

Yvonne O'Connell
8764 Captains Place
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Phone: (702) 228-4424
yoconnell@aol.com
Plaintiff Proper

Electronically Filed
Jan 12 2021 03:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

YVONNE O'CONNELL, an individual;

Plaintiff,

Case No.: A-12-655992-C

vs.

Dept. No.: V

WYNN LAS VEGAS, LLC, a Nevada Limited
Liability Company, doing business as WYNN
LAS VEGAS; DOES I through X; and ROE
CORPORATIONS I through X; inclusive;

Defendants.

NOTICE OF APPEAL

Notice is hereby given that Plaintiff, Yvonne O'Connell, proper, hereby appeals to the Supreme Court of Nevada from the "Order Granting Defendant's Motion to Enforce Settlement on Order Shortening Time and Denying Plaintiff's Post-Appeal Application for Attorney's Fees, Costs and Post-Judgment Interest as Moot" entered on January 14, 2020, and the "Order Granting Motion to Enforce Settlement After Reconsideration and Evidentiary Hearing by the Court" entered on December 7, 2020, and the "Order Denying Motion to Reconsider and/or Set

Aside Order Granting Motion to Enforce Settlement After Reconsideration and Evidentiary Hearing by the Court/and Motion to Set Aside Order/Proceeding Enforcing Settlement and Motion for Reconsideration of Order/Proceeding Enforcing Settlement” entered on December 24, 2020, all in the Eighth Judicial District Court, Clark County, Nevada, attached hereto as Exhibit “1”, Exhibit “2” and Exhibit “3”.

Dated this 4th day of January, 2021.

YVONNE O’CONNELL, Plaintiff Proper

Yvonne O'Connell

YVONNE O’CONNELL, Plaintiff Proper

8764 Captains Place

Las Vegas, NV 89117

(702) 228-4424

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CERTIFICATE OF SERVICE

I certify that on January 4th, 2021, a true and correct copy of this **NOTICE OF APPEAL** was served on the following by e-filing and e-service through the Clark County, Nevada Eighth Judicial District Court:

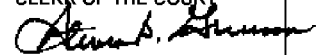
Lawrence J. Semenza, III, Esquire
SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Attorneys for Defendant

Yvonne O'Connell

YVONNE O’CONNELL, Plaintiff Proper

EXHIBIT 1

EXHIBIT 1



1 Lawrence J. Semenza, III, Esq., Bar No. 7174
Email: ljs@semenzalaw.com
2 Christopher D. Kircher, Esq., Bar No. 11176
Email: cdk@semenzalaw.com
3 Jarrod L. Rickard, Esq., Bar No. 10203
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4 Katie L. Cannata, Esq., Bar No. 14848
E-mail: klc@skrlawyers.com
5 SEMENZA KIRCHER RICKARD
6 10161 Park Run Drive, Suite 150
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7 Telephone: (702) 835-6803
8 Facsimile: (702) 920-8669

9 *Attorneys for Defendant Wynn Las Vegas, LLC*
10 *d/b/a Wynn Las Vegas*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 YVONNE O'CONNELL, individually,
14 Plaintiff,

15 v.

16 WYNN LAS VEGAS, LLC, a Nevada
17 Limited Liability Company, doing business as
18 WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X;
inclusive;

19 Defendants.
20

Case No. A-12-655992-C
Dept. No. V

CERTIFICATE OF SERVICE

21 Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of
22 Semenza Kircher Rickard and that on this 14th day of January 2020, I caused to be sent through
23 electronic transmission via Odyssey's online e-file and serve system, a file-stamped copy of the
24 **NOTICE OF ENTRY OF ORDER** filed in the above-entitled matter, to the following registered
25 e-mail address below. Mr. Bailey's e-mail address was inadvertently left off of the Certificate of
26 Service for the Notice of Entry of Order. Mr. Bailey, however, receive the Notice of Entry of
27 Order through Odyssey's online e-file and serve system. A true and correct copy of the Notice of
28

LAWRENCE J. SEMENZA, III, P.C.
10161 Park Run Drive, Suite 150
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Telephone: (702) 835-6803

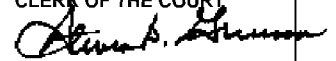
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Entry of Order is attached hereto.

Vernon Bailey, vbailey@vernonbaileylaw.com
Attorney for Plaintiff Yvonne O'Connell

/s/ Olivia A. Kelly

An Employee of Semenza Kircher Rickard



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9 *Attorneys for Defendant Wynn Las Vegas, LLC*
10 *d/b/a Wynn Las Vegas*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 YVONNE O'CONNELL, individually,

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15 v.

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18 WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X;
inclusive;

19 Defendants.
20

Case No. A-12-655992-C
Dept. No. V

NOTICE OF ENTRY OF ORDER

21 PLEASE TAKE NOTICE that an Order Granting Defendant's Motion to Enforce
22 Settlement on Order Shortening Time and Denying Plaintiff's Post-Appeal Application for

23 ///

24 ///

25 ///

26 ///

27

28

LAWRENCE J. SEMENZA, III, P.C.
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Las Vegas, Nevada 89145
Telephone: (702) 835-6803

1 Attorney's Fees, Costs and Post-Judgment Interest as Moot was entered by the Court on January
2 13, 2020, a true and correct copy of which is attached hereto.

3 DATED this 14th day of January 2020.

4 SEMENZA KIRCHER RICKARD

5
6 /s/ Lawrence J. Semenza, III

7 Lawrence J. Semenza, III, Esq., Bar No. 7174

8 Christopher D. Kircher, Esq., Bar No. 11176

9 Jarrod L. Rickard, Esq., Bar No. 10203

10 Katie L. Cannata, Esq., Bar No. 14848

11 10161 Park Run Drive, Suite 150

12 Las Vegas, Nevada 89145

13 *Attorneys for Defendant Wynn Las Vegas, LLC*
14 *d/b/a Wynn Las Vegas*

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Semenza Kircher Rickard and that on this 14th day of January 2020, I caused to be sent through electronic transmission via Odyssey's online e-file and serve system, a true copy of the foregoing

NOTICE OF ENTRY OF ORDER to the following registered e-mail addresses:

NETTLES LAW FIRM

Christian M. Morris, Esq. - christianmorris@nettlawfirm.com

Edward Wynder, Esq. - Edward@nettlawfirm.com

Jon J. Carlston, Esq. - jon@nettlawfirm.com

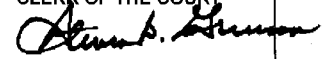
Jenn Alexy - jenn@nettlawfirm.com

Tiffany Wong - tiffany@nettlawfirm.com

Attorneys for Plaintiff Yvonne O'Connell

/s/ Olivia A. Kelly

An Employee of Semenza Kircher Rickard



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3 Jarrod L. Rickard, Esq., Bar No. 10203
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4 Katie L. Cannata, Esq., Bar No. 14848
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9 *Attorneys for Defendant Wynn Las Vegas, LLC*
10 *d/b/a Wynn Las Vegas*

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

13 YVONNE O'CONNELL, individually,
14 Plaintiff,

15 v.

16 WYNN LAS VEGAS, LLC, a Nevada
17 Limited Liability Company, doing business as
18 WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X;
inclusive;

19 Defendants.
20

Case No. A-12-655992-C
Dept. No. V

**ORDER GRANTING DEFENDANT'S
MOTION TO ENFORCE
SETTLEMENT ON ORDER
SHORTENING TIME AND DENYING
PLAINTIFF'S POST-APPEAL
APPLICATION FOR ATTORNEY'S
FEES, COSTS AND POST-JUDGMENT
INTEREST AS MOOT**

21 On October 11, 2019, the Court held a hearing on Defendant Wynn Las Vegas, LLC d/b/a
22 Wynn Las Vegas' ("Wynn") Motion to Enforce Settlement on Order Shortening Time (the
23 "Motion") and on Plaintiff Yvonne O'Connell's ("Plaintiff") Post-Appeal Application for
24 Attorney's Fees, Costs and Post-Judgment Interest (the "Application"). Plaintiff filed an
25
26
27
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SEMENTA KIRCHER RICKARD
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1 opposition to Wynn's Motion and Wynn filed a reply in support of its Motion. Wynn filed an
2 opposition to Plaintiff's Application and Plaintiff filed a reply in support of her Application.¹

3 A confidential settlement between Plaintiff and Defendant was reached on August 5,
4 2019 through an e-mail exchange and correspondence to the Court on the same day. There is no
5 need or cause for an evidentiary hearing to expand the record.

6 Having considered the Motion, Application, oppositions and replies thereto, the other
7 pleadings and papers relating to the foregoing and the oral argument of counsel during the
8 hearing, with good cause appearing:

9 **IT IS HEREBY ORDERED** that Wynn's Motion is **GRANTED** in so far as the Court
10 finds that the settlement amount and confidentiality term is enforceable. No further terms were
11 agreed to by Plaintiff.

12 **IT IS HEREBY FURTHER ORDERED** Plaintiff's request for an evidentiary hearing
13 is **DENIED**.

14 **IT IS HEREBY FURTHER ORDERED** that Defendant shall prepare formal settlement
15 documents and provide those documents to Plaintiff's counsel, which shall include the settlement
16 amount and confidentiality.

17 **IT IS HEREBY FURTHER ORDERED** that Wynn's request for an award of attorney's
18 fees is **DENIED**.

19 **IT IS HEREBY FURTHER ORDERED** that Plaintiff's Application is **DENIED AS**
20 **MOOT**.

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27
28 ¹ Plaintiff also filed a supplement to her Application and an errata to her supplement on July 25,
2019 and August 2, 2019, respectively.

SEMENZA KIRCHER RICKARD
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1 IT IS HEREBY FURTHER ORDERED that the Court shall conduct a status check on
2 ~~December 20, 2019~~ ^{Jan 31, 2020} at 9:00 a.m.

3 DATED this 7th day of Jan, 2019²⁰.

4
5 
6 EIGHTH JUDICIAL DISTRICT COURT JUDGE
JW7

7 Respectfully Submitted By:

8 SEMENZA KIRCHER RICKARD

9
10 

11 Lawrence J. Semenza, III, Esq., Bar No. 7174
12 Christopher D. Kircher, Esq., Bar No. 11176
13 Jarrod L. Rickard, Esq., Bar No. 10203
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

14 *Attorneys for Defendant Wynn Las Vegas, LLC*
15 *d/b/a Wynn Las Vegas*

16 Approved as to form and content by:

17 NETTLES LAW FIRM

18
19
20 Christian M. Morris, Esq., Bar No. 11218
1389 Galleria Drive, Suite 200
21 Henderson, Nevada 89014

22 *Attorneys for Plaintiff Yvonne O'Connell*
23
24
25
26
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28

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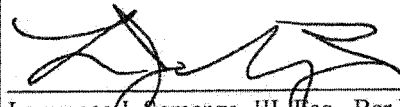
1 **IT IS HEREBY FURTHER ORDERED** that the Court shall conduct a status check on
2 December 20, 2019 at 9:00 a.m.

3 DATED this _____ day of _____, 2019.
4

5
6 EIGHTH JUDICIAL DISTRICT COURT JUDGE

7 Respectfully Submitted By:

8 SEMENZA KIRCHER RICKARD

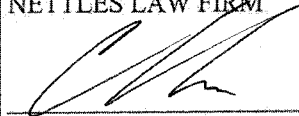
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10 

11 Lawrence J. Semenza, III, Esq., Bar No. 7174
12 Christopher D. Kircher, Esq., Bar No. 11176
13 Jarrod L. Rickard, Esq., Bar No. 10203
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

14 *Attorneys for Defendant Wynn Las Vegas, LLC*
15 *d/b/a Wynn Las Vegas*

16 Approved as to form and content by:

17 NETTLES LAW FIRM


18
19 

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21 Henderson, Nevada 89014

22 *Attorneys for Plaintiff Yvonne O'Connell*
23
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28

EXHIBIT 2

EXHIBIT 2



1 Lawrence J. Semenza, III, Esq., Bar No. 7174
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8 *Attorneys for Defendant Wynn Las Vegas, LLC*
d/b/a Wynn Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

9
10 YVONNE O'CONNELL, individually,

11 Plaintiff,

12 v.

13
14 WYNN LAS VEGAS, LLC, a Nevada Limited
15 Liability Company, doing business as WYNN
16 LAS VEGAS; DOES I through X; and ROE
CORPORATIONS I through X; inclusive;

17 Defendants.

Case No. A-12-655992-C
Dept. No. V

NOTICE OF ENTRY OF ORDER

18
19 PLEASE TAKE NOTICE that an Order Granting Motion to Enforce Settlement After
20 Reconsideration and Evidentiary Hearing by the Court was entered by the Court on December 4,
21 2020, a true and correct copy of which is attached hereto.

22 DATED this 7th day of December 2020.

23 SEMENZA KIRCHER RICKARD

24 /s/ Lawrence J. Semenza, III

Lawrence J. Semenza, III, Esq., Bar No. 7174

25 Christopher D. Kircher, Esq., Bar No. 11176

26 Jarrod L. Rickard, Esq., Bar No. 10203

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

27 *Attorneys for Defendant Wynn Las Vegas, LLC*

28 *d/b/a Wynn Las Vegas*

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that I am an employee with Semenza Kircher Rickard, and that on the 7th day of December 2020, I caused to be sent via Odyssey's online e-file and serve system a true copy of the foregoing **NOTICE OF ENTRY ORDER** to the following:

LAW OFFICE OF VERNON L. BAILEY

Vernon L. Bailey, Esq., vbailey@vernonbaileylaw.com

Attorney for Plaintiff

/s/ Olivia A. Kelly

An Employee of Semenza Kircher Rickard

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4

5 YVONNE O'CONNELL,

6 Plaintiff,

7 vs.

8 WYNN LAS VEGAS, LLC, ET AL.,

9 Defendants.

Case No. A-12-655992-C

Dept. No. V

10

11 **ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AFTER**
12 **RECONSIDERATION AND EVIDENTIARY HEARING BY THE COURT**

13

14 This matter came on for hearing before the Court on October 16, 2020, for an
15 evidentiary hearing concerning Plaintiff's Motion to Reconsider the Court's previous
16 Order Granting Defendant's Motion to Enforce Settlement. The plaintiff was present
17 by and through her counsel, I Vernon L. Bailey, Esq., and the defendant was present
18 by and through its counsel, Lawrence Semenza, III, Esq., and Christopher D.
19 Kircher, Esq. The Court heard testimony from the plaintiff, Yvonne O'Connell, and
20 from Plaintiff's former counsel, Christian Morris, Esq., of Nettles Morris Law Firm.
21 All persons appearing at the hearing did so via video through the BlueJeans
22 application as required by the District Court's Administrative Order in response to
23 the Covid-19 pandemic.

24 Plaintiff's counsel filed an Evidentiary Hearing Brief on the date of the hearing
25 without request by or permission of the Court, and said brief was ordered to be
26 struck. The Court did not review said brief.

27 During the evidentiary hearing, certain exhibits were offered and admitted by
28 the Court. Proposed Exhibits had been e-filed under temporary seal by the parties

CAROLYN ELLSWORTH
DISTRICT JUDGE
DEPARTMENT V

1 at the Court's request prior to the hearing, but not all of said proposed exhibits were
2 offered by the parties or admitted by the Court.

3 At the close of the evidentiary hearing, the Court ordered that the parties file,
4 on or before November 2, 2020, additional briefing concerning the testimony at the
5 evidentiary hearing. The Court, having reviewed the papers submitted by counsel,
6 makes the following findings of fact and conclusions of law:

7 A: FINDINGS OF FACT

8 The Court finds that Ms. Christian Morris, Esq., had actual authority from the
9 plaintiff to settle her case pursuant to a lengthy telephone conversation between Ms.
10 Morris and the plaintiff on or about August 2, 2019, which gave Ms. Morris authority
11 to settle the case, as long as the Plaintiff received, "in her pocket," a specific amount
12 which Ms. Morris had calculated, and which she had discussed with the plaintiff via
13 e-mail and during said telephone conversation. The plaintiff and Ms. Morris also
14 discussed the fact that the defendant wanted a confidentiality agreement as to the
15 settlement and the plaintiff indicated orally, and in e-mails, that she had no problem
16 with confidentiality. It was only after the defendant had accepted the plaintiff's
17 settlement offer, that Ms. O'Connell informed Ms. Morris that, although she had no
18 problem with the amount of the settlement, and had no problem with the
19 confidentiality term, she could not enter into any agreement with the defendant
20 because of her fear of the defendant.

21 The Court finds that Christian Morris was a credible witness. The plaintiff
22 gave her then counsel, Christian Morris, authority to negotiate a settlement on her
23 behalf, based upon specific parameters which were met when Ms. Morris reduced
24 her firm's contractual contingent attorney fees so that Ms. O'Connell would receive
25 the target amount "in her pocket." The Court further finds that the plaintiff was not a
26 credible witness, and this finding is, in part, based upon her testimony at the
27 evidentiary hearing that she believed that Ms. Morris and defense counsel were
28 somehow conspiring against her and that she had been threatened in a hallway

1 during her deposition, by men whom she could not identify or describe, but whom
2 she believed may have been defense counsel. It is further based upon her
3 contradictory testimony during the evidentiary hearing, as more fully set forth in the
4 defense brief filed on November 2, 2020.

5 B. CONCLUSIONS OF LAW

6 In *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 656, 218 P3d 853, 860 (2009) the
7 Nevada Supreme Court noted in dicta, “[C]ourts ‘do not treat the attorney-client
8 relationship as they do other agent principal relationships... when the question is
9 whether a settlement agreed to by the attorney binds the client.’ Grace M.
10 Giesel, *Client Responsibility for Lawyer Conduct: Examining the Agency Nature of*
11 *the Lawyer–Client Relationship*, 86 Neb. L.Rev. 346, 348 (2007). While a lawyer has
12 apparent authority to handle procedural matters for a client, ‘[m]erely retaining a
13 lawyer does not create apparent authority in the lawyer’ to settle his client’s case.
14 Restatement (Third) of the Law Governing Lawyers § 27 cmt. d (2000); see *id.* §
15 22(1).” Of course, the facts of the NC-DSH case differ greatly from the instant case
16 – there the attorney had forged his client’s signatures to settlement documents,
17 obtained the settlement funds and absconded with the money, and the Supreme
18 Court focused on the main issue of fraud upon the court. While the issue of
19 apparent authority of a lawyer to settle a case without actual authority from the client
20 was raised, it was unclear as to whether the Court was expressly adopting the Third
21 Restatement position in that regard. What is clear, and is not disputed by the
22 plaintiff, is that a lawyer with actual authority from a client to settle that client’s case,
23 may do so, and that settlement will be enforceable. It was for this reason that the
24 Court agreed to reconsider its earlier ruling and hold an evidentiary hearing, so that it
25 could make a factual finding as to whether Ms. Morris had actual authority.

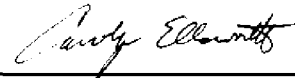
26 Having found that Ms. Morris did have actual authority, the Court HEREBY
27 REAFFIRMS its earlier granting of the Motion to Enforce Settlement.

28 IT IS FURTHER ORDERED that the defendant’s brief filed under temporary

1 seal on November 2, 2020, be sealed, and the defendant IS ORDERED to file a
2 redacted copy of said brief that does not contain the terms of the settlement which
3 are to be confidential. Said redacted brief shall be filed not later than December 11,
4 2020.

5 IT IS FURTHER ORDERED that the clerk of the court, having lodged in the
6 evidence vault, the exhibits which were offered and admitted at the evidentiary
7 hearing, shall seal the proposed exhibits which were filed temporarily under seal (on
8 October 12th and 14th of 2020) for the purpose of facilitating the paperless
9 requirements of Administrative Order 20-17, issued as part of the Court's Covid-19
10 response.

11
12 Dated this 4th day of December, 2020

13 
14

15 B48 BAA 91E4 AAFE
16 Carolyn Ellsworth
17 District Court Judge
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Yvonne O'Connell, Plaintiff(s)

CASE NO: A-12-655992-C

7 vs.

DEPT. NO. Department 5

8 Wynn Resorts Limited,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/4/2020

15 "Christian M. Morris, Esq." .

christianmorris@nettlelawfirm.com

16 "Edward Wynder, Esq." .

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17 "Jon J. Carlston, Esq." .

jon@nettlelawfirm.com

18 "Lawrence J. Semenza, III" .

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19 Christopher D. Kircher .

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21 Jenn Alexy .

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22 Jennifer A. Bidwell .

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23 Olivia Kelly .

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24 Teresa Beiter

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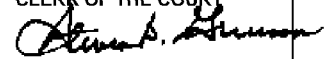
Vernon Bailey	vbailey@vernonbaileylaw.com
Katie Cannata	klc@skrlawyers.com
Emily Arriviello	emily@nettlesmorris.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 12/7/2020

Lawrence Semenza	Semenza Kircher Rickard Attn: Lawrence J. Semenza III 10161 Park Run Drive, Suite 150 Las Vegas, NV, 89145
------------------	---

EXHIBIT 3

EXHIBIT 3



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9 *Attorneys for Defendant Wynn Las Vegas, LLC*
10 *d/b/a Wynn Las Vegas*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 YVONNE O'CONNELL, individually,
14
15 Plaintiff,

16 v.

17 WYNN LAS VEGAS, LLC, a Nevada Limited
18 Liability Company, doing business as WYNN
19 LAS VEGAS; DOES I through X; and ROE
20 CORPORATIONS I through X; inclusive;

21 Defendants.
22
23
24
25

Case No. A-12-655992-C
Dept. No. V

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S PRO SE
MOTION TO RECONSIDER
AND/OR SET ASIDE ORDER
GRANTING MOTION TO ENFORCE
SETTLEMENT AFTER
RECONSIDERATION AND
EVIDENTIARY HEARING BY THE
COURT AND MOTION TO SET
ASIDE ORDER/PROCEEDING
ENFORCING SETTLEMENT AND
MOTION FOR RECONSIDERATION
OF ORDER/PROCEEDING
ENFORCING SETTLEMENT**

26 PLEASE TAKE NOTICE that an Order Denying Plaintiff Yvonne O'Connell's pro se
27 Motion to Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After
28

SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

1 Reconsideration and Evidentiary Hearing by The Court and Motion to Set Aside
2 Order/Proceeding Enforcing Settlement and Motion for Reconsideration of Order/Proceeding
3 Enforcing Settlement was entered by the Court on December 23, 2020, a true and correct copy of
4 which is attached hereto.

5 DATED this 24th day of December, 2020.

6 SEMENZA KIRCHER RICKARD

7 /s/ Lawrence J. Semenza, III

8 Lawrence J. Semenza, III, Esq., Bar No. 7174

9 Christopher D. Kircher, Esq., Bar No. 11176

10 Jarrod L. Rickard, Esq., Bar No. 10203

11 Katie L. Cannata, Esq., Bar No. 14848

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

12 *Attorneys for Defendant Wynn Las Vegas, LLC*
13 *d/b/a Wynn Las Vegas*

SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that I am an employee with Semenza Kircher Rickard, and that on the 24th day of December, 2020, I caused to be sent via Odyssey's online e-file and serve system a true copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S PRO SE MOTION TO RECONSIDER AND/OR SET ASIDE ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AFTER RECONSIDERATION AND EVIDENTIARY HEARING BY THE COURT AND MOTION TO SET ASIDE ORDER/PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR RECONSIDERATION OF ORDER/PROCEEDING ENFORCING SETTLEMENT** to the following:

Yvonne L. O'Connell, yoconnell@aol.com
Plaintiff

LAW OFFICE OF VERNON L. BAILEY
Vernon L. Bailey, Esq., vbailey@vernonbaileylaw.com
Attorney for Plaintiff Yvonne O'Connell

/s/ Olivia A. Kelly
An Employee of Semenza Kircher Rickard

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 YVONNE O'CONNELL,

6 Plaintiff,

7 vs.

Case No. A-12-655992-C

8 WYNN LAS VEGAS, LLC, ET AL.,

Dept. No. V

9 Defendants.

10
11 **ORDER DENYING MOTION TO RECONSIDER AND/OR SET ASIDE ORDER GRANTING**
12 **MOTION TO ENFORCE SETTLEMENT AFTER RECONSIDERATION AND**
13 **EVIDENTIARY HEARING BY THE COURT/AND MOTION TO SET ASIDE ORDER/**
14 **PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR RECONSIDERATION OF**
15 **ORDER/ PROCEEDING ENFORCING SETTLEMENT**
16

17 On December 21, 2020, the plaintiff, Yvonne O'Connell, filed a "Motion to
18 Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After
19 Reconsideration and Evidentiary Hearing by The Court/ And Motion to Set Aside
20 Order/Proceeding Enforcing Settlement And Motion for Reconsideration of
21 Order/Proceeding Enforcing Settlement." Said document was filed not by the plaintiff's
22 counsel, but by Ms. O'Connell herself. EDCR 7.40(a) provides:

23 When a party has appeared by counsel, the party cannot thereafter appear on the
24 party's own behalf in the case without the consent of the court. Counsel who has
25 appeared for any party must represent that party in the case and shall be recognized
26 by the court and by all parties as having control of the case. The court in its
discretion may hear a party in open court although the party is represented by
counsel.

27 This Court did not authorize Ms. O'Connell to appear on her own behalf and therefore the
28 above referenced motion was filed in violation of EDCR 7.40(a). Although Ms. O'Connell's

CAROLYN ELLSWORTH
DISTRICT JUDGE
DEPARTMENT V

1 counsel moved to withdraw, the Court denied said motion until the conclusion of a pending
2 motion for attorney's fees filed by the defendant, which is set for argument on December
3 28, 2020. Moreover, said fugitive document filed directly by the plaintiff again asks the
4 Court to reconsider its ruling despite the fact that the Court had previously agreed to
5 reconsider its earlier ruling on the same subject. After many hours spent by this Court
6 reviewing documents *in camera* at counsels' request, reviewing thorough briefs and
7 supplements thereto by the attorneys on both sides, and after considering testimony from
8 two witnesses at a day long evidentiary hearing, and the exhibits offered by the parties at
9 said hearing, the Court again ruled.

10 EDCR 2.24(a) provides, "No motions once heard and disposed of may be renewed
11 in the same cause, nor may the same matters therein embraced be reheard, unless by
12 leave of the court granted upon motion therefor, after notice of such motion to the adverse
13 parties." The Court declines to once again reconsider its ruling and therefore the MOTION
14 IS DENIED.

15 Dated this 23rd day of December, 2020

16 
17

18 E0B 5B6 A964 1C67
19 Carolyn Ellsworth
20 District Court Judge
21
22
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Yvonne O'Connell, Plaintiff(s) | CASE NO: A-12-655992-C
7 vs. | DEPT. NO. Department 5
8 Wynn Resorts Limited,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/23/2020

15 "Christian M. Morris, Esq." .	christianmorris@nettleslawfirm.com
16 "Edward Wynder, Esq." .	Edward@nettleslawfirm.com
17 "Jon J. Carlston, Esq." .	jon@nettleslawfirm.com
18 "Lawrence J. Semenza, III" .	ljs@skrlawyers.com
19 Christopher D. Kircher .	cdk@skrlawyers.com
20 Jarrod L. Rickard .	jlrr@skrlawyers.com
21 Jenn Alexy .	jenn@nettleslawfirm.com
22 Jennifer A. Bidwell .	jab@skrlawyers.com
23 Olivia Kelly .	oak@skrlawyers.com
24 Teresa Beiter	tnb@skrlawyers.com
25 Angie Barreras	alb@skrlawyers.com

Vernon Bailey	vbailey@vernonbaileylaw.com
Katie Cannata	klc@skrlawyers.com
Emily Arriviello	emily@nettlesmorris.com
Yvonne O'Connell	yoconnell@aol.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 12/24/2020

Lawrence Semenza	Semenza Kircher Rickard Attn: Lawrence J. Semenza III 10161 Park Run Drive, Suite 150 Las Vegas, NV, 89145
------------------	---

Yvonne O'Connell
8764 Captains Place
Las Vegas, Nevada 89117
Phone: (702) 228-4424
yoconnell@aol.com
Plaintiff Proper

DISTRICT COURT
CLARK COUNTY, NEVADA

YVONNE O'CONNELL, an individual;

Plaintiff,

Case No.: A-12-655992-C

vs.

Dept. No.: V

WYNN LAS VEGAS, LLC, a Nevada Limited
Liability Company, doing business as WYNN
LAS VEGAS; DOES I through X; and ROE
CORPORATIONS I through X; inclusive;

Defendants.

CASE APPEAL STATEMENT

Plaintiff Yvonne O'Connell, proper, hereby files this Case Appeal Statement
pursuant to NRAP 3(f).

1. The name of the parties below:

Plaintiff/Appellant: YVONNE O'CONNELL

Defendant/Respondent: WYNN LAS VEGAS, LLC, a Nevada Limited Liability Company, doing business as WYNN LAS VEGAS; DOES I through X; and ROE CORPORATIONS I through X; inclusive

2. Identify the Judge issuing the decision, judgment, or order appealed from:

The Honorable Carolyn Ellsworth.

3. Identify each appellant and the name and address of counsel for each appellant:

The Appellant is Yvonne O'Connell, proper. She no longer has counsel and is representing herself.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent:

The Respondent is WYNN LAS VEGAS, LLC, a Nevada Limited Liability Company, doing business as WYNN LAS VEGAS; DOES I through X; and ROE CORPORATIONS I through X; inclusive. Respondent's counsel is Semenza Kircher Rickard, 10161 Park Run Drive, Ste. 150, Las Vegas, Nevada 89145.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada, and if so, whether the district court granted the attorney permission to appear under SCR 42.

No.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellant was represented by retained counsel in the District Court.

7. Whether the district court granted the Appellant leave to proceed in forma pauperis:

Not applicable.

8. The date that the proceeding commenced in the district court:

The Complaint was filed on February 7, 2012, which commenced the District Court proceeding.

9. Provide a brief description of the nature of the action and result before the district court, the judgment or order being appealed, and the relief granted by the district court:

This is a personal injury negligence action that occurred as a result of a slip and fall, resulting in serious physical, chronic, disabling injuries requiring the Appellant to use a walker. O'Connell won a jury award. The Nevada Supreme Court affirmed, No. 70583. The Nevada Court of Appeals, No. 71789, found abuse of discretion, that "the district court improperly analyzed", and stated "we reverse the district court's denial of O'Connell's request for attorney fees and remand for a full hearing" and "consistent with this opinion". O'Connell's hearing was scheduled for August 16, 2019, and O'Connell believed that this would end the litigation.

On August 2, 2019, Appellant's prior counsel called Appellant and said that

Defendant made an offer to settle with confidentiality. Appellant **specifically** and **expressly said “No”**, that she wanted what was owed according to what she had won, which final amount was going to be determined at her hearing for fees. Her prior counsel understood that Appellant rejected settlement, rejected confidentiality, expected her hearing for fees and at 4:10 pm confirmed in her email to Appellant that she did reject it, that their goal was to see what the Court says and Appellant relied on that email.

Appellant’s former counsel then made her own offer/demand to Defendant on August 2, 2019 in her 4:37 pm email, without O’Connell’s knowledge or consent and continued to hide it from O’Connell, deliberately taking away O’Connell’s right to know about it and reject it. Appellant’s former counsel admitted in the October 16, 2020 evidentiary hearing that she didn’t tell O’Connell about her offer/demand. Defendant accepted Appellant’s former counsel’s offer/demand on August 5, 2019 and the district court judge ruled that that is when that contract happened. Appellant’s former counsel continued to hide this from Appellant.

As soon as Appellant found out what her former counsel had done, she repeatedly protested. Her hearing for fees was rescheduled to October 11, 2019, and Defendant filed a motion to enforce settlement. The district court judge continued her abuse of discretion, refused to let O’Connell speak, refused to hear O’Connell’s hearing for fees, and ordered O’Connell to settle. O’Connell then retained new counsel.

The Honorable Carolyn Ellsworth entered her Decision and Order on January 14, 2020 granting Respondent’s Motion to Enforce Settlement Agreement. On February 7, 2020 Appellant’s new counsel was heard and the Judge granted an evidentiary hearing, which was held on October 16, 2020. The Honorable Carolyn

Ellsworth entered her Order on December 7, 2020, finding that O’Connell’s former counsel had “actual” authority. The Honorable Carolyn Ellsworth entered her Order on December 24, 2020, denying Plaintiff’s Motion to Reconsider.

Appellant believes that her case is stronger than the Nevada Supreme Court No. 71317, King vs. Desert Palace, Inc., in which the Eighth Judicial District Court was again trying to force a Plaintiff into a settlement/contract.

The evidence of written material facts proves that O’Connell **specifically and expressly rejected settlement and confidentiality**, and her former counsel made her own offer/demand without O’Connell’s knowledge, contrary to their Retainer Agreement, their habit of full communication, Nevada Rules for Professional Conduct, contract laws, case law and public policy.

10. Indicate whether this case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court, and if so, the Supreme Court caption and docket number:

Wynn Las Vegas, LLC, D/B/A Wynn Las Vegas, Appellant, vs. Yvonne O’Connell, an Individual, Respondent. No. 70583

Yvonne O’Connell, an Individual, Appellant, vs. Wynn Las Vegas, LLC, D/B/A Wynn Las Vegas, Respondent. No. 71789

11. Whether the appeal involves child custody or visitation:

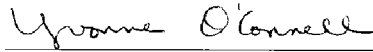
Not applicable.

12. Whether the appeal involves the likelihood of settlement:

Appellant doesn’t want to be forced into any settlement/contract with Defendant. This case was fully litigated and she only wants what she is owed according to the jury award, the two appeals that she won and the laws.

Dated this 4th day of January, 2021.

YVONNE O'CONNELL, Plaintiff/Appellant



YVONNE O'CONNELL, proper
8764 Captains Place
Las Vegas, Nevada 89117
Tel: (702) 228-4424
yoconnell@aol.com

CERTIFICATE OF SERVICE

I certify that on January 4th, 2021, a true and correct copy of this **CASE AP-
PEAL STATEMENT**, was served on the following by e-filing and e-service
through the Clark County, Nevada Eighth Judicial District Court:

Lawrence J. Semenza, III, Esquire
SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Attorneys for Defendant



Yvonne O'Connell, proper



1 ASTA

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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 YVONNE O'CONNELL,

11 Plaintiff(s),

12 vs.

