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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

TON VINH LEE,

Plaintiff,

v.

INGRID PATIN, an individual, and  
PATIN LAW GROUP, PLLC, a Nevada  
Professional LLC,

Defendants.

**Supreme Court No. 82516**  
District Court Case No.: A-15-  
723134-C

**APPELLANT'S OPENING BRIEF**

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## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Appellant Ton Vinh Lee is an individual and dentist licensed to practice in Nevada.

2. Appellant was represented in District Court by Resnick & Louis, P.C. and Bremer Whyte Brown & O'Meara LLP, and is represented in this Court by Resnick & Louis, P.C.

DATED this 27th day of July, 2021.

**RESNICK & LOUIS, P.C.**

*/s/ Prescott Jones*

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## **I. JURISDICTIONAL STATEMENT**

Appellant Dr. Ton Vinh Lee has timely appealed the final order of the District Court on Defendant Ingrid Patin’s Motion for Summary Judgment and Patin Law Group’s Joinder.

On October 30, 2020, the District Court entered its Order Granting Ingrid Patin’s Motion for Summary Judgment and Patin Law Group’s Joinder. 6 Appellant’s Appendix (“AA”) 1251-1250. Dr. Lee filed his Motion for Reconsideration on November 11, 2020, he filed his Motion to Alter/Amend Judgment Pursuant to NRCp 59(e) on November 24, 2020. The District Court denied Dr. Lee’s Motion to Alter or Amend Judgment on January 21, 2021, finding that it was substantively the same as the Motion for Reconsideration and that there was no mechanism for both motions. 8 AA 1243-1253. During oral argument on February 9, 2021, the District Court denied Dr. Lee’s Motion for Reconsideration and entered its Order on February 25, 2021. 9 AA1816-1823. Dr. Lee timely filed his Notice of Appeal on February 18, 2021. 8 AA 1654-1656.

On April 7, 2021, this Court entered its Order Removing from Settlement Program and Reinstating Briefing pursuant to the recommendation of the settlement judge. See 9 AA 1824.

Therefore, this Court has appellate jurisdiction over the issues presented in this appeal.

## II. ROUTING STATEMENT

The Supreme Court should retain this appeal. This appeal falls into the categories outlined in NRAP 17(a)(11), which pertains to “[m]atters raising as a principal issue a question of first impression involving . . . common law.” This appeal asks the Court to reverse the District Court’s Order granting Ms. Patin’s motion for summary judgment based on issues regarding the truth or falsity of an alleged defamatory statement (“Statement”) posted on the Respondents’ website regarding the jury verdict in a wrongful death case, Singletary v. Lee, District Court Case No. A656091.

First, this appeal asks that the Court determine, as a matter of first impression, whether an alleged defamatory Statement must be reviewed in its entirety and in context in order to determine whether it is true. Ms. Patin’s motion for summary judgment was granted based on Dr. Lee’s deposition testimony, in which Ms. Patin’s counsel reviewed individual portions of the Statement on their own to elicit admissions from Dr. Lee regarding the truth of each individual portion of the Statement, standing on its own.

Second, this appeal asks that the Court apply the standard for summary judgment to the District Court record and find that the District Court’s prior denial of Ms. Patin’s dispositive motions and granting of the operative motion for summary judgment were based on substantially the same facts, representing an



issue of material fact that precludes summary judgment. Third, this appeal asks the Court to apply to case law stating that the truth or falsity of an alleged defamatory statement is a jury question. Next, this appeal asks that the Court find that Ms. Patin's Statement was false in its entirety while it was published.

Last, this appeal asks the Court to review the standard for applying the fair report privilege to determine, as a matter of first impression, whether a report of an official action or proceeding can be considered "accurate and complete or a fair abridgment of the occurrence reported" if the report omits key information regarding the result of the official proceeding or action, such as the Respondents' omission of the verdict with respect to Dr. Lee in the underlying Singletary case. Restat. 2d of Torts, § 611 (1997); see Sahara Gaming Corp. v. Culinary Workers Union Local 226, 115 Nev. 212, 220, 984 P.2d 164, 169 (1999).

For these reasons, Dr. Lee asks that the Supreme Court retain this appeal based on NRAP 17(a)(11) and (12).

