

IN THE SUPREME COURT OF THE STATE OF NEVADA

TON VINH LEE,

Appellant,

v.

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

Respondent.

Supreme Court Case No.: 82516

District Court Case No. A-18-
723134-C
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APPELLANT'S APPENDIX VOLUME 2 PART 1

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Dated this 21st day of July, 2021.

RESNICK & LOUIS, P.C.

/s/ Prescott T. Jones

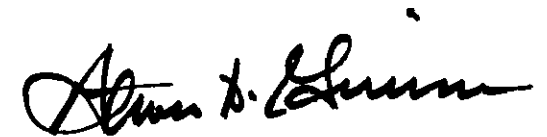
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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

TON VINH LEE, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO. A-15-723134
DEPARTMENT NO. IX

**SPECIAL MOTION TO DISMISS
PURSUANT TO NEVADA REVISED
STATUTE 41.635-70 OR IN THE
ALTERNATIVE MOTION TO DISMISS
PURSUANT TO NRS 12(b)(5)**

Defendants, Ingrid Patin and Patin Law Group, PLLC (hereinafter, "Defendants"), by and through their counsel of record, Christian M. Morris, Esq. of the Nettles Law Firm, hereby submits this Motion to Dismiss pursuant to NRS 41.635-70 (Nevada Anti-SLAPP statute) or in the alternative a Motion to Dismiss Pursuant to NRS 12(b)(5) and hereby move for dismissal of Plaintiff's Complaint and for an award of costs and attorney fees..

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NETTLES LAW FIRM
1389 Galleria Drive, Suite 200
Henderson, NV 89014
702.434.8282 / 702.434.1488 (fax)

1 This Motion is made and based upon the papers and pleadings on file with the Court, the
2 exhibits attached hereto, the following Memorandum of Points and Authorities, and any oral
3 argument the Court may entertain at the hearing on the Motion.

4 Dated this 16th day of October, 2015.

5 **NETTLES LAW FIRM**

6
7 /s/ Christian Morris
8 Christian M. Morris, Esq.
9 Nevada Bar No. 011218
10 1389 Galleria Drive, Suite 200
11 Henderson, NV 89014
12 Attorneys for Defendants

13 **NOTICE OF MOTION**

14 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

15 PLEASE TAKE NOTICE that Defendants will bring the instant SPECIAL MOTION
16 TO DISMISS PURSUANT TO NEVADA REVISED STATUTE 41.635-70 OR IN THE
17 ALTERNATIVE MOTION TO DISMISS PURSUANT TO NRS 12(b)(5) on for hearing before
18 the above-entitled Court on the 18 day of NOVEMBER, 2015, at the hour of
19 9:00A a.m. of that day, or as soon thereafter as counsel may be heard.

20 Dated this 16th day of October, 2015.

21 **NETTLES LAW FIRM**

22
23 /s/ Christian Morris
24 Christian M. Morris, Esq.
25 Nevada Bar No. 011218
26 1389 Galleria Drive, Suite 200
27 Henderson, NV 89014
28 Attorneys for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants move this Court to dismiss Plaintiff's complaint and award attorney's fees and costs as provided by Nevada's anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, NRS 41.635, et. seq. This case addresses an allegation of libel brought by Ton V. Lee, DDS, a dentist and owner of Ton V. Lee, DDS, PC doing business as Summerlin Smiles. The allegation arises from a short statement on the website of Patin Law Group, PLLC. The statement concerns a lawsuit currently under appeal in which a \$3,470,000 jury verdict was awarded to plaintiffs in a dental malpractice case. In the case, a jury returned a verdict that Florida Traivai, DMD and Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles were negligent and liable for the death of a patient. That verdict was vacated by the judge in the matter following the Court's ruling on a Judgment as a Matter of Law pursuant to NRCP 50(b). The order to vacate the jury award, as well as others, are now up on appeal before the Supreme Court of Nevada. Prior to the verdict, all claims against Ton Vinh Lee, DDS in his personal capacity were dismissed. Accordingly, the verdict came down against Ton V. Lee, DDS PC (doing business as Summerlin Smiles) and one treating dentist. The issue here is whether the statement made about this jury verdict is false and defamatory. Below is the statement:

DENTAL MALPRACTICE/WRONGFUL DEATH – PLAINTIFF'S VERDICT, 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.

This matter is on appeal.

1
2 Based on reasons given below, the Plaintiff's allegations of defamation, more
3 specifically libel, fail as a matter of law. Significant protections exist in the law to protect the
4 right to free speech and these protections, including Nevada's Anti-SLAPP statute, significantly
5 limit the situations in which a person is liable for defamation.

6 Accordingly, Defendants move this court to GRANT this Special Motion to Dismiss and
7 award statutory costs and attorney fees pursuant to NRS 41.635-70. In the alternative,
8 Defendants move for this court to dismiss this case matter pursuant to 12(b)(5) and award fees
9 and costs incurred by Defendants for having to bring this motion; based on the fact the
10 statement on the website is true and Dr. Ton Vinh Lee has testified under oath that he is the
11 owner of Summerlin Smiles.

12 II.

13 BRIEF PROCEDURAL HISTORY

14 On or about August 17, 2015, Plaintiff commenced the instant action through the filing
15 of a Complaint against Ingrid Patin, an individual, and Patin Law Group, PLLC, a Nevada
16 Professional LLC in the Eighth Judicial District Court. Thereafter, Plaintiff attempted service
17 of the Summons and Complaint on Defendant Patin Law Group, PLLC on or about August 19,
18 2015 by leaving a copy of the Summons and Complaint with a receptionist at Regus Las Vegas.
19 On or about September 16, 2015, Plaintiff properly served Defendant Ingrid Patin with a copy
20 of the Summons and Complaint.
21

22 On September 8, 2015, Defendants filed a Motion to Dismiss Plaintiff's Complaint.
23 Plaintiff filed an Opposition on September 25, 2015, to which Defendants replied on October 6,
24 2015. The matter came on for hearing before this honorable court on October 14, 2015. At that
25 time, the Motion to Dismiss was denied, without prejudice.

26 Defendants now file the instant Special Motion to Dismiss Plaintiff's Complaint,
27 pursuant to Nevada's Anti-SLAPP statute or in the alternative ask this court to dismiss the
28 matter with prejudice pursuant to NRCP 12(b)(5).

III.

STATEMENT OF FACTS AND RELEVANT BACKGROUND

The underlying case, of which the instant matter is based, involved a Complaint for dental malpractice brought by Plaintiff Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a minor, for the wrongful death of Reginald Singletary following dental surgery to extract a wisdom tooth. Plaintiff Svetlana Singletary commenced the action through the filing of an original Complaint in the Eighth Judicial District Court on or about February 7, 2012. The Complaint named Ton Vinh Lee, DDS, Florida Traivai, DMD, Jai Park, DDS and Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles as Defendants. (See Caption, attached hereto as **Exhibit A**).

The action came on for trial before the Eighth Judicial District Court and a jury on January 13, 2014. At the conclusion of the trial of the matter, the jury rendered a verdict in favor of Plaintiffs in the amount of Three Million Four Hundred Seventy Thousand Dollars and Zero Cents (\$3,470,000.00) as follows: that Plaintiff, Svetlana Singletary, individually, be awarded the sum of Nine Hundred Eighty Five Thousand Dollars and Zero Cents (\$985,000.00) and that Plaintiff, Gabriel Singletary, a minor, be awarded the sum of Two Million Four Hundred Eighty Five Thousand Dollars and Zero Cents (\$2,485,000.00). Having found for the Plaintiffs and against Defendants, Florida Traivai, DMD and Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles, the jury further found that the percentage of negligence on the part of Decedent Reginald Singletary which was the proximate cause of Decedent Reginald Singletary's injury was twenty five percent (25%), the percentage of negligence on the part of Defendant, Florida Traivai, DMD, which was the proximate cause of Decedent Reginald Singletary's injury was fifty percent (50%), and the percentage of negligence on the part of Defendant Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles, which was the proximate

1 cause of Decedent Reginald Singletary's injury, was twenty five percent (25%). (See Special
2 Verdict Form attached hereto as **Exhibit B**). Plaintiff Svetlana Singletary filed a Memorandum
3 of Costs and Motion for Award of Costs on February 3, 2014. The Court granted in part
4 Plaintiff's Motion for Award of Costs and Defendant Florida Traivai, DMD's Motion to Re-tax
5 Costs, and awarded Plaintiff Svetlana Singletary her costs of Thirty Eight Thousand Forty Two
6 Dollars and Sixty Four Cents (\$38,042.64), as the prevailing party under Nevada Revised
7 Statute 18.020. (See Order, attached hereto as **Exhibit C**). Plaintiff Svetlana Singletary
8 subsequently filed a Judgment on Jury Verdict. (See Judgement of Jury Verdict attached hereto
9 as **Exhibit D**).