13 WYNN LAS VEGAS, LLC dba WYNN LAS
14 VEGAS,

15 Defendant(s),

Case No: A-12-655992-C

Dept No: V

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Yvonne O'Connoll

20 2. Judge: Carolyn Ellsworth

21 3. Appellant(s): Yvonne O'Connoll

22 Counsel:

23 Yvonne O'Connoll
24 8764 Captains Pl.
Las Vegas, NV 89117

25 4. Respondent (s): Wynn Las Vegas, LLC dba Wynn Las Vegas

26 Counsel:

27 Lawrence J. Semenza, III, Esq.
28 10161 Park Run Dr., Ste. 150

Las Vegas, NV 89145

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: February 7, 2012

10. Brief Description of the Nature of the Action: NEGLIGENCE - Premises Liability

Type of Judgment or Order Being Appealed: Judgment

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 70583, 71789

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 6 day of January 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Yvonne O'Connell

CASE SUMMARY**CASE NO. A-12-655992-C**

Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

§
§
§
§
§
§
§

Location: **Department 5**
 Judicial Officer: **Ellsworth, Carolyn**
 Filed on: **02/07/2012**
 Case Number History:
 Cross-Reference Case Number: **A655992**
 Supreme Court No.: **70583**
71789

CASE INFORMATION**Statistical Closures**

12/30/2020 Other Manner of Disposition
 02/15/2017 Other Manner of Disposition
 12/15/2015 Verdict Reached

Case Type: **Negligence - Premises Liability**
 Subtype: **Slip and Fall**

Case Status: **12/30/2020 Closed**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-12-655992-C
 Court Department 5
 Date Assigned 02/17/2016
 Judicial Officer Ellsworth, Carolyn

PARTY INFORMATION

Plaintiff O'Connell, Yvonne

Defendant Wynn Las Vegas LLC

Semenza, Lawrence, III
Retained
 702-835-6803(W)

Wynn Resorts Limited

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

02/07/2012



Complaint

Filed By: Plaintiff O'Connell, Yvonne

03/20/2012



Amended Complaint

Filed By: Plaintiff O'Connell, Yvonne
Amended Complaint

04/04/2012



Summons

Filed by: Plaintiff O'Connell, Yvonne
Summons

11/19/2012



Motion for Withdrawal

Filed By: Plaintiff O'Connell, Yvonne
Motion to Withdraw as Attorney of Record

11/20/2012

















Certificate of Mailing

Filed By: Plaintiff O'Connell, Yvonne
Certificate of Mailing re Motion to Withdraw as Attorney of Record

CASE SUMMARY

CASE NO. A-12-655992-C

12/19/2012	 Supplement Filed by: Plaintiff O'Connell, Yvonne <i>Supplement to Motion to Withdraw as Attorney of Record</i>
12/21/2012	 Order Filed By: Plaintiff O'Connell, Yvonne <i>Order</i>
12/24/2012	 Notice of Entry of Order Filed By: Plaintiff O'Connell, Yvonne <i>Notice of Entry of Order</i>
05/14/2013	 Notice of Appearance Party: Plaintiff O'Connell, Yvonne <i>Notice of Appearance</i>
06/25/2013	 Default Filed By: Plaintiff O'Connell, Yvonne <i>(Set Aside 07-24-13) Default</i>
07/24/2013	 Initial Appearance Fee Disclosure Filed By: Defendant Wynn Las Vegas LLC <i>Initial Appearance Fee Disclosure</i>
07/24/2013	 Stipulation and Order Filed by: Defendant Wynn Las Vegas LLC <i>Stipulation and Order to Set Aside Default</i>
07/24/2013	 Answer to Amended Complaint Filed By: Defendant Wynn Las Vegas LLC <i>Answer to Amended Complaint</i>
07/24/2013	 Notice of Entry of Stipulation and Order Filed By: Defendant Wynn Las Vegas LLC <i>Notice of Entry of Stipulation and Order to Set Aside Default</i>
08/21/2013	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption</i>
11/20/2013	 Joint Case Conference Report Filed By: Plaintiff O'Connell, Yvonne <i>Joint Case Conference Report</i>
11/25/2013	 Scheduling Order Filed By: Plaintiff O'Connell, Yvonne <i>Scheduling Order</i>
12/05/2013	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial and Calendar Call</i>
09/10/2014	 Association of Counsel Filed By: Plaintiff O'Connell, Yvonne

CASE SUMMARY

CASE NO. A-12-655992-C

Notice of Association of Counsel

09/22/2014



Stipulation to Extend Discovery

Party: Plaintiff O'Connell, Yvonne

Stipulation and Order to Extend Discovery and Continue Trial (First Request)

09/29/2014



Notice of Entry of Stipulation and Order

Filed By: Plaintiff O'Connell, Yvonne

Notice of Entry of Stipulation and Order to Extend Discovery and Continue Trial

10/01/2014



Amended Order Setting Jury Trial

Amended Order Setting Civil Jury Trial and Calendar Call

12/29/2014



Motion to Withdraw As Counsel

Filed By: Plaintiff O'Connell, Yvonne

Motion to Withdraw as Counsel of Record

01/26/2015



Notice of Non Opposition

Filed By: Plaintiff O'Connell, Yvonne

Notice of Non-Opposition

01/27/2015



Affidavit in Support

Filed By: Plaintiff O'Connell, Yvonne

Affidavit of J. Scott Dilbeck, Esq. in Support of Motion to Withdraw

02/10/2015



Order to Withdraw as Attorney of Record

Filed by: Plaintiff O'Connell, Yvonne

Order Granting Motion to Withdraw

02/11/2015



Notice of Entry of Order

Filed By: Plaintiff O'Connell, Yvonne

Notice of Entry of Order Granting Motion to Withdraw

02/18/2015



Notice of Appearance

Party: Plaintiff O'Connell, Yvonne

Notice of Appearance

04/21/2015



Proof of Service

Filed by: Plaintiff O'Connell, Yvonne

Proof of Service of Subpoena Documents on Salvatore Risco

04/23/2015



Proof of Service

Filed by: Defendant Wynn Las Vegas LLC

Proof of Service

05/13/2015



Disclosure of Expert

Filed By: Defendant Wynn Las Vegas LLC

Defendant's Disclosure of Rebuttal Expert Witness and Report Pursuant to NRCP 26(E)

06/03/2015



Notice of Hearing

Notice of Rescheduling of Hearing




07/13/2015



Motion for Summary Judgment

CASE SUMMARY

CASE NO. A-12-655992-C

	Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Motion for Summary Judgment</i>
07/13/2015	 Initial Appearance Fee Disclosure Filed By: Defendant Wynn Las Vegas LLC <i>Initial Appearance Fee Disclosure for Motion for Summary Judgment Filing</i>
07/27/2015	 Opposition Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Opposition to Defendant's Motion for Summary Judgment</i>
07/31/2015	 Motion Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Motion for Protective Order and for Order Shortening Time</i>
08/04/2015	 Opposition to Motion For Protective Order Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Opposition to Defendant's Motion for Protective Order and for Order Shortening Time</i>
08/11/2015	 Errata Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Errata to Opposition to Defendant's Motion for Summary Judgment</i>
08/11/2015	 Order Setting Settlement Conference <i>Order Setting Settlement Conference</i>
08/13/2015	 Motion in Limine Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Motion In Limine [#1] To Exclude Purported Expert Gary Presswood</i>
08/13/2015	 Motion in Limine Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Motion In Limine [#2] To Exclude Unrelated Medical Conditions and Damages Claimed By Plaintiff</i>
08/13/2015	 Motion in Limine Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Motion In Limine [#3] To Exclude Any Reference Or Testimony of Defendant's Alleged Failure To Preserve Evidence</i>
08/13/2015	 Omnibus Motion In Limine Filed by: Plaintiff O'Connell, Yvonne <i>Plaintiff's Omnibus Motions in Limine</i>
08/18/2015	 Affidavit Filed By: Plaintiff O'Connell, Yvonne <i>Supplemental Affidavit and Declaration of Christian M. Morris to Plaintiff's Omnibus Motions in Limine</i>
08/27/2015	 Opposition to Motion in Limine Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Opposition to Wynn's Motion in Limine [#1] to Exclude Purported Expert Witness Gary Presswood</i>

CASE SUMMARY

CASE NO. A-12-655992-C

08/27/2015	 Opposition to Motion in Limine Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Opposition to Wynn's Motion in Limine [#2] to Exclude Unrelated Medical Conditions and Damages Claimed by Plaintiff and Motion for Sanctions for Violation of HIPPA Protected Information</i>
08/27/2015	 Opposition to Motion in Limine Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Opposition to Wynn's Motion in Limine [#3] to Exclude any Reference or Testimony or Defendant's Alleged Failure to Preserve Evidence</i>
08/31/2015	 Opposition to Motion in Limine Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Opposition to Plaintiff's Omnibus Motions in Limine</i>
09/03/2015	 Affidavit Filed By: Plaintiff O'Connell, Yvonne <i>Supplemental Affidavit and Declaration of Christian M. Morris to Plaintiff's Omnibus Motions in Limine</i>
09/09/2015	 Motion Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Motion to Re-Open Discovery for the Limited Purpose of Taking Defendant's 30(b)(6) Deposition and for Order Shortening Time</i>
09/10/2015	 Opposition to Motion Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Opposition to Plaintiff's Motion to Reopen Discovery for The Limited Purpose of Taking Defendant's 30(B)(6) Deposition and for Order Shortening Time</i>
09/10/2015	 Reply in Support Filed By: Defendant Wynn Las Vegas LLC <i>Reply In Support of Defendant's Motion for Summary Judgment</i>
09/10/2015	 Reply in Support Filed By: Defendant Wynn Las Vegas LLC <i>Reply in Support of Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness Gary Presswood</i>
09/10/2015	 Reply in Support Filed By: Defendant Wynn Las Vegas LLC <i>Reply In Support of Defendant's Motion in Limine [#3] to Exclude Any Reference or Testimony of Defendant's Alleged Failure to Preserve Evidence</i>
09/10/2015	 Reply in Support Filed By: Defendant Wynn Las Vegas LLC <i>Reply In Support of Defendant's Motion in Limine [#2] to Exclude Unrelated Medical Conditions; Opposition to Plaintiff's Motion for Sanctions</i>
09/17/2015	 Reply to Opposition Filed by: Plaintiff O'Connell, Yvonne <i>Plaintiff's Reply to Defendant's Opposition to Plaintiff's Omnibus Motions in Limine</i>
09/23/2015	 Discovery Commissioners Report and Recommendations Filed By: Plaintiff O'Connell, Yvonne

CASE SUMMARY














CASE NO. A-12-655992-C

Discovery Commissioner Report and Recommendations

09/24/2015	 Notice of Entry of Order Filed By: Plaintiff O'Connell, Yvonne <i>Notice of Entry of Discovery Commissioner Report and Recommendations</i>
09/28/2015	 Pre-trial Memorandum Filed by: Plaintiff O'Connell, Yvonne <i>Joint Pre-Trial Memorandum</i>
10/09/2015	 Order Denying Motion Filed By: Plaintiff O'Connell, Yvonne <i>Order Denying Defendant's Motion For Summary Judgment</i>
10/12/2015	 Recorders Transcript of Hearing <i>Transcript of Proceedings Defendants' Motions in Limine/Plaintiff's Omnibus Motions in Limine/Calendar Call October 1, 2015</i>
10/12/2015	 Notice of Entry of Order Filed By: Plaintiff O'Connell, Yvonne <i>Notice of Entry of Order Denying Defendant's Motion for Summary Judgment</i>
10/26/2015	 Order Shortening Time Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Emergency Motion to Continue Trial and for Sanctions on Order Shortening Time</i>
10/27/2015	 Supplemental Filed by: Defendant Wynn Las Vegas LLC <i>Defendant's Supplemental Brief to Exclude Plaintiff's Treating Physician Expert Witnesses</i>
10/27/2015	 Pre-Trial Disclosure Party: Defendant Wynn Las Vegas LLC <i>Defendant's Pretrial Disclosures</i>
10/27/2015	 Proposed Voir Dire Questions Filed By: Defendant Wynn Las Vegas LLC <i>Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas' Proposed Voir Dire Questions</i>
10/27/2015	 Proposed Verdict Forms Not Used at Trial Party: Defendant Wynn Las Vegas LLC <i>Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas' Proposed Verdict Forms</i>
10/27/2015	 Supplement Filed by: Plaintiff O'Connell, Yvonne <i>Supplement</i>
10/28/2015	 Pre-Trial Disclosure Party: Plaintiff O'Connell, Yvonne <i>Plaintiff's Pretrial Disclosures</i>
10/28/2015	 Proposed Voir Dire Questions Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Proposed Voir Dire Questions</i>

CASE SUMMARY

CASE NO. A-12-655992-C

10/28/2015	 Miscellaneous Filing Filed by: Plaintiff O'Connell, Yvonne <i>Plaintiff's Proposed Verdict Forms</i>
10/28/2015	 Opposition Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Opposition to Plaintiff's Motion to Continue Trial and For Sanctions on an Order Shortening Time</i>
11/02/2015	 Order Filed By: Defendant Wynn Las Vegas LLC <i>Order on Plaintiff's Omnibus Motions in Limine</i>
11/02/2015	 Order Filed By: Defendant Wynn Las Vegas LLC <i>Order Granting Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness Gary Presswood</i>
11/02/2015	 Order Denying Motion Filed By: Defendant Wynn Las Vegas LLC <i>Order Denying Without Prejudice Defendant's Motion in Limine [#2] to Exclude Unrelated Medical Conditions and Damages Claimed by Plaintiff</i>
11/02/2015	 Order Denying Motion Filed By: Defendant Wynn Las Vegas LLC <i>Order Denying Defendant's Motion in Limine [#3] to Exclude Any Reference or Testimony of Defendant's Alleged Failure to Preserve Evidence</i>
11/05/2015	 Notice of Entry of Order Filed By: Defendant Wynn Las Vegas LLC <i>Notice of Entry of Order</i>
11/05/2015	 Notice of Entry of Order Filed By: Defendant Wynn Las Vegas LLC <i>Notice of Entry of Order</i>
11/05/2015	 Notice of Entry of Order Filed By: Defendant Wynn Las Vegas LLC <i>Notice of Entry of Order</i>
11/05/2015	 Notice of Entry of Order Filed By: Defendant Wynn Las Vegas LLC <i>Notice of Entry of Order</i>
11/05/2015	 Order Granting Motion Filed By: Plaintiff O'Connell, Yvonne <i>Order Granting Plaintiff's Oral Motion for Demand of Jury Trial</i>
11/05/2015	 Notice of Entry of Order Filed By: Plaintiff O'Connell, Yvonne <i>Notice of Entry of Order Granting Plaintiff's Oral Motion for Demand of Jury Trial</i>
11/09/2015	 Brief Filed By: Plaintiff O'Connell, Yvonne

CASE SUMMARY


CASE NO. A-12-655992-C

Plaintiff's Brief Regarding Causation Testimony by Drs. Dunn and Tingey

11/09/2015

 Jury List
Jury List


11/09/2015

 Brief
Filed By: Plaintiff O'Connell, Yvonne
Plaintiff's Brief as to Testimony Regarding Future Pain and Suffering

11/09/2015

 Jury List

11/10/2015

 Brief
Filed By: Defendant Wynn Las Vegas LLC
Defendant's Bench Brief Regarding Future Pain and Suffering


11/10/2015

 Brief
Filed By: Defendant Wynn Las Vegas LLC
Defendant's Bench Brief Regarding Exclusion of Plaintiff's Treating Physician Testimony Solely Based On Plaintiff's Self-Reporting

11/12/2015

 Brief
Filed By: Defendant Wynn Las Vegas LLC
Defendant's Bench Brief Regarding Expert Medical Testimony to Apportion Damages


11/12/2015

 Jury List
Amended Jury List

11/12/2015

 Brief
Filed By: Plaintiff O'Connell, Yvonne
Plaintiff's Brief As To Constructive Notice


11/16/2015

 Jury Instructions


11/16/2015

 Verdict


11/16/2015

 Verdict Submitted to the Jury But Returned Unsigned


11/17/2015

 Discovery Commissioners Report and Recommendations
Filed By: Plaintiff O'Connell, Yvonne
Discovery Commissioner Report and Recommendations


11/17/2015

 Notice of Entry
Filed By: Plaintiff O'Connell, Yvonne
Notice of Entry of Discovery Commissioner Report and Recommendations

11/17/2015

 Notice of Entry of Order
Filed By: Plaintiff O'Connell, Yvonne
Notice of Entry of Discovery Commissioner Report and Recommendations

11/25/2015

 Brief
Filed By: Defendant Wynn Las Vegas LLC
Defendant Wynn Las Vegas, LLC's Trial Brief













CASE SUMMARY

CASE NO. A-12-655992-C

11/25/2015	 Application Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Application for Fees, Costs and Pre-Judgment Interest</i>
12/07/2015	 Opposition Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Opposition to Plaintiff's Application for Fees, Costs and Pre-Judgment Interest and Motion to Retax Costs</i>
12/15/2015	 Judgment Upon Jury Verdict Filed By: Plaintiff O'Connell, Yvonne <i>Judgment on Verdict</i>
12/15/2015	 Notice of Entry of Judgment Filed By: Plaintiff O'Connell, Yvonne <i>Notice of Entry of Judgment on Verdict</i>
12/21/2015	 Motion Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Amended Application for Fees, Costs and Pre-Judgment Interest - Amended and Resubmitted As - Plaintiff's Motion and Notice of Motion to Tax Costs and for Fees and Post-Judgment Interest</i>
12/21/2015	 Memorandum of Costs and Disbursements Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Amended Verified Memorandum of Costs (First Submission attached as Exhibit 5 to Plaintiff's Application for Fees, Costs and Pre-Judgment Interest</i>
12/23/2015	 Notice of Posting Bond Filed By: Defendant Wynn Resorts Limited <i>Notice of Posting Supersedeas Bond</i>
12/23/2015	 Order Filed By: Defendant Wynn Las Vegas LLC <i>Order on Supplemental Briefing Relating to the Proposed Testimony of Dr. Dunn and Dr. Tingey</i>
12/23/2015	 Order Denying Motion Filed By: Defendant Wynn Las Vegas LLC <i>Order Denying Plaintiff's Emergency Motion to Continue Trial</i>
12/28/2015	 Supplement Filed by: Defendant Wynn Las Vegas LLC <i>Defendant's Supplement to Motion to Retax Costs and Opposition to Plaintiff's Amended Application for Fees, Costs and Pre-Judgment Interest</i>
12/28/2015	 Notice of Entry of Order Filed By: Defendant Wynn Las Vegas LLC <i>Notice of Entry of Order</i>
12/28/2015	 Notice of Entry of Order Filed By: Defendant Wynn Las Vegas LLC <i>Notice of Entry of Order</i>
12/30/2015	














CASE SUMMARY

CASE NO. A-12-655992-C

	 Motion for Judgment Filed By: Defendant Wynn Las Vegas LLC <i>Defendant Wynn Las Vegas, LLC's Renewed Motion for Judgment as a Matter of Law, or, Alternatively, Motion for New Trial or Remittitur</i>
01/12/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Plaintiff's Emergency Motion to Continue Trial and for Sanctions on Order Shortening Time; Supplemental Brief on Motion in Limine -- 10-29-15</i>
01/12/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Jury Trial - Day 1 -- 11-4-15</i>
01/12/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Jury Trial - Day 2 -- 11-5-15</i>
01/12/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Jury Trial - Day 3 -- 11-9-15</i>
01/12/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Jury Trial - Day 4 -- 11-10-15</i>
01/12/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Jury Trial - Day 5-- 11-12-15</i>
01/12/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Jury Trial - Day 6 -- 11-13-15</i>
01/12/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Jury Trial - Day 7 -- 11-16-15</i>
01/14/2016	 Opposition to Motion Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Opposition to Defendant's Motion to Retax Costs and Reply to Defendant's Opposition to Plaintiff's Motion and Notice of Motion to Tax Costs and for Fees and Post-Judgment Interest</i>
01/19/2016	 Opposition to Motion Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial</i>
01/28/2016	 Reply in Support Filed By: Defendant Wynn Las Vegas LLC <i>Defendant Wynn Las Vegas, LLC's Reply in Support of Renewed Motion for Judgment as a Matter of Law, Or, Alternatively, Motion for New Trial or Remittitur</i>
02/15/2016	Case Reassigned to Department 14 <i>Reassigned From Judge Ellsworth - Dept 5</i>
02/17/2016	Case Reassigned to Department 14 <i>Reassignment From Judge Ellsworth - Dept 5</i>
02/17/2016	Case Reassigned to Department 5 <i>Case Retained by Judge Ellsworth</i>

CASE SUMMARY

CASE NO. A-12-655992-C

03/03/2016	 Notice Filed By: Defendant Wynn Las Vegas LLC <i>Notice of Related Authorities In Support Of Defendant Wynn Las Vegas, LLC's Renewed Motion for Judgment as a Matter of Law, or, Alternatively, Motion for New Trial or Remittitur</i>
05/24/2016	 Order Denying Motion Filed By: Plaintiff O'Connell, Yvonne <i>Order Denying Defendant's Renewed Motion for Judgment as a Matter of Law or Alternatively for a New Trial or Remittitur</i>
05/25/2016	 Notice of Entry of Order Filed By: Plaintiff O'Connell, Yvonne <i>Notice of Entry of Order Denying Defendant's Renewed Motion for Judgment as a Matter of Law or Alternatively for a New Trial or Remittitur</i>
06/08/2016	 Notice of Appeal Filed By: Defendant Wynn Las Vegas LLC <i>Notice of Appeal</i>
06/08/2016	 Case Appeal Statement Filed By: Defendant Wynn Las Vegas LLC <i>Case Appeal Statement</i>
07/13/2016	 Supplemental Brief Filed By: Plaintiff O'Connell, Yvonne <i>Supplemental Brief Regarding Deviating Above NRS 18.005(5)'s Expert Witness Statutory Cap Pursuant to the Frazier v. Duke Factors</i>
07/18/2016	 Errata Filed By: Plaintiff O'Connell, Yvonne <i>Errata to Supplemental Brief Regarding Deviating above NRS 18.005(5)'s Expert Witness Statutory Cap Pursuant to the Frazier v. Drake Factors</i>
07/26/2016	 Supplement Filed by: Defendant Wynn Las Vegas LLC <i>Defendant's Supplemental Response Brief Regarding Frazier v. Duke</i>
09/13/2016	 Recorders Transcript of Hearing <i>Transcript Re: All Pending Motions -- 3-4-16</i>
09/13/2016	 Recorders Transcript of Hearing <i>Transcript Re: Hearing: Retax Costs 8-12-16</i>
11/09/2016	 Order Filed By: Defendant Wynn Las Vegas LLC <i>Order Partially Granting and Partially Denying Defendant's Motion to Retax Costs and Plaintiff's Motion to Tax Costs and for Fees, Costs and Post-Judgment Interest</i>
11/10/2016	 Notice of Entry of Order Filed By: Defendant Wynn Las Vegas LLC <i>Notice of Entry of Order</i>
11/17/2016	 Notice of Appeal Filed By: Plaintiff O'Connell, Yvonne

CASE SUMMARY

CASE NO. A-12-655992-C

Notice of Appeal

11/17/2016	 Case Appeal Statement Filed By: Plaintiff O'Connell, Yvonne <i>Case Appeal Statement</i>
01/11/2017	 Recorders Transcript of Hearing <i>Recorder's Transcript Re: Defendant's Motion for Summary Judgment -- 9-17-15</i>
02/15/2017	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
09/13/2018	 Memorandum of Costs and Disbursements Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Post Appeal Verified Memorandum of Costs</i>
09/13/2018	 Application Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Post-Appeal Application for Attorney Fees, Costs and Post-Judgment Interest and Notice of Hearing</i>
04/09/2019	 NV Supreme Court Clerks Certificate/Judgment -Remanded <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed and Remand</i>
05/31/2019	 Notice of Hearing <i>Notice of Hearing</i>
06/05/2019	 Notice of Rescheduling <i>Notice of Rescheduling Hearing</i>
07/10/2019	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed; Petition Vacated</i>
07/25/2019	 Supplement Filed by: Plaintiff O'Connell, Yvonne <i>Supplement to Plaintiff's Post Appeal Verified Memorandum of Costs</i>
07/25/2019	 Supplement Filed by: Plaintiff O'Connell, Yvonne <i>Supplement to Plaintiff's Post-Appeal Application for Attorney Fees, Costs and Post-Judgment Interest</i>
08/02/2019	 Errata Filed By: Plaintiff O'Connell, Yvonne <i>Errata to Supplement to Plaintiff's Post-Appeal Application for Attorney Fees, Costs and Post-Judgment Interest</i>
09/23/2019	 Motion to Enforce Filed By: Defendant Wynn Las Vegas LLC <i>Defendant Wynn Las Vegas, LLC's Motion to Enforce Settlement on Order Shortening Time (Hearing Requested)</i>
09/25/2019	 Opposition Filed By: Defendant Wynn Las Vegas LLC

CASE SUMMARY

CASE NO. A-12-655992-C

Defendant Wynn Las Vegas, LLC's Opposition to Plaintiff's Post-Appeal Application and Supplement for Attorney's Fees, Costs and Post-Judgment Interest

10/04/2019



Reply to Opposition

Filed by: Plaintiff O'Connell, Yvonne

Plaintiff's Reply to Defendant's Opposition to Plaintiff's Post-Appeal Application for Post-Judgment Interest, Fees and Costs

10/04/2019



Filed Under Seal

Filed By: Plaintiff O'Connell, Yvonne

SEALED PER MINUTE ORDER 10/11/19 Plaintiff's Opposition to Defendant Wynn Las Vegas, LLC's Motion to Enforce Settlement on Order Shortening Time

10/10/2019



Reply in Support

Filed By: Defendant Wynn Las Vegas LLC

Defendant Wynn Las Vegas, LLC's Reply in Support of Motion to Enforce Settlement on Order Shortening Time

10/16/2019



Filed Under Seal

Transcript of Hearing Status Check; Dismissal Plaintiff's Post-Appeal Application for Attorney's Fees, Costs & Post-Judgment Interest & Notice of Hearing Defendant Wynn License LLC's Motion to Enforce Settlement on Order Shortening Time from 10/11/19 Minutes

12/19/2019



Supplement

Filed by: Plaintiff O'Connell, Yvonne

Plaintiff's Supplement Regarding Settlement

12/19/2019



Notice of Rescheduling

Notice of Rescheduling

01/08/2020



Substitution of Attorney

Filed by: Plaintiff O'Connell, Yvonne

Substitution of Attorney

01/13/2020



Order Granting Motion

Filed By: Defendant Wynn Las Vegas LLC

Order Granting Defendant's Motion to Enforce Settlement Time and Denying Plaintiff's Post-Appeal Application for Attorney's Fees, and Post-Judgment Interest as Moot

01/14/2020



Notice of Entry of Order

Filed By: Defendant Wynn Las Vegas LLC

NOTICE OF ENTRY OF ORDER

01/14/2020



Certificate of Service

Filed by: Defendant Wynn Las Vegas LLC

CERTIFICATE OF SERVICE

01/14/2020



Motion to Set Aside

Filed By: Plaintiff O'Connell, Yvonne

Motion to Set Aside Order / Proceeding Enforcing Settlement and Motion for Rehearing / Reconsideration of Order / Proceeding Enforcing Settlement on Order Shortening Time

01/18/2020



Supplement

Filed by: Plaintiff O'Connell, Yvonne

Supplement to Plaintiff's Motion to Set Aside Order / Proceeding Enforcing Settlement and

CASE SUMMARY

CASE NO. A-12-655992-C

Motion for Rehearing / Reconsideration of Order / Proceeding Enforcing Settlement on Order Shortening Time

01/28/2020



Opposition to Motion

Filed By: Defendant Wynn Las Vegas LLC

Opposition to Motion to Set Aside Order/Proceeding Enforcing Settlement and Motion for Rehearing/Reconsideration of Order/Proceeding Enforcing Settlement on Order Shortening Time

01/31/2020



Reply to Opposition

Filed by: Plaintiff O'Connell, Yvonne

Reply to Opposition to Motion to Set Aside Order / Proceeding Enforcing Settlement and Motion for Rehearing / Reconsideration of Order / Proceeding Enforcing Settlement on Order Shortening Time

02/05/2020



Supplement

Filed by: Defendant Wynn Las Vegas LLC

DEFENDANT'S SUPPLEMENT TO OPPOSITION TO MOTION TO SET ASIDE ORDER/PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR REHEARING/RECONSIDERATION OF ORDER/PROCEEDING ENFORCING SETTLEMENT ON ORDER SHORTENING TIME

02/18/2020



Objection

Filed By: Plaintiff O'Connell, Yvonne

Objections to Notice of Subpoena Duces Tecum to Nettles Morris Law Firm and/or its Predecessor Nettles Law Firm

02/20/2020



Motion for Protective Order

Filed By: Plaintiff O'Connell, Yvonne

Motion for a Protective Order Regarding Objections to Notice of Subpoena Duces Tecum to Nettles Morris Law Firm and/or its Predecessor Nettles Law Firm

02/24/2020



Clerk's Notice of Hearing

Notice of Hearing

02/28/2020



Recorders Transcript of Hearing

Transcript of Proceedings: Re: Motions -- 2-7-20

03/03/2020



Opposition and Countermotion

Filed By: Defendant Wynn Las Vegas LLC

Defendant's Opposition to Plaintiff's Motion for Protective Order; Countermotion to Compel; and Order Shortening Time

03/17/2020



Reply

Filed by: Plaintiff O'Connell, Yvonne

Reply to Defendant's Opposition to Motion for a Protective Order Regarding Objections to Notice of Subpoena Duces Tecum to Nettles Morris Law Firm and/or its Predecessor Nettles Law Firm; and Opposition to Defendant's Countermotion to Compel

03/20/2020



Reply in Support

Filed By: Defendant Wynn Las Vegas LLC

Defendant's Reply in Support of Countermotion to Compel

03/25/2020





Order

Order Concerning Plaintiff's Motion for a Protective Order Regarding Objections to Notice Of Subpoena Duces Tecum To Nettles Morris Law Firm and/or Its Predecessor Nettles Law

CASE SUMMARY

CASE NO. A-12-655992-C

Firm; And Defendant's Countermotion to Compel

03/26/2020	 Notice of Entry of Order Filed By: Defendant Wynn Las Vegas LLC <i>NOTICE OF ENTRY OF ORDER</i>
04/28/2020	 Acceptance of Service Filed By: Defendant Wynn Las Vegas LLC <i>Acceptance of Service</i>
07/24/2020	 Notice of Hearing <i>Notice of Hearing</i>
07/28/2020	 Order <i>Order Concerning Records</i>
09/29/2020	 Stipulation and Order Filed by: Plaintiff O'Connell, Yvonne <i>Stipulation and Order Approving Issuance of Subpoena</i>
10/02/2020	 Acceptance of Service Filed By: Plaintiff O'Connell, Yvonne <i>Acceptance of Service of Subpoena</i>
10/12/2020	 Exhibits Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Exhibits for Evidentiary Hearing in Opposition to Motion to Enforce Settlement</i>
10/12/2020	 Filed Under Seal Filed By: Plaintiff O'Connell, Yvonne <i>SEALED PER MINUTE ORDER 11/13/20 Plaintiff's Additional Exhibits (Sealed) for Evidentiary Hearing in Opposition to Motion to Enforce Settlement</i>
10/14/2020	 Filed Under Seal Filed By: Defendant Wynn Las Vegas LLC <i>SEALED PER MINUTE ORDER 11/13/20 DEFENDANT WYNN LAS VEGAS, LLC D/B/A WYNN LAS VEGAS PROPOSED EVIDENTIARY HEARING EXHIBITS (FILED UNDER SEAL)</i>
10/23/2020	 Filed Under Seal <i>SEALED PER ORDER 11/05/20 Transcript of Proceedings: Evidentiary Hearing Re: Motion to Enforce Settlement/Attorney Authority -- 10-16-20</i>
11/02/2020	 Filed Under Seal Filed By: Defendant Wynn Las Vegas LLC <i>SEALED PER MINUTE ORDER 11/13/20 DEFENDANT WYNN LAS VEGAS, LLC'S EVIDENTIARY HEARING BRIEF (FILED UNDER SEAL)</i>
11/02/2020	 Brief Filed By: Plaintiff O'Connell, Yvonne <i>Plaintiff's Evidentiary Hearing Brief in Opposition to Defendant's Motion to Enforce Settlement / Attorney Authority</i>
11/05/2020	 Stipulation and Order

CASE SUMMARY

CASE NO. A-12-655992-C

Filed by: Defendant Wynn Las Vegas LLC
Joint Stipulation and Order to File Evidentiary Hearing Transcript Under Seal

11/09/2020



Notice of Entry of Stipulation and Order

Filed By: Defendant Wynn Las Vegas LLC
NOTICE OF ENTRY OF JOINT STIPULATON AND ORDER

11/13/2020



Order

Order Concerning Plaintiff's Motion to Set Aside Order/ Proceeding Enforcing Settlement and Motion for Reharing Reconsideration of Order/ Proceeding Enforcing Settlement on Order Shortening Time

12/04/2020



Order

Order Granting Motion to Enforce Settlement after Reconsideration and Evidentiary Hearing by the Court

12/07/2020



Notice of Entry of Order

Filed By: Defendant Wynn Las Vegas LLC
NOTICE OF ENTRY OF ORDER

12/10/2020



Motion to Withdraw As Counsel

Filed By: Plaintiff O'Connell, Yvonne
Motion for Leave to Withdraw as Counsel on Order Shortening Time

12/10/2020



Notice of Entry of Order

Filed By: Plaintiff O'Connell, Yvonne
Notice of Entry of Order Shortening Time

12/11/2020



Proof of Service

Filed by: Plaintiff O'Connell, Yvonne
Proof of Service

12/11/2020



Brief

Filed By: Defendant Wynn Las Vegas LLC
DEFENDANT WYNN LAS VEGAS, LLC'S EVIDENTIARY HEARING BRIEF

12/11/2020



Motion for Attorney Fees and Costs

Filed By: Defendant Wynn Las Vegas LLC
Defendant's Motion for Attorney's Fees and Costs on Order Shortening Time

12/15/2020



Opposition to Motion

Filed By: Plaintiff O'Connell, Yvonne
Opposition to Defendant's Motion for Attorneys' Fees and Costs on Order Shortening Time

12/21/2020



Motion to Reconsider

Filed By: Plaintiff O'Connell, Yvonne
Motion to Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After Reconsideration and Evidentiary Hearing by the Court/and Motion to Set Aside Order/Proceeding Enforcing Settlement and Motion for Reconsideration of Order/Proceeding Enforcing Settlement