### **III. ISSUES ON APPEAL**

#### **A. WHETHER THIS COURT SHOULD REVERSE THE DISTRICT COURT'S ORDER GRANTING INGRID PATIN'S MOTION FOR SUMMARY JUDGMENT DUE TO ISSUES OF MATERIAL FACT REGARDING THE TRUTH OF THE STATEMENT**

##### **1. The District Court Erred in Finding that the Statement was True Because An Alleged Defamatory Statement Must be Read in Context and Its Entirety to Determine Whether It Is True**

2. The District Court Erred in Finding That There Are No Issues of Material Fact Because The District Court Has Previously Denied Patin's Dispositive Motions Based on Substantially the Same Information Upon Which the October 30, 2020, Order is Based
  3. The District Court Erred in Ruling on The Truth or Falsity of the Statement Because The Truth or Falsity of an Alleged Defamatory Statement is a Jury Question
  4. The District Court Erred in Finding that the Statement was True Because Ingrid Patin's Statement Was False at the Time It Was Published
- B. WHETHER THE FAIR REPORT PRIVILEGE APPLIES TO RESPONDENTS' STATEMENT BECAUSE IT WAS NOT AN ACCURATE, COMPLETE, OR FAIR REPORT OF THE SINGLETONARY VERDICT**

#### **IV. STATEMENT OF THE CASE**

Although the relevant facts surrounding this litigation are fairly simple, the procedural history is long due to the eight dispositive motions filed by the Respondents. 1 AA 203-214, 2 AA 244-260, 2 AA 327-335, 2 AA 363-380, 3 AA 492-506, 3 AA 615-636, 5 AA 945-951, 5 AA 1026-1048. The District Court denied seven of these dispositive motions. 2 AA 324-326, 2 AA 345-348, 2 AA 452-455, 4 AA 935-938, 5 AA 939-944, 5 AA 952-955. Appellant Dr. Ton Vinh Lee is a dentist and dental practice owner. 6 AA 1254. Respondent Ingrid Patin is a Nevada attorney and owner of Respondent Patin Law Group, PLLC (“PLG”). 6 AA 1254.

On August 17, 2015, Dr. Lee filed his initial Complaint against both Respondents, asserting a single claim of defamation *per se* on the grounds that Respondents published a statement that, in its entirety, was false, defamatory, and imputed to Dr. Lee a lack of fitness in his profession as a dentist and a business owner (“Statement”). 1 AA 197-201. After Dr. Lee filed his initial Complaint, the Respondents filed and joined in a series of dispositive motions dated September 8, 2015, October 16, 2015, January 27, 2016, May 24, 2016, February 10, 2017, May 30, 2017, and July 15, 2019. 1 AA 203-214, 2 AA 244-260, 2 AA 327-335, 2 AA 363-380, 3 AA 492-506, 3 AA 615-636, 5 AA 945-951. Respondents filed their Answer and respective Counterclaim and Crossclaim in response to Dr. Lee’s

April 11, 2016 Second Amended Complaint on October 7, 2016 and October 18, 2016. 2 AA 358-362, 2 AA 456-468, 2 AA 474-49. Due to the pendency and appeals of Respondents' multiple dispositive motions, the Joint Case Conference Report was not filed, and discovery did not open, until October 11, 2019. 5 AA 956-975.

On August 7, 2020, Ms. Patin filed her Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment, wherein Ms. Patin argued that Dr. Lee's July 14, 2020, deposition testimony resulted in an admission that the entire Statement is true, that the fair reporting privilege applies, and that Summary Judgment is warranted. 5 AA 1026-1048. PLG joined in Ms. Patin's August 7, 2020, motion. 6 AA 1200-1201. Ms. Patin's August 7, 2020, motion was the eighth dispositive motion that she filed since Plaintiff filed this case in August 2015. 1 AA 203-214, 2 AA 244-260, 2 AA 327-335, 2 AA 363-380, 3 AA 492-506, 3 AA 615-636, 5 AA 945-951, 5 AA 1026-1048. In opposition, Dr. Lee argued that the Statement must be reviewed in its entirety in order to determine whether it is true or capable of defamatory construction, that Ms. Patin presented no facts that differ to the facts presented in her prior dispositive motions, and accordingly, the fair report privilege does not apply and there remain issues of material fact regarding Defendant's Statement that must be decided by the jury, as held by the Court in its September 29, 2016 Order Denying Defendants' Renewed

Special Motion to Dismiss. 6 AA 1202-1216. Following oral argument on September 15, 2020, the District Court granted Ms. Patin's Motion for Summary Judgment, finding that there are no genuine material issues as to the truth or falsity of the Statement and that the Statement is protected under the fair report privilege. The District Court issued its Order Granting Defendant Patin's Motion for Summary Judgment on October 30, 2020. 6 AA 1235-1250.