11 In February, 2014, the Trial Reporter of Nevada published the jury verdict in its monthly
12 publication. (See The Trial Reporter of Nevada, attached hereto as **Exhibit E**).
13 Following the favorable jury verdict, Ingrid Patin of Patin Law Group, PLLC posted the jury
14 verdict on her website, including the case name [Singletary v. Ton Vinh Lee, DDS, et al.] and
15 information regarding the nature of the case and damages. Specifically, the statement at issue
16 reads as follows:

18 DENTAL MALPRACTIC/WRONGFUL DEATH – PLAINTIFF'S
19 VERDICT, 2014

20 DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.

21 A dental malpractice-based wrongful death action that arose out of the
22 death of Decedent Reginald Singletary following the extraction of the No.
23 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued
24 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.

This matter is on appeal.

25 (See Website Post attached hereto as **Exhibit F**).

26 In the Fall 2014, the Nevada Legal Update also published the jury verdict and case
27 summary in its quarterly publication. (See The Nevada Legal Update, attached hereto as
28 **Exhibit G**).

1 When performing a google search of “Nevada jury verdicts singletary,” the Supreme
2 Court of the State of Nevada has the judgment upon jury verdict listed. (See Google Search,
3 attached hereto as **Exhibit H**).

4 An Appeal was filed in the underlying matter on behalf of Plaintiff Svetlana Singletary,
5 individually, and as the Representative of the Estate of Reginald Singletary, and as parent and
6 legal guardian of Gabriel L. Singletary, a minor, on or about August 8, 2015. (See Case Appeal
7 Statement, attached hereto as **Exhibit I**). A Cross-Appeal was subsequently filed in the
8 underlying matter on behalf of Ton Vinh Lee, DDS and Ton V. Lee, DDS, Prof. Corp. d/b/a
9 Summerlin Smiles. (See Case Appeal Statement (Cross-Appeal) dated September 11, 2015 and
10 Case Appeal Statement (Cross-Appeal) dated October 7, 2015, attached hereto as **Exhibit J**).
11 The underlying matter is currently on appeal before the Supreme Court of Nevada.
12

13 **III.**

14 **LEGAL ARGUMENT**

15 **A. NRS 41.660 “Special” Motion to Dismiss**

16 A NRS 41.660 special motion is a procedural mechanism, not a separate cause of action.
17 John v. Douglas County School District, 125 Nev. 746, 219 P.3d 1276, (2009). A SLAPP lawsuit
18 is characterized as “a meritless suit filed primarily to chill the defendant’s exercise of First
19 Amended rights.” John v. Douglas Cnty. Sch. Dist., 125 Nev. 746, 752, 219 p.3d 1276, 1280
20 (2009) (citing Dickens v. Provident life and Acc. Ins. Co., 117 Cal. App. 4th 705, 11 Cal. Rptr.
21 3d 877, 882 (Ct. App. 2004)).

22 It is designed to prevent wasteful and abusive litigation by requiring the Plaintiff to make
23 an initial showing of merit. Id. The showing is quite high, in fact, because the Plaintiff must
24 establish by clear and convincing evidence the probability of prevailing on the claim. NRS.
25 41.660(3)(b). Short of this strong showing, the special motion to dismiss must be granted and
26 costs, fees, and attorney’s fees awarded to the Defendant. NRS 41.670.

27 The District Court must treat a special motion to dismiss as a motion for summary
28 judgment, and if granted, as an adjudication on the merits. NRS 41.660(3)-(4); John, 125 Nev. at

1 753, 219 p.3d at 1281. The appropriate standard of review for a denial of a special motion to
2 dismiss is the same as for a grant of summary judgment: de novo. See Wood v. Safeway, Inc.,
3 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

4 Pursuant to NRS 41.660 a special motion to dismiss must be filed within 60 days after
5 service of the Complaint and the Court must rule on the Motion within 7 judicial days after the
6 motion is served on the Plaintiff. In this matter, the special motion to dismiss has been timely
7 filed, as Plaintiff was properly served on September 16, 2015.

8 **a. Burden Shifting in the Special Motion to Dismiss**

9 When filing a special motion to dismiss, the Defendant first needs to establish that
10 the communication in question was made (1) in furtherance of the right to petition, or (2) in
11 furtherance of the right to free speech in connection with an issue of public concern. NRS
12 41.660(3)(a). A statement is made in good faith and in furtherance of these rights when it is in
13 “direct connection with an issue under consideration by a . . . judicial body,” or when it is in
14 “direct connection with an issue of public interest . . . in a public forum.” NRS. 41.637.

15 Here, the statement describes a case that is still pending in the Nevada judicial
16 system. It alerts the public of an ongoing case that is currently on appeal by citing the case name,
17 giving a brief description of the nature of the case, and indicating the party’s to the case and their
18 respective roles. The statement does not provide opinion as to the wisdom of the verdict, the
19 likelihood of the outcome of the appeal, nor does it provide any commentary on the parties
20 involved. Rather, it is a factual description of the pending petition for redress.

21 Moreover, the statement directly addresses an issue of public interest. The
22 practice of dental medicine is an issue of public health and safety. It is of such interest to
23 Nevadans that State government places strict guidelines on those who can practice dentistry,
24 including requiring a license from the State before a dentist may practice in Nevada.
25 Accordingly, a lawsuit that involves allegations of malpractice by a state-licensed individual is
26 certainly a matter of public concern. The public is interested generally in such cases because it
27 goes to whether the requirements for licensure are sufficient, whether the State Board of
28 Dentistry is effectively vetting license applicants, and whether continual education requirements

1 are sufficient. This statement addresses the public concern by providing the names of parties
2 involved in a dental malpractice case, a jury verdict in the case, and notes that the case is on
3 appeal.

4 **b. Clear and Convincing Evidence**

5 After a defendant shows that the statement concerns a petition for redress or an
6 issue of public concern, the burden shifts to the Plaintiff. NRS 41.660(3)(b) requires the
7 Plaintiff to show by clear and convincing evidence a probability of prevailing on his claim. The
8 Plaintiff must present more than general allegations or conclusions for his showing of clear and
9 convincing evidence. John, 125 Nev. at 754, 219 P.3d at 1281. As Nevada's legislative history
10 under the anti-SLAPP statute indicates, clear and convincing evidence is a high burden to meet.
11 (See Minutes of Nevada Senate Judiciary Committee, March 28, 2013, attached hereto as
12 **Exhibit K** at p. 7).

14 This clear and convincing showing requires Plaintiff to provide clear and
15 convincing evidence as to all the essential elements of a defamation claim, including (1) falsity,
16 (2) defamatory construction, (3) publication to a third-party, (4) damages. When the Plaintiff
17 cannot establish his case by clear and convincing evidence, or if the Defendant otherwise shows
18 that it is entitled to judgment as a matter of law, dismissal is proper. Moreover, it requires clear
19 and convincing evidence as to defenses, such as privilege. In adopting this approach, the Nevada
20 Legislature intended a very high burden.

21 Here, Defendants are entitled to judgment as a matter of law because the Plaintiff
22 cannot meet his burden as detailed below.

23 *i. Prima Facie Case for Defamation*

24 The prima facie case for defamation is (1) a false statement, (2) reasonably
25 capable of defamatory construction, (3) unprivileged published to a third-party, in which the
26 Plaintiff suffered (4) actual or presumed damages. Failure of any of these elements is fatal to a
27 defamation claim.

28 *ii. Truth is an absolute defense*

1 Truth is an absolute defense to a defamation action. Pegasus v. Reno Newspapers,
2 Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002). Moreover, a statement is not defamatory if it
3 contains only minor inaccuracies and is thus “substantially true.” Id. Under the doctrine of
4 substantial truth relied on by the Nevada Supreme Court in Pegasus:

5 [M]inor inaccuracies do not amount to falsity unless the inaccuracies
6 would have a different effect on the mind of the reader from that which the
7 pleaded truth would have produced. Specifically, the court must determine
8 whether the gist of the story, or the portion of the story that carries the
9 ‘sting’ of the article, is true.

10 Pegasus, 115 Nev. at n. 17. Here, a portion-by-portion analysis indicates the entire statement is
11 true.

12 “DENTAL MALPRACTICE/WRONGFUL DEATH – PLAINTIFF’S
13 VERDICT, 2014”

14 This portion is true because there was verdict for plaintiff given in the case.

15 “DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.”