12/21/2020



Clerk's Notice of Hearing

Notice of Hearing

12/22/2020

CASE SUMMARY

CASE NO. A-12-655992-C

	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling of Hearing</i>
12/23/2020	 Reply in Support Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Reply in Support of Motion for Attorneys' Fees and Costs on Order Shortening Time</i>
12/23/2020	 Opposition to Motion Filed By: Defendant Wynn Las Vegas LLC <i>Defendant's Opposition to Plaintiff's Pro Se Motion to Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After Reconsideration and Evidentiary Hearing by the Court and Motion to Set Aside Order/Proceeding Enforcing Settlement and Motion for Reconsideration of Order/Proceeding Enforcing Settlement</i>
12/23/2020	 Order Denying Motion <i>ORDER DENYING MOTION TO RECONSIDER AND/OR SET ASIDE ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AFTER RECONSIDERATION AND EVIDENTIARY HEARING BY THE COURT/AND MOTION TO SET ASIDE ORDER/ PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR RECONSIDERATION OF ORDER/ PROCEEDING ENFORCING SETTLEMENT</i>
12/24/2020	 Notice of Entry of Order Filed By: Defendant Wynn Las Vegas LLC <i>NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S PRO SE MOTION TO RECONSIDER AND/OR SET ASIDE ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AFTER RECONSIDERATION AND EVIDENTIARY HEARING BY THE COURT AND MOTION TO SET ASIDE ORDER/PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR RECONSIDERATION OF ORDER/PROCEEDING ENFORCING SETTLEMENT</i>
12/25/2020	 Document Filed Filed by: Plaintiff O'Connell, Yvonne <i>letter to Judge</i>
12/29/2020	 Order Filed By: Plaintiff O'Connell, Yvonne <i>Order Granting Motion for Leave to Withdraw as Counsel on Order Shortening Time</i>
12/30/2020	 Order <i>Order on Defendant's Motion for Attorney Fees and Costs</i>
12/30/2020	 Notice of Entry of Order Filed By: Defendant Wynn Las Vegas LLC; Defendant Wynn Resorts Limited <i>Notice of Entry of Order on Defendant Wynn Las Vegas, LLC'S Motion for Attorneys' Fees and Costs</i>
12/31/2020	 Notice of Entry of Order Filed By: Plaintiff O'Connell, Yvonne <i>Notice of Entry of Order</i>
01/05/2021	 Notice of Appeal Filed By: Plaintiff O'Connell, Yvonne
01/06/2021	 Case Appeal Statement Filed By: Plaintiff O'Connell, Yvonne

CASE SUMMARY

CASE NO. A-12-655992-C

Case Appeal Statement

DISPOSITIONS

11/16/2015	Verdict (Judicial Officer: Ellsworth, Carolyn) Debtors: Wynn Las Vegas LLC (Defendant) Creditors: Yvonne O'Connell (Plaintiff) Judgment: 11/16/2015, Docketed: 11/18/2015 Total Judgment: 240,000.00
12/15/2015	Judgment Plus Interest (Judicial Officer: Ellsworth, Carolyn) Debtors: Wynn Las Vegas LLC (Defendant) Creditors: Yvonne O'Connell (Plaintiff) Judgment: 12/15/2015, Docketed: 12/22/2015 Total Judgment: 257,190.96
11/09/2016	Order (Judicial Officer: Ellsworth, Carolyn) Debtors: Wynn Las Vegas LLC (Defendant) Creditors: Yvonne O'Connell (Plaintiff) Judgment: 11/09/2016, Docketed: 11/16/2016 Total Judgment: 16,880.38
04/09/2019	Clerk's Certificate (Judicial Officer: Ellsworth, Carolyn) Debtors: Wynn Las Vegas LLC (Defendant), Wynn Resorts Limited (Defendant) Creditors: Yvonne O'Connell (Plaintiff) Judgment: 04/09/2019, Docketed: 04/10/2019 Comment: Supreme Court No. 71789, Reversed and Remanded
07/10/2019	Clerk's Certificate (Judicial Officer: Ellsworth, Carolyn) Debtors: Wynn Las Vegas LLC (Defendant) Creditors: Yvonne O'Connell (Plaintiff) Judgment: 07/10/2019, Docketed: 07/17/2019 Comment: Supreme Court No. 70583 Appeal Affirmed
12/30/2020	Order (Judicial Officer: Ellsworth, Carolyn) Debtors: Yvonne O'Connell (Plaintiff) Creditors: Wynn Las Vegas LLC (Defendant) Judgment: 12/30/2020, Docketed: 12/31/2020 Total Judgment: 30,162.00
<u>HEARINGS</u>	
12/19/2012	Motion to Withdraw as Counsel (3:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Motion to Withdraw as Attorney of Record</i> No oppo filed Granted; Journal Entry Details: <i>MOTION TO WITHDRAW As supplemental affidavit with pertinent information was filed, there being no opposition, COURT ORDERED, Motion GRANTED. ;</i>
08/22/2013	CANCELED Status Check: Dismissal (3:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated - per Secretary</i>
02/13/2015	CANCELED Motion to Withdraw as Counsel (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated</i> <i>Motion to Withdraw as Counsel of Record</i> <i>01/30/2015 Continued to 02/13/2015 - At the Request of Counsel - Wynn Las Vegas LLC</i>
03/06/2015	CANCELED Calendar Call (10:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated - per Commissioner</i>
03/16/2015	CANCELED Bench Trial (1:30 PM) (Judicial Officer: Ellsworth, Carolyn)

CASE SUMMARY

CASE NO. A-12-655992-C

Vacated - per Commissioner

08/07/2015



Motion for Protective Order (9:30 AM) (Judicial Officer: Bulla, Bonnie)

Deft's Motion for Protective Order and for OST

Granted Without Prejudice; Deft's Motion for Protective Order and for OST

Journal Entry Details:

Commissioner stated the 30(b)(6) Notice was not timely served. Arguments by counsel. Case involved a slip and fall in 2010, no one saw the fall, and the spill was cleaned before Security arrived (no video surveillance). Commissioner suggested a Mandatory Settlement Conference; Ms. Morris to coordinate with Dept. 30 within 30 days, then contact the Senior Judge Dept. COMMISSIONER RECOMMENDED, motion is GRANTED but WITHOUT PREJUDICE for Pltf to move to re-open discovery to set a Rule 30(b)(6) deposition; submit a 2.35 Stipulation, or bring a Motion on OST. However, Commissioner advised counsel to try and work out the parameters, and Commissioner suggested five topic areas. Ms. Morris to prepare the Report and Recommendations, and Mr. Kircher to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Ms. Morris to appear at status check hearing to report on the Report and Recommendations. 9/18/15 11:00 a.m. Status Check: Compliance ;

09/03/2015



Settlement Conference (9:00 AM)

Not Settled;

Journal Entry Details:

Settlement conference held, matter NOT SETTLED.;

09/17/2015



Motion for Summary Judgment (9:00 AM) (Judicial Officer: Thompson, Charles)

Defendant's Motion for Summary Judgment

Denied;

Journal Entry Details:

DEFT'S MOTION FOR SUMMARY JUDGMENT Arguments by counsel. COURT ORDERED, Motion DENIED, Pltf's to prepare the order. ;

09/18/2015



Motion (9:00 AM) (Judicial Officer: Bulla, Bonnie)

Pltf's Motion to Re-Open Discovery for the Limited Purpose of Taking Deft's 30(b)(6) Deposition and for OST

Granted; Pltf's Motion to Re-Open Discovery for the Limited Purpose of Taking Deft's 30(b)(6) Deposition and for OST

Journal Entry Details:

Case is three years old, Trial date is 10/12/15, and Commissioner cannot move the Trial date. Ms. Morris stated the case will likely be tried the end of October. COMMISSIONER RECOMMENDED, motion is GRANTED within parameters for relevant topics; complete deposition by 10/2/15, or as otherwise agreed to by counsel; set deposition on five business days notice with the understanding that Defense counsel and the Deponent must be available. COMMISSIONER RECOMMENDED, Commissioner has no problem with Topics 1, 2, 3; Topic 4 is MODIFIED to date of incident in the Wynn Atrium area; Topic 5 and 6 - 30(b)(6) addresses policies and procedures for spills in a public area; narrow and answer Topic 7; include another Topic to identify employees working on the day in question (duties, responsibilities, documents they filled out, and knowledge); everything else is PROTECTED. COMMISSIONER RECOMMENDED, Topic 10 - individuals working in the area the day in question, job duties for this area, and checking the floor; Topic 11 is the Investigator (Ms. Morris will switch out with Topic 5); if information becomes known that was not reasonably known before, the lawyers are INSTRUCTED to raise a Trial continuance with the District Court Judge. Ms. Morris to prepare the Report and Recommendations, and Mr. Kircher to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Ms. Morris to appear at status check hearing to report on the Report and Recommendations. 10/16/15 11:00 a.m. Status Check: Compliance ;

09/18/2015

CANCELED Status Check: Compliance (11:00 AM) (Judicial Officer: Bulla, Bonnie)

Vacated - per Commissioner

10/01/2015

Motion in Limine (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Events: 08/13/2015 Motion in Limine

CASE SUMMARY


CASE NO. A-12-655992-C


	<i>Defendant's Motion In Limine [#1] To Exclude Purported Expert Gary Presswood</i>
10/01/2015	Motion in Limine (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Events: 08/13/2015 Motion in Limine <i>Defendant's Motion In Limine [#2] To Exclude Unrelated Medical Conditions and Damages Claimed By Plaintiff</i>
10/01/2015	Motion in Limine (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Events: 08/13/2015 Motion in Limine <i>Defendant's Motion In Limine [#3] To Exclude Any Reference Or Testimony of Defendant's Alleged Failure To Preserve Evidence</i>
10/01/2015	Omnibus Motion in Limine (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Events: 08/13/2015 Omnibus Motion In Limine <i>Plaintiff's Omnibus Motions in Limine</i>
10/01/2015	 All Pending Motions (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) All Pending Motions: 10/1/15 Matter Heard; Journal Entry Details: PLTF'S OMNIBUS MTNS IN LIMINE...DEFT'S MTN IN LIMINE #1 TO EXCLUDE PURPORTED EXPERT GARY PRESSWOOD...DEFT'S MTN IN LIMINE #2 TO EXCLUDE UNRELATED MEDICAL CONDITIONS & DAMAGES CLAIMED BY PLTFF...DEFT'S MTN IN LIMINE #3 TO EXCLUDE ANY REFERENCE OR TESTIMONY OF DEFT'S ALLEGED FAILURE TO PRESERVE EVIDENCE...CALENDAR CALL After arguments of counsel, COURT ORDERED, Pltf's Omnibus Motion rulings are as follows: 1. Admit pleadings and discovery: DENIED, counsel can stipulate to authenticity, but that is different than admissibility. 2. Exclude argument & evidence re: 3rd party negligence: DENIED with the caveat that all arguments must be supported by evidence. 3. Preclude argument Pltf's injuries are unrelated to fall: DENIED, may argue if supported by evidence properly admitted. 4. Preclude references to prior accidents, etc.: GRANTED IN PART, to the extent of prior accident, if in a previous lawsuit she had a permanent disability, that could be relevant. FURTHER, only relevant to pre-existing complaints when met with treating physician after accident. 5. Exclude evidence & reference to Pltf's medical bills paid by insurance: GRANTED. 6. Limit defense experts opinions to their reports: If foundation is laid, Deft's will qualify their witness as an expert at time of trial, and Pltf's can object at trial if not qualified, and ORDERED, DENIED WITHOUT PREJUDICE. 7. Excluding evidence /references regarding Pltf's recovery is subject to income tax; GRANTED as no opposition. 8. Admit all properly disclosed medical records as authentic; previously DENIED. 9. Adverse inference instruction; DENIED WITHOUT PREJUDICE. After arguments of counsel, COURT ORDERED, Deft's Motions in Limine rulings are as follows: 1. Exclude purported expert witness Gary Presswood; GRANTED. 2. Exclude unrelated medical conditions and damages claimed by Pltf.; DENIED WITHOUT PREJUDICE as to Dr. Dunn; and counsel to submit supplemental briefing as to Dr. Tingey. 3. Excluding reference or testimony as to Wynn's failure to preserve evidence; DENIED WITHOUT PREJUDICE. FURTHER, all motions for sanctions and fees are DENIED. Counsel to submit their supplemental brief's as to Dr. Tingey no later than 10/27/15 for everything. FURTHER, trial date SET, and Motion in Limine as to Dr. Tingey reset. Counsel to call chambers after they have their settlement conference and advised Court whether or not case has resolved. 10/29/15 9 AM SUPPLEMENTAL BRIEF ON MOTION IN LIMINE 11/4/15 1:30 PM JURY TRIAL ;
10/01/2015	Calendar Call (10:00 AM) (Judicial Officer: Ellsworth, Carolyn)
10/16/2015	CANCELED Status Check: Compliance (11:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Vacated - per Commissioner</i>
10/29/2015	CANCELED All Pending Motions (3:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated - per Clerk</i> All Pending Motions: 10/29/15
10/29/2015	Hearing (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Hearing: Supplemental Brief on Motion in Limine Matter Heard;

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10/29/2015 **Motion to Continue Trial** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Plaintiff's Emergency Motion to Continue Trial and for Sanctions on Order Shortening Time
 Motion Denied;

10/29/2015  **All Pending Motions** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
 10-29-15
 Matter Heard;
 Journal Entry Details:
HEARING: SUPPLEMENTAL BRIEF ON MOTION IN LIMINE...PLTF'S EMERGENCY MOTION TO CONTINUE TRIAL COURT reviewed pleadings and indicated she is not inclined to grant the motion as there is no basis. Arguments by counsel. COURT stated findings and ORDERED, Motion DENIED. COURT advised counsel upon reviewing file she noticed there was no jury demand filed in this case, and it was set for jury trial by a clerical error. Ms. Morris moved for Jury Trial. Arguments by counsel. COURT ORDERED, Motion GRANTED, Ms. Morris to prepare order. COURT noted there are no orders for other rulings in this case and they need to be filed immediately. Court advised she received supplemental briefing on outstanding Motions in Limine. Arguments by counsel. COURT ORDERED, Dr. Dunn WILL be allowed to testify. Arguments by counsel as to Dr. Tingy. COURT ORDERED, Dr. Tingy will be allowed to testify, however, defense counsel will be allowed to depose him on the stand in the absence of the jury. Mr. Semenza inquired if those where the only doctors counsel was going to call. Ms. Morris advised she had one more. Arguments by counsel. Ms. Morris conceded she will not call other doctor listed on her 16.1. 11/4/15 1:30 PM JURY TRIAL ;

11/04/2015  **Jury Trial** (1:30 PM) (Judicial Officer: Ellsworth, Carolyn)
11/04/2015-11/05/2015, 11/09/2015-11/10/2015, 11/12/2015-11/13/2015, 11/16/2015
 Trial Continues;
 Trial Continues;
 Trial Continues;
 Trial Continues;
 Trial Continues;
 Trial Continues;
 Verdict for Plaintiff;
 Journal Entry Details:
JURY TRIAL At 9 AM, this date, jury returned for continued deliberations. At 9:45 juror #3 gave note to the Marshal during break. All counsel present. Court advised that juror stated they are concerned about the cord on the floor in the courtroom. Juror #3, present with Court and counsel, in the absence of the remaining jurors. Upon Court's inquiry, Juror #3 explained he was afraid someone was going to trip on the cord. Conference at the bench. Jury returned to deliberations, including juror #3. Counsel advised they have no objection to juror remaining on the jury. At 12:10 PM this date, jury returned with a verdict. Court reviewed verdict. Conference at the bench. COURT advised jury that they did not completely fill out the verdict, and sent jury back to deliberations. AT 12:15 PM this date, jury returned with a verdict in FAVOR of Pltf. and AGAINST the Def. COURT thanked and excused the jury.;
 Trial Continues;
 Trial Continues;
 Trial Continues;
 Trial Continues;
 Trial Continues;
 Trial Continues;
 Verdict for Plaintiff;
 Journal Entry Details:
APPEARANCES CONTINUED: Edward Wynder, Esq. present on behalf of the Plaintiff. Kristen Steinbach, Representative for Wynn Las Vegas LLC, present. OUTSIDE THE PRESENCE OF THE JURY: Jury instructions settled off the record. Arguments by counsel as to the relevance of Jury Instructions 27, 32, and 37. COURT stated FINDINGS as to relevance of the Jury Instructions. IN THE PRESENCE OF THE JURY: Court read the jury instructions. Ms. Morris presented closing arguments on behalf of Plaintiff; Mr. Semenza presented closing arguments on behalf of Defendant. Marshal and Law Clerk Sworn to take charge of the Jury and the Alternate. Jury retired at the hour of 3:39 P.M. to begin deliberations. COURT ORDERED, trial CONTINUED for Jury Deliberations. Jury instructed to return Monday at the given time. CONTINUED TO: 11/16/15 9:00 A.M. ;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

JURY TRIAL IN THE ABSENCE OF THE JURY. Court advised counsel, that juror #6 called this morning and she has a family emergency, and noted she will put alternate #1 in juror #6's place. IN THE PRESENCE OF THE JURY. Alternate juror #1 sworn. Testimony and exhibits per worksheets. Pltf. rested. IN THE ABSENCE OF THE JURY. Mr. Semenza requeste ddirected verdict as to liabiity. Arguments by counsel. COURT stated findings and ORDERED, Motion DENIED and advised counsel he can re-new motion in writing within 10 days after verdict, with full briefing. Mr. Semenza advised that jury should be instructed they can not consider the testimony of either doctor and provided Court with bench briefs. Court advised she will read these but believes this is better handled with jury instructions. IN THE PRESENCE OF THE JURY. Testimony resumed. IN THE ABSENCE OF THE JURY. COURT advised she read briefs offered by counsel, state findings, and ORDERED, Motin DENIED. IN THE PRESENCE OF THE JURY. Testimony and exhibits resumed. JURY EXCUSED for the evening. EVENING RECESS CONTINUED TO: 11/13/15 9:00 AM;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

JURY TRIAL IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheets. IN THE ABSENCE OF THE JURY. Dr. Tingy sworn and testified in the absence of the jury. Mr. Semenza stated there are a whole bunch of medical records that were not provided and objects to Dr. Tingey testifying. Arguments by counsel. COURT will allow him to testify as to his own opinions based on files, is evaluation and history provided by Pltf. IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheets. EVENING RECESS CONTINUED TO: 11/12/15 8:30 AM;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

Attorney Edward Wynder present on behalf of Plaintiff. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Ms. Morris requested Badge No. 29 Becnel be questioned further regarding her work in a law firm as she had an E-mail with her name on it regarding another Wynn case. Mr. Semenza objected to her being excused. Ms. Becnel brought in and was questioned further by Court and counsel. Arguments by counsel. Court stated its findings, and ORDERED, Badge No. 29 Becnel is EXCUSED. Ms. Morris requested Badge No. 14 Herbert be excused as he worked at the golf course. Arguments by counsel. Court stated its findings, and ORDERED, Badge No. 14 Herbert is EXCUSED. Mr. Semenza requested Badge No. 1 Torres and Badge No. 7 De Madrigal be excused due to language problems. The Court advised it did not want to consider this now but counsel can ask qualifying questions during individual voir dire. PROSPECTIVE JURY PANEL PRESENT: Voir dire continues. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court noted more Jurors coming at 2:00 PM. Colloquy regarding scheduling of witnesses. The Court advised it would be as accommodating as possible. PROSPECTIVE JURY PANEL PRESENT: Voir dire continues. Peremptory Challenges. The Court thanked and excused the remaining prospective Jurors in the audience. The Court thanked and excused the remaining prospective Jurors. Jury chosen. EVENING RECESS. OUTSIDE THE PRESENCE OF THE JURY: Court noted it would swear in the Jury on Monday. CONTINUED TO: 11/9/15 1:30 PM;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

JURY TRIAL IN THE PRESENCE OF THE JURY PANEL. Jurors sworn. Court instructed jury as to trial procedure. Opening statements by counsel. Testimony and exhibits per worksheets. IN THE ABSENCE OF THE JURY. Arguments by counsel regarding whether Dr. Dunn will be testifying to future medical procedures. Court noted it does not appear that Pltf's intend to ask that question. IN THE PRESENCE OF THE JURY. Testimony and exhibits continued. IN THE ABSENCE OF THE JURY. Dr. Dunn sworn and testified in the absence of the jury. Arguments by counsel. COURT believes testimony has been limited to what in his own charges that he reviewed. Further arguments. COURT will allow Dr. Dunn to go on what he knows and how he knows it. IN THE PRESENCE OF THE JURY. Testimony and exhibits continued. EVENING RECESS 11/10/15 8:30 AM;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

JURY TRIAL IN THE ABSENCE OF THE JURY VENIRE. Mr. Semenza advised there is an issue with Mr. Prowell, security officer, arising after floor has been cleaned up. Arguments by counsel. COURT advised counsel to make appropriate adjustments. As to the second issue, Mr. Semenza wants to make sure Pltf's don't go beyond damages on collection of evidence. Arguments by counsel. Court advised she wants further briefing on this issue. Counsel stipulated to joint exhibits being admitted. IN THE PRESENCE OF THE JURY VENIRE. Venire sworn, and jury selection commenced. EVENING RECESS CONTINUED TO: 11/5/15 11:00 AM;

03/04/2016

Motion for Fees (8:30 AM) (Judicial Officer: Ellsworth, Carolyn)

Plaintiff's Amended Application for Fees, Costs and Pre-Judgment Interest - Amended and Resubmitted As - Plaintiff's Motion and Notice of Motion to Tax Costs and for Fees and Post-Judgment Interest

03/04/2016

Motion for Judgment (8:30 AM) (Judicial Officer: Ellsworth, Carolyn)

Defendant Wynn Las Vegas, LLC's Renewed Motion for Judgment as a Matter of Law, or, Alternatively, Motion for New Trial or Remittitur

03/04/2016



All Pending Motions (8:30 AM) (Judicial Officer: Ellsworth, Carolyn)

All Pending Motions: 3/4/16

Granted in Part;

Journal Entry Details:

PLTF'S AMENDED APPLICATION FOR FEES, COSTS & PRE-JUDGMENT INTEREST - AMENDED & RESUBMITTED AS PLTF'S MTN TO TAX COSTS & FOR FEES AND POST-JUDGMENT INTEREST...DEFT. WYNN LAS VEGAS, LLC'S RENEWED MTN FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY MTN FOR NEW TRIAL OR REMITTITUR Prior to hearing, counsel provided following tentative as to Deft's Motion as follows: This is a personal injury action resulting from Pltf. s slip and fall at Deft. s casino. A jury trial was held and the jury found in favor of Pltf. on November 16, 2015. The jury awarded Pltf. \$150,000 for past pain and suffering and \$250,000 for future pain and suffering, finding her to be 40% at fault. Accounting for Pltf. s comparative fault, her total award was \$240,000. Deft. (hereinafter Wynn), having moved for judgment under NRCP 50 at the close of Pltf. s case, filed a renewed motion for judgment as a matter of law or, alternatively, a motion for new trial or remittitur. At trial, Pltf. (hereinafter O Connell) testified that she fell after slipping on what was described as a pale green, sticky, liquid substance on the floor. There was no evidence presented by O Connell that Wynn had caused the foreign substance to be on the floor. While O Connell speculated that the substance may have been water from the irrigation system in the atrium area where she fell, she presented no evidence that such was the case. Rather, O Connell called, in her case in chief, an employee of Wynn who testified that she responded to the area of the fall immediately after the fall and she observed a substance on the

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floor which had been covered by a sweeper machine brought to clean up the area. She described the substance as looking a little sticky like honey. Trial Transcript (TT), Vol. 3 at 71:23-72:4. On cross-examination, the witness, when confronted with her previous deposition testimony, agreed that she had described the liquid substance as something like a syrup, like a drink, like something like that. Id. at 76:6-10. Additionally, O Connell presented no evidence that Wynn had actual notice of the foreign substance on the floor, and her counsel argued that it was in fact a constructive notice case, not an actual notice case. A. Legal Standards and Applicable Statutes NRCP 50 provides in pertinent part: (a) Judgment as a matter of law. (1) If during a trial by jury, a party has been fully heard on an issue and on the facts and law a party has failed to prove a sufficient issue for the jury, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue. (b) Renewing motion for judgment after trial; alternative motion for new trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after service of written notice of entry of judgment and may alternatively request a new trial or join a motion for new trial under Rule 59. In ruling on a renewed motion the court may: (1) if a verdict was returned: (A) allow the judgment to stand, (B) order a new trial, or (C) direct entry of judgment as a matter of law. NRCP 59(a) provides: A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion. The standard for granting a motion for judgment as a matter of law is based on the standard for granting a motion for involuntary dismissal under former NRCP 41(b). In applying that standard and deciding whether to grant a motion for judgment as a matter of law, the district court must view the evidence and all inferences in favor of the nonmoving party. To defeat the motion, the nonmoving party must have presented sufficient evidence such that the jury could grant relief to that party. *Nelson v. Heer*, 123 Nev. 217, 222, 163 P.3d 420,424 (2007). Def. presents several distinct arguments in support of its Motion for Judgment as a Matter of Law. These are: (1) there was insufficient evidence presented at trial for a finding that Def. owed Pltf. a duty of care; (2) the testimony of Dr. Tingey and Dr. Dunn was improper and prejudiced Def. ; and (3) Pltf. had a burden to apportion the amount of damages attributable to Def. and those attributable to prior injuries, but failed to do so. Def. also argues, in the alternative, that even if it is not entitled to judgment as a matter of law, it is entitled under NRCP 59 to a new trial or remittitur because the jury's award of future pain and suffering was unsupported, Pltf. posed improper questions to Def.'s witnesses, and Pltf.'s counsel made prejudicial comments to the jury. Each of these will be addressed in turn. 1. Whether there was sufficient evidence produced at trial such that a reasonable jury could find that Def. had notice of the foreign substance on the floor. The law concerning negligence in relation to a foreign substance on the floor is, in some respects, well settled. Where the business owner or its agent caused the substance to be on the floor, liability will lie, as a foreign substance on the floor is not consistent with reasonable care. However where the business owner or his agent did not cause the foreign substance to be on the floor, a Pltf. must prove actual or constructive knowledge of the floor's condition, and a failure to remedy it. *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320, 322-323 (1993). As stated above, O Connell produced no evidence that the Wynn caused the substance to be on the floor, or that it had actual notice. Thus, the question remains as to whether sufficient evidence was presented for a jury to find that Wynn was on constructive notice of the spill. Whether a business owner was under constructive notice of the hazardous condition is a question of fact properly left for the jury, *Sprague, id.*, but this does not relieve the Pltf. from having to admit evidence at trial of constructive notice. In *Sprague*, the Supreme Court noted that a reasonable jury could have determined that the virtually continual debris on the produce department floor put Lucky on constructive notice that, at any time, a hazardous condition might exist which would result in injury to Lucky customers. Id., 109 Nev. at 251, 849 P.2d at 323. Nevada case law has caused some confusion in differentiating between constructive notice and the mode of operation approach, the latter of which is specifically discussed in cases decided subsequent to *Sprague*. The fact that there is a difference is made clear in *FGA v. Giglio*, 128 Nev. Adv. Op. 26, 278 P.3d 490, 497 (2012), where the court noted that the *Sprague* court had implicitly adopted the mode of operation

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approach when it stated that even in the absence of constructive notice, a jury could conclude that Lucky should have recognized the impossibility of keeping the produce section clean by sweeping alone. (emphasis added). With the mode of operation approach, which is not applicable in this case, a Pltf. satisfies the notice requirement (actual or constructive) by establishing that an injury was attributable to a reasonably foreseeable dangerous condition on the owner's premises that is related to the owner's self-service mode of operation. While evidence of a continuous or recurring condition might amount to constructive notice under *Sprague, supra* and *Ford v. Southern Hills Medical Center*, 2011 WL 6171790 (Nev. 2011), that is not the only way of proving constructive notice. Proof that a foreign substance on the floor had existed for such a length of time that the proprietor in the exercise of ordinary care should have known of it is another way of proving constructive notice. What would amount to sufficient time to warrant holding that the proprietor had constructive notice generally depends on the circumstances of the particular case and involves consideration of the nature of the danger, the number of persons likely to be affected by it, the diligence required to discover or prevent it, opportunity and means of knowledge, the foresight which a person of ordinary care and prudence would be expected to exercise under the circumstances, and the foreseeable consequence of the conditions. See 61 A.L.R.2d 67(b). Moreover, Nevada has made clear that an innkeeper may be found on constructive notice of latent defects upon their premises if a reasonable inspection would have revealed such a danger. See *Twardowski v. Westward Ho Motels, Inc.*, 86 Nev. 784, 476 P.2d 946 (1970). In *Twardowski*, the court held that if a reasonable inspection of its pool slide would have revealed the defective handrails, the *Westward Ho* would be charged with constructive notice of the latent defect, but that whether the defect would have been discovered by a reasonable inspection was a jury question. The court further noted that [c]onstructive knowledge of a latent defect can be established by circumstantial evidence. *Id.*, 86 Nev. at 788, 476 P.2d at 948. The over-arching theme of a negligence case has been, and is, foreseeability. [T]here is no liability for harm resulting from conditions from which no unreasonable risk was to be anticipated, or those which the occupier did not know and could not have discovered with reasonable care. The mere existence of a defect or danger is not enough to establish liability, unless it is shown to be of such a character or of such a duration that the jury may reasonably conclude that due care would have discovered it. *Prosser, Law of Torts* 393 (4th ed. 1980). Whether reasonable care has been exercised is almost always a jury question as was made clear by the Nevada Supreme Court in *Foster v. Costco Wholesale Corp.*, 128 Nev. Adv. Op. 71, 291 P.3d 150 (2012). Abrogating the holding in *Gunlock v. New Frontier Hotel*, 78 Nev. 182, 370 P.2d 682 (1962), the Nevada Supreme Court adopted the position of the Restatement (Third) of Torts concerning the duty of a landowner. Thus, under the Restatement (Third), landowners bear a general duty of reasonable care to all entrants. The duty issue must be analyzed with regard to foreseeability and gravity of harm, and the feasibility and availability of alternative conduct that would have prevented the harm. *Foster*, 291 P.3d at 156 (citations omitted). Here, during *O Connell's* case in chief, Yanet Elias, whose job was that of an assistant manager in the public areas department at Wynn, testified that, It's very difficult to maintain the casino, you know, completely clean, because it's a job for 24 hours. There are people a lot of people walking through, a lot of children, they're carrying things. So, it's impossible to keep it clean at 100 percent. TT Vol. 3 at 70:22-71:1. Additionally, Ms. Elias testified that she did not know when the area where O Connell fell had last been inspected prior to her fall, and when asked about how often the area is checked, she testified, It depends on how long it takes the employee to check the north area and return to the south area, because it's all considered one whole area. And there aren't always two employees assigned to that area. Sometimes, there's only one. TT Vol. 3 at 69:5-11. While she repeatedly answered questions posed by both counsel by stating that she did not recall, Ms. Elias was also repeatedly impeached with her earlier deposition testimony. At one point she admitted that one of the signs that a porter is not doing their job is that there is debris on the floor. *Id.* at 70:3-6) O Connell also called Cory Prowell in her case in chief, Wynn's assistant security manager who at the time of the incident was a security report writer. Mr. Prowell responded to the subject incident and eventually wrote a report. He described the scene of the fall as a high traffic area with marble flooring and indicated that upon his arrival, he was told by Ms. Elias that the liquid on the floor had already been cleaned up, and that he was told by another employee that the employee had seen O Connell being helped up by four other guests. He also testified that O Connell told him that when she had recovered from her fall, she saw a green liquid on the floor. During her testimony at trial, O Connell described the spill as at least seven feet with one side measuring about four feet still in a liquid state, and a three foot portion as almost dry, a little sticky with footprints on it. TT Vol. 3 at 59:19-24. She described the liquid as having just a hint of green, *Id.* at 59:12, and elaborating about the footprints she said, They looked like, you know, they were they looked like mine that I was making, and I'm sure they were from the people that were standing around and helped me up [k]ind of like dirty footprints that you leave after you've mopped your floor and you step on it, you walk on it, that's kind of how it looked. *Id.* at 62:19-63:2. Wynn argues that the record is completely devoid of any evidence regarding the length of

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time the foreign substance had been on the floor. Mot. at 15-17. While it is true that O Connell could not testify as to how long the substance had been on the floor, she did testify that a three foot section of the 7 foot spill was already dry and drying. While the defense seems to suggest that expert testimony would be required, presumably to testify as to the relative humidity within the casino and its relation to the rate of evaporation, common experience would allow a jury to infer that the spill had been in place longer than just a few minutes. As pointed out by Pltf. s Opposition, there was ample other evidence from which the jury could have found that Wynn had constructive notice of the substance of the floor. Opp. at 11-13. This evidence includes: (1) testimony that the atrium where the substance was located was highly trafficked; (2) testimony that it is impossible for Wynn s employees to keep the casino floor entirely clean; and (3) testimony that Def. had no floor inspection schedule, did not maintain inspection logs, and could not say with certainty when the floor was last inspected prior to Pltf. s injury. This testimony was elicited from Def. s own employees. A non-moving party can defeat a motion for judgment as a matter of law if it present[s] sufficient evidence such that the jury could grant relief to that party. *D&D Tire, Inc. v. Ouellette*, 131 Nev. Adv. Op. 47, 352 P.3d 32, 35 (2015) (internal quotations and citations omitted). All of the aforementioned testimony, taken together and drawing all reasonable inferences in favor of the Pltf. was sufficient to establish that Wynn was on constructive notice of the dangerous condition upon its floor. Whether the testimony of Dr. Tingey and Dr. Dunn was improper. Def. next makes the argument that the testimony of Pltf. s experts, Dr. Tingey and Dr. Dunn, was improper. Mot. at 19-21. Def. first argues that the Court improperly admitted their testimony because Pltf. disclosed them as expert witnesses beyond the disclosure deadline. Id. at 18-19. Def. argues that its rebuttal expert was unable to review their records and incorporate them into his report. Id. at 18. However, late production was substantially justified under NRC 37(c) because O Connell continued to treat after the close of discovery, treatment records were provided to O Connell s counsel after the close of discovery, and were provided to Defense counsel soon after their receipt, and because O Connell had to change treating physicians after Dr. Martin had left the practice. The late disclosed records were only a few pages, the Court permitted the defense to Voir dire the doctors outside the presence of the jury before they testified in the presence of the jury, and the Court allowed Def. s rebuttal expert to sit in the courtroom and listen to the testimony of both Dr. Tingey and Dr. Dunn, allowing him to incorporate his opinions on direct examination. Hence, Def. was not prejudiced by any late disclosure on Pltf. s part. Wynn also argues that both doctors lacked a sufficient basis for their opinions because they were only based upon Pltf. s self-reporting. Id. at 19. In support, Def. cites to the federal case of *Perkins v. United States*, 626 F. Supp. 2d 587 (E.D. Va. 2009). Notwithstanding the fact that *Perkins* is a federal case, it is not on point to the facts here. In *Perkins*, the court found that expert testimony as to medical causation should be excluded because the expert s opinion was based solely on the patient s self-reporting that the expert had merely adopted the patient s explanation as his own opinion. 626 F. Supp. 2d at 592-593. Here, however, Pltf. s self-reporting did not appear to be the sole basis of her experts testimony. Both doctors testified as to the basis of their opinions, which included not only evaluation of the Pltf. s medical history but also their examination of her, their review of her diagnostic medical tests, and their experience in treating orthopedic conditions and the conditions that would result from a slip and fall. There is simply no indication that O Connell s experts wholly adopted her self-reporting as the sole basis for their opinions as to causation. Moreover, Dr. Tingey was candid in his opinion that he would not attribute all of O Connell s knee problems to the subject fall because the MRI indicated a degenerative disease process in the left knee as opposed to the right knee. 2. Whether there is legal basis for a finding that Pltf. bears a burden to apportion damages between pre-existing conditions and the harm caused by Def. Def. next argues that Pltf. had the burden of apportioning her damages between pre-existing injuries and those injuries caused by her slip and fall at the Wynn but failed to do so. Mot. at 21-25. This is a familiarly incorrect argument (and, indeed, was raised and rejected during trial for the same reasons as it is now) because the legal premises upon which it rests are infirm. The main cause of confusion in this and other cases is the federal case of *Schwartz v. State Farm Mut. Auto. Ins. Co.*, 2009 WL 2197370 (D. Nev. July 22, 2009). In that case, Judge Dawson did indeed hold that [i]n a case where a Pltf. has a pre-existing condition, and later sustains an injury to that area, the Pltf. bears the burden of apportioning the injuries, treatment and damages between the pre-existing condition and the subsequent accident. Id. at *6. However, the cases cited as precedent by Judge Dawson for that statement do not support that assertion. *Kleitv. Raskin*, 103 Nev. 325, 738 P.2d 508 (1987) involved apportioning damages between injuries caused by successive tortfeasor, not apportioning damages between pre-existing conditions and injuries caused by a sole tortfeasor. Judge Dawson also cited the Washington Court of Appeals case of *Phennah v. Whalen*, 621 P.2d 1304 (Wash. App. 1980), but that also involved apportioning damages between successive tortfeasor. The Restatement (Second) of Torts 433(b), also relied upon, doesn t even concern successive tortfeasor on its face but rather concerns the substantial factor test for determining proximate cause. Here, we do not have successive tortfeasor. Rather, we have a Pltf. who, admittedly, had various pre-existing mental and physical conditions.