Dr. Lee filed his Motion for Reconsideration on November 13, 2020, and his Motion to Alter or Amend Judgment Pursuant to NRCp 59(e) on November 24, 2020. 6 AA 1251-1266, 8 AA 1598-1613. The District Court denied Dr. Lee's Motion to Alter or Amend Judgment on January 21, 2021, finding that it was substantively the same as the Motion for Reconsideration, and that there was no mechanism for both motions and continuing the hearing on Dr. Lee's Motion for Reconsideration. 8 AA 1643-1653. During oral argument on February 9, 2021, the District Court denied Dr. Lee's Motion for Reconsideration and entered its Order on February 25, 2021. 9 AA 1816-1823. Dr. Lee timely filed his Notice of Appeal on February 18, 2021. 8 AA 1654-1656.

## **V. STATEMENT OF RELEVANT FACTS**

The Statement at issue was made by the Respondents and was published on the Respondents' website, patinlaw.com. 5 AA 1028, 1042. The Statement was

presented as a report of the verdict in Eighth Judicial District Court Case No. A-12-656091-C, Svetlana Singletary v. Ton Lee, DDS et. al., and read as follows:

DENTAL MALPRACTICE/WRONGFUL DEATH –PLAINTIFF’S  
VERDICT,

\$3.4M, 2014

Description: Singletary v. Ton Vinh Lee, DDS, et al.

A dental malpractice-based wrongful death action that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traivai, DDS and Jai Park, DDS, on behalf of the Estate, herself and minor son.

5 AA 1028, 1042. The Statement identifies Dr. Lee by name and incorrectly asserts that the Respondents’ former client obtained a \$3.4 million jury verdict against all Singletary defendants, including Dr. Lee. However, the Singletary verdict found zero liability on Dr. Lee, and Dr. Lee instead received a judgment in his favor. 1 AA 1-5, 1 AA 195-196.

Respondents filed a total of eight dispositive motions throughout the lengthy history of this litigation, many of which were before discovery even opened. 1 AA 203-214, 2 AA 244-260, 2 AA 327-335, 2 AA 363-380, 3 AA 492-506, 3 AA 615-636, 5 AA 945-951, 5 AA 1026-1048. The District Court denied Ms. Patin’s previous motions for summary judgment on the grounds that genuine issues of material fact precluded summary judgment. 4 AA 935-938, 5 AA 939-944. The District Court discussed issues of fact related to the truth of the Statement during the May 9, 2017, hearing on Ms. Patin’s February 10, 2017, motion for summary

judgment. 3 AA 601, 607. The Court specifically found issues of fact related to the truth or falsity of the Statement in its August 17, 2017, Order denying Ms. Patin's May 30, 2017, Motion for Summary Judgment. 5 AA 939-944. Notably, Ms. Patin's October 16, 2015, Special Motion to Dismiss and May 24, 2016, Renewed Special Motion to Dismiss were both denied by the District Court on the grounds that the truth or falsity of Defendants' Statement is a question for the jury. 2 AA 345-348, 2 AA 452-455.

The District Court ultimately granted Ms. Patin's August 7, 2020, motion for judgment on the pleadings, or in the alternative, motion for summary judgment based on Dr. Lee's deposition testimony. 6 AA 1235-1250. The Respondents deposed Dr. Lee on July 14, 2020. 5 AA 976-1025. During Dr. Lee's deposition, Dr. Lee admitted that separate, individual portions of the Statement, standing alone and out of context, were true. Ms. Patin presented Dr. Lee's July 14, 2020, deposition testimony to argue that the entire Statement is true.

Q. Well, let's go break this up as to what part you believe to be untrue. This was,

in fact, a dental malpractice wrongful death action, correct?

A. Yes

Q. There was a plaintiff's verdict of 3.4 million, correct?

A. I don't know the amount.

Q. Okay. Do you believe that to be untrue, 3.4 million?

A. I don't know the amount.

Q. Okay. Description, Singletary versus Ton Vinh Lee, DDS, et. al. that was the

caption on the complaint, correct?

A. I believe so.

Q. Okay. It was a dental malpractice-based wrongful death action that arose from the death of Reginald Singletary, correct?

A. That is correct.

Q. It was following –his death did follow the extraction of the No. 32 wisdom tooth by defendants, correct?

A. This is correct.

. . . Objection made by Plaintiff’s counsel. . .