16 This portion is true because it is the appropriate abbreviation of the case name.

17 “A dental malpractice-based wrongful death action that arose out of the
18 death of Decedent Reginald Singletary following the extraction of the No.
19 32 wisdom tooth by Defendants on or about April 16, 2011.”

20 This portion is true because the action was a wrongful death case following an allegedly
21 faulty dental procedure.

22 “Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh
23 Lee, DDS, and the treating dentists, Florida Traivai, DDS and Jai Park,
24 DDS, on behalf of the Estate, herself and minor son.”

25 This portion is true because the plaintiff did sue these parties as named. The statement indicates
26 that Plaintiff sued “the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS.” This is
27 a true statement. “Summerlin Smiles” is a fictitious firm name used by Ton Vinh Lee, DDS, PC.
28 See Certificate of Business – Fictitious Firm Application and Secretary of State listing for Ton
V. Lee, DDS, PC, attached hereto as **Exhibit L**) That is, “Summerlin Smiles” and “Ton V. Lee,
DDS, PC” are synonymous. Stated another way “the dental office, Summerlin Smiles” was not a
business owned by Ton Vinh Lee, DDS, PC, it *was* Ton Vinh Lee, DDS, PC.

1 In fact, this is consistent with documents signed by Mr. Lee and by his own testimony at
2 trial. In a 2010 Clark County fictitious firm name filing, Mr. Lee signed as “President/Owner” of
3 Ton v. Lee, DDS, Prof. Corp.” doing business as Summerlin Smiles. Also, in his testimony
4 during trial, Mr. Lee confirmed that he was the “president and owner” of Summerlin Smiles:

5 Q. Dr. Lee, you’re the president and owner of Summerlin Smiles,
6 correct?

7 A. That’s correct.

8 . . .

9 Q. And the tooth extraction that was performed on [decedent] by
10 [treating dentists] was done at your clinic, Summerlin Smiles,
11 correct?

12 A. That’s correct.

13 (See Trial Testimony of Ton Vinh Lee, DDS, attached hereto as **Exhibit M**) By his own
14 admission at trial and in a county filing signed by him under penalty of perjury, Mr. Lee asserts
15 that he “owns” the dental office Summerlin Smiles. Accordingly, Mr. Lee should be estopped
16 from arguing to the contrary.

17 “This matter is on appeal.”

18 This portion is accurate because the case is currently on appeal.

19 Every portion of the statement is accurate. Even if it were not entirely true, it would still
20 certainly be substantially true under Pegasus. The “gist” of the statement is the same, whether
21 “Ton V. Lee, DDS” is, or is not, followed by a “PC.” Indeed, it seems unlikely that an ordinary
22 reader would know that “PC” made the rest of the name into an artificial business entity, rather
23 than a Dentist with multiple degrees or specialties.

24 The truth of the statement is an absolute defense to defamation and Defendants are
25 entitled to judgment as a matter of law.

26 *iii. Defamatory construction*

27 Dr. Lee cannot show a defamatory construction to the statement. A statement is
28 defamatory if it tends to lower the reputation of a person. The “reading” of a statement is to be

1 made as if by a “reasonable person,” and one should not seek to split-hairs or adopt a complex
2 construction. See, Pegasus, 118 Nev. at 715. Here, the statement does not insult or attack Dr.
3 Lee’s reputation, rather it accurately reports that he is the owner of a dental office where two
4 dentists had a jury verdict rendered against them.

5 The statement, in fact, takes steps to distinguish Dr. Lee’s involvement in the case, as an
6 “owner” of the clinic, from the involvement of the other two dentists, identified as “the treating
7 dentists.” No ordinary person reading the statement in its entirety could reasonably conclude that
8 the post was suggesting Dr. Lee was an unfit dentist or that he had personally committed
9 malpractice. The only reasonable conclusion that can be had from the statement is that Dr. Lee
10 owned a clinic where two dentists were sued and a jury verdict was rendered against the two
11 treating dentists and the clinic’s owner (as noted above, Dr. Lee has previously admitted that he
12 “owns” Summerlin Smiles).

13 Because the statement, read in its entirety, cannot reasonably be understood to demean
14 Dr. Lee or his fitness as a dentist, and cannot be understood to suggest that he committed
15 malpractice, it is not defamatory as to him.

16 *iv. Fair Report Privilege*

17 Nevada has long recognized a fair reporting privilege that absolutely privileges the “fair
18 and accurate” reporting of a judicial proceeding. Sahara Gaming Corp. v. Culinary Workers
19 Union Local 226, 115 Nev. 212, 215 (1999). Provided the report is “fair, accurate, and
20 impartial,” an *absolute* privilege protects publication by any person. Id. at 216.

21 Here, the statement is protected by the fair reporting privilege. The statement does not
22 include commentary, bias, or partisan interpretation—it is merely the recitation of public
23 information. As discussed above, the information, line-by-line, is true and a faithful recitation of
24 the outcome of a judicial proceeding. Because the statement was a fair and accurate reporting of
25 a judicial proceeding, it is absolutely protected by privilege.

26 *v. Damages in cases of multiple publications*

27 Damages cannot be presumed to come from a single publication when allegedly
28 defamatory information is available from multiple independent sources unrelated to the

1 publication at issue. Here, the information in the statement was published in at least three
2 different places by persons who obtained the information from a public source and not
3 Defendants. First, in February, 2014, the Trial Reporter of Nevada published the jury verdict in
4 its monthly publication. Second, in the fall 2014 Nevada Legal Update also published the jury
5 verdict and case summary in its quarterly publication. Third, a recent google search of “Nevada
6 jury verdicts Singletary,” returned a page maintained by the Supreme Court of the State of
7 Nevada that displays the judgment upon jury verdict listed.

8 Accordingly, because there were multiple publications independent of Defendants,
9 Plaintiff is unable to prove that any alleged damages came from Defendants’ publication to the
10 exclusion of all other potential sources.

11 *vi. Limited purpose public figure requires showing of actual malice*

12 In Nevada, a limited-purpose public figure is a person who “voluntarily injects
13 himself into a . . . public concern.” Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 720
14 (2009). Businesses that “actively advertise and seek commercial patronage” have frequently
15 been found to be public figures with respect to customer reviews in newspapers and on the
16 internet. Id. Accordingly, in Pegasus the Nevada Supreme Court held a restaurant was a public
17 figure with respect to customer reviews of its food and service. Id. at 721. Although it is not
18 clear how far the Nevada Supreme Court is willing to extend the limited-purpose public figure
19 doctrine, it seems clear that if a restaurant is a public figure with respect to customer reviews (a
20 rather trivial publication), the owner of an eponymously-named dental office would also be a
21 public figure, for reviews by customers and, presumably, in relation to a malpractice lawsuit
22 brought against dentists practicing in the office.

23 By owning a dental office, naming his professional corporation after himself, and
24 advertising himself personally on the dental office website, Dr. Lee has made himself a limited-
25 purpose public figure with respect to lawsuits associated with that dental office. Moreover, Dr.
26 Lee has continued to interject himself into the spotlight by filing a cross-appeal on behalf of
27 himself in the matter pending before the Supreme Court. Accordingly, Dr. Lee must prove by
28 clear and convincing evidence that the statement was made with actual malice.

1 To establish actual malice, Dr. Lee must prove that the statement was made with
2 knowledge or reckless disregard for its falsity. Pegasus, 118 Nev. at 722. However, he cannot
3 do so because Defendants did not knowingly make any false statement. Moreover, there is no
4 evidence to support a finding of recklessness—indeed, Dr. Lee himself reported that he owned
5 Summerlin Smiles. It seems strange to think that Mr. Lee could make a statement under penalty
6 of perjury and turn around and accuse Defendants of actual malice for making the same
7 statement.

8 **B. In the Alternative this Matter Should be Dismissed Pursuant to NRS 12(b)(5)**
9 **Due to Fact Dr. Ton Vinh Lee DDS is the Owner of Summerlin Smiles and**
10 **Was a Party to the Lawsuit**

11 a. Standard of Review

12 A complaint will not be dismissed for failure to state a claim upon which relief
13 can be granted unless it appears beyond a doubt that the plaintiff could prove no set of facts
14 which, if accepted by the trier of fact, would entitle him or her to relief. Simpson v. Mars, Inc.,
15 113 Nev. 188, 929 P.2d 966 (1997). If the court, taking Plaintiff's allegations at face value,
16 determines that the allegations fail to state a recognizable claim for relief, then dismissal is
17 appropriate. Morris v. Bank of America, 110 Nev. 1274, 886 P.2d 454 (1994); see also
18 Bratcher v. City of Las Vegas, 113 Nev. 502, 937 P.2d 485 (1997) (dismissal with prejudice is
19 proper when it appears beyond a reasonable doubt that the Plaintiff can sustain no action which
20 would entitle him or her to relief.). When the complaint shows on its face that the cause of
21 action is barred, the burden falls upon the plaintiff to satisfy the court that the bar does not exist.
22 Bank of Nevada v. Friedman, 82 Nev. 417, 420 P.2d 1 (1996). A motion to dismiss for failure
23 to state a claim, if sustained without leave to proceed further, results in a judgment on the
24 merits. Zalk-Josephs Co. v. Wells Cargo, Inc., 81 Nev. 163, 400 P.2d 621 (1965).