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Therefore, the Schwartz case is in error and is inapplicable to this case. Def't. took the Pltf. as it found her and is liable for the full extent of her injuries, notwithstanding her pre-existing conditions. See *Murphy v. Southern Pac. Co.*, 31 Nev. 120, 101 P. 322 (1909). Whether the Def't. is entitled to a new trial or remittitur. In *Canterino v. The Mirage Casino-Hotel*, 117 Nev. 19, 24, 16 P.3d 415, 418 (2001), opinion reinstated on reh'g (Oct. 2, 2001), opinion modified on reh'g sub nom, *Canterino v. Mirage Casino-Hotel*, 118 Nev. 191, 42 P.3d 808 (2002), the Supreme Court addressed the issue of when a trial court may grant a new trial or issue a conditional order of remittitur reducing an award of damages by a jury. The court stated: This court has held that damages for pain and suffering are peculiarly within the province of the jury. In *Stackiewicz v. Nissan Motor Corporation*, 100 Nev. 443, 454, 686 P.2d 925, 932 (1984), this court stated that the trial court cannot revisit a jury's damage award unless it is flagrantly improper. In actions for damages in which the law provides no legal rule of measurement it is the special province of the jury to determine the amount that ought to be allowed, so that a court is not justified in reversing the case or granting a new trial on the ground that the verdict is excessive, unless it is so flagrantly improper as to indicate passion, prejudice or corruption in the jury.... The elements of pain and suffering are wholly subjective. It can hardly be denied that, because of their very nature, a determination of their monetary compensation falls peculiarly within the province of the jury.... We may not invade the province of the fact-finder by arbitrarily substituting a monetary judgment in a specific sum felt to be more suitable. *Stackiewicz*, 100 Nev. at 454 55, 686 P.2d at 932 (quotations and citations omitted). The mere fact that a verdict is large is not conclusive that it is the result of passion or prejudice. *Id.* (citing *Beccard v. Nevada National Bank*, 99 Nev. 63, 66 n. 3, 657 P.2d 1154, 1156 n. 3 (1983)). Here, it must be noted that O Connell was prevented from presenting evidence of her medical special damages due to discovery and evidentiary issues. Thus, she sought only pain and suffering damages. She testified that she had been suffering with her knee and her neck and back since the fall five years earlier and could no longer engage in the activities that she could prior to the fall, including the swing dancing she had done regularly before the accident. This testimony was corroborated by her former boyfriend and dance partner. She often described her pain throughout her medical records as 10 out of 10. While the defense may have thought that this testimony would be unbelievable to a jury, it was nonetheless the jury's choice to believe it. Additionally, Dr. Tingey testified that he had recommended surgery for O Connell's traumatically injured knee and that she would, if she chose the surgery, have post-operative pain, but that typically the result after surgery would be a complete relief of the symptoms. On the other hand, Dr. Dunn testified that due to O Connell's continued complaints of pain in her neck and symptoms in her arms, he recommended an anterior cervical neck discectomy; removal of the disc and an inter-body 3 level fusion with placement of a plate and screws. He described this surgery as non-curative, but rather taking away 50 to 60 percent of the pain which O Connell had described as terrible. While Dr. Dunn attributed the changes to O Connell's spine to a degenerative disease process, he attributed the pain, which he believed to be previously asymptomatic, to the fall describing the quintessential egg-shell Pltf. . Wynn argues in the alternative to the motion for judgment as a matter of law, that a new trial should be had or remittitur issued for several reasons. The first is that O Connell failed to establish future pain and suffering damages as required by Nevada law. *Mot.* at 25 (citing *Krause, Inc. v. Little*, 117 Nev. 929, 938, 34 P.3d 566 (2001) (holding that Nevada law requires that when an injury or disability is subjective and not demonstrable expert medical testimony is required)). The basis for this argument, however, is the same as above that Pltf.'s medical experts lacked a reliable basis for their opinion and that O Connell failed to carry her burden to apportion damages between pre-existing conditions. *Mot.* at 26:3-7. For the same reasons as outlined above, then, this argument should be rejected. Wynn next argues that O Connell was improperly allowed to question defense witnesses. Specifically, Def't. points to Pltf.'s counsel questioning witnesses on the lack of video coverage of the incident and references in her closing arguments that Wynn controlled the evidence. *Mot.* at 26. One of the statements cited by Wynn, on examination of Corey Prowell, does not appear to have been objected to by defense counsel and so that objection is now untimely. The other statements cited by Wynn were in Pltf.'s counsel's closing or rebuttal arguments. Def't. also did not object to those statements and, in any event, had the opportunity to make arguments rebutting those statements in its own closing. Therefore, no prejudice resulted. Wynn last argues that it is entitled to a new trial because O Connell's counsel made an improper statement in rebuttal as to damages. The statement in issue is: As jurors, you are the voice of the conscience of this community. Def't. lodged a timely objection, which was immediately sustained by this Court. The Court also admonished counsel for making the statement and instructed the jury to disregard it. The Court stated: Sustained. No, no. The jury will disregard that. Counsel, this is not a punitive damage case. You may not address the they are not to be making decisions as the conscience of the community. You know that is improper argument. TT Vol. 6 at 46:12-16). The problem with such a statement is that it allows the jury to punish the Def't. , e.g., with punitive damages, which was not a part of Pltf.'s case here. See *Florida Crushed Stone Co. v. Johnson*, 546 So.2d 1102, 1104 (1989). The Nevada Supreme Court has made clear, however, that a new

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trial is warranted only where the [comment] is so extreme that the objection and admonishment could not remove the misconduct's effect. *Lioce v. Cohen*, 124 Nev. 1, 17, 174 P.3d 970, 981 (2008). This amounts to an analysis of whether no other reasonable explanation could exist for the jury's verdict. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 364, 212 P.3d 1068, 1079 (2009). Here, there was ample evidence presented at trial, as outlined above and in *Pltf. s Opposition*, to support the jury verdict. *Deft. s* timely objection was quickly sustained and a limiting instruction was given immediately. In light of the evidence presented at trial, it cannot be said that the jury's verdict was so unreasonable as to make the statement prejudicial. Cf. *Lioce*, *supra* (finding that the trial testimony supported the jury's verdict and the district court sustained the *Deft. s* objections to misconduct, so a new trial was not warranted). Based on the foregoing, then, *Deft. s* Motion should be denied. Arguments by counsel. COURT stated findings and ORDERED, Motion DENIED. As to *Pltf's* motion, tentative ruling submitted as follows: This is a personal injury action resulting from *Pltf. s* slip and fall at *Deft s* casino. A jury trial was held and the jury found in favor of *Pltf. s* on November 16, 2015. The jury awarded *Pltf. \$150,000* for past pain and suffering and *\$250,000* for future pain and suffering, finding her to be 40% at fault. *Pltf. s* total award was *\$240,000*. After the verdict was entered, *Pltf. filed* an Application for Attorneys Fees and Costs, attaching a Memorandum of Costs as an exhibit. *Pltf. then* filed an Amended Application for Fees and Costs to address identified deficiencies in the first Application. *Deft. has* moved to Re-Tax the Costs and is opposing the request for fees in a Supplement to its opposition to *Pltf. s* first Application. A. Legal Standards and Applicable Statutes: *Pltf. moves* for fees and costs under both NRCP 68 and NRS 18.010. NRCP 68(f) provides: If the offeree [of an offer of judgment] rejects an offer and fails to obtain a more favorable judgment, (1) the offeree cannot recover any costs or attorney's fees and shall not recover interest for the period after the service of the offer and before the judgment; and (2) the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney's fees awarded to the party for whom the offer is made must be deducted from that contingent fee. NRS 17.115(4) similarly provides, in relevant part: Except as otherwise provided in this section, if a party who rejects an offer of judgment fails to obtain a more favorable judgment, the court: (c) Shall order the party to pay the taxable costs incurred by the party who made the offer; and (d) May order the party to pay to the party who made the offer (3) Reasonable attorney's fees incurred by the party who made the offer for the period from the date of service of the offer to the date of entry of the judgment. If the attorney of the party who made the offer is collecting a contingent fee, the amount of any attorney's fees awarded to the party pursuant to this subparagraph must be deducted from that contingent fee. Additionally, NRS 18.010(2)(b) provides that fees may be awarded to the prevailing party [w]ithout regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. NRS 18.110(1)-(2) provides that whenever a party claims costs, she must file a verified memorandum setting forth those costs within 5 days of entry of the judgment and that witness fees are recoverable costs, regardless of whether the witness was subpoenaed, if the witness testified at trial. NRS 18.110(4) allows the opposing party to file a motion to re-tax claimed costs within 3 days of service of a copy of the memorandum of costs. As a preliminary note, *Deft s* first argument is that *Pltf. improperly* and unilaterally filed an Amended Application for Fees and Costs after reading *Deft s* Opposition, so the Court should only consider the first Application. Here, judgment was entered on December 15, 2015. *Pltf. filed* the first Application well before this, on November 25, 2015. She also filed her Amended Application for Costs on December 21, 2015, which is within the time limit set forth in the rule (note that under EDCR 1.14(a), the period for filing is five judicial days from entry of judgment). However, *Deft s* Motion to Re-Tax as to the first Application was due on December 2, 2015, but it was not filed until December 7, 2015 and was thus untimely. *Deft s* Motion to Re-Tax as to the Amended Application was timely, though. It is true that generally, supplemental briefing is allowed only by leave of court. See EDCR 2.20(i). However, given that *Deft s* first opposition was untimely, it would seem that it would be willing to waive its first argument in opposition to *Pltf. s* Amended Application. In order for the penalties associated with the rejection of an offer of judgment to apply, the offeree must not have obtained a more favorable judgment. NRCP 68(f); NRS 17.115(4). To determine whether the offeree of a lump-sum offer of judgment obtained a more favorable judgment, the amount of the offer must be compared to the amount of the offeree's pre-offer, taxable costs. *McCrary v. Bianco*, 122 Nev. 102, 131 P.2d 573, 576, n. 10 (2006) (stating that NRCP 68(g) must be read in conformance with NRS 17.115(5)(b)). Here, *Pltf. offered* to settle the case for \$49,999.00 on September 3, 2015. The verdict was in favor of *Pltf. for* a total of \$240,000.00. It seems that this may be a more favorable judgment, although *Pltf. has* neglected to specifically set forth her pre-offer taxable costs. On the other hand, *Pltf. s* total claimed costs were \$26,579.38 (whether pre- or post-offer) and that, together with the offer, amounts to \$76,578.38. *Pltf. s* jury

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recovery was well above this - \$240,000.00 so it appears that Pltf. has met the threshold requirement to show entitlement to fees and costs under Rule 68. The determination of whether to grant fees to a party under NRCP 68 rests in the sound discretion of the trial court. Chavez v. Sievers, 118 Nev. 288, 296, 43 P.3d 1022, 1027 (2002). Such a decision will not be disturbed unless it is arbitrary and capricious. Schouweiler v. Yancey Co., 101 Nev. 827, 833, 712 P.2d 786, 790 (1985). District courts must consider several factors when making a fee determination under Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1963): (1) whether the Pltf. s claim was brought in good faith; (2) whether the offer was reasonable and in good faith in timing and amount; (3) whether the decision to reject the offer was grossly unreasonable or in bad faith; and (4) whether the sought fees are reasonable and justified. However, where the Deft. is the offeree of an offer of judgment, the first factor changes to a consideration of whether the Deft s defenses were litigated in good faith. See Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998). As to the first factor, whether Deft s defenses were litigated in good faith, Pltf. argues that Deft s defense that it had no notice of the liquid on the casino floor was in bad faith because it failed to make an inquiry into the last time the floor was checked before Pltf. slipped. Am. App. at 5-6. Pltf. also argues that Deft s defense that there was no causation here was unreasonable because it relied upon expert testimony that lacked a basis in modern science. Id. at 6. Deft s Motion to Retax does not address whether its defenses were maintained in good faith. However, this Court has already highlighted in its Tentative Ruling on Deft s Renewed Motion for Judgment as a Matter of Law that Nevada case law surrounding constructive notice is, at best, confusing. This is not a case where the law is black and white. Based on that and the evidence presented at trial, it was not bad faith for Deft. to contend that it lacked notice of the condition on the floor and Pltf. in fact so concedes. Furthermore, Pltf. s evidence of constructive notice may have been enough to escape the granting of a Rule 50 motion, but it was by no means overwhelming. Additionally, Pltf. s damages claims were reasonably disputed by expert testimony of a defense witness. That the jury was not persuaded by this expert does not translate to bad faith by the Deft.. Thus, the first factor therefore weighs in favor of the Deft.. As to the second factor, Deft. argues that the offer was unreasonable in amount because Pltf. had no basis for its offer and that due to Pltf. s gamesmanship, Deft. could not sufficiently evaluate the offer. Opp. at 5-7. Here, discovery closed on June 12, 2015. Pltf. was unable to submit proof of special medical damages at the time of trial because the Court precluded them on the basis that they were not properly disclosed in discovery. This made it extremely difficult for the Defense to evaluate a potential value of the case. An offer made at a time when Pltf. has not properly provided a calculation of damages is unreasonable. Thus, the second factor weighs in favor of Deft.. In ascertaining whether Deft s decision to reject the offer was grossly unreasonable or in bad faith, a pertinent consideration is whether enough information was available to determine the merits of the offer. Trustees of the Carpenters for S. Nev. Health & Welfare Trust v. Better Building Co., 101 Nev. 742, 746, 710 P.2d 1379, 1382 (1985). Here, discovery closed on June 12, 2015. The offer of judgment was made three months later, on September 3, 2015. Given that at the time of the offer, Deft. had available all the materials obtained during discovery, including witness depositions, Deft s decision to reject the offer was well-informed. Furthermore, the issues surrounding notice were not necessarily clear cut, as evidenced by the parties pre-trial and post-trial motions on that issue. Overall, it is unlikely that Deft s rejection of the offer was grossly unreasonable or in bad faith, and in the end weighs in favor of Deft.. With regard to the last Beattie factor, the Court must undergo an analysis of whether claimed fees were reasonable in light of the factors set forth in Brunzell v. Golden Gate Nat l Bank, 85 Nev. 345, 249, 455 P.2d 31, 33 (1969). Pltf. has addressed some, but not all, of these factors. Pltf. s counsel has set forth the qualities of the advocate(s) on this case and, of course, we know that a favorable result was obtained. However, Pltf. has not provided any bills setting forth what tasks were performed and the associated hours for those tasks. This prevents the Court from determining whether the fees charged were reasonable in light of the tasks actually performed. Therefore, because Pltf. has not carried her burden under Brunzell, this factor weighs in favor of Deft.. On the whole, all of the factors set forth in Beattie (as modified by Yamaha, supra) weigh in favor of Deft. in this case and Pltf. s Amended Application for Fees should be denied. Although NRCP 68 costs are only for post-offer costs, NRS 18.020(3) mandates awarding all costs to Pltf. since she prevailed in seeking damages in an amount more than \$2,500. NRS 18.110(1) requires the filing of a memorandum of costs by the party in whose favor judgment is rendered, including a verification of the party, the party s attorney, or an agent of the party s attorney that the costs are correct and were necessarily incurred. The amount of awarded costs rests in the sole discretion of the trial court. Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 565 66 (1993). The court also has discretion when determining the reasonableness of the individual costs to be awarded. U.S. Design & Constr. Corp. v. I.B.E.W. Local 357, 118 Nev. 458, 463, 50 P.3d 170, 173 (2002). Claimed costs must be actual and reasonable, rather than a reasonable estimate or calculation of such costs. Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385 86 (1998) (internal quotations omitted). The Supreme Court has also indicated that claimed costs must be supported by documentation and itemization. Bobby

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Berosini, Ltd. v. PETA, 114 Nev. 1348, 971 P.2d 383 (1998). Deft. only challenges certain specific fees, each of which will be addressed in turn. 1. *Expert Witness Fees* Deft. argues that the amounts for expert witnesses should be reduced because they are well over the statutory limit of \$1,500.00 per expert and the additional amounts are not necessary and reasonable. Mot. at 6-8. NRS 18.005(5) provides that recoverable costs include [r]easonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee. Allowing fees above the statutory maximum requires this Court to determine whether those fees were necessary and reasonable. *Arnold v. Mt. Wheeler Power Co.*, 101 Nev. 612, 615, 707 P.2d 1137, 1139 (1985). Granting fees in excess of the statutory maximum may be necessary and reasonable where the expert witness testimony constituted most of the evidence. *Gilman v. Nevada State Bd. of Veterinary Med. Examiners*, 120 Nev. 263, 273, 89 P.3d 1000, 1006-07 (2004), disapproved of on other grounds by *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. Adv. Op. 27, 327 P.3d 487 (2014). Here, the testimony of Dr. Dunn and Dr. Tingey was important but did not constitute most of the evidence. Pltf. herself testified, as well as other witnesses and employees of Deft.. On the other hand, Pltf. outlined in her Amended Application and Opposition to Deft.'s Motion to Re-Tax that the nature of their testimony was fairly complex and required several hours of file review. Even though Drs. Dunn and Tingey were Pltf.'s treating physicians, as Deft. points out, this does not necessarily make an increased fee unnecessary or unreasonable. Pltf. requests a total fee of \$6,000 for Dr. Tingey, \$10,000 for Dr. Dunn, and \$3,699 for Gary Presswood. Dr. Tingey's fee seems to be reasonable, for the reasons identified by Pltf. in her Amended Application. As to Dr. Dunn, Deft. does point out that half of the claimed amount is for the second day of testimony, which lasted less than an hour and was done to accommodate his own schedule. Mot. at 8. Hence, Dr. Dunn should be allowed only \$5,000. As to Mr. Presswood, his testimony was not used at trial because this Court ruled that his testimony would be unreliable. Since his testimony was clearly inadmissible under the Hallmark standard, as reflected in this Court's prior pre-trial ruling, his fees should not be awarded. Hence, as to the expert fees, Deft.'s Motion should be granted in part. 2. *Service Fees* NRS 18.005(7) allows recovery of service fees. Deft. next challenges the service fees claimed by Pltf. in serving Yanet Elias, Corey Prowell, and Salvatore Risco. Mot. at 8-9. Pltf. acknowledges that all costs must be both reasonable and necessary. As to Yanet Elias and Corey Prowell, each was an employee of Deft. and Deft. points out that it had accepted service for those persons. Defense counsel should be prepared to address whether he agreed that these witnesses would be produced for trial without a subpoena at the time of oral argument. If so, the service fee was unnecessary, but if not, agreement that service can be made upon counsel instead of the witness does not eliminate the need to serve and the fees would be necessary. As to Mr. Risco, Deft. argues that the service fees were unnecessary and unreasonable because Pltf.'s counsel had good communication with him. However, unlike the other two employee-witnesses, Mr. Risco was not a party to this case or an agent of a party to this case, so service of a subpoena upon him was necessary. Additionally, Pltf. has outlined sufficient reasons for the amount of the claimed charge that show it to be reasonable and she should be granted those fees, subject to the same question posed above. 3. *Jury Fees* NRS 18.005(3) specifically allows an award of jury fees as an element of costs. Deft. next argues it should not be responsible for the jury fees because Pltf. failed to request a jury trial within the time allowed. Mot. at 9. Deft. essentially only argues that because Pltf.'s demand for a jury trial was untimely and this should have been a bench trial, it should not have to pay for the jury fees. However, those arguments are premised on challenging this Court's grant of Pltf.'s request for a jury trial and the time for reconsidering that decision has long since passed. Moreover, both parties had prepared this entire case under the assumption that it was going to be tried by jury, so Deft. was not prejudiced by the Court's ruling in any event. Since the jury fees were actually incurred and reasonable, Deft.'s Motion as to those fees should be denied, and Pltf. should be allowed the jury fees incurred. 4. *Parking Fees* NRS 18.005(17) allows the court to award any other reasonable costs actually incurred. This would, of course, include costs incurred in parking for hearings and the like. Deft. argues that there were other, free, places Pltf. could have parked. Mot. at 9. This may or may not be true, but Deft.'s argument is conclusory in any event. Because Pltf. actually incurred the parking costs, they should be awarded. 5. *Skip Trace Fees* Deft. lastly argues that Pltf.'s request for skip trace/investigative fees for Terry Ruby were unreasonable and unnecessary. Mot. at 9. Terry Ruby is a former employee of Deft. and was the first to respond to Pltf.'s fall. Opp. at 8. It is clear why Pltf. would have a need to locate and depose Mr. Ruby. A \$150.00 fee for that service is not unreasonable, given the extreme costs associated with reporting services like Accurant. Therefore, Deft.'s Motion as to the skip trace fee should be denied, and Pltf. should be allowed that amount as a cost. 6. *Remaining Fees* Deft. does not challenge the remaining requested fees. Pltf. has attached back-up documentation for each claimed cost and they all seem to be reasonable and within the going market rate for each associated service. Pltf. has therefore carried her burden under *Berosini* and the remaining costs requested should be awarded. Therefore, Pltf.'s Amended Application

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as to costs should be granted, as set forth herein. Arguments by counsel. Upon Court's inquiry, Pltf. advised costs have been paid in full. COURT stated findings and ORDERED, Defi's Motion is GRANTED in part, noting calendar is in error as it state's Pltf's Motion. Pltf's Motion for fees and costs is DENIED, and for attorney fees is DENIED. Defense to prepare the order and join it all in one. ;

06/29/2016



Minute Order (3:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Minute Order - No Hearing Held;

Journal Entry Details:

MINUTE ORDER This matter came before the Court on March 4, 2016 on Defendant s Motion to Retax Costs and Plaintiff s Motion to Tax Costs and for Fees, Costs, and Post-Judgment Interest. After reviewing the parties briefs and hearing arguments of counsel, the Court made its findings granting in part and denying in part both Motions. The Court received the proposed order on those Motions on May 27, 2016. The proposed order awarded fees to two expert witnesses, Dr. Tingey and Dr. Dunn, above the statutory maximum of \$1,500.00 set forth in NRS 18.005(5), and disallowed all fees for expert Gary Presswood. However, in reviewing that proposed order and additional case law surrounding the award of expert witness fees, it has come to the Court s attention that the Nevada Court of Appeals has recently outlined several express factors that are to be considering when deviating above the statutory maximum in NRS 18.005(5) for expert witness fee awards. See *Frazier v. Duke*, 131 Nev. Adv. Op. 64, 357 P.3d 365 (2015). That case was issued in September of 2015, just before the trial of this matter, but was not cited in either party s briefing with regard to a fee award. Therefore, the Court finds it appropriate to order additional limited briefing on that issue and, good cause appearing, **IT IS HEREBY ORDERED** that Plaintiff s counsel is to file a supplemental brief of no more than 10 pages that addresses the factors set forth in *Frazier*, supra, in detail, as applicable, for Drs. Tingey and Dunn no later than July 13, 2015. **IT IS FURTHER ORDERED** that Defendant s counsel is to file a supplemental response brief of no more than 10 pages no later than July 27, 2016. **IT IS FURTHER ORDERED** that this matter will be set for hearing on the supplemental briefs only on August 12, 2016 at 9AM. If the parties wish to submit on their briefs, or if the hearing date of August 12 is unavailable for either counsel, they are to contact the Court s law clerk, Travis Chance, at 702-671-4357 to reschedule to a mutually agreeable date. The Court further notes that this matter has been appealed, however, a final order on the issue of a fee award has not yet been entered and may still be resolved by this Court. ;

08/12/2016



Hearing (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Hearing: Retax Costs

Granted;

Journal Entry Details:

Mr. Carlston stated he had a couple of points that he wanted to raise, one being Dr. Dunn's second day of testimony; these Frazier factors non exhausted lists trial witnesses can be difficult, he had to come back. The second issue we had been awarded Dr. Tingy's full \$6,000 fee and \$5,000 of that was for his testimony, \$1,000 was for consult with our office, we ask that is something that should be awardable it was part of his preparation for trial and his retention for treating as a medical expert should be awarded his full \$6,000 rather than capping it at \$5,000. Mr. Semenza argued with regard to Dr's Dunn and Tingy there was an issues with the disclosures, in their disclosures they had provided identical descriptions for 30 something providers and that was the basis why we didn't take the depositions beforehand and there were concerns if these two doctors would be permitted to testify at all in this case. That was the basis for the voir dire that took some time that the Court did allow us to take. The reason Dr. Dunn took the stand so late was based on his schedule, not the Court's schedule. We didn't finish with him which required him to come back the following day. The Court appropriately limited the amount of the award relating to Dr. Dunn to only that first day, based upon his schedule. With regard to the \$6,000 or \$5,000 difference. The \$6,000 was related to Dr. Tingy and Dr. Dunn was \$5,000 for the day, Dr. Tingy was the same, therefore we believe that the \$5,000 is more appropriate. The Court stated the reason Dr. Tingy's fee was adjusted down from the original \$6,000 was because the medical record by both physicians which was obtained late by the defense, was not very expansive or extensive. The Court finds the time Dr. Tingy spent testifying his fee was adequate. **COURT ORDERED, DEFT'S RETAX COSTS GRANTED.** Mr. Semenza will prepare the Order.;

07/26/2019

CANCELED At Request of Court (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Vacated - per Judge

At Request of Court: Status of Supreme Court Appeal

EIGHTH JUDICIAL DISTRICT COURT

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08/16/2019	CANCELED At Request of Court (1:30 PM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated - per Stipulation and Order</i> <i>At Request of Court: Status of Supreme Court Appeal</i>
10/11/2019	Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Plaintiff's Post-Appeal Application for Attorney Fees, Costs and Post-Judgment Interest and Notice of Hearing</i> Supreme Court Appeal still pending Moot;
10/11/2019	Status Check: Dismissal (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Set Status Check;
10/11/2019	Motion to Enforce (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Defendant Wynn Las Vegas LLC's Motion to Enforce Settlement on Order Shortening Time</i> Motion Granted;
10/11/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Matter Heard; Journal Entry Details: <i>STATUS CHECK: DISMISSAL ... PLAINTIFF'S POST-APPEAL APPLICATION FOR ATTORNEY FEES, COSTS, AND POST-JUDGMENT INTEREST AND NOTICE OF HEARING ... DEFT. WYNN LAS VEGAS LLC'S MOTION TO ENFORCE SETTLEMENT ON ORDER SHORTENING TIME (OST) Arguments by Mr. Semenza in support of the motion to enforce and in opposition to the Plaintiff's Application for Attorney Fees Costs and Post-Judgment Interest; summarized the circumstances and correspondence related to the settlement. Further argument by Mr. Semenza noting there was an enforceable settlement agreement and that there was a material breach of the agreement. Argument by Ms. Morris in opposition to the Deft.'s motion to enforce and in support of the Application for Attorney Fees Costs and Post-Judgment Interest; noting she had authorization to agree to the settlement, but not that the Plaintiff would sign a confidentiality contract. Further, Ms. Morris stated the defense did not provide a release for this case, as she was advised it would be the same release used for another case, which she reviewed, and did not agree to some of the terms of the other release. COURT ADVISED, there was an offer the Plaintiff made and the Wynn accepted it. Further, arguments by counsel regarding the confidentiality, whether liquidated damages would become an issue, and whether there was a breach of the contract due to the publicly filed document and arguments presented in court today. COURT FINDS, there is no need to have an evidentiary hearing, the record was clear, there was an offer made by the Plaintiff to settle the case, it would be done without further litigation by the Court, and the Wynn accepted the offer. COURT FURTHER FINDS, there was a settlement agreement and ORDERED, motion to enforce settlement GRANTED and request for evidentiary hearing is DENIED; matter SET for status check. COURT ADVISED, there would be no liquidated damages, and if the Plaintiff breaches the agreement, counsel would need to file a law suit. COURT FURTHER ORDERED, request for attorney fees is DENIED. COURT DIRECTED, Mr. Semenza to prepare the order. FURTHER ORDERED, the Plaintiff's post-appeal application is DENIED AS MOOT. At the request of counsel, COURT FURTHER ORDERED, Plaintiff's Opposition to Defendant Wynn Las Vegas, LLC's Motion to Enforce Settlement on Order Shortening Time, filed on 10/4/19, and today's hearing (JAVS) are SEALED. Further arguments regarding whether counsel had breached the confidentiality agreement. 12/20/19 - 9:00 AM - STATUS CHECK: DISMISSAL / SETTLEMENT DOCUMENTS;</i>
02/07/2020	Status Check: Dismissal (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Status Check: Dismissal / Settlement Documents</i> Off Calendar;
02/07/2020	Motion to Set Aside (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Plaintiff's Motion to Set Aside Order / Proceeding Enforcing Settlement and Motion for Rehearing / Reconsideration of Order / Proceeding Enforcing Settlement on Order Shortening Time</i> Granted in Part; Plaintiff's Motion to Set Aside Order / Proceeding Enforcing Settlement and Motion for Rehearing / Reconsideration of Order / Proceeding Enforcing Settlement on Order Shortening Time

CASE SUMMARY

CASE NO. A-12-655992-C

02/07/2020



All Pending Motions (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

All Pending Motions (02/07/2020)

Matter Heard; All Pending Motions (02/07/2020)

Journal Entry Details:

STATUS CHECK: DISMISSAL / SETTLEMENT DOCUMENTS...PLAINTIFF'S MOTION TO SET ASIDE ORDER / PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR REHEARING RECONSIDERATION OF ORDER / PROCEEDING ENFORCING SETTLEMENT ON ORDER SHORTENING TIME Court stated the Court read the Motion, Opposition, Reply and Plaintiff's Supplement; However, the Court received the Defendants supplemental yesterday and was unable to read the supplement. Court further stated the in-camera documents, containing several e-mails, was received in chambers, however not reviewed. Court noted the Court's intent was to grant the Motion to Reconsider, under the EDCR and set an evidentiary hearing and have Ms. Morris, prior Plaintiff's Counsel, testify to distinguish if she actually had authority. Colloquy regarding the confidentiality, settlement amounts redaction and attorney client representations. Arguments by Counsel regarding if an evidentiary hearing would be needed. Mr. Semenza argued a hearing would not be needed and referred to several e-mails attached to their supplement to show Ms. Morris had authority. Mr. Bailey argued for the hearing and requested to Court consider the Plaintiff's knowledge and understanding and that Counsel did not have authority. Colloquy regarding cited cases. Upon Court's inquiry, Mr. Bailey agreed his client would testify. Mr. Semenza requested the Court decide the matter on the briefs without a hearing. Mr. Semenza further noted if a hearing is set, he would request attorney fees. Colloquy regarding subpoenas, Ms. Morris having a retainer lien, limited waiver of attorney client privilege and documents needed. Mr. Semenza noted the Plaintiff, Ms. O'Connell has possession of documents and requested she turn over her file. Colloquy regarding ratification. Mr. Semenza further inquired as to witnesses to be called and opposed his firm being called as a witness. Mr. Bailey stated he had not determined his witnesses to call, however if regarding a carve out Mr. Semenza would be called. Court noted Mr. Semenza would not be a witness as he had already stated in the papers. **COURT ORDERED**, Plaintiff's Motion to Reconsider, **GRANTED**. Court noted the Order is on hold. **COURT FURTHER ORDERED**, Evidentiary Hearing **SET**. Counsel estimated a full day. Court to review the in-camera documents next week. Status Check: Settlement Documents, **OFF CALENDAR**. 04/17/2020 9:00 AM **EVIDENTIARY HEARING RE: MOTION TO ENFORCING SETTLEMENT // AUTHORITY OF COUNSEL (MORRIS);**

04/03/2020

CANCELED Motion for Protective Order (3:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Vacated

Plaintiff's Motion for a Protective Order Regarding Objections to Notice of Subpoena Duces Tecum to Nettles Morris Law Firm and/or its Predecessor Nettles Law Firm

04/03/2020

CANCELED Opposition and Countermotion (3:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Vacated