Q: And the extraction took place on April 16th, 2011 correct?

A. As far as I can recall based on this, yes.

Q. Okay. And the plaintiff did sue the dental office of Summerlin Smiles, correct?

A. That’s correct.

Q: And the plaintiff did sue the owner, Ton Vinh Lee, DDS, correct?

A. That’s correct.

Q. And the plaintiff did sue treating dentists Florida Traivai, DMD, and Jai –is it Jai Park, DDS?

A. Jai Park, yes.

Q. And the plaintiff did sue on behalf of the estate, herself, and minor son, correct?

A. That is correct.

Q. So what part of the statement is untrue?

A. It’s the whole or the sum and not just the parts.

5 AA 989-990. However, Dr. Lee maintained during the deposition and throughout this litigation that the Statement, in its entirety and read in context, is false and defamatory. 5 AA 990. During the oral argument on September 15, 2020, counsel for Dr. Lee emphasized that when Dr. Lee was asked by Ms. Patin’s counsel what portion of the statement is untrue, he responded “[i]t’s the whole or the sum and not just the parts. 8 AA 1640-1641.



## **VI. SUMMARY OF ARGUMENT**

This appeal asks the Court to reverse the District Court's Order granting Ms. Patin's August 7, 2020 motion for judgment on the pleadings, or in the alternative, motion for summary judgment due to several issues of material fact regarding the truth of the Statement.

First, Dr. Lee argues that several issues of material fact regarding the truth of the Statement preclude summary judgment. The District Court granted summary judgment finding that Dr. Lee's deposition testimony admitting the truth of individual, out-of-context portions of the Statement amounted to an admission of the truth of the entire Statement. Dr. Lee asks the Court to find that the Statement must be reviewed in its entirety and in context in order to properly determine whether it is true. The District Court has previously denied dispositive motions filed by Ms. Patin based on substantially these same facts regarding the Statement admitted by Dr. Lee in his deposition. In addition, the truth or falsity of an alleged defamatory statement is a jury question; the District Court has also made this holding more than once in this litigation. Further, Ms. Patin kept the Statement published on patinlaw.com during a period when the Statement was false in its entirety.

Next, Dr. Lee argues that the Statement cannot be protected by the fair report privilege because the Statement incorrectly represented the complete verdict in Singletary, and as a result is not a fair and accurate report of the Singletary

verdict. Application of the fair report privilege to the Respondents' false and defamatory Statement is in contradiction of the requirement of a "fair and accurate report" as well as the policies underlying the application of the fair report privilege. Specifically, the fair report privilege rests upon (1) "the policy that Nevada citizens have a right to know what transpires in public and official legal proceedings," (2) the "public policy of securing to attorneys as officers of the court the utmost freedom in their efforts to obtain justice for their clients," and (3) the policy . . . that **in certain situations** the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege by making false and malicious statements." Adelson v. Harris, 133 Nev. 512, 515 402 P.3d 665, 667 (2017) (quoting Lubin v. Kunin, 117 Nev. 107, 114, 17 P.3d 422, 427 (2001)); Bull v. McCuskey, 96 Nev. 706, 712, 615 P.2d 957, 961 (1980); Circus Circus Hotels v. Witherspoon, 99 Nev. 56, 61, 657 P.2d 101, 104-5 (1983) (emphasis added).

## **VII. LEGAL ARGUMENT**

### **A. THIS COURT SHOULD REVERSE THE DISTRICT COURT'S ORDER GRANTING INGRID PATIN'S MOTION FOR SUMMARY JUDGMENT DUE TO SEVERAL ISSUES OF MATERIAL FACT AS TO THE TRUTH OF THE STATEMENT**

The standard of review for an order granting summary judgment is *de novo*. Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002). Under NRCP 56(a), the court shall grant summary judgment only if the movant

shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 442-3 (1993). When considering the record for summary judgment, the court must view the evidence in a light most favorable to the nonmoving party. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). To overcome a moving party's claim that no material question of fact exists, the nonmoving party must present admissible evidence from the record and identify specific facts to establish that there is a genuine issue of fact which must be determined at trial. Wood v. Safeway, Inc., 121 Nev. 724, 732, 121 P.3d 1026, 1032 (2005). "Summary judgment is necessarily foreclosed if there is the slightest doubt as to the operative facts." Sawyer v. Sugarless Shops, 106 Nev. 265, 267, 792 P.2d 14, 15 (1990) (citing Mullis v. Nevada National Bank, 98 Nev. 510, 654 P.2d 533 (1982)).