25 A 12(b)(5) motion to dismiss that asks to the court to look outside the pleadings is treated
26 as a Rule 56 motion for summary judgment. NRCP 12(b)(5), 56. The standard for determining
27 whether to grant a motion requires the Court view all evidence in the light most favorable to the
28

1 non-moving party, with all inferences settled in that party's favor. NRCP 56. When the evidence
2 pointed to by the parties demonstrates, however, that an essential element of a claim fails as a
3 matter of law, the motion should be granted and the claim dismissed. NRCP 56.

4 b. Legal Argument

5 Here, the statement posted by Defendants is *true* and not defamatory in nature.
6 (See "*truth is an absolute defense*" argument above) After a seven day trial in January, 2014,
7 the Plaintiffs in the underlying case were collectively awarded Three Million Four Hundred
8 Seventy Thousand Dollars and Zero Cents (\$3,470,000.00) by a jury. Both the Special Verdict
9 Form and Judgment on Jury Verdict clearly state that the award to Plaintiffs was against Ton V.
10 Lee, DDS, a Prof. Corp. d/b/a Summerlin Smiles. Defendants statement concerning this verdict
11 on their website reads:

13 DENTAL MALPRACTIC/WRONGFUL DEATH – PLAINTIFF'S
14 VERDICT, 2014

15 DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.

16 A dental malpractice-based wrongful death action that arose out of the
17 death of Decedent Reginald Singletary following the extraction of the No.
18 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued
19 the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and
20 the treating dentists, Florida Traivai, DDS and Jai Park, DDS, on behalf of
21 the Estate, herself and minor son.

22 This matter is on appeal.

23 This statement does not contain a defamatory factual assertion, as every fact contained
24 in the statement is *true*, and accurately depicts a judicial proceeding. Ton Vinh Lee, DDS is, in
25 fact, the owner of Summerlin Smiles; Ton Vinh Lee, DDS did in fact get sued in the underlying
26 matter; there was a verdict rendered in the wrongful death of Mr. Singletary; and, Ton Vinh
27 Lee, DDS is actively participating in a cross-appeal in the matter before the Supreme Court.

28 Based upon the fact that Plaintiff can prove no set of facts that would entitle him to relief
as Defendants' statement is true or substantially true, Plaintiff's Complaint should be dismissed
with prejudice and fees and costs should be awarded to Defendants.

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**C. Defendants’ Are Entitled To Attorney’s Fees And Costs And a Statutory Award
From Plaintiff**

If a party is successful in their special motion to dismiss under Nevada’s Anti-SLAPP statute, the prevailing party is entitled to an award of their reasonable attorney’s fees and costs incurred in having to defend the action. NRS 41.670(1)(a). The Court is also permitted to award up to \$10,000 to the prevailing party. NRS 41.670(1)(b).

Defendants have shown that the alleged defamatory statement posted on Defendants’ website was made in direct connection with an action currently under consideration by the Supreme Court of Nevada and an issue of public concern. Defendants have also shown that Plaintiff is unable to present clear and convincing evidence to show a probability of success on the merits of his claim for defamation because Defendants’ statement was *true*, not defamatory in nature, and privileged. Thus, Defendants’ Special Motion to Dismiss under Nevada’s Anti-SLAPP statute must be granted, and Defendants are entitled to an award of their reasonable attorney’s fees and costs plus statutory damages of \$10,000 under NRS 41.670 (1).

III.

CONCLUSION

Defendants respectfully request this Honorable Court to issue an Order dismissing, with prejudice, Plaintiff’s Complaint pursuant to NRS 41.635-70 (Nevada Anti-SLAPP statute), as Defendants’ statement was made in direct connection with a judicial proceeding and is an issue of public concern. Plaintiff is unable to present clear and convincing evidence of a probability of success on their claims because Defendants’ statement is true, is not defamatory in nature, is privileged, and because Plaintiff cannot establish causation to the exclusion of other publications or actual malice. For these reasons, the Special Motion to Dismiss is appropriate and Defendants are entitled to an award of attorney’s fees and costs and statutory damages of \$10,000.

In the alternative Defendants respectfully request this matter be dismissed with prejudice

pursuant to NRS 12(b)(5) and attorney's fees and costs be granted to Defendants.

DATED this 16th day of October, 2015.

NETTLES LAW FIRM

/s/ Christian Morris
Christian M. Morris, Esq.
Nevada Bar No. 011218
1389 Galleria Drive, Suite 200
Henderson, NV 89014
Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP (b) and EDCR 7.26, I certify that on this date, I served the foregoing **SPECIAL MOTION TO DISMISS PURSUANT TO NEVADA REVISED STATUTE 41.635-70 OR IN THE ALTERNATIVE MOTION TO DISMISS PURSUANT TO NRS 12(b)(5)** on the following parties by electronic transmission through the Wiznet system on this 16th day of October, 2015.

Prescott T. Jones, Esq.
Jessica Friedman, Esq.
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive Suite 250
Las Vegas, NV 89144
Attorneys for Plaintiff
TON VINH LEE

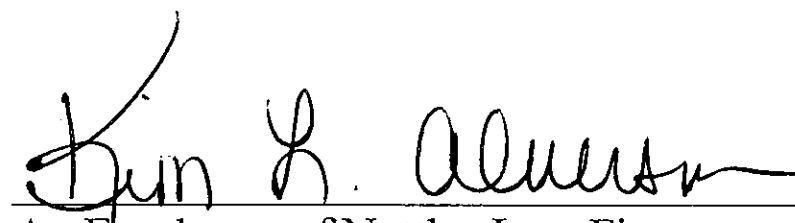
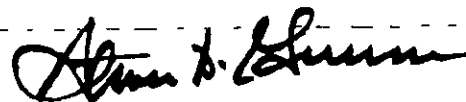

An Employee of Nettles Law Firm

EXHIBIT A



CLERK OF THE COURT

1 **COMP**
2 **LLOYD W. BAKER, ESQ.**
3 Nevada Bar No. 6893
4 **INGRID PATIN, ESQ.**
5 Nevada Bar No.: 011239
6 **BAKER LAW OFFICES**
7 500 South Eighth Street
8 Las Vegas, NV 89101
9 (702) 360-4949
10 Attorneys for Plaintiff

11 **DISTRICT COURT**

12 **COUNTY OF CLARK, STATE OF NEVADA**

13 **SVETLANA SINGLETARY**, individually,
14 as the Representative of the Estate of
15 **REGINALD SINGLETARY**, and as parent and
16 legal guardian of **GABRIEL L. SINGLETARY**,
17 a Minor,

18 Plaintiff,

19 vs.

20 **TON VINH LEE, DDS**, individually, **FLORIDA**
21 **TRAI VAL, DMD**, individually, **JAI PARK, DDS**,
22 individually, **TON V. LEE, DDS, PROF. CORP.**,
23 a Nevada Professional Corporation d/b/a
24 **SUMMERLIN SMILES, DOE SUMMERLIN**
25 **SMILES EMPLOYEE**, and **DOES I through X**
26 and **ROE CORPORATIONS I through X**,
27 inclusive,

28 Defendants.

Case No.: **A- 12 - 656091 - C**
Dept. No.:

XVI

ARBITRATION EXEMPTION:
WRONGFUL DEATH

COMPLAINT

COMES NOW the Plaintiff, **SVETLANA SINGLETARY**, individually, as the
Representative of the Estate of **REGINALD SINGLETARY**, and as parent and legal guardian of
GABRIEL L. SINGLETARY, by and through her counsel of record, **INGRID M. PATIN, ESQ.** of
BAKER LAW OFFICES, hereby alleges and complains as follows:

///

///

///

///

EXHIBIT B

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JAN 22 2014

BY, ALICE JACOBSON, DEPUTY

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of
REGINALD SINGLETARY, and as parent
and legal guardian of GABRIEL L.
SINGLETARY, a Minor,

CASE NO.: A-12-656091-C
DEPT. NO.: XXX

SPECIAL VERDICT FORM

Plaintiff,

vs.