Defendant's Opposition to Plaintiff's Motion for Protective Order; Countermotion to Compel; and Order Shortening Time

10/16/2020



Evidentiary Hearing (10:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Evidentiary Hearing Re: Motion to Enforce Settlement / Attorney Authority

to be reset by Court

Matter Heard;

Journal Entry Details:

APPEARANCES: Plaintiff, Mr. Bailey, Esq., on behalf of Plaintiff, Eric Aldrian, Wynn Representative, Mr. Semenza, Esq., and Mr. Kircher, Esq., on behalf of Defendant, present and all appearing via BlueJeans. **COURT ADVISED** the court would need time to pull up the exhibits which were filed in Odyssey. Colloquy regarding today's hearing and which party was to proceed first. **COURT DIRECTED** Mr. Bailey to proceed with his first witness. Witness Yvonne O'Connell **SWORN** and **TESTIFIED**. Exhibits presented (see worksheets). **MATTER TRAILED**. **MATTER RECALLED**. All parties present as before. Witness Christian Morris **SWORN** and **Testified**. Exhibits presented (see worksheets). Mr. Bailey withdrew exhibit 5. **COURT SO NOTED**. Upon Court's inquiry regarding briefs, Mr. Semenza requested the brief filed today by Mr. Bailey be stricken. Colloquy regarding Mr. Bailey's brief. **COURT ORDERED**, Mr. Bailey's **BRIEF** filed today 10/16/2020 **STRICKEN** from the Record. Upon continued colloquy regarding brief's, **COURT FURTHER ORDERED**, Plaintiff and Defendant's brief to be **FILED** by November 2, 2020 and this matter **PLACED** on the Chambers calendar for a decision. Mr. Semenza requested all documents temporarily filed

CASE SUMMARY

CASE NO. A-12-655992-C

under seal, REMAIN UNDER SEAL. COURT SO ORDERED. 11/06/2020 CHAMBERS
CALENDAR - DECISION ;

11/13/2020



Decision (3:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Matter Heard;

Journal Entry Details:

The Court, having reviewed the papers submitted by counsel, and having heard oral argument, GRANTS the Plaintiff's Motion to Reconsider its earlier order granting the defendant's motion to enforce settlement, as well as Plaintiff's request for an evidentiary hearing in order to determine whether Plaintiff's counsel, Christian Morris, Esq., had actual authority to settle the instant case. The Court will reserve its ruling on whether the Defendant's Motion to Enforce Settlement shall be granted or denied until after the evidentiary hearing. Order efiled on November 13, 2020. COURT FURTHER ORDERED, the Defendant Wynn Las Vegas, LLC's Evidentiary Hearing Brief, temporarily filed under seal on 11/2/20, the Temporarily Sealed Proposed Exhibits which were efiled on 10/12/20, 10/14/20, and were utilized for the Evidentiary Hearing are SEALED. CLERK'S NOTE: The foregoing minutes were distributed via electronic mail to Mr. S Semenza and Mr. Vernon (11/24/20 amn). CLERK'S NOTE: Due to a clerical error, the above minutes were corrected to indicate the Defendant Wynn Las Vegas, LLC's Evidentiary Hearing Brief is SEALED instead of stricken, and to add that the Temporarily Sealed Proposed Exhibits were also to be SEALED as noted above and to coincide with the Court's Order efiled on 12/4/20. The foregoing minutes were distributed via electronic mail to Mr. S Semenza and Mr. Vernon (12/8/20 amn).;

12/16/2020



Motion to Withdraw as Counsel (3:00 PM) (Judicial Officer: Ellsworth, Carolyn)

Motion to Withdraw as Counsel

Deferred Ruling;

Journal Entry Details:

All parties appeared via BlueJeans audio / video conferencing. Mr. Bailey stated he served the motion; additionally, he had emailed the Plaintiff the BlueJeans link at 9:09 AM. COURT ADVISED, it was inclined to allow counsel to withdraw once it had ruled upon the motion for attorney's fees and Costs, it still had to read those briefs, but it could not allow counsel to withdraw until that motion has been decided; therefore, it would grant the motion to withdraw as counsel after that hearing. Mr. Bailey stated he was closing his practice and would not be practicing privately any longer in Nevada. Colloquy regarding having the order prepared, signed and filed so it was addressed prior to the appeal deadline. COURT ADVISED, counsel to reference 5:00 PM on 12/28/20 as there was nothing precluding counsel from withdrawing. Mr. Semenza had nothing to add.;

12/23/2020



Motion For Reconsideration (3:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Motion to Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After Reconsideration and Evidentiary Hearing by the Court/and Motion to Set Aside Order/Proceeding Enforcing Settlement and Motion for Reconsideration of Order/Proceeding Enforcing Settlement

Denied; Motion to Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After Reconsideration and Evidentiary Hearing by the Court/and Motion to Set Aside Order/Proceeding Enforcing Settlement and Motion for Reconsideration of Order/Proceeding Enforcing Settlement

Journal Entry Details:

On December 21, 2020, the Plaintiff, Yvonne O'Connell, filed a "Motion to Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After Reconsideration and Evidentiary Hearing by The Court/ And Motion to Set Aside Order/Proceeding Enforcing Settlement And Motion for Reconsideration of Order/Proceeding Enforcing Settlement." Said document was filed not by Plaintiff's counsel, but by Ms. O'Connell herself. EDCR 7.40(a) provides, "When a party has appeared by counsel, the party cannot thereafter appear on the party's own behalf in the case without the consent of the court. Counsel who has appeared for any party must represent that party in the case and shall be recognized by the court and by all parties as having control of the case. The court in its discretion may hear a party in open court although the party is represented by counsel." This Court did not authorize Ms. O'Connell to appear on her own behalf and therefore the above referenced motion was filed in violation of EDCR 7.40 (a). Although Ms. O'Connell's counsel moved to withdraw, the Court denied said motion because there is a pending motion for attorney fees filed by the defendant which is set for argument on December 28, 2020. Moreover, said fugitive document filed directly by the plaintiff again asks the Court to reconsider its ruling despite the fact that the Court had

CASE SUMMARY

CASE NO. A-12-655992-C

previously agreed to reconsider its earlier ruling on the same subject. After many hours spent by this Court reviewing documents in camera at counsels' request, reviewing thorough briefs and supplements thereto by the attorneys on both sides, and after considering testimony from two witnesses at a day long evidentiary hearing, and the exhibits offered by the parties at said hearing, the Court again ruled. EDCR 2.24(a) provides, "No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." The Court declines to once again reconsider its ruling and the MOTION IS DENIED. The court will prepare the order. CLERK'S NOTE: The foregoing minutes were distributed via electronic mail to Mr. S Semenza and Mr. Vernon, and a courtesy copy via general mail to the following party: Yvonne O'Connell 8764 Captains Place Las Vegas, NV 89117 (12/24/20 amn).;

12/28/2020



Motion for Attorney Fees and Costs (3:30 PM) (Judicial Officer: Ellsworth, Carolyn)

Decision Made;

Journal Entry Details:

COURT NOTED, the Plaintiff filed a letter on this case, indicating she did not want counsel to represent her for this hearing; however, at the prior hearing it had previously indicated it would not let Plaintiff's counsel withdraw at that time, as there was a pending motion. Upon Court's inquiry, Ms. O'Connell requested to represent herself on today's motion and summarized the reason she did not want Mr. Bailey to continue representing her. Colloquy regarding the timeline of the motion to withdraw as counsel and the motion for attorney's fees being filed. COURT FURTHER NOTED, Mr. Bailey had filed an opposition to the motion for attorney's fees on Ms. O'Connell's behalf. Ms. O'Connell reiterated her request to represent herself on today's motion. Statement by Mr. Bailey regarding the allegations raised by Ms. O'Connell. Mr. Semenza had no opposition to Mr. Bailey being withdrawn as counsel for the Plaintiff. COURT ORDERED, the motion to withdraw as counsel for Ms. O'Connell is GRANTED; DIRECTED, Mr. Bailey to prepare a new order, indicating the motion to withdraw as counsel was granted prior to the motion for attorney's fees hearing, and it did not need to be provided to defense counsel prior to its submission. Argument by Mr. Semenza in support of the motion for attorney's fees. Colloquy regarding whether there was an error in the transcript, on page 246 lines 16-18 from the 10/16/20 hearing, with respect to the word don't being left out. Opposition by Ms. O'Connell. COURT REMINDED, Ms. O'Connell that her arguments were restricted to the matter of attorney's fees, and not to argue regarding the motion for reconsideration. Further arguments by Ms. O'Connell and Mr. Semenza. COURT ORDERED, matter TAKEN UNDER ADVISEMENT, and ADVISED, it would draft the order, which was anticipated to be completed by tomorrow or Wednesday.;

DATE

FINANCIAL INFORMATION

Defendant Wynn Las Vegas LLC

Total Charges

447.00

Total Payments and Credits

447.00

Balance Due as of 1/6/2021

0.00

Plaintiff O'Connell, Yvonne

Total Charges

294.00

Total Payments and Credits

294.00

Balance Due as of 1/6/2021

0.00

Defendant Wynn Las Vegas LLC

Appeal Bond Balance as of 1/6/2021

500.00

Plaintiff O'Connell, Yvonne

Appeal Bond Balance as of 1/6/2021

500.00



CLARK County, Nevada

Case No. _____
(Assigned by Clerk's Office)

A-12-655992-C

Plaintiff(s) (name/address/phone): YVONNE O'CONNELL, an individual, IN PROPER PERSON

8764 Captains Place, Las Vegas, NV 89117

(702) 228-4424

Attorney (name/address/phone):

Defendant(s) (name/address/phone): WYNN RESORTS, LIMITED,
a Nevada corporation, d/b/a WYNN LAS VEGAS; DOES 1
through X, inclusive; and ROE BUSINESS ENTITIES 1 through
X, inclusive

3131 Las Vegas Boulevard South, Clark County, State of Nevada.

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

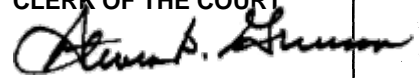
<p align="center">Real Property</p> <p><input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning</p>	<p align="center">Torts</p> <p align="center">Negligence</p> <p><input type="checkbox"/> Negligence – Auto</p> <p><input type="checkbox"/> Negligence – Medical/Dental</p> <p><input checked="" type="checkbox"/> Negligence – Premises Liability (Slip/Fall)</p> <p><input type="checkbox"/> Negligence – Other</p>	<p><input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights</p> <p><input type="checkbox"/> Employment Torts (Wrongful termination)</p> <p><input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition</p>
<p align="center">Probate</p> <p>Estimated Estate Value: _____</p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside Estates</p> <p><input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee</p> <p><input type="checkbox"/> Other Probate</p>	<p align="center">Other Civil Filing Types</p> <p><input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General</p> <p><input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal</p>	<p><input type="checkbox"/> Appeal from Lower Court <i>(also check applicable civil case box)</i> <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal</p> <p><input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding</p> <p><input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters</p>

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

FEBRUARY 6, 2012
Date

Yvonne O'Connell
Signature of initiating party or representative



1 Lawrence J. Semenza, III, Esq., Bar No. 7174
Email: ljs@skrlawyers.com
2 Christopher D. Kircher, Esq., Bar No. 11176
Email: cdk@skrlawyers.com
3 Jarrod L. Rickard, Esq., Bar No. 10203
Email: jlr@skrlawyers.com
4 Katie L. Cannata, Esq., Bar No. 14848
Email: klc@skrlawyers.com
5 SEMENZA KIRCHER RICKARD
6 10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
7 Telephone: (702) 835-6803
8 Facsimile: (702) 920-8669

9 *Attorneys for Defendant Wynn Las Vegas, LLC*
10 *d/b/a Wynn Las Vegas*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 YVONNE O'CONNELL, individually,

14 Plaintiff,

15 v.

16 WYNN LAS VEGAS, LLC, a Nevada
17 Limited Liability Company, doing business as
18 WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X;
inclusive;

19 Defendants.

Case No. A-12-655992-C
Dept. No. V

**ORDER GRANTING DEFENDANT'S
MOTION TO ENFORCE
SETTLEMENT ON ORDER
SHORTENING TIME AND DENYING
PLAINTIFF'S POST-APPEAL
APPLICATION FOR ATTORNEY'S
FEES, COSTS AND POST-JUDGMENT
INTEREST AS MOOT**

21 On October 11, 2019, the Court held a hearing on Defendant Wynn Las Vegas, LLC d/b/a
22 Wynn Las Vegas' ("Wynn") Motion to Enforce Settlement on Order Shortening Time (the
23 "Motion") and on Plaintiff Yvonne O'Connell's ("Plaintiff") Post-Appeal Application for
24 Attorney's Fees, Costs and Post-Judgment Interest (the "Application"). Plaintiff filed an
25
26
27
28

SEMENTA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

1 opposition to Wynn's Motion and Wynn filed a reply in support of its Motion. Wynn filed an
2 opposition to Plaintiff's Application and Plaintiff filed a reply in support of her Application.¹

3 A confidential settlement between Plaintiff and Defendant was reached on August 5,
4 2019 through an e-mail exchange and correspondence to the Court on the same day. There is no
5 need or cause for an evidentiary hearing to expand the record.

6 Having considered the Motion, Application, oppositions and replies thereto, the other
7 pleadings and papers relating to the foregoing and the oral argument of counsel during the
8 hearing, with good cause appearing:

9 **IT IS HEREBY ORDERED** that Wynn's Motion is **GRANTED** in so far as the Court
10 finds that the settlement amount and confidentiality term is enforceable. No further terms were
11 agreed to by Plaintiff.

12 **IT IS HEREBY FURTHER ORDERED** Plaintiff's request for an evidentiary hearing
13 is **DENIED**.

14 **IT IS HEREBY FURTHER ORDERED** that Defendant shall prepare formal settlement
15 documents and provide those documents to Plaintiff's counsel, which shall include the settlement
16 amount and confidentiality.

17 **IT IS HEREBY FURTHER ORDERED** that Wynn's request for an award of attorney's
18 fees is **DENIED**.

19 **IT IS HEREBY FURTHER ORDERED** that Plaintiff's Application is **DENIED AS**
20 **MOOT**.

21 ///

22 ///

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27 ¹ Plaintiff also filed a supplement to her Application and an errata to her supplement on July 25,
28 2019 and August 2, 2019, respectively.

1 IT IS HEREBY FURTHER ORDERED that the Court shall conduct a status check on

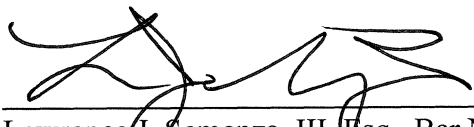
2 ~~December 20, 2019~~ ^{Jan 31, 2020} at 9:00 a.m.

3 DATED this 7th day of Janr, 2019²⁰.

4
5 
6 EIGHTH JUDICIAL DISTRICT COURT JUDGE
JwT

7 Respectfully Submitted By:

8 SEMENZA KIRCHER RICKARD

9 
10
11 Lawrence J. Semenza, III, Esq., Bar No. 7174
12 Christopher D. Kircher, Esq., Bar No. 11176
13 Jarrod L. Rickard, Esq., Bar No. 10203
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

14 *Attorneys for Defendant Wynn Las Vegas, LLC*
15 *d/b/a Wynn Las Vegas*

16 Approved as to form and content by:

17 NETTLES LAW FIRM

18
19
20 Christian M. Morris, Esq., Bar No. 11218
1389 Galleria Drive, Suite 200
21 Henderson, Nevada 89014

22 *Attorneys for Plaintiff Yvonne O'Connell*
23
24
25
26
27
28

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IT IS HEREBY FURTHER ORDERED that the Court shall conduct a status check on

December 20, 2019 at 9:00 a.m.

DATED this _____ day of _____, 2019.

EIGHTH JUDICIAL DISTRICT COURT JUDGE

Respectfully Submitted By:

SEMENZA KIRCHER RICKARD

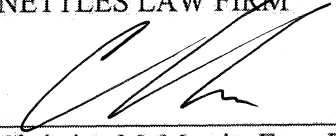


Lawrence J. Semenza, III, Esq., Bar No. 7174
Christopher D. Kircher, Esq., Bar No. 11176
Jarrod L. Rickard, Esq., Bar No. 10203
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

*Attorneys for Defendant Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas*

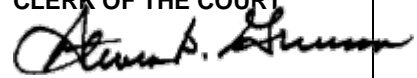
Approved as to form and content by:

NETTLES LAW FIRM



Christian M. Morris, Esq., Bar No. 11218
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014

Attorneys for Plaintiff Yvonne O'Connell



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Jarrod L. Rickard, Esq., Bar No. 10203
E-mail: jlr@skrlawyers.com
Katie L. Cannata, Esq., Bar No. 14848
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Las Vegas, Nevada 89145
Telephone: (702) 835-6803
Facsimile: (702) 920-8669

*Attorneys for Defendant Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas*

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company, doing business as
WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X;
inclusive;

Defendants.

Case No. A-12-655992-C

Dept. No. V

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Defendant's Motion to Enforce
Settlement on Order Shortening Time and Denying Plaintiff's Post-Appeal Application for

///

///

///

///

LAWRENCE J. SEMENZA, III, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

1 Attorney's Fees, Costs and Post-Judgment Interest as Moot was entered by the Court on January
2 13, 2020, a true and correct copy of which is attached hereto.

3 DATED this 14th day of January 2020.

4 SEMENZA KIRCHER RICKARD

5
6 /s/ Lawrence J. Semenza, III

7 Lawrence J. Semenza, III, Esq., Bar No. 7174

8 Christopher D. Kircher, Esq., Bar No. 11176

9 Jarrod L. Rickard, Esq., Bar No. 10203

10 Katie L. Cannata, Esq., Bar No. 14848

11 10161 Park Run Drive, Suite 150

12 Las Vegas, Nevada 89145

13 *Attorneys for Defendant Wynn Las Vegas, LLC*
14 *d/b/a Wynn Las Vegas*

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Semenza Kircher Rickard and that on this 14th day of January 2020, I caused to be sent through electronic transmission via Odyssey's online e-file and serve system, a true copy of the foregoing **NOTICE OF ENTRY OF ORDER** to the following registered e-mail addresses:

NETTLES LAW FIRM

Christian M. Morris, Esq. - christianmorris@nettleslawfirm.com

Edward Wynder, Esq. - Edward@nettleslawfirm.com

Jon J. Carlston, Esq. - jon@nettleslawfirm.com

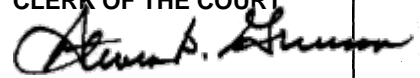
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Attorneys for Plaintiff Yvonne O'Connell

/s/ Olivia A. Kelly

An Employee of Semenza Kircher Rickard



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2 Christopher D. Kircher, Esq., Bar No. 11176
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4 Katie L. Cannata, Esq., Bar No. 14848
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5 SEMENZA KIRCHER RICKARD
6 10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
7 Telephone: (702) 835-6803
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9 *Attorneys for Defendant Wynn Las Vegas, LLC*
10 *d/b/a Wynn Las Vegas*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 YVONNE O'CONNELL, individually,

14 Plaintiff,

15 v.

16 WYNN LAS VEGAS, LLC, a Nevada
17 Limited Liability Company, doing business as
18 WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X;
inclusive;

19 Defendants.

Case No. A-12-655992-C
Dept. No. V

**ORDER GRANTING DEFENDANT'S
MOTION TO ENFORCE
SETTLEMENT ON ORDER
SHORTENING TIME AND DENYING
PLAINTIFF'S POST-APPEAL
APPLICATION FOR ATTORNEY'S
FEES, COSTS AND POST-JUDGMENT
INTEREST AS MOOT**

21 On October 11, 2019, the Court held a hearing on Defendant Wynn Las Vegas, LLC d/b/a
22 Wynn Las Vegas' ("Wynn") Motion to Enforce Settlement on Order Shortening Time (the
23 "Motion") and on Plaintiff Yvonne O'Connell's ("Plaintiff") Post-Appeal Application for
24 Attorney's Fees, Costs and Post-Judgment Interest (the "Application"). Plaintiff filed an
25
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27
28

SEMENTA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

1 opposition to Wynn's Motion and Wynn filed a reply in support of its Motion. Wynn filed an
2 opposition to Plaintiff's Application and Plaintiff filed a reply in support of her Application.¹

3 A confidential settlement between Plaintiff and Defendant was reached on August 5,
4 2019 through an e-mail exchange and correspondence to the Court on the same day. There is no
5 need or cause for an evidentiary hearing to expand the record.

6 Having considered the Motion, Application, oppositions and replies thereto, the other
7 pleadings and papers relating to the foregoing and the oral argument of counsel during the
8 hearing, with good cause appearing:

9 **IT IS HEREBY ORDERED** that Wynn's Motion is **GRANTED** in so far as the Court
10 finds that the settlement amount and confidentiality term is enforceable. No further terms were
11 agreed to by Plaintiff.

12 **IT IS HEREBY FURTHER ORDERED** Plaintiff's request for an evidentiary hearing
13 is **DENIED**.

14 **IT IS HEREBY FURTHER ORDERED** that Defendant shall prepare formal settlement
15 documents and provide those documents to Plaintiff's counsel, which shall include the settlement
16 amount and confidentiality.

17 **IT IS HEREBY FURTHER ORDERED** that Wynn's request for an award of attorney's
18 fees is **DENIED**.

19 **IT IS HEREBY FURTHER ORDERED** that Plaintiff's Application is **DENIED AS**
20 **MOOT**.

21 ///

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26 ///

27 ¹ Plaintiff also filed a supplement to her Application and an errata to her supplement on July 25,
28 2019 and August 2, 2019, respectively.

1 IT IS HEREBY FURTHER ORDERED that the Court shall conduct a status check on

2 ~~December 20, 2019~~ ^{Jan 31, 2020} at 9:00 a.m.

3 DATED this 7th day of Janr, 2019²⁰.

4
5 
6 EIGHTH JUDICIAL DISTRICT COURT JUDGE
JwT

7 Respectfully Submitted By:

8 SEMENZA KIRCHER RICKARD

9
10 

11 Lawrence J. Semenza, III, Esq., Bar No. 7174

12 Christopher D. Kircher, Esq., Bar No. 11176

13 Jarrod L. Rickard, Esq., Bar No. 10203

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

14 *Attorneys for Defendant Wynn Las Vegas, LLC*

15 *d/b/a Wynn Las Vegas*

16 Approved as to form and content by:

17 NETTLES LAW FIRM

18
19
20 Christian M. Morris, Esq., Bar No. 11218

1389 Galleria Drive, Suite 200

21 Henderson, Nevada 89014

22 *Attorneys for Plaintiff Yvonne O'Connell*

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IT IS HEREBY FURTHER ORDERED that the Court shall conduct a status check on

December 20, 2019 at 9:00 a.m.

DATED this _____ day of _____, 2019.

EIGHTH JUDICIAL DISTRICT COURT JUDGE

Respectfully Submitted By:

SEMENZA KIRCHER RICKARD

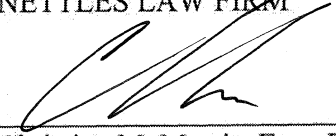


Lawrence J. Semenza, III, Esq., Bar No. 7174
Christopher D. Kircher, Esq., Bar No. 11176
Jarrod L. Rickard, Esq., Bar No. 10203
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

*Attorneys for Defendant Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas*

Approved as to form and content by:

NETTLES LAW FIRM



Christian M. Morris, Esq., Bar No. 11218
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014

Attorneys for Plaintiff Yvonne O'Connell

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 YVONNE O'CONNELL,

6 Plaintiff,

7 vs.

Case No. A-12-655992-C

8 WYNN LAS VEGAS, LLC, ET AL.,

Dept. No. V

9 Defendants.

10
11 **ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AFTER**
12 **RECONSIDERATION AND EVIDENTIARY HEARING BY THE COURT**
13

14 This matter came on for hearing before the Court on October 16, 2020, for an
15 evidentiary hearing concerning Plaintiff's Motion to Reconsider the Court's previous
16 Order Granting Defendant's Motion to Enforce Settlement. The plaintiff was present
17 by and through her counsel, Vernon L. Bailey, Esq., and the defendant was present
18 by and through its counsel, Lawrence Semenza, III, Esq., and Christopher D.
19 Kircher, Esq. The Court heard testimony from the plaintiff, Yvonne O'Connell, and
20 from Plaintiff's former counsel, Christian Morris, Esq., of Nettles Morris Law Firm.
21 All persons appearing at the hearing did so via video through the BlueJeans
22 application as required by the District Court's Administrative Order in response to
23 the Covid-19 pandemic.

24 Plaintiff's counsel filed an Evidentiary Hearing Brief on the date of the hearing
25 without request by or permission of the Court, and said brief was ordered to be
26 struck. The Court did not review said brief.

27 During the evidentiary hearing, certain exhibits were offered and admitted by
28 the Court. Proposed Exhibits had been e-filed under temporary seal by the parties

1 at the Court's request prior to the hearing, but not all of said proposed exhibits were
2 offered by the parties or admitted by the Court.

3 At the close of the evidentiary hearing, the Court ordered that the parties file,
4 on or before November 2, 2020, additional briefing concerning the testimony at the
5 evidentiary hearing. The Court, having reviewed the papers submitted by counsel,
6 makes the following findings of fact and conclusions of law:

7 A: FINDINGS OF FACT

8 The Court finds that Ms. Christian Morris, Esq., had actual authority from the
9 plaintiff to settle her case pursuant to a lengthy telephone conversation between Ms.
10 Morris and the plaintiff on or about August 2, 2019, which gave Ms. Morris authority
11 to settle the case, as long as the Plaintiff received, "in her pocket," a specific amount
12 which Ms. Morris had calculated, and which she had discussed with the plaintiff via
13 e-mail and during said telephone conversation. The plaintiff and Ms. Morris also
14 discussed the fact that the defendant wanted a confidentiality agreement as to the
15 settlement and the plaintiff indicated orally, and in e-mails, that she had no problem
16 with confidentiality. It was only after the defendant had accepted the plaintiff's
17 settlement offer, that Ms. O'Connell informed Ms. Morris that, although she had no
18 problem with the amount of the settlement, and had no problem with the
19 confidentiality term, she could not enter into any agreement with the defendant
20 because of her fear of the defendant.

21 The Court finds that Christian Morris was a credible witness. The plaintiff
22 gave her then counsel, Christian Morris, authority to negotiate a settlement on her
23 behalf, based upon specific parameters which were met when Ms. Morris reduced
24 her firm's contractual contingent attorney fees so that Ms. O'Connell would receive
25 the target amount "in her pocket." The Court further finds that the plaintiff was not a
26 credible witness, and this finding is, in part, based upon her testimony at the
27 evidentiary hearing that she believed that Ms. Morris and defense counsel were
28 somehow conspiring against her and that she had been threatened in a hallway

1 during her deposition, by men whom she could not identify or describe, but whom
2 she believed may have been defense counsel. It is further based upon her
3 contradictory testimony during the evidentiary hearing, as more fully set forth in the
4 defense brief filed on November 2, 2020.

5 B. CONCLUSIONS OF LAW

6 In *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 656, 218 P3d 853, 860 (2009) the
7 Nevada Supreme Court noted in dicta, “[C]ourts ‘do not treat the attorney-client
8 relationship as they do other agent principal relationships... when the question is
9 whether a settlement agreed to by the attorney binds the client.’ Grace M.
10 Giesel, *Client Responsibility for Lawyer Conduct: Examining the Agency Nature of*
11 *the Lawyer–Client Relationship*, 86 Neb. L.Rev. 346, 348 (2007). While a lawyer has
12 apparent authority to handle procedural matters for a client, ‘[m]erely retaining a
13 lawyer does not create apparent authority in the lawyer’ to settle his client's case.
14 Restatement (Third) of the Law Governing Lawyers § 27 cmt. d (2000); see *id.* §
15 22(1).” Of course, the facts of the NC-DSH case differ greatly from the instant case
16 – there the attorney had forged his client’s signatures to settlement documents,
17 obtained the settlement funds and absconded with the money, and the Supreme
18 Court focused on the main issue of fraud upon the court. While the issue of
19 apparent authority of a lawyer to settle a case without actual authority from the client
20 was raised, it was unclear as to whether the Court was expressly adopting the Third
21 Restatement position in that regard. What is clear, and is not disputed by the
22 plaintiff, is that a lawyer with actual authority from a client to settle that client’s case,
23 may do so, and that settlement will be enforceable. It was for this reason that the
24 Court agreed to reconsider its earlier ruling and hold an evidentiary hearing, so that it
25 could make a factual finding as to whether Ms. Morris had actual authority.

26 Having found that Ms. Morris did have actual authority, the Court HEREBY
27 REAFFIRMS its earlier granting of the Motion to Enforce Settlement.

28 IT IS FURTHER ORDERED that the defendant’s brief filed under temporary

1 seal on November 2, 2020, be sealed, and the defendant IS ORDERED to file a
2 redacted copy of said brief that does not contain the terms of the settlement which
3 are to be confidential. Said redacted brief shall be filed not later than December 11,
4 2020.

5 IT IS FURTHER ORDERED that the clerk of the court, having lodged in the
6 evidence vault, the exhibits which were offered and admitted at the evidentiary
7 hearing, shall seal the proposed exhibits which were filed temporarily under seal (on
8 October 12th and 14th of 2020) for the purpose of facilitating the paperless
9 requirements of Administrative Order 20-17, issued as part of the Court's Covid-19
10 response.

11
12 Dated this 4th day of December, 2020

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15 B48 BAA 91E4 AAFE
16 Carolyn Ellsworth
17 District Court Judge
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Yvonne O'Connell, Plaintiff(s) | CASE NO: A-12-655992-C
7 vs. | DEPT. NO. Department 5
8 Wynn Resorts Limited,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/4/2020

15 "Christian M. Morris, Esq." .	christianmorris@nettleslawfirm.com
16 "Edward Wynder, Esq." .	Edward@nettleslawfirm.com
17 "Jon J. Carlston, Esq." .	jon@nettleslawfirm.com
18 "Lawrence J. Semenza, III" .	ljs@skrlawyers.com
19 Christopher D. Kircher .	cdk@skrlawyers.com
20 Jarrod L. Rickard .	jl原因@skrlawyers.com
21 Jenn Alexy .	jenn@nettleslawfirm.com
22 Jennifer A. Bidwell .	jab@skrlawyers.com
23 Olivia Kelly .	oak@skrlawyers.com
24 Teresa Beiter	tnb@skrlawyers.com
25 Angie Barreras	alb@skrlawyers.com

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Vernon Bailey

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Katie Cannata

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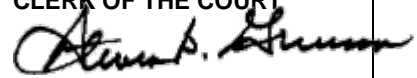
Emily Arriviello

emily@nettlesmorris.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 12/7/2020

Lawrence Semenza

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Las Vegas, NV, 89145



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SEMENZA KIRCHER RICKARD

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Las Vegas, Nevada 89145

Telephone: (702) 835-6803

Facsimile: (702) 920-8669

Attorneys for Defendant Wynn Las Vegas, LLC

d/b/a Wynn Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada Limited
Liability Company, doing business as WYNN
LAS VEGAS; DOES I through X; and ROE
CORPORATIONS I through X; inclusive;

Defendants.

Case No. A-12-655992-C

Dept. No. V

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Motion to Enforce Settlement After Reconsideration and Evidentiary Hearing by the Court was entered by the Court on December 4, 2020, a true and correct copy of which is attached hereto.

DATED this 7th day of December 2020.

SEMENZA KIRCHER RICKARD

/s/ Lawrence J. Semenza, III

Lawrence J. Semenza, III, Esq., Bar No. 7174

Christopher D. Kircher, Esq., Bar No. 11176

Jarrold L. Rickard, Esq., Bar No. 10203

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Attorneys for Defendant Wynn Las Vegas, LLC

d/b/a Wynn Las Vegas

SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that I am an employee with Semenza Kircher Rickard, and that on the 7th day of December 2020, I caused to be sent via Odyssey's online e-file and serve system a true copy of the foregoing **NOTICE OF ENTRY ORDER** to the following:

LAW OFFICE OF VERNON L. BAILEY

Vernon L. Bailey, Esq., vbailey@vernonbaileylaw.com

Attorney for Plaintiff

/s/ Olivia A. Kelly

An Employee of Semenza Kircher Rickard

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 YVONNE O'CONNELL,

6 Plaintiff,

7 vs.

Case No. A-12-655992-C

8 WYNN LAS VEGAS, LLC, ET AL.,

Dept. No. V

9 Defendants.

10
11 **ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AFTER**
12 **RECONSIDERATION AND EVIDENTIARY HEARING BY THE COURT**
13

14 This matter came on for hearing before the Court on October 16, 2020, for an
15 evidentiary hearing concerning Plaintiff's Motion to Reconsider the Court's previous
16 Order Granting Defendant's Motion to Enforce Settlement. The plaintiff was present
17 by and through her counsel, Vernon L. Bailey, Esq., and the defendant was present
18 by and through its counsel, Lawrence Semenza, III, Esq., and Christopher D.
19 Kircher, Esq. The Court heard testimony from the plaintiff, Yvonne O'Connell, and
20 from Plaintiff's former counsel, Christian Morris, Esq., of Nettles Morris Law Firm.
21 All persons appearing at the hearing did so via video through the BlueJeans
22 application as required by the District Court's Administrative Order in response to
23 the Covid-19 pandemic.

24 Plaintiff's counsel filed an Evidentiary Hearing Brief on the date of the hearing
25 without request by or permission of the Court, and said brief was ordered to be
26 struck. The Court did not review said brief.

27 During the evidentiary hearing, certain exhibits were offered and admitted by
28 the Court. Proposed Exhibits had been e-filed under temporary seal by the parties

CAROLYN ELLSWORTH
DISTRICT JUDGE
DEPARTMENT V

1 at the Court's request prior to the hearing, but not all of said proposed exhibits were
2 offered by the parties or admitted by the Court.

3 At the close of the evidentiary hearing, the Court ordered that the parties file,
4 on or before November 2, 2020, additional briefing concerning the testimony at the
5 evidentiary hearing. The Court, having reviewed the papers submitted by counsel,
6 makes the following findings of fact and conclusions of law:

7 A: FINDINGS OF FACT

8 The Court finds that Ms. Christian Morris, Esq., had actual authority from the
9 plaintiff to settle her case pursuant to a lengthy telephone conversation between Ms.
10 Morris and the plaintiff on or about August 2, 2019, which gave Ms. Morris authority
11 to settle the case, as long as the Plaintiff received, "in her pocket," a specific amount
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13 e-mail and during said telephone conversation. The plaintiff and Ms. Morris also
14 discussed the fact that the defendant wanted a confidentiality agreement as to the
15 settlement and the plaintiff indicated orally, and in e-mails, that she had no problem
16 with confidentiality. It was only after the defendant had accepted the plaintiff's
17 settlement offer, that Ms. O'Connell informed Ms. Morris that, although she had no
18 problem with the amount of the settlement, and had no problem with the
19 confidentiality term, she could not enter into any agreement with the defendant
20 because of her fear of the defendant.