This Court should reverse the District Court's order granting Ingrid Patin's Motion for Summary Judgment for any one of several reasons demonstrating that there remain genuine issues of material fact regarding the truth of the Statement.

**1. The District Court Erred in Finding that the Statement Was True Because An Alleged Defamatory Statement Must Be Read in Context and in Its Entirety to Determine Whether It is True**

First, this Court should reverse the District Court's order granting summary judgment because Ms. Patin's Statement as a whole is false with respect to Dr. Lee. During Dr. Lee's July 14, 2020, deposition, Ms. Patin's counsel reviewed each line of the Statement individually and out of context to elicit piecemeal responses from Dr. Lee regarding the truth of each line alone. 5 AA 989-990. The District Court granted Ms. Patin's motion for summary judgment based on this testimony. 8 AA 1636-1640. However, Dr. Lee has not alleged that each individual line, standing on its own, amounts to defamation *per se*. Dr. Lee's defamation *per se* claim is based on the Statement in its entirety. As stated by counsel during the hearing on Ms. Patin's Motion to Dismiss and by Dr. Lee during his deposition, although individual portions of the Statement may be true, the Statement as a whole is false. 8 AA 1640-1641. Read in its entirety, the Statement conveys a false representation of the verdict in Singletary.

It is well-settled that alleged an alleged defamatory statement must be reviewed in context and in its entirety in order to determine whether it is capable of defamatory construction. See Chowdhry v. NLVH, Inc., 109 Nev. 478, 484, 851 P.2d 459, 463 (1993) (citing Branda v. Sanford, 97 Nev. 643, 646-47, 637 P.2d 1223, 1226 (1981)). In Chowdhry, this Court considered statements made by

NLVH, Inc. that Dr. Bassir A. Chowdhry “‘failed to come’ or ‘would not respond’ to NLVH to treat his patient.” Dr. Chowdhry claimed that these statements charged him with patient abandonment and amounted to defamation *per se*. The Court in Chowdhry ultimately found that, taken in context, the statements were not capable of defamatory construction because “the statements were made by the respondents to hospital personnel and other interested parties (e.g., the patient’s mother), in the context of reporting what was reasonably perceived to be Dr. Chowdhry’s refusal to treat the patient at NLVH.” This Court recognized in Chowdhry that although the respondents’ statements by themselves could not be deemed defamatory, “words do not exist in isolation” and “must be reviewed in their entirety and in context to determine whether they are susceptible of defamatory meaning.” Id.

Following this Court’s reasoning in Chowdhry, Dr. Lee argues that the Respondents’ Statement must be reviewed in context and in its entirety in order to determine whether the Statement is true. This is not a far leap from this Court’s considerations in Chowdhry, where the Court acknowledged that the entire alleged defamatory statement must be considered in order to determine whether a statement had defamatory meaning. Here, while individual lines of the Statement may have been true, each of these lines “do not exist in isolation,” but instead have been put together and published on patinlaw.com. See id. The average person

reading the Statement will not read individual portions of the Statement on their own. The average reader will view the Statement in its entirety and in the context of patinlaw.com. When read in its entirety, the Statement conveys to the average reader that Dr. Lee, in his personal capacity, is among the Singletary defendants who were found liable in the wrongful death action.

As a result, the truth of individual portions of the Statement is not enough to render the entire Statement true. Read as a whole, the Statement presents a false and inaccurate report of the Singletary verdict. The Statement lists the name of each Singletary defendant, including Dr. Lee, and reports that a \$3.4 million verdict was received in a dental malpractice/wrongful death action. In doing so, the Statement incorrectly presents that Dr. Lee was found liable in the wrongful death action. This is false. As written, the Statement omits key information regarding the Singletary verdict that Dr. Lee was found to have no liability and instead received a judgment in his favor. While portions of the Statement may be true when read individually, the Respondents' omission of certain details of the verdict regarding the identity of the liable parties and of the fact that Dr. Lee received a verdict in his favor rendered the Statement false with respect to Dr. Lee. As a result, Ms. Patin's complete Statement imputes to Dr. Lee a lack of fitness for his profession as a dentist and as a business owner.

For these reasons, Dr. Lee asks this Court to reverse the District Court's Order granting Ms. Patin's motion for summary judgment because the Statement must be considered in its entirety and in context to determine whether it is true.