TON VINH LEE, DDS, individually,
FLORIDA TRAIVAI, DMD, individually, JAI
PARK, DDS, individually, TON V. LEE,
DDS, PROF. CORP., a Nevada
Professional Corporation d/b/a
SUMMERLIN SMILES, DOE
SUMMERLIN SMILES EMPLOYEE, and
DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Defendants.

We the jury in the above-entitled action find the following special verdict on the
Questions submitted to us:

Question No. 1: Was Ton Vinh Lee, DDS, negligent in his care and treatment of
Reginald Singletary?

ANSWER: Yes _____ No ☒

If your answer to Question 1 is "no" please sign and return the General Verdict
finding in favor of Dr. Lee.

Question No. 2: Was negligence on the part of Ton Vinh Lee, DDS a cause of injury
to Reginald Singletary?

ANSWER: Yes _____ No ☒

1 If your answer to Question 2 is "no" please sign and return the General Verdict
2 finding in favor of Dr. Lee.

3 Question No. 3: Was Florida Traivai, DMD, negligent in her care and treatment of
4 Reginald Singletary?

5 ANSWER: Yes ✓ No _____

6
7 If your answer to Question 3 is "no" please sign and return the General Verdict
8 finding in favor of Dr. Traivai.

9 Question No. 4: Was negligence on the part of Florida Traivai, DMD, a cause of injury
10 to Reginald Singletary?

11 ANSWER: Yes ✓ No _____

12 If your answer to Question 4 is "no" please sign and return the General Verdict
13 finding in favor of Dr. Traivai.

14 Question No. 5: Was Jai Park, DDS, negligent in his care and treatment of Reginald
15 Singletary?

16
17 ANSWER: Yes _____ No ✓

18 If your answer to Question 5 is "no" please sign and return the General Verdict
19 finding in favor of Dr. Park.

20 Question No. 6: Was negligence on the part of Jai Park, DDS, a cause of injury to
21 Reginald Singletary?

22 ANSWER: Yes _____ No ✓

23
24 If your answer to Question 6 is "no" please sign and return the General Verdict
25 finding in favor of Dr. Park.

26 Question No. 7: Was Summerlin Smiles negligent in its care and treatment of
27 Reginald Singletary?

28 ANSWER: Yes ✓ No _____

1 If your answer to Question 7 is "no" please sign and return the General Verdict
2 finding in favor of Summerlin Smiles.

3 Question No. 8: Was negligence on the part of Summerlin Smiles a cause of injury to
4 Reginald Singletary?

5 ANSWER: Yes ✓ No _____

6
7 If your answer to Question 8 is "no" please sign and return the General Verdict
8 finding in favor of Summerlin Smiles.

9 If there is any Defendant for whom you have not signed and returned a General
10 Verdict Form please proceed to questions 9 through 16 for that Defendant or Defendants.

11 Question No. 9: What amount of damage, if any, do you find was sustained by Svetlana
12 Singletary for past grief or sorrow, loss of companionship, society, comfort and
13 consortium, and damages for pain, suffering or disfigurement of the decedent?

14 ANSWER \$ 125,000.-

15
16 Question No. 10: What amount of damage, if any, do you find will be sustained by
17 Svetlana Singletary for future grief or sorrow, loss of companionship, society, comfort and
18 consortium?

19 ANSWER \$ 500,000.-

20 Question No. 11: What amount of damage, if any, do you find was sustained by Gabriel
21 Singletary for past grief or sorrow, loss of companionship, society, comfort and
22 consortium, and damages for pain, suffering or disfigurement of the decedent?

23 ANSWER \$ 125,000.-

24
25 Question No. 12: What amount of damage, if any, do you find will be sustained by Gabriel
26 Singletary for future grief or sorrow, loss of companionship, society, comfort and
27 consortium?

28 ANSWER \$ 2,000,000.00

1 Question No. 13: What amount of damage, if any, do you find was sustained by Svetlana
2 Singletary for past loss of probable support?

3 ANSWER \$ 60,000-

4 Question No. 14: What amount of damage, if any, do you find will be sustained by
5 Svetlana Singletary for future loss of probable support?

6 ANSWER \$ 300,000.-

7
8 Question No. 15: What amount of damage, if any, do you find was sustained by Gabriel
9 Singletary for past loss of probable support?

10 ANSWER \$ 60,000.-

11 Question No. 16: What amount of damage, if any, do you find will be sustained by Gabriel
12 Singletary for future loss of probable support?

13 ANSWER \$ 300,000.-

14 Question No. 17: Was Reginald Singletary comparatively negligent?

15
16 ANSWER: Yes ✓ No _____

17 If you answered "yes", please proceed to Question No. 18. If you answered "no"
18 please proceed to Question No. 19.

19 Question No. 18: If you answered "yes" to Question No. 17, was the comparative
20 negligence of Reginald Singletary a cause of his injuries?

21 ANSWER: Yes ✓ No _____

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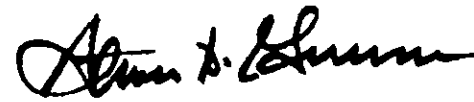
1 Question No. 19: Assuming that 100% represents the total negligence which was the
2 cause of the Plaintiffs' damages, what percentage of this 100% is due to the comparative
3 negligence of Reginald Singletary and what percentage of this 100% is due to the
4 negligence of each of the Defendants?

5	Reginald Singletary	<u>25</u> %
6	Ton Vinh Lee, DDS	<u>0</u> %
7	Florida Traivai, DMD	<u>50</u> %
8	Jai Park, DDS	<u>0</u> %
9	Summerlin Smiles	<u>25</u> %
10		
11	TOTAL	<u>100</u> %

12
13 DATED this 22 day of January, 2014

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16 FOREPERSON
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EXHIBIT C



CLERK OF THE COURT

Lloyd W. Baker, Esq.
Nevada Bar No. 6893
Ingrid Patin, Esq.
Nevada Bar No. 011239
BAKER LAW OFFICES
500 S. Eighth Street
Las Vegas, NV 89101
Telephone : (702) 360-4949
Facsimile : (702) 360-3234

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of
REGINALD SINGLETARY, and as parent
and legal guardian of GABRIEL L.
SINGLETARY, a Minor,

Plaintiff,

v.

TON VINH LEE, DDS, individually,
FLORIDA TRAIVAI, DMD, individually, JAI
PARK, DDS, individually; TON V. LEE,
DDS, PROF. CORP., a Nevada Professional
Corporation d/b/a SUMMERLIN SMILES,
DOE SUMMERLIN SMILES EMPLOYEE,
and DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-12-656091-C
Dept. No.: ~~XIV~~ XXX

ORDER

Defendant FLORIDA TRAIVAI, DMD'S MOTION TO RETAX, and Defendant TON
VINH LEE, DDS', Joinder to Motion to Retax, having come before the Court for hearing on the
11th day of March, 2014; Jessica Goodey, Esq. of Baker Law Offices appearing for Plaintiff
SVETLANA SINGLETARY, individually, as the Representative of the Estate of REGINALD

1 SINGLETARY, and as parent and legal guardian of GABRIEL L. SINGLETARY, Amanda
2 Brookhyser, Esq. of LEWIS, BRISBOIS, BISGAARD & SMITH, LLP appearing for Defendant
3 FLORIDA TRAIVAL, DMD, and Jason Friedman, Esq. of STARK, FREIDMAN & CHAPMAN
4 appearing before Defendant TON V. LEE, DDS, PROF. CORP., and the Court having examined
5 the records and documents on file in the above-entitled matter and being fully advised in the
6 premises:

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant FLORIDA
8 TRAIVAL, DMD's Motion to Retax and Defendant TON VINH LEE, DDS' Joinder thereto is
9 GRANTED IN PART and DENIED IN PART, as set forth below.

10 Plaintiff's requested witness fees are hereby reduced to \$18,495.64, and Plaintiffs'
11 requested photocopy costs are hereby reduced to \$4,153.44. All other costs requested by
12 Plaintiff are granted in the full amounts requested.

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1 Therefore, IT IS HEREBY ORDERED ADJUGED AND DECREED that Plaintiff is
2 awarded \$38,042.64 in costs.