21 The Court finds that Christian Morris was a credible witness. The plaintiff
22 gave her then counsel, Christian Morris, authority to negotiate a settlement on her
23 behalf, based upon specific parameters which were met when Ms. Morris reduced
24 her firm's contractual contingent attorney fees so that Ms. O'Connell would receive
25 the target amount "in her pocket." The Court further finds that the plaintiff was not a
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28 somehow conspiring against her and that she had been threatened in a hallway

1 during her deposition, by men whom she could not identify or describe, but whom
2 she believed may have been defense counsel. It is further based upon her
3 contradictory testimony during the evidentiary hearing, as more fully set forth in the
4 defense brief filed on November 2, 2020.

5 B. CONCLUSIONS OF LAW

6 In *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 656, 218 P3d 853, 860 (2009) the
7 Nevada Supreme Court noted in dicta, “[C]ourts ‘do not treat the attorney-client
8 relationship as they do other agent principal relationships... when the question is
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10 Giesel, *Client Responsibility for Lawyer Conduct: Examining the Agency Nature of*
11 *the Lawyer–Client Relationship*, 86 Neb. L.Rev. 346, 348 (2007). While a lawyer has
12 apparent authority to handle procedural matters for a client, ‘[m]erely retaining a
13 lawyer does not create apparent authority in the lawyer’ to settle his client's case.
14 Restatement (Third) of the Law Governing Lawyers § 27 cmt. d (2000); see *id.* §
15 22(1).” Of course, the facts of the NC-DSH case differ greatly from the instant case
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18 Court focused on the main issue of fraud upon the court. While the issue of
19 apparent authority of a lawyer to settle a case without actual authority from the client
20 was raised, it was unclear as to whether the Court was expressly adopting the Third
21 Restatement position in that regard. What is clear, and is not disputed by the
22 plaintiff, is that a lawyer with actual authority from a client to settle that client’s case,
23 may do so, and that settlement will be enforceable. It was for this reason that the
24 Court agreed to reconsider its earlier ruling and hold an evidentiary hearing, so that it
25 could make a factual finding as to whether Ms. Morris had actual authority.

26 Having found that Ms. Morris did have actual authority, the Court HEREBY
27 REAFFIRMS its earlier granting of the Motion to Enforce Settlement.

28 IT IS FURTHER ORDERED that the defendant’s brief filed under temporary

1 seal on November 2, 2020, be sealed, and the defendant IS ORDERED to file a
2 redacted copy of said brief that does not contain the terms of the settlement which
3 are to be confidential. Said redacted brief shall be filed not later than December 11,
4 2020.

5 IT IS FURTHER ORDERED that the clerk of the court, having lodged in the
6 evidence vault, the exhibits which were offered and admitted at the evidentiary
7 hearing, shall seal the proposed exhibits which were filed temporarily under seal (on
8 October 12th and 14th of 2020) for the purpose of facilitating the paperless
9 requirements of Administrative Order 20-17, issued as part of the Court's Covid-19
10 response.

11
12 Dated this 4th day of December, 2020

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15 B48 BAA 91E4 AAFE
16 Carolyn Ellsworth
17 District Court Judge
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Yvonne O'Connell, Plaintiff(s) | CASE NO: A-12-655992-C
7 vs. | DEPT. NO. Department 5
8 Wynn Resorts Limited,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/4/2020

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Vernon Bailey

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Katie Cannata

klc@skrlawyers.com

Emily Arriviello

emily@nettlesmorris.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 12/7/2020

Lawrence Semenza

Semenza Kircher Rickard
Attn: Lawrence J. Semenza III
10161 Park Run Drive, Suite 150
Las Vegas, NV, 89145

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 YVONNE O'CONNELL,

6 Plaintiff,

7 vs.

Case No. A-12-655992-C

8 WYNN LAS VEGAS, LLC, ET AL.,

Dept. No. V

9 Defendants.

10
11 **ORDER DENYING MOTION TO RECONSIDER AND/OR SET ASIDE ORDER GRANTING**
12 **MOTION TO ENFORCE SETTLEMENT AFTER RECONSIDERATION AND**
13 **EVIDENTIARY HEARING BY THE COURT/AND MOTION TO SET ASIDE ORDER/**
14 **PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR RECONSIDERATION OF**
15 **ORDER/ PROCEEDING ENFORCING SETTLEMENT**
16

17 On December 21, 2020, the plaintiff, Yvonne O'Connell, filed a "Motion to
18 Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After
19 Reconsideration and Evidentiary Hearing by The Court/ And Motion to Set Aside
20 Order/Proceeding Enforcing Settlement And Motion for Reconsideration of
21 Order/Proceeding Enforcing Settlement." Said document was filed not by the plaintiff's
22 counsel, but by Ms. O'Connell herself. EDCR 7.40(a) provides:

23 When a party has appeared by counsel, the party cannot thereafter appear on the
24 party's own behalf in the case without the consent of the court. Counsel who has
25 appeared for any party must represent that party in the case and shall be recognized
26 by the court and by all parties as having control of the case. The court in its
discretion may hear a party in open court although the party is represented by
counsel.

27 This Court did not authorize Ms. O'Connell to appear on her own behalf and therefore the
28 above referenced motion was filed in violation of EDCR 7.40(a). Although Ms. O'Connell's

1 counsel moved to withdraw, the Court denied said motion until the conclusion of a pending
2 motion for attorney's fees filed by the defendant, which is set for argument on December
3 28, 2020. Moreover, said fugitive document filed directly by the plaintiff again asks the
4 Court to reconsider its ruling despite the fact that the Court had previously agreed to
5 reconsider its earlier ruling on the same subject. After many hours spent by this Court
6 reviewing documents *in camera* at counsels' request, reviewing thorough briefs and
7 supplements thereto by the attorneys on both sides, and after considering testimony from
8 two witnesses at a day long evidentiary hearing, and the exhibits offered by the parties at
9 said hearing, the Court again ruled.

10 EDCR 2.24(a) provides, "No motions once heard and disposed of may be renewed
11 in the same cause, nor may the same matters therein embraced be reheard, unless by
12 leave of the court granted upon motion therefor, after notice of such motion to the adverse
13 parties." The Court declines to once again reconsider its ruling and therefore the MOTION
14 IS DENIED.

15 Dated this 23rd day of December, 2020

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18 E0B 5B6 A964 1C67
19 Carolyn Ellsworth
20 District Court Judge
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Yvonne O'Connell, Plaintiff(s) | CASE NO: A-12-655992-C
7 vs. | DEPT. NO. Department 5
8 Wynn Resorts Limited,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/23/2020

16 "Christian M. Morris, Esq." . christianmorris@nettleslawfirm.com

17 "Edward Wynder, Esq." . Edward@nettleslawfirm.com

18 "Jon J. Carlston, Esq." . jon@nettleslawfirm.com

19 "Lawrence J. Semenza, III" . ljs@skrlawyers.com

20 Christopher D. Kircher . cdk@skrlawyers.com

21 Jarrod L. Rickard . jlr@skrlawyers.com

22 Jenn Alexy . jenn@nettleslawfirm.com

23 Jennifer A. Bidwell . jab@skrlawyers.com

24 Olivia Kelly . oak@skrlawyers.com

25 Teresa Beiter tnb@skrlawyers.com

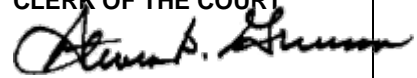
26 Angie Barreras alb@skrlawyers.com

27
28

Vernon Bailey	vbailey@vernonbaileylaw.com
Katie Cannata	klc@skrlawyers.com
Emily Arriviello	emily@nettlesmorris.com
Yvonne O'Connell	yoconnell@aol.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 12/24/2020

Lawrence Semenza	Semenza Kircher Rickard Attn: Lawrence J. Semenza III 10161 Park Run Drive, Suite 150 Las Vegas, NV, 89145
------------------	---



Lawrence J. Semenza, III, Esq., Bar No. 7174
Email: ljs@skrlawyers.com
Christopher D. Kircher, Esq., Bar No. 11176
Email: cdk@skrlawyers.com
Jarrod L. Rickard, Esq., Bar No. 10203
Email: jlr@skrlawyers.com
Katie L. Cannata, Esq., Bar No. 14848
Email: klc@skrlawyers.com
SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Ste. 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803
Facsimile: (702) 920-8669

*Attorneys for Defendant Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas*

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada Limited
Liability Company, doing business as WYNN
LAS VEGAS; DOES I through X; and ROE
CORPORATIONS I through X; inclusive;

Defendants.

Case No. A-12-655992-C
Dept. No. V

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S PRO SE
MOTION TO RECONSIDER
AND/OR SET ASIDE ORDER
GRANTING MOTION TO ENFORCE
SETTLEMENT AFTER
RECONSIDERATION AND
EVIDENTIARY HEARING BY THE
COURT AND MOTION TO SET
ASIDE ORDER/PROCEEDING
ENFORCING SETTLEMENT AND
MOTION FOR RECONSIDERATION
OF ORDER/PROCEEDING
ENFORCING SETTLEMENT**

PLEASE TAKE NOTICE that an Order Denying Plaintiff Yvonne O'Connell's pro se
Motion to Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After

1 Reconsideration and Evidentiary Hearing by The Court and Motion to Set Aside
2 Order/Proceeding Enforcing Settlement and Motion for Reconsideration of Order/Proceeding
3 Enforcing Settlement was entered by the Court on December 23, 2020, a true and correct copy of
4 which is attached hereto.

5 DATED this 24th day of December, 2020.

6 SEMENZA KIRCHER RICKARD

7
8 /s/ Lawrence J. Semenza, III

9 Lawrence J. Semenza, III, Esq., Bar No. 7174

10 Christopher D. Kircher, Esq., Bar No. 11176

11 Jarrod L. Rickard, Esq., Bar No. 10203

12 Katie L. Cannata, Esq., Bar No. 14848

13 10161 Park Run Drive, Suite 150

14 Las Vegas, Nevada 89145

15 *Attorneys for Defendant Wynn Las Vegas, LLC*

16 *d/b/a Wynn Las Vegas*

SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that I am an employee with Semenza Kircher Rickard, and that on the 24th day of December, 2020, I caused to be sent via Odyssey's online e-file and serve system a true copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S PRO SE MOTION TO RECONSIDER AND/OR SET ASIDE ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AFTER RECONSIDERATION AND EVIDENTIARY HEARING BY THE COURT AND MOTION TO SET ASIDE ORDER/PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR RECONSIDERATION OF ORDER/PROCEEDING ENFORCING SETTLEMENT** to the following:

Yvonne L. O'Connell, yoconnell@aol.com
Plaintiff

LAW OFFICE OF VERNON L. BAILEY
Vernon L. Bailey, Esq., vbailey@vernonbaileylaw.com
Attorney for Plaintiff Yvonne O'Connell

/s/ Olivia A. Kelly
An Employee of Semenza Kircher Rickard

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 YVONNE O'CONNELL,

6 Plaintiff,

7 vs.

Case No. A-12-655992-C

8 WYNN LAS VEGAS, LLC, ET AL.,

Dept. No. V

9 Defendants.
10

11 **ORDER DENYING MOTION TO RECONSIDER AND/OR SET ASIDE ORDER GRANTING**
12 **MOTION TO ENFORCE SETTLEMENT AFTER RECONSIDERATION AND**
13 **EVIDENTIARY HEARING BY THE COURT/AND MOTION TO SET ASIDE ORDER/**
14 **PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR RECONSIDERATION OF**
15 **ORDER/ PROCEEDING ENFORCING SETTLEMENT**
16

17 On December 21, 2020, the plaintiff, Yvonne O'Connell, filed a "Motion to
18 Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After
19 Reconsideration and Evidentiary Hearing by The Court/ And Motion to Set Aside
20 Order/Proceeding Enforcing Settlement And Motion for Reconsideration of
21 Order/Proceeding Enforcing Settlement." Said document was filed not by the plaintiff's
22 counsel, but by Ms. O'Connell herself. EDCR 7.40(a) provides:

23 When a party has appeared by counsel, the party cannot thereafter appear on the
24 party's own behalf in the case without the consent of the court. Counsel who has
25 appeared for any party must represent that party in the case and shall be recognized
26 by the court and by all parties as having control of the case. The court in its
discretion may hear a party in open court although the party is represented by
counsel.

27 This Court did not authorize Ms. O'Connell to appear on her own behalf and therefore the
28 above referenced motion was filed in violation of EDCR 7.40(a). Although Ms. O'Connell's

CAROLYN ELLSWORTH
DISTRICT JUDGE
DEPARTMENT V

1 counsel moved to withdraw, the Court denied said motion until the conclusion of a pending
2 motion for attorney's fees filed by the defendant, which is set for argument on December
3 28, 2020. Moreover, said fugitive document filed directly by the plaintiff again asks the
4 Court to reconsider its ruling despite the fact that the Court had previously agreed to
5 reconsider its earlier ruling on the same subject. After many hours spent by this Court
6 reviewing documents *in camera* at counsels' request, reviewing thorough briefs and
7 supplements thereto by the attorneys on both sides, and after considering testimony from
8 two witnesses at a day long evidentiary hearing, and the exhibits offered by the parties at
9 said hearing, the Court again ruled.

10 EDCR 2.24(a) provides, "No motions once heard and disposed of may be renewed
11 in the same cause, nor may the same matters therein embraced be reheard, unless by
12 leave of the court granted upon motion therefor, after notice of such motion to the adverse
13 parties." The Court declines to once again reconsider its ruling and therefore the MOTION
14 IS DENIED.

15 Dated this 23rd day of December, 2020

16 
17

18 E0B 5B6 A964 1C67
19 Carolyn Ellsworth
20 District Court Judge
21
22
23
24
25
26
27
28

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Yvonne O'Connell, Plaintiff(s) | CASE NO: A-12-655992-C
7 vs. | DEPT. NO. Department 5
8 Wynn Resorts Limited,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/23/2020

15 "Christian M. Morris, Esq." .	christianmorris@nettleslawfirm.com
16 "Edward Wynder, Esq." .	Edward@nettleslawfirm.com
17 "Jon J. Carlston, Esq." .	jon@nettleslawfirm.com
18 "Lawrence J. Semenza, III" .	ljs@skrlawyers.com
19 Christopher D. Kircher .	cdk@skrlawyers.com
20 Jarrod L. Rickard .	jl原因@skrlawyers.com
21 Jenn Alexy .	jenn@nettleslawfirm.com
22 Jennifer A. Bidwell .	jab@skrlawyers.com
23 Olivia Kelly .	oak@skrlawyers.com
24 Teresa Beiter	tnb@skrlawyers.com
25 Angie Barreras	alb@skrlawyers.com

Vernon Bailey	vbailey@vernonbaileylaw.com
Katie Cannata	klc@skrlawyers.com
Emily Arriviello	emily@nettlesmorris.com
Yvonne O'Connell	yoconnell@aol.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 12/24/2020

Lawrence Semenza	Semenza Kircher Rickard Attn: Lawrence J. Semenza III 10161 Park Run Drive, Suite 150 Las Vegas, NV, 89145
------------------	---

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

December 19, 2012

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

**December 19, 2012 3:00 AM Motion to Withdraw as
Counsel**

HEARD BY: Ellsworth, Carolyn

COURTROOM: No Location

COURT CLERK: Denise Trujillo

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- MOTION TO WITHDRAW

As supplemental affidavit with pertinent information was filed, there being no opposition, COURT ORDERED, Motion GRANTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability**COURT MINUTES****August 07, 2015**

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
 vs.
 Wynn Resorts Limited, Defendant(s)

August 07, 2015	9:30 AM	Motion for Protective Order	Deft's Motion for Protective Order and for OST
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HEARD BY: Bulla, Bonnie**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Jennifer Lott**RECORDER:** Francesca Haak**REPORTER:****PARTIES**

PRESENT:	Kircher, Christopher D.	Attorney
	Morris, Christian	Attorney

JOURNAL ENTRIES

- Commissioner stated the 30(b)(6) Notice was not timely served. Arguments by counsel. Case involved a slip and fall in 2010, no one saw the fall, and the spill was cleaned before Security arrived (no video surveillance). Commissioner suggested a Mandatory Settlement Conference; Ms. Morris to coordinate with Dept. 30 within 30 days, then contact the Senior Judge Dept.

COMMISSIONER RECOMMENDED, motion is GRANTED but WITHOUT PREJUDICE for Pltf to move to re-open discovery to set a Rule 30(b)(6) deposition; submit a 2.35 Stipulation, or bring a Motion on OST. However, Commissioner advised counsel to try and work out the parameters, and Commissioner suggested five topic areas.

Ms. Morris to prepare the Report and Recommendations, and Mr. Kircher to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Ms. Morris to appear at status check hearing to report on the Report and Recommendations.

9/18/15 11:00 a.m. Status Check: Compliance

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

September 03, 2015

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

September 03, 2015 9:00 AM Settlement Conference

HEARD BY: **COURTROOM:** No Location

COURT CLERK:

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Settlement conference held, matter NOT SETTLED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

September 17, 2015

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

**September 17, 2015 9:00 AM Motion for Summary
Judgment**

HEARD BY: Thompson, Charles **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Kircher, Christopher D. Attorney
 Morris, Christian Attorney

JOURNAL ENTRIES

- DEFT'S MOTION FOR SUMMARY JUDGMENT

Arguments by counsel. COURT ORDERED, Motion DENIED, Pltf's to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

September 18, 2015

A-12-655992-C	Yvonne O'Connell, Plaintiff(s)
	vs.
	Wynn Resorts Limited, Defendant(s)

September 18, 2015	9:00 AM	Motion	Pltf's Motion to Re- Open Discovery for the Limited Purpose of Taking Deft's 30(b)(6) Deposition and for OST
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HEARD BY: Bulla, Bonnie

COURTROOM: RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT:	Kircher, Christopher D.	Attorney
	Morris, Christian	Attorney

JOURNAL ENTRIES

- Case is three years old, Trial date is 10/12/15, and Commissioner cannot move the Trial date. Ms. Morris stated the case will likely be tried the end of October. COMMISSIONER RECOMMENDED, motion is GRANTED within parameters for relevant topics; complete deposition by 10/2/15, or as otherwise agreed to by counsel; set deposition on five business days notice with the understanding that Defense counsel and the Deponent must be available.

COMMISSIONER RECOMMENDED, Commissioner has no problem with Topics 1, 2, 3; Topic 4 is MODIFIED to date of incident in the Wynn Atrium area; Topic 5 and 6 - 30(b)(6) addresses policies and procedures for spills in a public area; narrow and answer Topic 7; include another Topic to identify employees working on the day in question (duties, responsibilities, documents they filled out, and knowledge); everything else is PROTECTED.

COMMISSIONER RECOMMENDED, Topic 10 - individuals working in the area the day in question, job duties for this area, and checking the floor; Topic 11 is the Investigator (Ms. Morris will switch out with Topic 5); if information becomes known that was not reasonably known before, the lawyers are INSTRUCTED to raise a Trial continuance with the District Court Judge.

Ms. Morris to prepare the Report and Recommendations, and Mr. Kircher to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Ms. Morris to appear at status check hearing to report on the Report and Recommendations.

10/16/15 11:00 a.m. Status Check: Compliance

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

October 01, 2015

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

October 01, 2015 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Debbie Winn

REPORTER:

PARTIES

PRESENT: Kircher, Christopher D. Attorney
 Morris, Christian Attorney
 Semenza, Lawrence, III Attorney

JOURNAL ENTRIES

- PLTF'S OMNIBUS MTNS IN LIMINE...DEFT'S MTN IN LIMINE #1 TO EXCLUDE PURPORTED EXPERT GARY PRESSWOOD...DEFT'S MTN IN LIMINE #2 TO EXCLUDE UNRELATED MEDICAL CONDITIONS & DAMAGES CLAIMED BY PLTFF...DEFT'S MTN IN LIMINE #3 TO EXCLUDE ANY REFERENCE OR TESTIMONY OF DEFT'S ALLEGED FAILURE TO PRESERVE EVIDENCE...CALENDAR CALL

After arguments of counsel, COURT ORDERED, Pltf's Omnibus Motion rulings are as follows:

1. Admit pleadings and discovery: DENIED, counsel can stipulate to authenticity, but that is different than admissibility.
2. Exclude argument & evidence re: 3rd party negligence: DENIED with the caveat that all arguments must be supported by evidence.
3. Preclude argument Pltf's injuries are unrelated to fall: DENIED, may argue if supported by evidence properly admitted.
4. Preclude references to prior accidents, etc.: GRANTED IN PART, to the extent of prior accident, if in a previous lawsuit she had a permanent disability, that could be relevant. FURTHER, only relevant to pre-existing complaints when met with treating physician after accident.

5. Exclude evidence & reference to Pltf's medical bills paid by insurance: GRANTED.
6. Limit defense experts opinions to their reports: If foundation is laid, Deft's will qualify their witness as an expert at time of trial, and Pltf's can object at trial if not qualified, and ORDERED, DENIED WITHOUT PREJUDICE.
7. Excluding evidence /references regarding Pltf's recovery is subject to income tax; GRANTED as no opposition.
8. Admit all properly disclosed medical records as authentic; previously DENIED.
9. Adverse inference instruction; DENIED WITHOUT PREJUDICE.

After arguments of counsel, COURT ORDERED, Deft's Motions in Limine rulings are as follows:

1. Exclude purported expert witness Gary Presswood; GRANTED.
2. Exclude unrelated medical conditions and damages claimed by Pltf.; DENIED WITHOUT PREJUDICE as to Dr. Dunn; and counsel to submit supplemental briefing as to Dr. Tingey.
3. Excluding reference or testimony as to Wynn's failure to preserve evidence; DENIED WITHOUT PREJUDICE.

FURTHER, all motions for sanctions and fees are DENIED. Counsel to submit their supplemental brief's as to Dr. Tingey no later than 10/27/15 for everything. FURTHER, trial date SET, and Motion in Limine as to Dr. Tingey reset. Counsel to call chambers after they have their settlement conference and advised Court whether or not case has resolved.

10/29/15 9 AM SUPPLEMENTAL BRIEF ON MOTION IN LIMINE

11/4/15 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

October 29, 2015

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

October 29, 2015 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- HEARING: SUPPLEMENTAL BRIEF ON MOTION IN LIMINE...PLTF'S EMERGENCY MOTION TO CONTINUE TRIAL

COURT reviewed pleadings and indicated she is not inclined to grant the motion as there is no basis. Arguments by counsel. COURT stated findings and ORDERED, Motion DENIED. COURT advised counsel upon reviewing file she noticed there was no jury demand filed in this case, and it was set for jury trial by a clerical error. Ms. Morris moved for Jury Trial. Arguments by counsel. COURT ORDERED, Motion GRANTED, Ms. Morris to prepare order. COURT noted there are no orders for other rulings in this case and they need to be filed immediately. Court advised she received supplemental briefing on outstanding Motions in Limine. Arguments by counsel. COURT ORDERED, Dr. Dunn WILL be allowed to testify. Arguments by counsel as to Dr. Tingy. COURT ORDERED, Dr. Tingy will be allowed to testify, however, defense counsel will be allowed to depose him on the stand in the absence of the jury. Mr. Semenza inquired if those were the only doctors counsel was going to call. Ms. Morris advised she had one more. Arguments by counsel. Ms. Morris conceded she will not call other doctor listed on her 16.1.

11/4/15 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

November 04, 2015

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

November 04, 2015 1:30 PM Jury Trial

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Kircher, Christopher D.	Attorney
	Morris, Christian	Attorney
	Nettles, Brian D.	Attorney
	O'Connell, Yvonne	Plaintiff
	Rickard, Jarrod L.	Attorney
	Semenza, Lawrence, III	Attorney
	Wynn Las Vegas LLC	Defendant

JOURNAL ENTRIES

- JURY TRIAL

IN THE ABSENCE OF THE JURY VENIRE. Mr. Semenza advised there is an issue with Mr. Prowell, security officer, arising after floor has been cleaned up. Arguments by counsel. COURT advised counsel to make appropriate adjustments. As to the second issue, Mr. Semenza wants to make sure Pltf's don't go beyond damages on collection of evidence. Arguments by counsel. Court advised she wants further briefing on this issue. Counsel stipulated to joint exhibits being admitted. IN THE PRESENCE OF THE JURY VENIRE. Venire sworn, and jury selection commenced.

EVENING RECESS

CONTINUED TO: 11/5/15 11:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

November 05, 2015

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

November 05, 2015 11:00 AM Jury Trial

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Billie Jo Craig

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Kircher, Christopher D. Attorney
 Morris, Christian Attorney
 O'Connell, Yvonne Plaintiff
 Semenza, Lawrence, III Attorney

JOURNAL ENTRIES

- Attorney Edward Wynder present on behalf of Plaintiff.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Ms. Morris requested Badge No. 29 Becnel be questioned further regarding her work in a law firm as she had an E-mail with her name on it regarding another Wynn case. Mr. Semenza objected to her being excused. Ms. Becnel brought in and was questioned further by Court and counsel. Arguments by counsel. Court stated its findings, and ORDERED, Badge No. 29 Becnel is EXCUSED. Ms. Morris requested Badge No. 14 Herbert be excused as he worked at the golf course. Arguments by counsel. Court stated its findings, and ORDERED, Badge No. 14 Herbert is EXCUSED. Mr. Semenza requested Badge No. 1 Torres and Badge No. 7 De Madrigal be excused due to language problems. The Court advised it did not want to consider this now but counsel can ask qualifying questions during individual voir dire.

PROSPECTIVE JURY PANEL PRESENT: Voir dire continues. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court noted more Jurors coming at 2:00 PM. Colloquy regarding scheduling of witnesses. The Court advised it would be as accommodating as possible.

PROSPECTIVE JURY PANEL PRESENT: Voir dire continues. Peremptory Challenges. The Court thanked and excused the remaining prospective Jurors in the audience. The Court thanked and excused the remaining prospective Jurors. Jury chosen. EVENING RECESS. OUTSIDE THE PRESENCE OF THE JURY: Court noted it would swear in the Jury on Monday.

CONTINUED TO: 11/9/15 1:30 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

November 09, 2015

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

November 09, 2015 1:30 PM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Morris, Christian Attorney
 Nettles, Brian D. Attorney
 Rickard, Jarrod L. Attorney
 Semenza, Lawrence, III Attorney

JOURNAL ENTRIES

- JURY TRIAL

IN THE PRESENCE OF THE JURY PANEL. Jurors sworn. Court instructed jury as to trial procedure. Opening statements by counsel. Testimony and exhibits per worksheets. IN THE ABSENCE OF THE JURY. Arguments by counsel regarding whether Dr. Dunn will be testifying to future medical procedures. Court noted it does not appear that Pltf's intend to ask that question. IN THE PRESENCE OF THE JURY. Testimony and exhibits continued. IN THE ABSENCE OF THE JURY. Dr. Dunn sworn and testified in the absence of the jury. Arguments by counsel. COURT believes testimony has been limited to what in his own charges that he reviewed. Further arguments. COURT will allow Dr. Dunn to go on what he knows and how he knows it. IN THE PRESENCE OF THE JURY. Testimony and exhibits continued.

EVENING RECESS

11/10/15 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

November 10, 2015

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

November 10, 2015 8:30 AM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Morris, Christian	Attorney
	Nettles, Brian D.	Attorney
	O'Connell, Yvonne	Plaintiff
	Rickard, Jarrod L.	Attorney
	Semenza, Lawrence, III	Attorney
	Wynn Las Vegas LLC	Defendant

JOURNAL ENTRIES

- JURY TRIAL

IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheets. IN THE ABSENCE OF THE JURY. Dr. Tingy sworn and testified in the absence of the jury. Mr. Semenza stated there are a whole bunch of medical records that were not provided and objects to Dr. Tingey testifying. Arguments by counsel. COURT will allow him to testify as to his own opinions based on files, is evaluation and history provided by Pltf. IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheets.

EVENING RECESS

CONTINUED TO: 11/12/15 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability**COURT MINUTES****November 12, 2015**

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
 vs.
 Wynn Resorts Limited, Defendant(s)

November 12, 2015 8:30 AM Jury Trial

HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Denise Trujillo**RECORDER:** Lara Corcoran**REPORTER:****PARTIES**

PRESENT:	Morris, Christian	Attorney
	Nettles, Brian D.	Attorney
	O'Connell, Yvonne	Plaintiff
	Rickard, Jarrod L.	Attorney
	Semenza, Lawrence, III	Attorney

JOURNAL ENTRIES

- JURY TRIAL

IN THE ABSENCE OF THE JURY. Court advised counsel, that juror #6 called this morning and she has a family emergency, and noted she will put alternate #1 in juror #6's place. IN THE PRESENCE OF THE JURY. Alternate juror #1 sworn. Testimony and exhibits per worksheets. Pltf. rested. IN THE ABSENCE OF THE JURY. Mr. Semenza requested directed verdict as to liability. Arguments by counsel. COURT stated findings and ORDERED, Motion DENIED and advised counsel he can re-new motion in writing within 10 days after verdict, with full briefing. Mr. Semenza advised that jury should be instructed they can not consider the testimony of either doctor and provided Court with bench briefs. Court advised she will read these but believes this is better handled with jury instructions. IN THE PRESENCE OF THE JURY. Testimony resumed. IN THE ABSENCE OF THE JURY. COURT advised she read briefs offered by counsel, state findings, and ORDERED, Motion DENIED. IN THE PRESENCE OF THE JURY. Testimony and exhibits resumed. JURY EXCUSED for the evening.

EVENING RECESS

CONTINUED TO: 11/13/15 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

November 13, 2015

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

November 13, 2015 8:30 AM Jury Trial

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Kircher, Christopher D.	Attorney
	Morris, Christian	Attorney
	O'Connell, Yvonne	Plaintiff
	Semenza, Lawrence, III	Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Edward Wynder, Esq. present on behalf of the Plaintiff. Kristen Steinbach, Representative for Wynn Las Vegas LLC, present.

OUTSIDE THE PRESENCE OF THE JURY: Jury instructions settled off the record. Arguments by counsel as to the relevance of Jury Instructions 27, 32, and 37. COURT stated FINDINGS as to relevance of the Jury Instructions.

IN THE PRESENCE OF THE JURY: Court read the jury instructions. Ms. Morris presented closing arguments on behalf of Plaintiff; Mr. Semenza presented closing arguments on behalf of Defendant. Marshal and Law Clerk Sworn to take charge of the Jury and the Alternate. Jury retired at the hour of 3:39 P.M. to begin deliberations. COURT ORDERED, trial CONTINUED for Jury Deliberations. Jury instructed to return Monday at the given time.

CONTINUED TO: 11/16/15 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

November 16, 2015

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

November 16, 2015 9:00 AM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Kircher, Christopher D.	Attorney
	Morris, Christian	Attorney
	Nettles, Brian D.	Attorney
	O'Connell, Yvonne	Plaintiff
	Semenza, Lawrence, III	Attorney

JOURNAL ENTRIES

- JURY TRIAL

At 9 AM, this date, jury returned for continued deliberations. At 9:45 juror #3 gave note to the Marshal during break. All counsel present. Court advised that juror stated they are concerned about the cord on the floor in the courtroom. Juror #3, present with Court and counsel, in the absence of the remaining jurors. Upon Court's inquiry, Juror #3 explained he was afraid someone was going to trip on the cord. Conference at the bench. Jury returned to deliberations, including juror #3. Counsel advised they have no objection to juror remaining on the jury. At 12:10 PM this date, jury returned with a verdict. Court reviewed verdict. Conference at the bench. COURT advised jury that they did not completely fill out the verdict, and sent jury back to deliberations. AT 12:15 PM this date, jury returned with a verdict in FAVOR of Pltf. and AGAINST the Deft. COURT thanked and excused the jury.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability**COURT MINUTES****March 04, 2016**

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
 vs.
 Wynn Resorts Limited, Defendant(s)

March 04, 2016 8:30 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Kircher, Christopher D. Attorney
 Morris, Christian Attorney
 Semenza, Lawrence, III Attorney
 Wynder, Edward J. Attorney

JOURNAL ENTRIES

- PLTF'S AMENDED APPLICATION FOR FEES, COSTS & PRE-JUDGMENT INTEREST -
 AMENDED & RESUBMITTED AS PLTF'S MTN TO TAX COSTS & FOR FEES AND POST-
 JUDGMENT INTEREST...DEFT. WYNN LAS VEGAS, LLC'S RENEWED MTN FOR JUDGMENT AS
 A MATTER OF LAW, OR, ALTERNATIVELY MTN FOR NEW TRIAL OR REMITTITUR

Prior to hearing, counsel provided following tentative as to Deft's Motion as follows: This is a personal injury action resulting from Pltf. s slip and fall at Deft. s casino. A jury trial was held and the jury found in favor of Pltf. on November 16, 2015. The jury awarded Pltf. \$150,000 for past pain and suffering and \$250,000 for future pain and suffering, finding her to be 40% at fault. Accounting for Pltf. s comparative fault, her total award was \$240,000. Deft. (hereinafter Wynn), having moved for judgment under NRCP 50 at the close of Pltf. s case, filed a renewed motion for judgment as a matter of law or, alternatively, a motion for new trial or remittitur. At trial, Pltf. (hereinafter O Connell) testified that she fell after slipping on what was described as a pale green, sticky, liquid substance on the floor. There was no evidence presented by O Connell that Wynn had caused the foreign substance to be on the floor. While O Connell speculated that the substance may have been

water from the irrigation system in the atrium area where she fell, she presented no evidence that such was the case. Rather, O Connell called, in her case in chief, an employee of Wynn who testified that she responded to the area of the fall immediately after the fall and she observed a substance on the floor which had been covered by a sweeper machine brought to clean up the area. She described the substance as looking a little sticky like honey. Trial Transcript (TT), Vol. 3 at 71:23-72:4. On cross-examination, the witness, when confronted with her previous deposition testimony, agreed that she had described the liquid substance as something like a syrup, like a drink, like something like that. Id. at 76:6-10. Additionally, O Connell presented no evidence that Wynn had actual notice of the foreign substance on the floor, and her counsel argued that it was in fact a constructive notice case, not an actual notice case.