**2. The District Court Erred in Finding That There Are No Issues of Material Fact Because The District Court Has Previously Denied Patin's Dispositive Motions Based on Substantially the Same Information Upon Which the October 30, 2020, Order is Based**

The District Court granted Ms. Patin's Motion for Summary judgment due to Dr. Lee's deposition testimony agreeing that individual portions of the Statement, read on their own, were true. However, the District Court has also used substantially the same information to deny Ms. Patin's prior dispositive motions. Dr. Lee's deposition testimony presented no new information regarding the Statement to the District Court record. The District Court already had notice of the contents of the entire Statement, as well as the trial reports upon which Ms. Patin claims they were based, by virtue of the pleadings and Ms. Patin's prior motions. With knowledge of the Statement's contents, the District Court denied Plaintiff's dispositive motions filed on September 8, 2015, October 16, 2015, January 27, 2016, May 24, 2016, and May 30, 2017.

Notably, during the May 9, 2017, hearing on Ms. Patin's February 10, 2017, motion for summary judgment, the District Court denied the motion due to issues of fact. In reaching its conclusion, the District Court acknowledged that even though each portion of the Statement may be true standing on its own, the

Statement read in its entirety would lead the average person to incorrectly believe that Dr. Lee, in his personal capacity, was found liable for a wrongful death the Singletary case:

MR. LARSEN: Are you saying that there's an issue of fact there?

THE COURT: Yeah.

MR. LARSEN: And how is that issue of fact presented by anything presented by the other side?

THE COURT: Well –

MR. LARSEN: Because everything we presented shows that every factual statement – or every statement in that paragraph is factually accurate. So what evidence have they presented to make this an issue of fact?

THE COURT: It just – **as I read this, I think it would imply to a layperson, that “following the extraction of the number 32 wisdom tooth by the Defendants,” to me that would imply to a person reading this that Dr. Lee was found guilty of negligence for this death in relation to extracting that tooth. Dr. Lee specifically was found to be not negligent.**

....

MR. LARSEN: Nevertheless, it's an accurate summary of the Complaint.

MS. MORRIS: Uh-huh.

THE COURT: It may be, but it doesn't say that it's a summary of the Complaint because very specifically, the next sentence talks about the Complaint, thus implying as a person reading this – if you were going to parse this out linguistically, the first sentence doesn't say anything about the Complaint. It's a factual statement stating that “this arose out of the wrongful death of Reginald Singletary during the extraction of his number 32 wisdom tooth by Defendants.”

It doesn't say that it was alleged that it was by Defendants. It doesn't say one or more of the Defendants. It says by Defendants. Then the very next sentence says the Complaint – “the Plaintiff sued.” That's where it makes clear who the Plaintiff sued. **It never says who they got the verdict against, which is another problem.**



**It's just like by omission when you say by Defendants and then the Complaint alleges against these people, I mean, to me, can a reasonable person read it that way?** I don't know. It's going to be up to him to prove. I have no idea if anybody ever told him I read that and I said, okay, I don't want Dr. Trinh – or Dr. Lee, you're not finishing my dental work.

3 AA 601, 607.

During the hearing on the February 10, 2017, Motion, the Court had evidence regarding the truth of each portion of the Statement. This is substantially the same evidence presented in Dr. Lee's deposition testimony, where the Statement was reviewed line-by-line. Despite the District Court's prior findings and ruling on the February 10, 2017, Motion, the District Court has now determined that the line-by-line review of the Statement during Dr. Lee's deposition warrants summary judgment. Trial judges are to exercise great caution in granting summary judgment, which is not to be granted if there is the slightest doubt as to the operative facts. Posadas, 109 Nev. at 452 (citing Mullis, 98 Nev. at 512). The fact that the District Court has now both denied and granted these dispositive motions based on the same facts contained in the Statement is further indicative that there remain genuine issues of material fact that preclude summary judgment.

**3. The District Court Erred in Ruling on The Truth or Falsity of the Statement Because The Truth or Falsity of an Alleged Defamatory Statement is a Jury Question**

This Court should also reverse the District Court's Order granting summary judgment because the Statement was never reviewed by a jury for its truth or falsity. It is well-settled that "the truth or falsity of an allegedly defamatory statement is an issue of fact properly left to the jury for resolution." Posadas, 109 Nev. at 453 (citing Mullis, 98 Nev. at 512). The District Court even relied on Posadas in this litigation on two separate occasions. In the Court's February 4, 2016, Order denying Ms. Patin's Special Motion to Dismiss and in its September 29, 2016, Order denying Ms. Patin's Renewed Special Motion to Dismiss, the Court cited Posadas in finding that "the truth or falsity of an alleged defamatory statement is an issue for the jury to determine." 2 AA 346, 2 AA 453.