3 Dated this ____ day of March, 2014.

4
5
6 _____
Honorable Jerry Wiese, II, District Court Judge

7 Respectfully Submitted By:

8 **BAKER LAW OFFICES**

9
10 _____
Lloyd W. Baker, Esq.
11 Nevada Bar No. 6893
Ingrid Patin, Esq.
12 Nevada Bar No. 011239
500 S. Eighth Street
13 Las Vegas, NV 89101
14 Attorneys for Plaintiff

15 **APPROVED AS TO FORM AND CONTENT:**

16
17 

18 Amanda Brookheyser, Esq.
LEWIS, BRISBOIS,
19 BISGAARD & SMITH, LLP.
20 6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118
21 Attorney for Defendant
22 Florida Traivai, DMD

23
24 _____
Jason Friedman, Esq.
STARK, FRIEDMAN & CHAPMAN
200 W. Sahara, #1401
Las Vegas NV 89102
Attorney for Defedants,
Ton Vinh Lee, DDS and Ton V. Lee, DDS,
Prof. Corp., d/b/a Summerlin Smiles

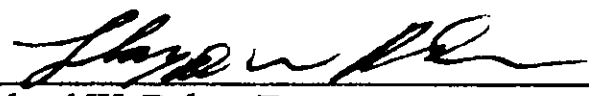
1 Therefore, IT IS HEREBY ORDERED ADJUGED AND DECREED that Plaintiff is
2 awarded \$38,042.64 in costs.

3 Dated this 1 day of ^{April} March, 2014.

4
5
6 Honorable Jerry Wiese, II, District Court Judge

7 Respectfully Submitted By:

8 **BAKER LAW OFFICES**

9
10 
11 Lloyd W. Baker, Esq.
12 Nevada Bar No. 6893
13 Ingrid Patin, Esq.
14 Nevada Bar No. 011239
500 S. Eighth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

15 **APPROVED AS TO FORM AND CONTENT:**

16
17
18 Amanda Brookheyser, Esq.
19 LEWIS, BRISBOIS,
20 BISGAARD & SMITH, LLP.
6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118
21 Attorney for Defendant
22 Florida Traivai, DMD


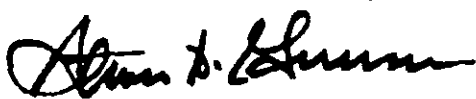
16
17 
18 Jason Friedman, Esq.
19 STARK, FRIEDMAN & CHAPMAN
20 200 W. Sahara, #1401
Las Vegas NV 89102
21 Attorney for Defedants,
22 Ton Vinh Lee, DDS and Ton V. Lee, DDS,
Prof. Corp., d/b/a Summerlin Smiles

EXHIBIT D



CLERK OF THE COURT

Lloyd W. Baker, Esq.
Nevada Bar No. 6893
Ingrid Patin, Esq.
Nevada Bar No. 011239
BAKER LAW OFFICES
500 S. Eighth Street
Las Vegas, NV 89101
Telephone : (702) 360-4949
Facsimile : (702) 360-3234

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of
REGINALD SINGLETARY, and as parent
and legal guardian of GABRIEL L.
SINGLETARY, a Minor,

Plaintiff,

v.

TON VINH LEE, DDS, individually,
FLORIDA TRAI VAI, DMD, individually, JAI
PARK, DDS, individually; TON V. LEE,
DDS, PROF. CORP., a Nevada Professional
Corporation d/b/a SUMMERLIN SMILES,
DOE SUMMERLIN SMILES EMPLOYEE,
and DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-12-656091-C
Dept. No.: 30

JUDGMENT ON JURY VERDICT

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<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input type="checkbox"/> Sum Jdgmt
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non-Jury Trial
<input type="checkbox"/> Jdgmt on Arb Award	<input type="checkbox"/> Default Jdgmt	<input checked="" type="checkbox"/> Jury Trial
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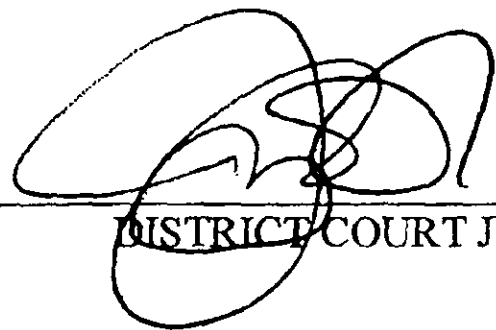
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1 **IT IS FURTHER ORDERED AND ADJUDGED** that Plaintiff is entitled to her costs
2 of Thirty Eight Thousand Forty Two Dollars and Sixty Four Cents (\$38,042.64), as the
3 prevailing part under Nevada Revised Statute 18.020.

4 **IT IS FURTHER ORDERED AND ADJUDGED** that the amounts awarded to
5 Plaintiffs, SVETLANA SINGLETARY, individually, and GABRIEL SINGLETARY, a minor,
6 shall bear interest at the legal rate of 5.25% per year from the date thereon.

7 DATED this 15 day of April, 2014.

8
9
10 
DISTRICT COURT JUDGE 41

11 Prepared by:

12 BAKER LAW OFFICES


13
14 By: 
15 LLOYD W. BAKER, ESQ.
16 Nevada Bar No. 6893
17 INGRID PATIN, ESQ.
18 Nevada Bar No.: 011239
19 500 South Eighth St.
20 Las Vegas, NV 89101
21 (702) 360-4949
22 Attorneys for Plaintiff
23
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25
26
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EXHIBIT E

The Trial Reporter

NEVADA

Published Monthly

P.O. Box 8187, Phoenix, Arizona 85066-8187

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Established 1968

February, 2014

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IN MEMORIAM

Andy Anderson

Editor & Publisher 1967 - 2003

Editor & Publisher

Beverly Graham



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OPEN THE DOOR
TO A FORENSIC
EXPERT'S PAST
HISTORY

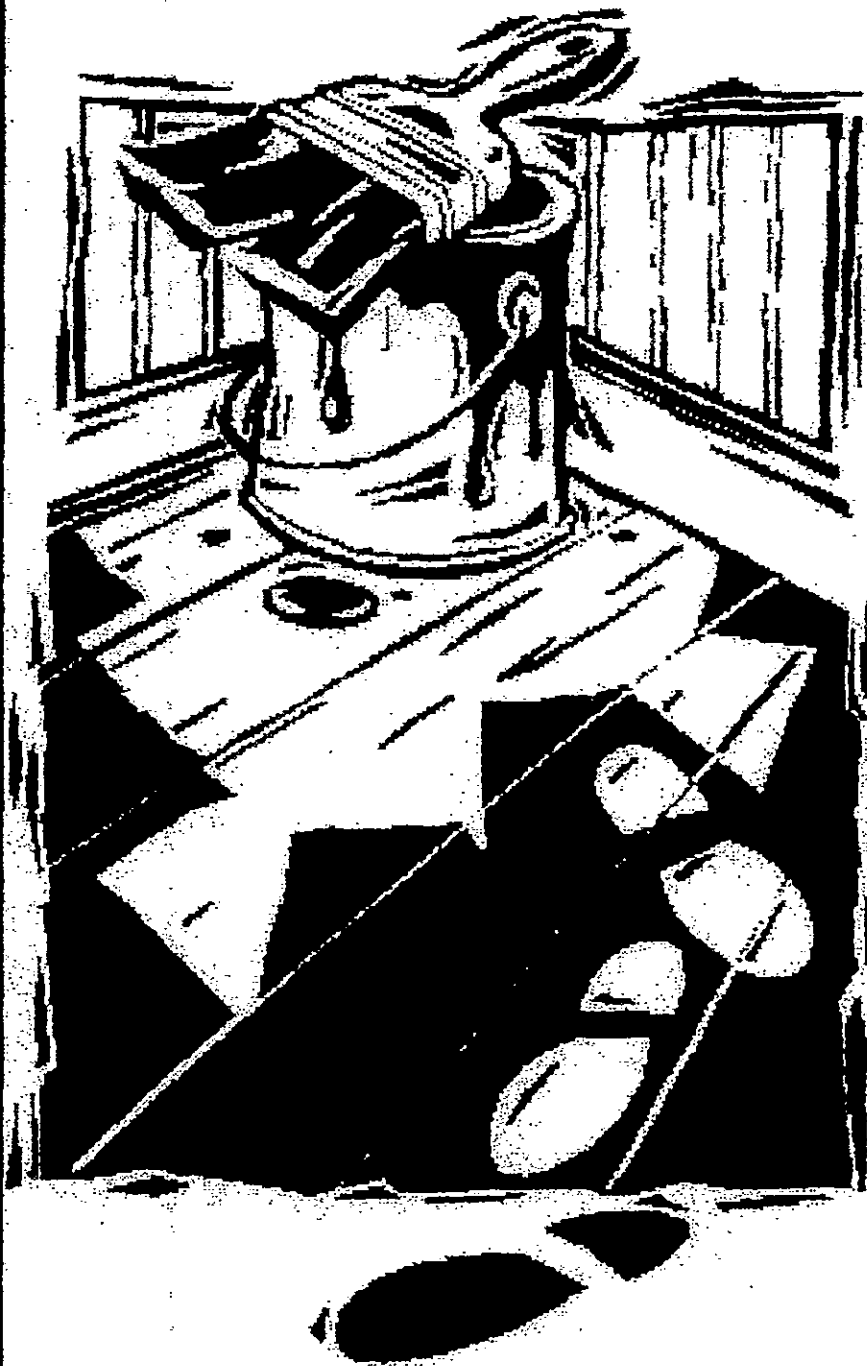
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The Trial Reporter