A. Legal Standards and Applicable Statutes

NRCP 50 provides in pertinent part:

(a) Judgment as a matter of law.

(1) If during a trial by jury, a party has been fully heard on an issue and on the facts and law a party has failed to prove a sufficient issue for the jury, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(b) Renewing motion for judgment after trial; alternative motion for new trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after service of written notice of entry of judgment and may alternatively request a new trial or join a motion for new trial under Rule 59. In ruling on a renewed motion the court may:

(1) if a verdict was returned:

(A) allow the judgment to stand,

(B) order a new trial, or

(C) direct entry of judgment as a matter of law.

NRCP 59(a) provides: A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion. The standard for granting a motion for judgment as a matter of law is based on the standard for granting a motion for involuntary dismissal under former NRCP 41(b). In applying that standard and deciding whether to grant a motion for judgment as a matter of law, the district court must view the evidence and all inferences in favor of the nonmoving party. To defeat the motion, the nonmoving party must have

presented sufficient evidence such that the jury could grant relief to that party. *Nelson v. Heer*, 123 Nev. 217, 222, 163 P.3d 420,424 (2007). Deft. presents several distinct arguments in support of its Motion for Judgment as a Matter of Law. These are: (1) there was insufficient evidence presented at trial for a finding that Deft. owed Pltf. a duty of care; (2) the testimony of Dr. Tingey and Dr. Dunn was improper and prejudiced Deft. ; and (3) Pltf. had a burden to apportion the amount of damages attributable to Deft. and those attributable to prior injuries, but failed to do so. Deft. also argues, in the alternative, that even if it is not entitled to judgment as a matter of law, it is entitled under NRCP 59 to a new trial or remittitur because the jury's award of future pain and suffering was unsupported, Pltf. posed improper questions to Deft.'s witnesses, and Pltf.'s counsel made prejudicial comments to the jury. Each of these will be addressed in turn.

1. Whether there was sufficient evidence produced at trial such that a reasonable jury could find that Deft. had notice of the foreign substance on the floor.

The law concerning negligence in relation to a foreign substance on the floor is, in some respects, well settled. Where the business owner or its agent caused the substance to be on the floor, liability will lie, as a foreign substance on the floor is not consistent with reasonable care. However where the business owner or his agent did not cause the foreign substance to be on the floor, a Pltf. must prove actual or constructive knowledge of the floor's condition, and a failure to remedy it. *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320, 322-323 (1993). As stated above, O Connell produced no evidence that the Wynn caused the substance to be on the floor, or that it had actual notice. Thus, the question remains as to whether sufficient evidence was presented for a jury to find that Wynn was on constructive notice of the spill. Whether a business owner was under constructive notice of the hazardous condition is a question of fact properly left for the jury, *Sprague, id.*, but this does not relieve the Pltf. from having to admit evidence at trial of constructive notice. In *Sprague*, the Supreme Court noted that a reasonable jury could have determined that the virtually continual debris on the produce department floor put Lucky on constructive notice that, at any time, a hazardous condition might exist which would result in injury to Lucky customers. *Id.*, 109 Nev. at 251, 849 P.2d at 323. Nevada case law has caused some confusion in differentiating between constructive notice and the mode of operation approach, the latter of which is specifically discussed in cases decided subsequent to *Sprague*. The fact that there is a difference is made clear in *FGA v. Giglio*, 128 Nev. Adv. Op. 26, 278 P.3d 490, 497 (2012), where the court noted that the *Sprague* court had implicitly adopted the mode of operation approach when it stated that even in the absence of constructive notice, a jury could conclude that Lucky should have recognized the impossibility of keeping the produce section clean by sweeping alone. (emphasis added). With the mode of operation approach, which is not applicable in this case, a Pltf. satisfies the notice requirement (actual or constructive) by establishing that an injury was attributable to a reasonably foreseeable dangerous condition on the owner's premises that is related to the owner's self-service mode of operation. While evidence of a continuous or recurring condition might amount to constructive notice under *Sprague, supra* and *Ford v. Southern Hills Medical Center*, 2011 WL 6171790 (Nev. 2011), that is not the only way of proving constructive notice. Proof that a foreign substance on the floor had existed for such a length of time that the proprietor in the exercise of ordinary care should have known of it is another way of proving constructive notice. What would amount to sufficient time to warrant holding that the proprietor had constructive notice generally depends on the circumstances of the particular case and involves consideration of the nature of the danger, the

number of persons likely to be affected by it, the diligence required to discover or prevent it, opportunity and means of knowledge, the foresight which a person of ordinary care and prudence would be expected to exercise under the circumstances, and the foreseeable consequence of the conditions. See 61 A.L.R.2d 67(b). Moreover, Nevada has made clear that an innkeeper may be found on constructive notice of latent defects upon their premises if a reasonable inspection would have revealed such a danger. See *Twardowski v. Westward Ho Motels, Inc.*, 86 Nev. 784, 476 P.2d 946 (1970). In *Twardowski*, the court held that if a reasonable inspection of its pool slide would have revealed the defective handrails, the Westward Ho would be charged with constructive notice of the latent defect, but that whether the defect would have been discovered by a reasonable inspection was a jury question. The court further noted that [c]onstructive knowledge of a latent defect can be established by circumstantial evidence. *Id.*, 86 Nev. at 788, 476 P.2d at 948. The over-arching theme of a negligence case has been, and is, foreseeability. [T]here is no liability for harm resulting from conditions from which no unreasonable risk was to be anticipated, or those which the occupier did not know and could not have discovered with reasonable care. The mere existence of a defect or danger is not enough to establish liability, unless it is shown to be of such a character or of such a duration that the jury may reasonably conclude that due care would have discovered it. *Prosser, Law of Torts* 393 (4th ed. 1980). Whether reasonable care has been exercised is almost always a jury question as was made clear by the Nevada Supreme Court in *Foster v. Costco Wholesale Corp.*, 128 Nev. Adv. Op. 71, 291 P.3d 150 (2012). Abrogating the holding in *Gunlock v. New Frontier Hotel*, 78 Nev. 182, 370 P.2d 682 (1962), the Nevada Supreme Court adopted the position of the Restatement (Third) of Torts concerning the duty of a landowner. Thus, under the Restatement (Third), landowners bear a general duty of reasonable care to all entrants. The duty issue must be analyzed with regard to foreseeability and gravity of harm, and the feasibility and availability of alternative conduct that would have prevented the harm. *Foster*, 291 P.3d at 156 (citations omitted). Here, during O'Connell's case in chief, Yanet Elias, whose job was that of an assistant manager in the public areas department at Wynn, testified that, It's very difficult to maintain the casino, you know, completely clean, because it's a job for 24 hours. There are people a lot of people walking through, a lot of children, they're carrying things. So, it's impossible to keep it clean at 100 percent. TT Vol. 3 at 70:22-71:1. Additionally, Ms. Elias testified that she did not know when the area where O'Connell fell had last been inspected prior to her fall, and when asked about how often the area is checked, she testified, It depends on how long it takes the employee to check the north area and return to the south area, because it's all considered one one whole area. And there aren't always two employees assigned to that area. Sometimes, there's only one. TT Vol. 3 at 69:5-11. While she repeatedly answered questions posed by both counsel by stating that she did not recall, Ms. Elias was also repeatedly impeached with her earlier deposition testimony. At one point she admitted that one of the signs that a porter is not doing their job is that there is debris on the floor. *Id.* at 70:3-6) O'Connell also called Cory Prowell in her case in chief, Wynn's assistant security manager who at the time of the incident was a security report writer. Mr. Prowell responded to the subject incident and eventually wrote a report. He described the scene of the fall as a high traffic area with marble flooring and indicated that upon his arrival, he was told by Ms. Elias that the liquid on the floor had already been cleaned up, and that he was told by another employee that the employee had seen O'Connell being helped up by four other guests. He also testified that O'Connell told him that when she had recovered from her fall, she saw a green liquid on the floor. During her testimony at trial, O'Connell

described the spill as at least seven feet with one side measuring about four feet still in a liquid state, and a three foot portion as almost dry, a little sticky with footprints on it. TT Vol. 3 at 59:19-24. She described the liquid as having just a hint of green, Id. at 59:12, and elaborating about the footprints she said, They looked like, you know, they were they looked like mine that I was making, and I m sure they were from the people that were standing around and helped me up [k]ind of like dirty footprints that you leave after you ve mopped your floor and you step on it, you walk on it, that s kind of how it looked. Id. at 62:19 63:2. Wynn argues that the record is completely devoid of any evidence regarding the length of time the foreign substance had been on the floor. Mot. at 15-17. While it is true that O Connell could not testify as to how long the substance had been on the floor, she did testify that a three foot section of the 7 foot spill was already dry and drying. While the defense seems to suggest that expert testimony would be required, presumably to testify as to the relative humidity within the casino and its relation to the rate of evaporation, common experience would allow a jury to infer that the spill had been in place longer than just a few minutes. As pointed out by Pltf. s Opposition, there was ample other evidence from which the jury could have found that Wynn had constructive notice of the substance of the floor. Opp. at 11-13. This evidence includes: (1) testimony that the atrium where the substance was located was highly trafficked; (2) testimony that it is impossible for Wynn s employees to keep the casino floor entirely clean; and (3) testimony that Deft. had no floor inspection schedule, did not maintain inspection logs, and could not say with certainty when the floor was last inspected prior to Pltf. s injury. This testimony was elicited from Deft. s own employees. A non-moving party can defeat a motion for judgment as a matter of law if it present[s] sufficient evidence such that the jury could grant relief to that party. D&D Tire, Inc. v. Ouellette, 131 Nev. Adv. Op. 47, 352 P.3d 32, 35 (2015) (internal quotations and citations omitted). All of the aforementioned testimony, taken together and drawing all reasonable inferences in favor of the Pltf. was sufficient to establish that Wynn was on constructive notice of the dangerous condition upon its floor.

Whether the testimony of Dr. Tingey and Dr. Dunn was improper. Deft. next makes the argument that the testimony of Pltf. s experts, Dr. Tingey and Dr. Dunn, was improper. Mot. at 19-21. Deft. first argues that the Court improperly admitted their testimony because Pltf. disclosed them as expert witnesses beyond the disclosure deadline. Id. at 18-19. Deft. argues that its rebuttal expert was unable to review their records and incorporate them into his report. Id. at 18. However, late production was substantially justified under NRCP 37(c) because O Connell continued to treat after the close of discovery, treatment records were provided to O Connell s counsel after the close of discovery, and were provided to Defense counsel soon after their receipt, and because O Connell had to change treating physicians after Dr. Martin had left the practice. The late disclosed records were only a few pages, the Court permitted the defense to Voir dire the doctors outside the presence of the jury before they testified in the presence of the jury, and the Court allowed Deft. s rebuttal expert to sit in the courtroom and listen to the testimony of both Dr. Tingey and Dr. Dunn, allowing him to incorporate his opinions on direct examination. Hence, Deft. was not prejudiced by any late disclosure on Pltf. s part. Wynn also argues that both doctors lacked a sufficient basis for their opinions because they were only based upon Pltf. s self-reporting. Id. at 19. In support, Deft. cites to the federal case of Perkins v. United States, 626 F. Supp. 2d 587 (E.D. Va. 2009). Notwithstanding the fact that Perkins is a federal case, it is not on point to the facts here. In Perkins, the court found that expert testimony as to medical causation should be excluded because the expert s opinion was based

solely on the patient's self-reporting that the expert had merely adopted the patient's explanation as his own opinion. 626 F. Supp. 2d at 592-593. Here, however, Pltf.'s self-reporting did not appear to be the sole basis of her experts' testimony. Both doctors testified as to the basis of their opinions, which included not only evaluation of the Pltf.'s medical history but also their examination of her, their review of her diagnostic medical tests, and their experience in treating orthopedic conditions and the conditions that would result from a slip and fall. There is simply no indication that O'Connell's experts wholly adopted her self-reporting as the sole basis for their opinions as to causation. Moreover, Dr. Tingey was candid in his opinion that he would not attribute all of O'Connell's knee problems to the subject fall because the MRI indicated a degenerative disease process in the left knee as opposed to the right knee.

2. Whether there is legal basis for a finding that Pltf. bears a burden to apportion damages between pre-existing conditions and the harm caused by Deft. Deft. next argues that Pltf. had the burden of apportioning her damages between pre-existing injuries and those injuries caused by her slip and fall at the Wynn but failed to do so. Mot. at 21-25. This is a familiarly incorrect argument (and, indeed, was raised and rejected during trial for the same reasons as it is now) because the legal premises upon which it rests are infirm. The main cause of confusion in this and other cases is the federal case of *Schwartz v. State Farm Mut. Auto. Ins. Co.*, 2009 WL 2197370 (D. Nev. July 22, 2009). In that case, Judge Dawson did indeed hold that "[i]n a case where a Pltf. has a pre-existing condition, and later sustains an injury to that area, the Pltf. bears the burden of apportioning the injuries, treatment and damages between the pre-existing condition and the subsequent accident. *Id.* at *6. However, the cases cited as precedent by Judge Dawson for that statement do not support that assertion. *Kleitz v. Raskin*, 103 Nev. 325, 738 P.2d 508 (1987) involved apportioning damages between injuries caused by successive tortfeasor, not apportioning damages between pre-existing conditions and injuries caused by a sole tortfeasor. Judge Dawson also cited the Washington Court of Appeals case of *Phennah v. Whalen*, 621 P.2d 1304 (Wash. App. 1980), but that also involved apportioning damages between successive tortfeasor. The Restatement (Second) of Torts 433(b), also relied upon, doesn't even concern successive tortfeasor on its face but rather concerns the substantial factor test for determining proximate cause. Here, we do not have successive tortfeasor. Rather, we have a Pltf. who, admittedly, had various pre-existing mental and physical conditions. Therefore, the *Schwartz* case is in error and is inapplicable to this case. Deft. took the Pltf. as it found her and is liable for the full extent of her injuries, notwithstanding her pre-existing conditions. See *Murphy v. Southern Pac. Co.*, 31 Nev. 120, 101 P. 322 (1909).

Whether the Deft. is entitled to a new trial or remittitur.

In *Canterino v. The Mirage Casino-Hotel*, 117 Nev. 19, 24, 16 P.3d 415, 418 (2001), opinion reinstated on reh'g (Oct. 2, 2001), opinion modified on reh'g sub nom, *Canterino v. Mirage Casino-Hotel*, 118 Nev. 191, 42 P.3d 808 (2002), the Supreme Court addressed the issue of when a trial court may grant a new trial or issue a conditional order of remittitur reducing an award of damages by a jury. The court stated:

This court has held that damages for pain and suffering are peculiarly within the province of the jury. In *Stackiewicz v. Nissan Motor Corporation*, 100 Nev. 443, 454, 686 P.2d 925, 932 (1984), this court stated that the trial court cannot revisit a jury's damage award unless it is flagrantly improper. In actions for damages in which the law provides no legal rule of measurement it is the special province

of the jury to determine the amount that ought to be allowed, so that a court is not justified in reversing the case or granting a new trial on the ground that the verdict is excessive, unless it is so flagrantly improper as to indicate passion, prejudice or corruption in the jury.... The elements of pain and suffering are wholly subjective. It can hardly be denied that, because of their very nature, a determination of their monetary compensation falls peculiarly within the province of the jury.... We may not invade the province of the fact-finder by arbitrarily substituting a monetary judgment in a specific sum felt to be more suitable. *Stackiewicz*, 100 Nev. at 454 55, 686 P.2d at 932 (quotations and citations omitted). The mere fact that a verdict is large is not conclusive that it is the result of passion or prejudice. *Id.* (citing *Beccard v. Nevada National Bank*, 99 Nev. 63, 66 n. 3, 657 P.2d 1154, 1156 n. 3 (1983)). Here, it must be noted that O Connell was prevented from presenting evidence of her medical special damages due to discovery and evidentiary issues. Thus, she sought only pain and suffering damages. She testified that she had been suffering with her knee and her neck and back since the fall five years earlier and could no longer engage in the activities that she could prior to the fall, including the swing dancing she had done regularly before the accident. This testimony was corroborated by her former boyfriend and dance partner. She often described her pain throughout her medical records as 10 out of 10. While the defense may have thought that this testimony would be unbelievable to a jury, it was nonetheless the jury's choice to believe it. Additionally, Dr. Tingey testified that he had recommended surgery for O Connell's traumatically injured knee and that she would, if she chose the surgery, have post-operative pain, but that typically the result after surgery would be a complete relief of the symptoms. On the other hand, Dr. Dunn testified that due to O Connell's continued complaints of pain in her neck and symptoms in her arms, he recommended an anterior cervical neck discectomy; removal of the disc and an inter-body 3 level fusion with placement of a plate and screws. He described this surgery as non-curative, but rather taking away 50 to 60 percent of the pain which O Connell had described as terrible. While Dr. Dunn attributed the changes to O Connell's spine to a degenerative disease process, he attributed the pain, which he believed to be previously asymptomatic, to the fall describing the quintessential egg-shell Pltf. . Wynn argues in the alternative to the motion for judgment as a matter of law, that a new trial should be had or remittitur issued for several reasons. The first is that O Connell failed to establish future pain and suffering damages as required by Nevada law. Mot. at 25 (citing *Krause, Inc. v. Little*, 117 Nev. 929, 938, 34 P.3d 566 (2001) (holding that Nevada law requires that when an injury or disability is subjective and not demonstrable expert medical testimony is required)). The basis for this argument, however, is the same as above that Pltf. 's medical experts lacked a reliable basis for their opinion and that O Connell failed to carry her burden to apportion damages between pre-existing conditions. Mot. at 26:3-7. For the same reasons as outlined above, then, this argument should be rejected. Wynn next argues that O Connell was improperly allowed to question defense witnesses. Specifically, Deft. points to Pltf. 's counsel questioning witnesses on the lack of video coverage of the incident and references in her closing arguments that Wynn controlled the evidence. Mot. at 26. One of the statements cited by Wynn, on examination of Corey Prowell, does not appear to have been objected to by defense counsel and so that objection is now untimely. The other statements cited by Wynn were in Pltf. 's counsel's closing or rebuttal arguments. Deft. also did not object to those statements and, in any event, had the opportunity to make arguments rebutting those statements in its own closing. Therefore, no prejudice resulted. Wynn last argues that it is entitled to a new trial because O Connell's counsel made an improper statement in rebuttal as to damages. The statement in

issue is: As jurors, you are the voice of the conscience of this community. Deft. lodged a timely objection, which was immediately sustained by this Court. The Court also admonished counsel for making the statement and instructed the jury to disregard it. The Court stated: Sustained. No, no. The jury will disregard that. Counsel, this is not a punitive damage case. You may not address the they are not to be making decisions as the conscience of the community. You know that is improper argument. TT Vol. 6 at 46:12-16). The problem with such a statement is that it allows the jury to punish the Deft. , e.g., with punitive damages, which was not a part of Pltf. s case here. See *Florida Crushed Stone Co. v. Johnson*, 546 So.2d 1102, 1104 (1989). The Nevada Supreme Court has made clear, however, that a new trial is warranted only where the [comment] is so extreme that the objection and admonishment could not remove the misconduct's effect. *Lioce v. Cohen*, 124 Nev. 1, 17, 174 P.3d 970, 981 (2008). This amounts to an analysis of whether no other reasonable explanation could exist for the jury s verdict. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 364, 212 P.3d 1068, 1079 (2009). Here, there was ample evidence presented at trial, as outlined above and in Pltf. s Opposition, to support the jury verdict. Deft. s timely objection was quickly sustained and a limiting instruction was given immediately. In light of the evidence presented at trial, it cannot be said that the jury s verdict was so unreasonable as to make the statement prejudicial. Cf. *Lioce*, supra (finding that the trial testimony supported the jury s verdict and the district court sustained the Deft. s objections to misconduct, so a new trial was not warranted). Based on the foregoing, then, Deft. s Motion should be denied.

Arguments by counsel. COURT stated findings and ORDERED, Motion DENIED.

As to Pltf's motion, tentative ruling submitted as follows: This is a personal injury action resulting from Pltf. s slip and fall at Deft s casino. A jury trial was held and the jury found in favor of Pltf. on November 16, 2015. The jury awarded Pltf. \$150,000 for past pain and suffering and \$250,000 for future pain and suffering, finding her to be 40% at fault. Pltf. s total award was \$240,000. After the verdict was entered, Pltf. filed an Application for Attorneys Fees and Costs, attaching a Memorandum of Costs as an exhibit. Pltf. then filed an Amended Application for Fees and Costs to address identified deficiencies in the first Application. Deft. has moved to Re-Tax the Costs and is opposing the request for fees in a Supplement to its opposition to Pltf. s first Application.

A. Legal Standards and Applicable Statutes:

Pltf. moves for fees and costs under both NRCP 68 and NRS 18.010. NRCP 68(f) provides:

If the offeree [of an offer of judgment] rejects an offer and fails to obtain a more favorable judgment, (1) the offeree cannot recover any costs or attorney s fees and shall not recover interest for the period after the service of the offer and before the judgment; and

(2) the offeree shall pay the offeror s post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney s fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror s attorney is collecting a contingent fee, the amount of any attorney s fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

NRS 17.115(4) similarly provides, in relevant part:

Except as otherwise provided in this section, if a party who rejects an offer of judgment fails to obtain a more favorable judgment, the court:

(c) Shall order the party to pay the taxable costs incurred by the party who made the offer; and

(d) May order the party to pay to the party who made the offer (3) Reasonable attorney's fees incurred by the party who made the offer for the period from the date of service of the offer to the date of entry of the judgment. If the attorney of the party who made the offer is collecting a contingent fee, the amount of any attorney's fees awarded to the party pursuant to this subparagraph must be deducted from that contingent fee. Additionally, NRS 18.010(2)(b) provides that fees may be awarded to the prevailing party [w]ithout regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. NRS 18.110(1)-(2) provides that whenever a party claims costs, she must file a verified memorandum setting forth those costs within 5 days of entry of the judgment and that witness fees are recoverable costs, regardless of whether the witness was subpoenaed, if the witness testified at trial. NRS 18.110(4) allows the opposing party to file a motion to re-tax claimed costs within 3 days of service of a copy of the memorandum of costs. As a preliminary note, Deft's first argument is that Pltf. improperly and unilaterally filed an Amended Application for Fees and Costs after reading Deft's Opposition, so the Court should only consider the first Application. Here, judgment was entered on December 15, 2015. Pltf. filed the first Application well before this, on November 25, 2015. She also filed her Amended Application for Costs on December 21, 2015, which is within the time limit set forth in the rule (note that under EDCR 1.14(a), the period for filing is five judicial days from entry of judgment). However, Deft's Motion to Re-Tax as to the first Application was due on December 2, 2015, but it was not filed until December 7, 2015 and was thus untimely. Deft's Motion to Re-Tax as to the Amended Application was timely, though. It is true that generally, supplemental briefing is allowed only by leave of court. See EDCR 2.20(i). However, given that Deft's first opposition was untimely, it would seem that it would be willing to waive its first argument in opposition to Pltf.'s Amended Application. In order for the penalties associated with the rejection of an offer of judgment to apply, the offeree must not have obtained a more favorable judgment. NRCP 68(f); NRS 17.115(4). To determine whether the offeree of a lump-sum offer of judgment obtained a more favorable judgment, the amount of the offer must be compared to the amount of the offeree's pre-offer, taxable costs. *McCrary v. Bianco*, 122 Nev. 102, 131 P.2d 573, 576, n. 10 (2006) (stating that NRCP 68(g) must be read in conformance with NRS 17.115(5)(b)). Here, Pltf. offered to settle the case for \$49,999.00 on September 3, 2015. The verdict was in favor of Pltf. for a total of \$240,000.00. It seems that this may be a more favorable judgment, although Pltf. has neglected to specifically set forth her pre-offer taxable costs. On the other hand, Pltf.'s total claimed costs were \$26,579.38 (whether pre- or post-offer) and that, together with the offer, amounts to \$76,578.38. Pltf.'s jury recovery was well above this - \$240,000.00 - so it appears that Pltf. has met the threshold requirement to show entitlement to fees and costs under Rule 68. The determination of whether to grant fees to a party under NRCP 68 rests in the sound discretion of the trial court. *Chavez v. Sievers*, 118 Nev. 288, 296, 43 P.3d 1022, 1027 (2002). Such a decision will not be disturbed unless it is arbitrary and capricious. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790 (1985). District courts must consider several factors when making a fee determination under *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1963): (1) whether the Pltf.'s claim was brought in good faith; (2) whether the offer was reasonable and in good faith in timing and amount; (3) whether the decision to reject the offer was grossly unreasonable or in bad faith; and (4) whether the sought fees are reasonable and justified. However,

where the Deft. is the offeree of an offer of judgment, the first factor changes to a consideration of whether the Deft s defenses were litigated in good faith. See *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998). As to the first factor, whether Deft s defenses were litigated in good faith, Pltf. argues that Deft s defense that it had no notice of the liquid on the casino floor was in bad faith because it failed to make an inquiry into the last time the floor was checked before Pltf. slipped. Am. App. at 5-6. Pltf. also argues that Deft s defense that there was no causation here was unreasonable because it relied upon expert testimony that lacked a basis in modern science. Id. at 6. Deft s Motion to Retax does not address whether its defenses were maintained in good faith. However, this Court has already highlighted in its Tentative Ruling on Deft s Renewed Motion for Judgment as a Matter of Law that Nevada case law surrounding constructive notice is, at best, confusing. This is not a case where the law is black and white. Based on that and the evidence presented at trial, it was not bad faith for Deft. to contend that it lacked notice of the condition on the floor and Pltf. in fact so concedes. Furthermore, Pltf. s evidence of constructive notice may have been enough to escape the granting of a Rule 50 motion, but it was by no means overwhelming. Additionally, Pltf. s damages claims were reasonably disputed by expert testimony of a defense witness. That the jury was not persuaded by this expert does not translate to bad faith by the Deft.. Thus, the first factor therefore weighs in favor of the Deft.. As to the second factor, Deft. argues that the offer was unreasonable in amount because Pltf. had no basis for its offer and that due to Pltf. s gamesmanship, Deft. could not sufficiently evaluate the offer. Opp. at 5-7. Here, discovery closed on June 12, 2015. Pltf. was unable to submit proof of special medical damages at the time of trial because the Court precluded them on the basis that they were not properly disclosed in discovery. This made it extremely difficult for the Defense to evaluate a potential value of the case. An offer made at a time when Pltf. has not properly provided a calculation of damages is unreasonable. Thus, the second factor weighs in favor of Deft.. In ascertaining whether Deft s decision to reject the offer was grossly unreasonable or in bad faith, a pertinent consideration is whether enough information was available to determine the merits of the offer. *Trustees of the Carpenters for S. Nev. Health & Welfare Trust v. Better Building Co.*, 101 Nev. 742, 746, 710 P.2d 1379, 1382 (1985). Here, discovery closed on June 12, 2015. The offer of judgment was made three months later, on September 3, 2015. Given that at the time of the offer, Deft. had available all the materials obtained during discovery, including witness depositions, Deft s decision to reject the offer was well-informed. Furthermore, the issues surrounding notice were not necessarily clear cut, as evidenced by the parties pre-trial and post-trial motions on that issue. Overall, it is unlikely that Deft s rejection of the offer was grossly unreasonable or in bad faith, and in the end weighs in favor of Deft.. With regard to the last Beattie factor, the Court must undergo an analysis of whether claimed fees were reasonable in light of the factors set forth in *Brunzell v. Golden Gate Nat l Bank*, 85 Nev. 345, 249, 455 P.2d 31, 33 (1969). Pltf. has addressed some, but not all, of these factors. Pltf. s counsel has set forth the qualities of the advocate(s) on this case and, of course, we know that a favorable result was obtained. However, Pltf. has not provided any bills setting forth what tasks were performed and the associated hours for those tasks. This prevents the Court from determining whether the fees charged were reasonable in light of the tasks actually performed. Therefore, because Pltf. has not carried her burden under *Brunzell*, this factor weighs in favor of Deft.. On the whole, all of the factors set forth in *Beattie* (as modified by *Yamaha*, supra) weigh in favor of Deft. in this case and Pltf. s Amended Application for Fees should be denied. Although NRCP 68 costs are only for post-offer costs, NRS 18.020(3) mandates awarding

all costs to Pltf. since she prevailed in seeking damages in an amount more than \$2,500. NRS 18.110(1) requires the filing of a memorandum of costs by the party in whose favor judgment is rendered, including a verification of the party, the party's attorney, or an agent of the party's attorney that the costs are correct and were necessarily incurred. The amount of awarded costs rests in the sole discretion of the trial court. *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 565 66 (1993). The court also has discretion when determining the reasonableness of the individual costs to be awarded. *U.S. Design & Constr. Corp. v. I.B.E.W. Local 357*, 118 Nev. 458, 463, 50 P.3d 170, 173 (2002). Claimed costs must be actual and reasonable, rather than a reasonable estimate or calculation of such costs. *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 86 (1998) (internal quotations omitted). The Supreme Court has also indicated that claimed costs must be supported by documentation and itemization. *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 971 P.2d 383 (1998). Deft. only challenges certain specific fees, each of which will be addressed in turn.

1. Expert Witness Fees

Deft. argues that the amounts for expert witnesses should be reduced because they are well over the statutory limit of \$1,500.00 per expert and the additional amounts are not necessary and reasonable. Mot. at 6-8. NRS 18.005(5) provides that recoverable costs include [r]easonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee. Allowing fees above the statutory maximum requires this Court to determine whether those fees were necessary and reasonable. *Arnold v. Mt. Wheeler Power Co.*, 101 Nev. 612, 615, 707 P.2d 1137, 1139 (1985). Granting fees in excess of the statutory maximum may be necessary and reasonable where the expert witness testimony constituted most of the evidence. *Gilman v. Nevada State Bd. of Veterinary Med. Examiners*, 120 Nev. 263, 273, 89 P.3d 1000, 1006-07 (2004), disapproved of on other grounds by *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. Adv. Op. 27, 327 P.3d 487 (2014). Here, the testimony of Dr. Dunn and Dr. Tingey was important but did not constitute most of the evidence. Pltf. herself testified, as well as other witnesses and employees of Deft.. On the other hand, Pltf. outlined in her Amended Application and Opposition to Deft's Motion to Re-Tax that the nature of their testimony was fairly complex and required several hours of file review. Even though Drs. Dunn and Tingey were Pltf.'s treating physicians, as Deft. points out, this does not necessarily make an increased fee unnecessary or unreasonable. Pltf. requests a total fee of \$6,000 for Dr. Tingey, \$10,000 for Dr. Dunn, and \$3,699 for Gary Presswood. Dr. Tingey's fee seems to be reasonable, for the reasons identified by Pltf. in her Amended Application. As to Dr. Dunn, Deft. does point out that half of the claimed amount is for the second day of testimony, which lasted less than an hour and was done to accommodate his own schedule. Mot. at 8. Hence, Dr. Dunn should be allowed only \$5,000. As to Mr. Presswood, his testimony was not used at trial because this Court ruled that his testimony would be unreliable. Since his testimony was clearly inadmissible under the Hallmark standard, as reflected in this Court's prior pre-trial ruling, his fees should not be awarded. Hence, as to the expert fees, Deft's Motion should be granted in part.

2. Service Fees

NRS 18.005(7) allows recovery of service fees. Deft. next challenges the service fees claimed by Pltf. in serving Yanet Elias, Corey Prowell, and Salvatore Risco. Mot. at 8-9. Pltf. acknowledges that all costs must be both reasonable and necessary. As to Yanet Elias and Corey Prowell, each was an employee of Deft. and Deft. points out that it had accepted service for those persons. Defense counsel

should be prepared to address whether he agreed that these witnesses would be produced for trial without a subpoena at the time of oral argument. If so, the service fee was unnecessary, but if not, agreement that service can be made upon counsel instead of the witness does not eliminate the need to serve and the fees would be necessary. As to Mr. Risco, Deft. argues that the service fees were unnecessary and unreasonable because Pltf. s counsel had good communication with him. However, unlike the other two employee-witnesses, Mr. Risco was not a party to this case or an agent of a party to this case, so service of a subpoena upon him was necessary. Additionally, Pltf. has outlined sufficient reasons for the amount of the claimed charge that show it to be reasonable and she should be granted those fees, subject to the same question posed above.

3. Jury Fees

NRS 18.005(3) specifically allows an award of jury fees as an element of costs. Deft. next argues it should not be responsible for the jury fees because Pltf. failed to request a jury trial within the time allowed. Mot. at 9. Deft. essentially only argues that because Pltf. s demand for a jury trial was untimely and this should have been a bench trial, it should not have to pay for the jury fees. However, those arguments are premised on challenging this Court s grant of Pltf. s request for a jury trial and the time for reconsidering that decision has long since passed. Moreover, both parties had prepared this entire case under the assumption that it was going to be tried by jury, so Deft. was not prejudiced by the Court s ruling in any event. Since the jury fees were actually incurred and reasonable, Deft s Motion as to those fees should be denied, and Pltf. should be allowed the jury fees incurred.

4. Parking Fees

NRS 18.005(17) allows the court to award any other reasonable costs actually incurred. This would, of course, include costs incurred in parking for hearings and the like. Deft. argues that there were other, free, places Pltf. could have parked. Mot. at 9. This may or may not be true, but Deft s argument is conclusory in any event. Because Pltf. actually incurred the parking costs, they should be awarded.

5. Skip Trace Fees

Deft. lastly argues that Pltf. s request for skip trace/investigative fees for Terry Ruby were unreasonable and unnecessary. Mot. at 9. Terry Ruby is a former employee of Deft. and was the first to respond to Pltf. s fall. Opp. at 8. It is clear why Pltf. would have a need to locate and depose Mr. Ruby. A \$150.00 fee for that service is not unreasonable, given the extreme costs associated with reporting services like Accurant. Therefore, Deft s Motion as to the skip trace fee should be denied, and Pltf. should be allowed that amount as a cost.

6. Remaining Fees

Deft. does not challenge the remaining requested fees. Pltf. has attached back-up documentation for each claimed cost and they all seem to be reasonable and within the going market rate for each associated service. Pltf. has therefore carried her burden under Berossini and the remaining costs requested should be awarded. Therefore, Pltf. s Amended Application as to costs should be granted, as set forth herein.