This Court further stated in Chowdhry that "[a] jury question arises when the statement is susceptible of different meanings, one of which is defamatory." Chowdhry 109 Nev. at 484 (citing Branda, 97 Nev. at 646). Dr. Lee has alleged defamation *per se* on the grounds that Ms. Patin's Statement imputes to him a lack of fitness for his profession as a dentist and as a business owner. As discussed above, the District Court has also acknowledged that the Statement read in its entirety implies that Dr. Lee was found liable in the wrongful death action when it denied Ms. Patin's February 10, 2017, motion. Based on this information, the Statement is clearly susceptible to defamatory construction to warrant review by a jury. See id.

The District Court's only basis for departing from its own prior rulings and the rulings of this Court was Dr. Lee's deposition testimony regarding the truth of individual lines of the Statement. However, Dr. Lee's deposition testimony presented no new information to the District Court record regarding the truth or falsity of the full Statement, as the contents of the Statement were already in the Court record by virtue of the pleadings. Instead, Dr. Lee maintained that the Statement read as a whole was false. As a result, the Court should reverse the Order granting summary judgment because the truth or falsity and defamatory construction of the Statement must be reviewed by a jury.

**4. The District Court Erred in Finding that the Statement was True Because Ingrid Patin's Statement Was False at the Time It Was Published**

Ms. Patin claims that her Statement reported the verdict issued in the Singletary case. However, the adverse verdicts against the other Singletary defendants had been vacated while the Statement remained published on patinlaw.com, which means that the Statement was false while Ms. Patin kept the Statement published.

After the jury in Singletary issued its January 22, 2014, verdict against Summerlin Smiles and Dr. Traivai (the other Singletary defendants) Summerlin Smiles and Dr. Traivai filed motions for judgment as a matter of law on May 13, 2014. 1 AA 5-29. The Singletary Court granted both motions for judgment as a

matter of law on July 16, 2014 and vacated the January 22, 2014 verdict against Summerlin Smiles and Dr. Traivai. 1 AA 182-194. The Supreme Court ultimately reinstated the January 22, 2014, verdict against Summerlin Smiles and Dr. Traivai on October 17, 2016. 2 AA 469-473. However, the Statement remained published on patinlaw.com even after the January 22, 2014, verdict had been vacated. Regardless, there was no adverse verdict or judgment against any of the Singletary defendants between July 16, 2014 and October 17, 2016, and Ms. Patin kept the Statement published during this time.

In addition, Dr. Lee never received an adverse verdict in the Singletary case, and instead received a verdict in his favor with an award for costs from the Singletary plaintiffs. 1 AA 1-5, 1 AA 195-196. Regardless of this fact, Defendant's Statement, read as a whole, indicates that the Singletary plaintiffs recovered a \$3.4 verdict from all named defendants in the Singletary case. The Statement fails to specify that Dr. Lee actually received a verdict in his favor and was not among the Singletary defendants who received adverse verdicts. The Statement was also completely false with respect to Dr. Lee at the time it was published on Defendants' website.

As a result, the Court should reverse the Order granting summary judgment because the Statement was published on the Respondents' website during a time when it was false with respect to all Singletary defendants.

**B. THIS COURT SHOULD REVERSE THE DISTRICT COURT’S ORDER GRANTING INGRID PATIN’S MOTION FOR SUMMARY JUDGMENT BECAUSE THE STATEMENT WAS NOT AN ACCURATE, COMPLETE, OR FAIR REPORT OF THE SINGLETARY VERDICT AND THE FAIR REPORT PRIVILEGE DOES NOT APPLY**

The standard of review for an order granting summary judgment is *de novo*.

Pegasus, 118 Nev. at 713. In applying the fair report privilege, Nevada courts have followed the language of the Restatement (Second) of Torts, which provides:

The publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged **if the report is accurate and complete or a fair abridgement of the occurrence reported.**

Restat. 2d of Torts, § 611 (1997) (emphasis added); see Sahara Gaming Corp., 115 Nev. 212; see also Wynn v. AP, 136 Nev. Adv. Rep. 70, 475 P.3d 44, 47-8 (2020).