1/17/14 - pro tem Judge HARRY P. MARQUIS - CV A636746 - ACOSTA (Ralph A. Schwartz, a sole practitioner) v LAS VEGAS METROPOLITAN POLICE DEPARTMENT and CROSSMAN (Craig R. Anderson of Marquis Auerbach Coffing, P.C.) - PERSONAL INJURY - REAREND - POLICE VEHICLE. Case being tried as a Shorttrial. Plntf, male, age 37, an unemployed Nevada resident, alleged that, while stopped southbound on Lamb Boulevard, he was rear-ended by Dfnt Crossman, male, a Nevada resident, who was in the course and scope of his occupational duties as a police officer for Dfnt Las Vegas Metropolitan Police Department. Plntf alleged he sustained cervical and thoracic strains and sprains, with secondary headaches; plus a bulging cervical disk at C-4, C-5, which necessitated bilateral facet injections and occipital nerve blocks. Plntf also alleged he has ongoing residual complaints. Prayer: In excess of \$10,000 compensatory damages; plus \$42,507.44 medical expenses. (Dfnts self-insured.) One day trial. By stipulation, four jurors deliberated. Jury out ? hours. AWARDED PLNTF \$35,000 COMPENSATORY DAMAGES (REPRESENTING \$25,000 FOR MEDICAL EXPENSES AND \$10,000 FOR PAIN AND SUFFERING).

1/22/14 - Judge JERRY A. WIESE - CV A656091 - SINGLETARY (Lloyd W. Baker, Ingrid M. Patin, and Jessica M. Goodey of Baker Law Offices) v LEE, D.D.S., dba SUMMERLIN SMILES (Jason B. Friedman of Stark, Friedman & Chapman, L.L.P., of Long Beach, California); PARK, D.D.S. (Edward J. Lemons of Lemons, Grundy & Eisenberg, P.C.); and TRAIVAL, D.M.D. (S. Brent Vogel of Lewis, Brisbois, Bisgaard & Smith, L.L.P.) - WRONGFUL DEATH - MEDICAL MALPRACTICE - DENTAL - FAILURE TO DIAGNOSE/TREAT - INFECTION - LACK OF INFORMED CONSENT. Prologue: Decedent presented to Dfnt Summerlin Smiles, on March 24, 2011, for routine dental work. New

PLAN AHEAD!



Don't Paint Yourself
Into A Corner; Order
A **Compendium** of Jury
Awards In Cases With
Like Injuries. Call:

The Trial Reporter

patient examination was done. Dfnts dentists Traivai and Park were independent contractors of Dfnt Summerlin Smiles. On April 16th, Decedent returned to Dfnt Summerlin Smiles for an extraction of the number 32 wisdom tooth, performed by Dfnt Traivai. Following the extraction, Decedent experienced ongoing severe pain in the extraction area on the right side of his face; swelling of the face, jaw, and neck; plus difficulty swallowing. Dfnt Summerlin Smiles was allegedly contacted via telephone on April 18th, and Decedent was advised to call again if his symptoms did not subside within four to five days. Decedent continued to experience his prior symptoms, and had difficulty swallowing, as well as difficulty speaking and eating, on April 19th and April 20th. Decedent was vomiting, began having difficulty breathing, and was transported by ambulance to non-party hospital, where he was admitted to the Intensive Care Unit, on April 21st. Antibiotics were administered and drainage of Decedent's neck was performed. Decedent died on April 25th. Case being tried on comparative fault. Decedent, male, age 42, was survived by his spouse and minor son, who brought suit for his wrongful death. Plntfs, both Nevada residents, alleged Dfnts fell below the standard of care by giving Decedent incorrect advice when he called Dfnt Summerlin Smiles, and followed their advice even though he became progressively sicker. Plntfs also alleged Dfnts failed to obtain Decedent's informed consent regarding use of antibiotics to prevent infection. (Court ruled issue was moot.) Plntfs called Joseph B. Marzouk, M.D., an infectious diseases specialist, of Oakland, California. Plntfs also called Andrew Pallos, D.D.S. of Laguna Niguel, California, who was of the opinion that Dfnts fell below the standard of care. Dfnts Lee and Park denied liability, advancing the defense that they did not provide any treatment to Decedent. Dfnt Traivai, female, a Nevada resident, denied falling below the standard of care. Dfnt Traivai argued that there were no complications during the procedure, and Decedent was given both

verbal and written postoperative instructions, which instructed Decedent to contact the office or go to the emergency department if he experienced any severe or unexpected complications. Dfnt Traivai also argued that, in the days following the extraction procedure, she was not contacted and was not aware of Decedent's condition and/or any potential complications. Additionally, Dfnt Traivai argued she did not instruct an employee of Dfnt Summerlin Smiles to give any medical advice and/or instructions to Decedent. Dfnt Traivai called Christian E. Sandrock, M.D., an infectious diseases specialist, of Sacramento, California; and William C. Ardary, D.D.S., M.D., an oral and maxillofacial surgeon, of Arcadia, California. Plntfs alleged that, as a result of Dfnts' negligence, Decedent developed necrotizing mediastinitis and septic shock, then Ludwig's angina from the dental abscess, which resulted in his death. Prayer: In excess of \$10,000 compensatory damages; plus \$600,000 loss of support (D Vogel). (Carrier: Hartford Insurance.) Seven day trial. Jury out two-plus hours. FOUND FOR DFNTS LEE AND PARK; AWARDED PLNTF SPOUSE \$985,000 COMPENSATORY DAMAGES (REPRESENTING \$125,000 FOR PAST PAIN AND SUFFERING, \$500,000 FOR FUTURE PAIN AND SUFFERING, \$60,000 PAST LOSS OF SUPPORT, AND \$300,000 FUTURE LOSS OF SUPPORT). AWARDED PLNTF SON \$2,485,000 COMPENSATORY DAMAGES (REPRESENTING \$125,000 FOR PAST PAIN AND SUFFERING, \$2 MILLION FOR FUTURE PAIN AND SUFFERING, \$60,000 PAST LOSS OF SUPPORT, AND \$300,000 FUTURE LOSS OF SUPPORT). (Found Decedent to be twenty-five percent at fault, found Dfnt Traivai to be fifty percent at fault, and found Dfnt Summerlin Smiles to be twenty-five percent at fault; therefore, Plntf spouse to recover \$492,500 from Dfnt Traivai and \$246,250 from Dfnt Summerlin Smiles; and Plntf son to recover \$1,242,500 from Dfnt Traivai and \$621,250 from Dfnt Summerlin Smiles).

EXHIBIT F

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— Navigation — ▼

Settlement – Verdict

Settlement/Verdict

Every person deserves to be treated fairly. We are a team of lawyers that pride ourselves on the ability to get the results you deserve. We never settle for the first offer, and are willing to take your case to trial if necessary. We will fight for you to obtain compensation for your medical expenses, lost wages, property damage, pain and suffering and loss of enjoyment of life.

Recent Settlements and Verdicts

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, DMD and Jai Park, DDS, on behalf of the Estate, herself and minor son.

NEGLIGENCE/WRONGFUL DEATH – SETTLEMENT, 2014

Description: Lavoll v. Jack in the Box, Inc.

A negligence-based wrongful death action that arose out of the shooting of Decedent Brittney Lavoll by Third-Party Defendant, Kevin Gipson, on March 25, 2010 in or near the parking lot of Jack in the Box, located at 7510 West Lake Mead Boulevard, Las Vegas, Nevada 89128.

MOTOR VEHICLE ACCIDENT – SETTLEMENT, 2014

Description: Benefraim v. Colorado Casualty Insurance Company

A negligence-based bad faith action that arose out of a motor vehicle accident that occurred on February 18, 2011. Plaintiff was a 70 year old restrained passenger in the vehicle. There was moderate damage to both vehicles as a result of the subject motor vehicle accident.