Arguments by counsel. Upon Court's inquiry, Pltf. advised costs have been paid in full. COURT stated findings and ORDERED, Deft's Motion is GRANTED in part, noting calendar is in error as it state's Pltf's Motion. Pltf's Motion for fees and costs is DENIED, and for attorney fees is DENIED. Defense to prepare the order and join it all in one.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability**COURT MINUTES****June 29, 2016**

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
 vs.
 Wynn Resorts Limited, Defendant(s)

June 29, 2016 3:00 AM Minute Order

HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Denise Trujillo**RECORDER:** Lara Corcoran**REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- MINUTE ORDER

This matter came before the Court on March 4, 2016 on Defendant s Motion to Retax Costs and Plaintiff s Motion to Tax Costs and for Fees, Costs, and Post-Judgment Interest. After reviewing the parties' briefs and hearing arguments of counsel, the Court made its findings granting in part and denying in part both Motions.

The Court received the proposed order on those Motions on May 27, 2016. The proposed order awarded fees to two expert witnesses, Dr. Tingey and Dr. Dunn, above the statutory maximum of \$1,500.00 set forth in NRS 18.005(5), and disallowed all fees for expert Gary Presswood.

However, in reviewing that proposed order and additional case law surrounding the award of expert witness fees, it has come to the Court s attention that the Nevada Court of Appeals has recently outlined several express factors that are to be considering when deviating above the statutory maximum in NRS 18.005(5) for expert witness fee awards. See *Frazier v. Duke*, 131 Nev. Adv. Op. 64, 357 P.3d 365 (2015). That case was issued in September of 2015, just before the trial of this matter, but was not cited in either party s briefing with regard to a fee award. Therefore, the Court finds it appropriate to order additional limited briefing on that issue and, good cause appearing,

IT IS HEREBY ORDERED that Plaintiff s counsel is to file a supplemental brief of no more than 10 pages that addresses the factors set forth in Frazier, supra, in detail, as applicable, for Drs. Tingey and Dunn no later than July 13, 2015.

IT IS FURTHER ORDERED that Defendant s counsel is to file a supplemental response brief of no more than 10 pages no later than July 27, 2016.

IT IS FURTHER ORDERED that this matter will be set for hearing on the supplemental briefs only on August 12, 2016 at 9AM. If the parties wish to submit on their briefs, or if the hearing date of August 12 is unavailable for either counsel, they are to contact the Court s law clerk, Travis Chance, at 702-671-4357 to reschedule to a mutually agreeable date.

The Court further notes that this matter has been appealed, however, a final order on the issue of a fee award has not yet been entered and may still be resolved by this Court.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability**COURT MINUTES****August 12, 2016**

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
 vs.
 Wynn Resorts Limited, Defendant(s)

August 12, 2016 9:00 AM Hearing

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Phyllis Irby

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Carlston, Jon J Attorney
 Semenza, Lawrence, III Attorney

JOURNAL ENTRIES

- Mr. Carlston stated he had a couple of points that he wanted to raise, one being Dr. Dunn's second day of testimony; these Frazier factors non exhausted lists trial witnesses can be difficult, he had to come back. The second issue we had been awarded Dr. Tingy's full \$6,000 fee and \$5,000 of that was for his testimony, \$1,000 was for consult with our office, we ask that is something that should be awardable it was part of his preparation for trial and his retention for treating as a medical expert should be awarded his full \$6,000 rather than capping it at \$5,000.

Mr. Semenza argued with regard to Dr's Dunn and Tingy there was an issues with the disclosures, in their disclosures they had provided identical descriptions for 30 something providers and that was the basis why we didn't take the depositions beforehand and there were concerns if these two doctors would be permitted to testify at all in this case. That was the basis for the voir dire that took some time that the Court did allow us to take. The reason Dr. Dunn took the stand so late was based on his schedule, not the Court's schedule. We didn't finish with him which required him to come back the following day. The Court appropriately limited the amount of the award relating to Dr. Dunn to only that first day, based upon his schedule. With regard to the \$6,000 or \$5,000 difference. The \$6,000 was related to Dr. Tingy and Dr. Dunn was \$5,000 for the day, Dr. Tingy was the same, therefore we believe that the \$5,000 is more appropriate. The Court stated the reason Dr. Tingy's fee was adjusted down from the original \$6,000 was because the medical record by both physicians which was

obtained late by the defense, was not very expansive or extensive. The Court finds the time Dr. Tingy spent testifying his fee was adequate. COURT ORDERED, DEFT'S RETAX COSTS GRANTED. Mr. Semenza will prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

October 11, 2019

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

October 11, 2019 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Morris, Christian Attorney
O'Connell, Yvonne Plaintiff
Semenza, Lawrence, III Attorney
Wynder, Edward J. Attorney

JOURNAL ENTRIES

- STATUS CHECK: DISMISSAL ... PLAINTIFF'S POST-APPEAL APPLICATION FOR ATTORNEY FEES, COSTS, AND POST-JUDGMENT INTEREST AND NOTICE OF HEARING ... DEFT. WYNN LAS VEGAS LLC'S MOTION TO ENFORCE SETTLEMENT ON ORDER SHORTENING TIME (OST)

Arguments by Mr. Semenza in support of the motion to enforce and in opposition to the Plaintiff's Application for Attorney Fees Costs and Post-Judgment Interest; summarized the circumstances and correspondence related to the settlement. Further argument by Mr. Semenza noting there was an enforceable settlement agreement and that there was a material breach of the agreement. Argument by Ms. Morris in opposition to the Deft.'s motion to enforce and in support of the Application for Attorney Fees Costs and Post-Judgment Interest; noting she had authorization to agree to the settlement, but not that the Plaintiff would sign a confidentiality contract. Further, Ms. Morris stated the defense did not provide a release for this case, as she was advised it would be the same release used for another case, which she reviewed, and did not agree to some of the terms of the other release. COURT ADVISED, there was an offer the Plaintiff made and the Wynn accepted it. Further, arguments by counsel regarding the confidentiality, whether liquidated damages would become an

issue, and whether there was a breach of the contract due to the publicly filed document and arguments presented in court today. COURT FINDS, there is no need to have an evidentiary hearing, the record was clear, there was an offer made by the Plaintiff to settle the case, it would be done without further litigation by the Court, and the Wynn accepted the offer. COURT FURTHER FINDS, there was a settlement agreement and ORDERED, motion to enforce settlement GRANTED and request for evidentiary hearing is DENIED; matter SET for status check. COURT ADVISED, there would be no liquidated damages, and if the Plaintiff breaches the agreement, counsel would need to file a law suit. COURT FURTHER ORDERED, request for attorney fees is DENIED. COURT DIRECTED, Mr. Semenza to prepare the order. FURTHER ORDERED, the Plaintiff's post-appeal application is DENIED AS MOOT.

At the request of counsel, COURT FURTHER ORDERED, Plaintiff's Opposition to Defendant Wynn Las Vegas, LLC's Motion to Enforce Settlement on Order Shortening Time, filed on 10/4/19, and today's hearing (JAVS) are SEALED. Further arguments regarding whether counsel had breached the confidentiality agreement.

12/20/19 - 9:00 AM - STATUS CHECK: DISMISSAL / SETTLEMENT DOCUMENTS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

February 07, 2020

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

February 07, 2020	9:00 AM	Motion to Set Aside	Plaintiff's Motion to Set Aside Order / Proceeding Enforcing Settlement and Motion for Rehearing / Reconsideration of Order / Proceeding Enforcing Settlement on Order Shortening Time
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HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Kathy Thomas

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Bailey, Vernon L.	Attorney
	Kircher, Christopher D.	Attorney
	Semenza, Lawrence, III	Attorney

JOURNAL ENTRIES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability**COURT MINUTES****February 07, 2020**

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
 vs.
 Wynn Resorts Limited, Defendant(s)

February 07, 2020**9:00 AM****All Pending Motions****All Pending Motions
(02/07/2020)****HEARD BY:** Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Kathy Thomas**RECORDER:** Lara Corcoran**REPORTER:****PARTIES**

PRESENT: Bailey, Vernon L. Attorney
 Kircher, Christopher D. Attorney
 Semenza, Lawrence, III Attorney

JOURNAL ENTRIES

- STATUS CHECK: DISMISSAL / SETTLEMENT DOCUMENTS...PLAINTIFF'S MOTION TO SET ASIDE ORDER / PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR REHEARING RECONSIDERATION OF ORDER / PROCEEDING ENFORCING SETTLEMENT ON ORDER SHORTENING TIME

Court stated the Court read the Motion, Opposition, Reply and Plaintiff's Supplement; However, the Court received the Defendants supplemental yesterday and was unable to read the supplement. Court further stated the in-camera documents, containing several e-mails, was received in chambers, however not reviewed. Court noted the Court's intent was to grant the Motion to Reconsider, under the EDCR and set an evidentiary hearing and have Ms. Morris, prior Plaintiff's Counsel, testify to distinguish if she actually had authority.

Colloquy regarding the confidentiality, settlement amounts redaction and attorney client representations.

Arguments by Counsel regarding if an evidentiary hearing would be needed.

Mr. Semenza argued a hearing would not be needed and referred to several e-mails attached to their

supplement to show Ms. Morris had authority. Mr. Bailey argued for the hearing and requested to Court consider the Plaintiff's knowledge and understanding and that Counsel did not have authority. Colloquy regarding cited cases. Upon Court's inquiry, Mr. Bailey agreed his client would testify. Mr. Semenza requested the Court decide the matter on the briefs without a hearing. Mr. Semenza further noted if a hearing is set, he would request attorney fees. Colloquy regarding subpoenas, Ms. Morris having a retainer lien, limited waiver of attorney client privilege and documents needed. Mr. Semenza noted the Plaintiff, Ms. O'Connell has possession of documents and requested she turn over her file. Colloquy regarding ratification. Mr. Semenza further inquired as to witnesses to be called and opposed his firm being called as a witness. Mr. Bailey stated he had not determined his witnesses to call, however if regarding a carve out Mr. Semenza would be called. Court noted Mr. Semenza would not be a witness as he had already stated in the papers. COURT ORDERED, Plaintiff's Motion to Reconsider, GRANTED. Court noted the Order is on hold. COURT FURTHER ORDERED, Evidentiary Hearing SET. Counsel estimated a full day. Court to review the in-camera documents next week. Status Check: Settlement Documents, OFF CALENDAR.

04/17/2020 9:00 AM EVIDENTIARY HEARING RE: MOTION TO ENFORCING SETTLEMENT // AUTHORITY OF COUNSEL (MORRIS)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

October 16, 2020

A-12-655992-C	Yvonne O'Connell, Plaintiff(s)
	vs.
	Wynn Resorts Limited, Defendant(s)

October 16, 2020 10:00 AM Evidentiary Hearing

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Cynthia Moleres

RECORDER: Lara Corcoran

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- APPEARANCES: Plaintiff, Mr. Bailey, Esq., on behalf of Plaintiff, Eric Aldrian, Wynn Representative, Mr. Semenza, Esq., and Mr. Kircher, Esq., on behalf of Defendant, present and all appearing via BlueJeans.

COURT ADVISED the court would need time to pull up the exhibits which were filed in Odyssey. Colloquy regarding today's hearing and which party was to proceed first. COURT DIRECTED Mr. Bailey to proceed with his first witness.

Witness Yvonne O'Connell SWORN and TESTIFIED. Exhibits presented (see worksheets). MATTER TRAILED. MATTER RECALLED. All parties present as before. Witness Christian Morris SWORN and Testified. Exhibits presented (see worksheets). Mr. Bailey withdrew exhibit 5. COURT SO NOTED. Upon Court's inquiry regarding briefs, Mr. Semenza requested the brief filed today by Mr. Bailey be stricken. Colloquy regarding Mr. Bailey's brief. COURT ORDERED, Mr. Bailey's BRIEF filed today 10/16/2020 STRICKEN from the Record. Upon continued colloquy regarding brief's, COURT FURTHER ORDERED, Plaintiff and Defendant's brief to be FILED by November 2, 2020 and this matter PLACED on the Chambers calendar for a decision. Mr. Semenza requested all documents temporarily filed under seal, REMAIN UNDER SEAL. COURT SO ORDERED.

11/06/2020 CHAMBERS CALENDAR - DECISION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

November 13, 2020

A-12-655992-C	Yvonne O'Connell, Plaintiff(s)
	vs.
	Wynn Resorts Limited, Defendant(s)

November 13, 2020 3:00 AM Decision

HEARD BY: Ellsworth, Carolyn

COURTROOM: No Location

COURT CLERK:

Andrea Natali

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court, having reviewed the papers submitted by counsel, and having heard oral argument, GRANTS the Plaintiff s Motion to Reconsider its earlier order granting the defendant s motion to enforce settlement, as well as Plaintiff s request for an evidentiary hearing in order to determine whether Plaintiff s counsel, Christian Morris, Esq., had actual authority to settle the instant case. The Court will reserve its ruling on whether the Defendant s Motion to Enforce Settlement shall be granted or denied until after the evidentiary hearing. Order efiled on November 13, 2020.

COURT FURTHER ORDERED, the Defendant Wynn Las Vegas, LLC's Evidentiary Hearing Brief, temporarily filed under seal on 11/2/20, the Temporarily Sealed Proposed Exhibits which were efiled on 10/12/20, 10/14/20, and were utilized for the Evidentiary Hearing are SEALED.

CLERK'S NOTE: The foregoing minutes were distributed via electronic mail to Mr. S Semenza and Mr. Vernon (11/24/20 amn).

CLERK'S NOTE: Due to a clerical error, the above minutes were corrected to indicate the Defendant Wynn Las Vegas, LLC's Evidentiary Hearing Brief is SEALED instead of stricken, and to add that the

Temporarily Sealed Proposed Exhibits were also to be SEALED as noted above and to coincide with the Court's Order efiled on 12/4/20. The foregoing minutes were distributed via electronic mail to Mr. S Semenza and Mr. Vernon (12/8/20 amn).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

December 16, 2020

A-12-655992-C	Yvonne O'Connell, Plaintiff(s)
	vs.
	Wynn Resorts Limited, Defendant(s)

December 16, 2020	3:00 PM	Motion to Withdraw as Counsel
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HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Bailey, Vernon L.	
	Kircher, Christopher D.	Attorney
	Semenza, Lawrence, III	Attorney

JOURNAL ENTRIES

- All parties appeared via BlueJeans audio / video conferencing.

Mr. Bailey stated he served the motion; additionally, he had emailed the Plaintiff the BlueJeans link at 9:09 AM. COURT ADVISED, it was inclined to allow counsel to withdraw once it had ruled upon the motion for attorney s fees and Costs, it still had to read those briefs, but it could not allow counsel to withdraw until that motion has been decided; therefore, it would grant the motion to withdraw as counsel after that hearing. Mr. Bailey stated he was closing his practice and would not be practicing privately any longer in Nevada. Colloquy regarding having the order prepared, signed and filed so it was addressed prior to the appeal deadline. COURT ADVISED, counsel to reference 5:00 PM on 12/28/20 as there was nothing precluding counsel from withdrawing. Mr. Semenza had nothing to add.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability**COURT MINUTES****December 23, 2020**

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
 vs.
 Wynn Resorts Limited, Defendant(s)

December 23, 2020	3:00 AM	Motion For Reconsideration	Motion to Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After Reconsideration and Evidentiary Hearing by the Court/and Motion to Set Aside Order/Proceeding Enforcing Settlement and Motion for Reconsideration of Order/Proceeding Enforcing Settlement
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HEARD BY: Ellsworth, Carolyn**COURTROOM:** Chambers**COURT CLERK:** Andrea Natali**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- On December 21, 2020, the Plaintiff, Yvonne O'Connell, filed a "Motion to Reconsider and/or Set Aside Order Granting Motion to Enforce Settlement After Reconsideration and Evidentiary Hearing by The Court/ And Motion to Set Aside Order/Proceeding Enforcing Settlement And Motion for Reconsideration of Order/Proceeding Enforcing Settlement." Said document was filed not by Plaintiff's counsel, but by Ms. O'Connell herself. EDCR 7.40(a) provides, "When a party has

appeared by counsel, the party cannot thereafter appear on the party's own behalf in the case without the consent of the court. Counsel who has appeared for any party must represent that party in the case and shall be recognized by the court and by all parties as having control of the case. The court in its discretion may hear a party in open court although the party is represented by counsel." This Court did not authorize Ms. O'Connell to appear on her own behalf and therefore the above referenced motion was filed in violation of EDCR 7.40(a). Although Ms. O'Connell's counsel moved to withdraw, the Court denied said motion because there is a pending motion for attorney fees filed by the defendant which is set for argument on December 28, 2020. Moreover, said fugitive document filed directly by the plaintiff again asks the Court to reconsider its ruling despite the fact that the Court had previously agreed to reconsider its earlier ruling on the same subject. After many hours spent by this Court reviewing documents in camera at counsels' request, reviewing thorough briefs and supplements thereto by the attorneys on both sides, and after considering testimony from two witnesses at a day long evidentiary hearing, and the exhibits offered by the parties at said hearing, the Court again ruled.

EDCR 2.24(a) provides, "No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." The Court declines to once again reconsider its ruling and the MOTION IS DENIED. The court will prepare the order.

CLERK'S NOTE: The foregoing minutes were distributed via electronic mail to Mr. S Semenza and Mr. Vernon, and a courtesy copy via general mail to the following party:

Yvonne O'Connell
8764 Captains Place
Las Vegas, NV 89117
(12/24/20 amn).

support of the motion for attorney s fees. Colloquy regarding whether there was an error in the transcript, on page 246 lines 16-18 from the 10/16/20 hearing, with respect to the word don t being left out. Opposition by Ms. O Connell. COURT REMINDED, Ms. O Connell that her arguments were restricted to the matter of attorney s fees, and not to argue regarding the motion for reconsideration. Further arguments by Ms. O Connell and Mr. Semenza. COURT ORDERED, matter TAKEN UNDER ADVISEMENT, and ADVISED, it would draft the order, which was anticipated to be completed by tomorrow or Wednesday.

PLAINTIFF'S PROPOSED EXHIBITS

YVONNE O'CONNELL vs. WYNN LAS VEGAS, LLC					
Case Number A-12-655992					
	Description	Bate Numbers	Offered	Objected	Admitted
1	Picture of Plaintiff (far right) with her Cousins – pre- accident	00001			
2	Picture of Plaintiff (far left) with her nephew and his family – pre-accident	00002			
3	Picture of Plaintiff (far left) with her nephew and his family – pre-accident	00003			
4	Unredacted photograph of Plaintiff's buttocks showing bruising from fall	00004	11/12	NO	11/12/15
5	Redacted photograph of Plaintiff's buttocks showing bruising from fall	00005			
6	Unredacted photograph of Plaintiff's buttocks showing bruising from fall	00006	11/12	NO	11/12/15
7	Redacted photograph of Plaintiff's buttocks showing bruising from fall	00007			
8	Unredacted photograph of Plaintiff's buttocks showing bruising from fall	00008	11/12/15	NO	11/12/15
9	Redacted photograph of Plaintiff's buttocks showing bruising from fall	00009	11/12	withdrawn obj	
10	Unredacted photograph (close-up) of Plaintiff's buttocks showing bruising from fall	00010			
11	Redacted photograph (close-up) of Plaintiff's buttocks showing bruising from fall	00011			
12	Curriculum Vitae; Fee Schedule and Trial Testimony List – Thomas Dunn, M.D.	00012 - 00015			

YVONNE O'CONNELL vs. WYNN LAS VEGAS, LLC

Case Number A-12-655992

13	Plaintiff's Medical Records and Billing Statement for treatment rendered by Thomas Dunn, M.D.	00016 - 00048			
14	Curriculum Vitae; Fee Schedule and Trial Testimon List – Craig T. Tingey, M.D.	00049 – 00056			
15	Plaintiff's Medical Records and Billing Statement for treatment rendered by Craig T. Tingey, M.D.	00057 – 00076			
16	Wynn Las Vegas, LLC Answer to Amended Complaint	00077 – 00082			
17	Wynn Las Vegas Dust Mop/Damp Mop Policy dated 1/28/2005	0083 – 00084			
18	Wynn Las Vegas Dust Mop/Damp Mop Policy dated 8/1/07	00085 – 00086			
19	Wynn Las Vegas Dust Mopping/Damp Mopping Power Point Presentation – undated	00087 – 00090			
20	Wynn Las Vegas Wet Floor Signs and Spills Power Point Presentation – undated	00091 – 0092			
21	Wynn Las Vegas Wet Floor Signs & Spills Policy	00093			
22	Wynn Las Vegas Signs and Spills Power Point – undated	00094 - 00095			
23	Wynn Las Vegas Marble Care Policy	00096 - 00097			
24	Wynn Las Vegas Marble Care Power Point Presentation – undated	00098 - 00099			
25	Affidavit/Declaration of Custodian of Records for Desert Orthopedic/Dr Tingey	00100 - 00101			

YVONNE O'CONNELL vs. WYNN LAS VEGAS, LLC**Case No. A-12-655992-C, Dept. No. V****Wynn's Proposed Exhibit List**

<u>Ex No.</u>	<u>DOCUMENT/BATES NUMBERS</u>	<u>OFFERED</u>	<u>OBJECTED</u>	<u>ADMITTED</u>
A. (1-11)	Color Pictures of Incident and Guest Statements WYNN-O'CONNELL 00001 - 00011			
B. (1-66)	UMC Records WYNN-O'CONNELL 00012, 00016, 00024, 00032, 00039 - 00040, 00047 - 00053, 00060 - 00067, 00075 - 00077, 00079 - 00080, 00090, 00099 - 00101, 00111, 00120 - 000122, 00126, 00135 - 00138, 00150, 00163, 00168 - 00169, 00175, 00184, 00193, 00201 - 00203, 00214, 00216, 00230, 00232, 00234 - 00235, 00239, 00241 - 00244, 00252, 00254 - 00258			
C. (1-11)	Apache Foot & Ankle Specialist (Lee Wittenberg DPM) WYNN-O'CONNELL00262 - WYNN-O'CONNELL00272			
D.	Ascent Primary Care (Suresh Prahbu MD) WYNN-O'CONNELL00277 - WYNN-O'CONNELL00278			
E. (1-5)	Clinical Neurology Specialists (Leo Germin MD) WYNN-O'CONNELL 00290 - 00291, 00296 - 00298			
F.	Desert Institute of Spine Care - Dr. Cash WYNN-O'CONNELL00302 - WYNN-O'CONNELL00303			
G. (1-15)	Ed Suarez WYNN-O'CONNELL 00307 - 00321			
H.	Matt Smith PT 5/3/10 WYNN-O'CONNELL00398 - WYNN-O'CONNELL00399			

YVONNE O'CONNELL vs. WYNN LAS VEGAS, LLC**Case No. A-12-655992-C, Dept. No. V****Wynn's Proposed Exhibit List**

<u>Ex No.</u>	<u>DOCUMENT/BATES NUMBERS</u>	<u>OFFERED</u>	<u>OBJECTED</u>	<u>ADMITTED</u>
I. (1-4)	Southern Nevada Pain Center WYNN-O'CONNELL 00418, 00420, 00426 -00427	11/10/15	NO	11/10/15
J. (1-12)	Steinberg Diagnostic WYNN-O'CONNELL 00428 - 00438, 00442			
K.	Yanet Elias Statement WYNN-O'CONNELL00481			
L. (1-19)	Wynn Las Vegas Policies WYNN-O'CONNELL 00483 - 00489, 00491 - 00502			
M.	Incident Report WYNN-O'CONNELL00511 - WYNN- O'CONNELL00513			
N. (1-5)	Advanced Ortho - Timothy Trainor WYNN-O'CONNELL 00522 - 00526			
O.	Minimally Invasive Hand Institute 3/8/12 WYNN-O'CONNELL00548 - WYNN- O'CONNELL00550			
P. (1-18)	Dr. Cash intake form 3/23/10 WYNN-O'CONNELL 00562 - 00571, 00586-588, 00593 - 00597			
Q.	Silver State Neurology (Christopher Millford MD) WYNN-O'CONNELL00599			
R. (1-6)	Desert Oasis Clinic 2/17/10 WYNN-O'CONNELL00607 - WYNN- O'CONNELL00612	11/10/15	NO	11/10/15

YVONNE O'CONNELL vs. WYNN LAS VEGAS, LLC**Case No. A-12-655992-C, Dept. No. V****Wynn's Proposed Exhibit List**

<u>Ex No.</u>	<u>DOCUMENT/BATES NUMBERS</u>	<u>OFFERED</u>	<u>OBJECTED</u>	<u>ADMITTED</u>
S.	Apache Foot & Ankle Specialist (Lee Wittenberg DPM) WYNN-O'CONNELL 00621 - 00623			
T.	Ascent Primary Care (Suresh Prahu MD) WYNN-O'CONNELL 00638 - 00639			
U. (1-16)	Southern Nevada Pain Center WYNN-O'CONNELL 00774 - 00789			
V. (1-4)	Dr. Yakov Shaposhnikov, M.D., Gastrointestinal and Liver Diseases Medical Records/Bills WYNN-O'CONNELL 01192 - 01195			
W.	Dr. Enrique Lacayo, M.D. Medical Records WYNN-O'CONNELL 01210 - 01211			
X. (1-11)	Yvonne O'Connell Player Report for Wynn Las Vegas WYNN-O'CONNELL 01225 - 01235			
Y. (1-3)	Yvonne O'Connell Patron Information for Wynn Las Vegas WYNN-O'CONNELL 01236 - 01238	11/12/15	obj	11/12/15
Z. (1-10)	Wynn Las Vegas Atrium Log WYNN-O'CONNELL 01239 - 01248	11/12/15	NO	11/12/15
AA. (1-2)	Color Photos of Bruising PLTF000720- 000721			
BB.	Defendant's Disclosure of Initial Expert Witness and Report Pursuant to NRCP 26(e) - Victor B. Klausner, D.O. filed on 4/13/15 DEFT. EXPERT01 (1 DOCUMENT-25 PAGES)			

YVONNE O'CONNELL vs. WYNN LAS VEGAS, LLC
Case No. A-12-655992-C, Dept. No. V

Wynn's Proposed Exhibit List

<u>Ex No.</u>	<u>DOCUMENT/BATES NUMBERS</u>	<u>OFFERED</u>	<u>OBJECTED</u>	<u>ADMITTED</u>
CC.	Defendant's Disclosure of Rebuttal Expert Witness and Report Pursuant to NRCP 26(e) - Neil D. Opfer filed on 5/13/15 DEFT. EXPERT02 (1 DOCUMENT – 96 PAGES)			
DD. (1-13)	Deposition Transcript of Corey Powell DEFT. DEPO01			
EE. (1-24)	Deposition Transcript of Yanet Elias DEFT. DEPO02			
FF. (1-78)	Deposition Transcripts of Plaintiff Yvonne O'Connell (and Exhibit 1 Pages 1-4) DEFT. DEPO03			
GG. (1-53)	Deposition Transcript of Sal Risco DEFT. DEPO04			
HH. (1-24)	Deposition Transcripts of NRCP 30(b)(6) Witnesses DEFT. DEPO05			
II. (1-15)	Plaintiff's Responses to Defendant's First Set of Interrogatories with Verification DEFT. DISC01			
JJ. (1-7)	Plaintiff's Responses to Defendants' First Set of Requests for the Production of Documents DEFT. DISC02			
KK.	Plaintiff's Amended Complaint DEFT. PLDG01 (1 DOCUMENT – 4 PAGES)			
LL.	Defendant's Answer to Amended Complaint DEFT. PLDG02 (1 DOCUMENT – 5 PAGES)			

Deft's

EXHIBITS

CASE NO.

[illegible]

JOINT STIPULATED EXHIBITS OF THE PARTIES

YVONNE O'CONNELL vs. WYNN LAS VEGAS, LLC					
Case Number A-12-655992					
	Description	Bate Numbers	Offered	Objected	Admitted
1	Wynn Incident File Full Report	JOINT STIPULATED EXHIBIT 001 – 003		<i>stip</i>	NOV - 4 2015
2	Wynn Guest Accident or Illness Report – Yvonne O'Connell	JOINT STIPULATED EXHIBIT 004			
3	Wynn – Guest Refusal of Medical Assistance	JOINT STIPULATED EXHIBIT 005			
4	Wynn- Guest/Employee Voluntary Statement – Yanet Elias	JOINT STIPULATED EXHIBIT 006			
5	Wynn – Guest/Employee Voluntary Statement – Terry M. Ruby	JOINT STIPULATED EXHIBIT 007			
6	Wynn – File Photograph Of Area of Incident - #2152-8	JOINT STIPULATED EXHIBIT 008			
7	Wynn – File Photograph Of Area of Incident - #2152-3	JOINT STIPULATED EXHIBIT 009			
8	Wynn – File Photograph Of Area of Incident - #2152-7	JOINT STIPULATED EXHIBIT 010			
9	Wynn – File Photograph Of Area of Incident - #2152-5	JOINT STIPULATED EXHIBIT 011			
10	Wynn – File Photograph Of Area of Incident - #2152-2	JOINT STIPULATED EXHIBIT 012			
11	Wynn – File Photograph Of Area of Incident - #2152-1	JOINT STIPULATED EXHIBIT 013			
12	Wynn – File Photograph Of Area of Incident - #2152-6	JOINT STIPULATED EXHIBIT 0014			
13	Wynn – File Photograph Of Area of Incident - #2152-4	JOINT STIPULATED EXHIBIT 015		<i>✓</i>	NOV - 4 2015

COURT

S EXHIBITS

CASE NO.

A655992

[illegible]

EXHIBIT(S) LIST

Case No.: A-12-655992-C

Hearing / Trial Date: 10-16-2020

Dept. No.: V

Judge: Carolyn Ellsworth

Plaintiff: Yvonne O'Connell

Court Clerk: Cynthia Hynes

Recorder / Reporter: Lara Corcoran

Counsel for Plaintiff: Vernon Bailey

vs.

Defendant: Wynn Resorts Limited

Counsel for Defendant: Lawrence Semenza
Christopher Kircher

HEARING / TRIAL BEFORE THE COURT

Plaintiff's

EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
#2 EH 38-41	E-Mails Ending 8-4-2019	10-16-2020	Yes	10-16-2020
#20 EH 300-330	Unredacted (in part) emails ending 8-21-2019	/	No	/
#9 EH 126-148	E-Mails Ending 10-3-19 with attached letter	/	No	/
#10 EH 150-160	E-Mails Ending later on 10-3-19	/	No	/
#4 EH 75-78	Retainer Agreement	/	No	/
#6	E-Mails Attorney Carlton ending 8-29-16	/	No	/
#5	June 13, 2016 letter to Attorney Carlton	10-16-2020	Yes	10-16-2020
Depts A	Declaration of Yvonne O'Connell	10-16-2020	Yes	N/A
Depts #11 Wynn 93	E-Mail O'Connell & Nettle Morris	10-16-2020	No	10-16-2020
#7	Supplement re: Settlement filed by Morris	10-16-2020		10-16-2020
Depts B	E-Mails between Semenza & Nettle Morris	10-16-2020	No	10-16-2020
Depts E	Nettle Morris Proposed Settlement Agreement	10-16-2020	No	10-16-2020
Depts F	Semenza Kircher Rickard's Proposed Settlement	10-16-2020	No	/

EXHIBIT(S) LIST

Case No.: A-12-655992-C

Hearing / Trial Date: 10-16-2020

Dept. No.: V

Judge: Carolyn Ellsworth

Plaintiff: Yvonne O'Connell

Court Clerk: Cynthia M. Jones

Recorder / Reporter: Lara Corcoran

Counsel for Plaintiff: Vernon Bailey

vs.

Defendant: Wynn Resorts Limited

Counsel for Defendant: Lawrence Semenza
Christopher Bailey

HEARING / TRIAL BEFORE THE COURT

Defendants

EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted	
M	Richard Johnson's Mtn to Withdrawal	10-16-2020	Yes		WA
H-Wynn EH 61452	E-Mails between O'Connell & Nettle Morris	10-16-2020	Yes	10-16-2020	WA
H-Wynn EH 285-88	" "		No		WA
H-Wynn EH 388	" "		Yes		WA
H-Wynn EH 464	" "		No		WA
H-Wynn EH 573-74	" "		No		WA
H-Wynn EH 670-71	E-Mail		No		WA
H-Wynn EH 718	E-Mail		No		WA
H-Wynn EH 744-75	E-Mail (8-1-19)		No		WA
H-Wynn EH 933-434	E-Mail		No		WA
H-Wynn EH 1031-46	E-Mail 10-24-19 to Nettles & Morris		Yes	NA	WA
#19	Unredacted E-Mails with Nettle Morris		No	10-16-2020	WA



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

YVONNE O'CONNELL
8764 CAPTAINS PL.
LAS VEGAS, NV 89117

DATE: January 6, 2021
CASE: A-12-655992-C

RE CASE: YVONNE O'CONNELL vs. WYNN LAS VEGAS, LLC dba WYNN LAS VEGAS

NOTICE OF APPEAL FILED: January 6, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☒ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANT'S MOTION TO ENFORCE SETTLEMENT ON ORDER SHORTENING TIME AND DENYING PLAINTIFF'S POST-APPEAL APPLICATION FOR ATTORNEY'S FEES, COSTS AND POST-JUDGMENT INTEREST AS MOOT; NOTICE OF ENTRY OF ORDER; ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AFTER RECONSIDERATION AND EVIDENTIARY HEARING BY THE COURT; NOTICE OF ENTRY OF ORDER; ORDER DENYING MOTION TO RECONSIDER AND/OR SET ASIDE ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AFTER RECONSIDERATION AND EVIDENTIARY HEARING BY THE COURT/AND MOTION TO SET ASIDE ORDER/PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR RECONSIDERATION OF ORDER/PROCEEDING ENFORCING SETTLEMENT; NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S PRO SE MOTION TO RECONSIDER AND/OR SET ASIDE ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AFTER RECONSIDERATION AND EVIDENTIARY HEARING BY THE COURT AND MOTION TO SET ASIDE ORDER/PROCEEDING ENFORCING SETTLEMENT AND MOTION FOR RECONSIDERATION OF ORDER/PROCEEDING ENFORCING SETTLEMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

YVONNE O'CONNELL,

Plaintiff(s),

vs.

WYNN LAS VEGAS, LLC dba WYNN LAS VEGAS,

Defendant(s),

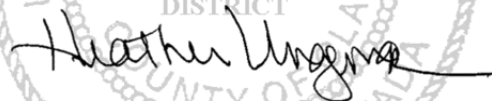
Case No: A-12-655992-C

Dept No: V

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 6 day of January 2021.

Steven D. Grierson, Clerk of the Court

A handwritten signature in black ink, appearing to read "Heather Ungermann", is written over a faint, circular court seal. The seal contains the text "UNITED STATES DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT COUNTY OF NEVADA".

Heather Ungermann, Deputy Clerk
A-12-655992-C