Application of the privilege requires the Court to determine whether a report or statement is fair, accurate, and impartial. Lubin v. Kunin, 117 Nev. 107, 114, 17 P.3d 422, 427 (2001). The privilege “extends to any person who makes a republication of a judicial proceeding from material that is available to the general public.” Sahara Gaming Corp., 115 Nev. at 215. Later, the Court in Adelson applied the Dameron test to apply the privilege to reports that are written in a manner that the average reader would understand that the report is a summary of

an official document or proceeding based on specific attributions in the report or the overall context of the report. Adelson, 133 Nev. 512.

On appeal, Dr. Lee argues that the Statement cannot be protected by the fair report privilege because the Statement incorrectly represented the complete verdict in Singletary, and as a result is not a fair and accurate report of the Singletary verdict. Application of the fair report privilege to the Statement is in contradiction of the policies upon which the fair report privilege is based. One of the policies underlying the fair report privilege in Nevada is the right of the public to know what occurs in public and official proceedings. The Court in Adelson discussed the privilege, stating that “the 'fair, accurate, and impartial' reporting of judicial proceedings is privileged and nonactionable . . . **affirming the policy that Nevada citizens have a right to know what transpires in public and official legal proceedings.**” Adelson, 133 Nev. at 515 (quoting Lubin, 117 Nev. at 114); see also Sahara Gaming Corp., 115 Nev. at 215. The Statement was held out to be a report of the verdict in Singletary made by the attorney and/or firm that represented the plaintiff in Singletary. As the attorney who represented the plaintiff in Singletary and obtained the verdict upon which the Statement was based, the average reader would expect Ms. Patin to have provided an accurate report of the verdict. However, the Statement did not accurately report the verdict because it did not report the complete verdict with respect to all defendants listed in the Statement.

Instead, the Statement identified Dr. Lee by name and omitted the portion of the verdict that found no liability against Dr. Lee personally. Dr. Lee was never found liable in the wrongful death case, and he instead received a judgment in his favor. As a result, the Statement read as a whole is false with respect to Dr. Lee.

Next, although the privilege has been applied to “any person who makes a republication of a judicial proceeding from material that is available to the general public,” Ms. Patin and PLG were not just any people. The role of the Respondents as the plaintiffs’ counsel in the case that was being reported by their Statement heightens the standard for application of the fair report privilege to the Respondents’ Statement. The Court has recognized that the public interest in having people speak freely may not always outweigh the risk of false and malicious statements, as “[t]he policy underlying the privilege is that **in certain situations** the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege by making false and malicious statements.” Circus Circus Hotels, 99 Nev. at 61 (emphasis added). When considering application of the fair report privilege to statements made by attorneys, this Court has recognized that “[t]he privilege rests upon a public policy of securing to attorneys as officers of the court the utmost freedom in their efforts to obtain justice for their clients.” Bull, 96 Nev. at 712. In Bull, the Court considered

defamatory statements made by an attorney *during* a medical malpractice case in defense of a client.

Unlike the attorney in Bull whose defamatory statements were made in defense of his client during an ongoing case, the Respondents' Statement was made after the regarding the Singletary verdict was issued as an advertisement of their legal services. The Statement at issue does not concern the Respondents' ongoing procurement of justice for their client. Instead, the Statement was made in the Respondents' efforts to attract future clients and generate future business. The Respondents' interest in advertising does not outweigh the actual harm to Dr. Lee's reputation as a result of the false and defamatory Statement. The policies underlying the fair report privilege are in favor of applying a heightened standard to published reports made by attorneys regarding cases in which they played an active role. As a result, the Respondents' false and defamatory Statement cannot be protected by the fair report privilege.

### **VIII. CONCLUSION**

In summary, several issues of material fact regarding the truth of the Statement preclude summary judgment and application of the fair report privilege. This Court should reverse the District Court's Order granting Ms. Patin's August 7, 2020 motion for judgment on the pleadings, or in the alternative, motion for summary judgment, based upon (1) the need to review the Statement in its entirety



and in context in order to properly determine whether it is true; (2) the issues of material fact presented by the District Court's previously denial of Ms. Patin's dispositive motions based on substantially the same facts it used to grant Ms. Patin's August 7, 2020, motion; (3) case law stating that the truth or falsity of an alleged defamatory statement is a jury question; (4) the falsity of the Statement while it was published on the Respondents' website; and (5) the District Court's misapplication of the fair report privilege.

## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface in 14-point Times New Roman font.

2. I further certify that this opening brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 point or more, consists of no more than 30 pages and contains no more than 14,000 words.

3. I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 21st day of July, 2021.

**RESNICK & LOUIS, P.C.**

*/s/ Prescott Jones*

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