EXHIBIT G



NEVADA Legal Update

Fall 2014

I v e r s o n T a y l o r M o r t e n s e n & S a n d e r s • N e v a d a ' s L a w F i r m

HIGHLIGHTS

Nevada Supreme Court Clarifies Standard for Testimony of a Treating Physician and Prohibits Ex Parte Communication with an Opposing Party's Experts

Whether the testimony of a treating physician must be stated to a "reasonable degree of medical probability" depends on the purpose of the testimony, and whether it supports an alternative causation theory. Further, counsel is prohibited from contacting an opposing party's expert, including a non-retained treating physician, without express consent.

Entertainer Awarded More Than \$1.3 Million after Backstage Fall

A professional comedian, hired to perform at the Bellagio Hotel and Casino, allegedly tripped and fell over an unsecured speaker cord resulting in a complete rupture of his Achilles tendon. The jury awarded the plaintiff \$1,308,500.00 for personal injuries and alleged lost wages.

IN THIS ISSUE

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NEVADA JURY VERDICTS

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NEVADA SUPREME COURT DECISIONS

MEDICAL MALPRACTICE

A Treating Provider Need Not Testify to a Reasonable Degree of Medical Certainty if Contradicting a Plaintiff's Causation Theory and Parties Must Obtain Express Consent Before Contacting an Opposing Party's Expert

Plaintiff filed a complaint alleging medical malpractice and negligence. Plaintiff specifically asserted that after receiving Lasik corrective surgery on both eyes she experienced ocular irritation and subsequently lost a majority of her sight. Defendant denied liability and asserted that Plaintiff's deteriorating eye condition may have resulted from abuse of numbing eye drops.

In support of Defendant's theory, Defendant called Plaintiff's treating physician to testify at trial. Plaintiff's treating provider testified that, in his opinion, plaintiff could have returned to her best corrective vision had she followed his instructions and recommendations, but conceded that this was speculation. He also testified that, while not the cause of the defect, it was possible that Plaintiff's use of numbing eye drops caused her vision to deteriorate and contributed to her lack of improvement. The jury returned a verdict for Defendant and Plaintiff appealed.

The Nevada Supreme Court determined the testimony offered by Plaintiff's treating physician was permissible pursuant to Williams v. Eighth Judicial District Court, 127 Nev. 262 P.3d 360 (2011). Williams provided that the testimony of a defense expert need not be stated to a reasonable degree of medical probability when being used to controvert an element of the plaintiff's claim, rather than

establish an independent theory of causation. Here, Defendant did not offer the expert's testimony to establish the alternative causation theory that eye damage resulted from abuse of numbing drops, rather than defendant's actions. Rather, the expert's testimony was offered to furnish reasonable alternative causes to those offered by Plaintiff.

On appeal, Plaintiff also asserted that defense counsel contacted the Plaintiff's treating physician without express consent, thereby warranting a new trial. Defendant argued the communication with the expert was necessary only to coordinate the physician's appearance at trial. The Nevada Supreme Court initially noted that a plaintiff's claim for personal injury or medical malpractice served as a limited waiver of the physician-patient privilege with regard to directly relevant and essential information necessary to resolve the case. Further, the Nevada Rules of Civil Procedure affirmatively allow formal depositions of individuals who have been identified as experts whose opinions may be presented at trial. NRCP 26(b)(4). Rule 26 does not, however, contemplate ex parte communications with the opposing party's expert witnesses. The Court also noted that the professional ethics rules for the Ninth Circuit Court of Appeals preclude counsel from speaking directly to an opposing party's expert. Erickson v. Newmar Corp., 87 F.3d 298, 301 (9th Cir. 1996).

The Nevada Supreme Court ultimately balanced the desire for confidentiality with the need for full disclosure of relevant medical information and concluded there was no need to allow ex parte communication with an opposing party's expert, absent express consent. While the Nevada Supreme Court agreed that improper ex parte communication had occurred, Plaintiff's motion for a new trial was properly denied. The Court noted that the physician's trial testimony remained unchanged from his prior deposition testimony, and therefore Plaintiff did not suffer prejudice as a result of the conduct of Defendant. Leavitt v. Siems, 130 Nev. Adv. Rep. 54 (2014).

the property.

As a result of the contact with the chemicals, Plaintiff allegedly developed reactive airway dysfunction syndrome. When Plaintiff's worker's compensation coverage terminated six months after the incident, she was unable to obtain her prescription medication, which allegedly resulted in a stroke. Defendant denied liability.

Plaintiff sought compensatory damages, including approximately \$180,000.00 in medical expenses and \$100,000.00 in lost wages. After a nine day trial the jury awarded Plaintiff \$621,122.00 in compensatory damages. *Wright v. Valley Health System, L.L.C.*, March 6, 2014.

Truck Driver Found Liable for Another Vehicle's Rollover

Defendant was operating a tractor-trailer in the course of his occupational duties as a truck driver for Defendant Pet Food Wholesale. Plaintiff, a 19 year-old female retail clerk, alleged that Defendant negligently executed a lane change into Plaintiff's lane of travel, which caused her to lose control and roll her vehicle. Plaintiff sustained a degloving injury to her dominant left hand.

Defendants denied liability and asserted that Plaintiff was either traveling in Defendant's "blind spot" or she attempted to "shoot the gap" to avoid travelling behind Defendant's tractor-trailer. Defendants called an accident reconstructionist to testify in support of their theory. Plaintiff called a psychiatrist, a hand surgeon, a vocational rehabilitation expert and economist to testify as to Plaintiff's alleged damages.

Plaintiff sought \$199,525.48 in past medical expenses, plus \$64,581.00 to \$87,381.00 for future medical treatment. Plaintiff served an \$825,000.00 pretrial Offer of Judgment and during closing arguments, Plaintiff's counsel asked the jury to award more \$5 million. After a 12 day trial, the jury awarded Plaintiff \$1,261,780.22, but found her to be 10 percent at fault. *Kumar v. Pet Food Wholesale, Inc.*, February 5, 2014.

MEDICAL MALPRACTICE

Jury Returns Defense Verdict as to Claims Resulting from Plaintiff's Apparent Suicide

Decedent, a 23 year-old female, professional golfer, was survived by her parents who brought suit for her wrongful death. Defendant, a

medical physician, met decedent through mutual friends at a Country Club and treated decedent four times for minor health issues. Five months after their initial meeting, decedent and Defendant developed a romantic relationship.

On May 8, 2010, Defendant arrived at decedent's residence and found her intoxicated. Decedent was instructed to take a shower and the pair then chipped golf balls in decedent's backyard until 9:00 p.m., when Defendant went home to his pregnant wife. On May 9, 2010, Defendant called decedent 17 times, but was unable to reach her. He then drove to her home and gained entry through an unlocked rear door. Defendant found decedent in her bedroom with a plastic bag secured with rubber bands around her head. Defendant removed decedent's suicide note and a blister pack of Xanax, which appeared to be from Mexico, and placed them in the trunk of his vehicle. Decedent's cause of death was determined to be suicide by asphyxiation.

Plaintiffs alleged Defendant fell below the standard of care when he prescribed medication without determining decedent's medical conditions, allergies to the medications, or whether decedent was at risk for taking medications other than those prescribed. Plaintiffs further alleged that Defendant did not properly document decedent's medical chart with the prescribed controlled substances, and failed to properly evaluate her on May 8 and left her in a medically compromised condition. Plaintiffs also claimed that a combined drug intoxication was a significant cause of decedent's death. Defendant denied falling below the standard of care.

Plaintiffs sought compensatory damages and punitive damages. After a seven day trial the jury returned a verdict for Defendant. *Blasberg v. Hess, M.D.*, May 13, 2014.

Jury Finds for Decedent's Family after Overdose on Methadone

Decedent was treated by Defendant physician for several years preceding his death. During the course of his treatment, Defendant discussed referring decedent to an opioid addiction specialist and prescribed a one month supply of Methadone, ten milligrams. Decedent began taking the prescribed Methadone and experienced insomnia, hallucinations and constipation. After four days, decedent experienced pinpoint eyes, profuse sweating, twitching in his sleep, sleep walking, blue-tinged lips and an ashen complexion. Decedent's spouse contacted Defendant's office and was advised by the staff that the decedent's

symptoms were normal and the information would be passed along to the Defendant. Twenty minutes later, decedent stopped breathing and died. Decedent's cause of death was determined to be Methadone intoxication.

Decedent was survived by his spouse and three minor children, who brought suit for his wrongful death. Plaintiffs alleged that Defendant fell below the standard of care when he negligently prescribed methadone for opioid addiction and failed to conduct a thorough medical assessment and physical evaluation. Plaintiffs also alleged that Defendant's medical staff fell below the standard of care when they advised decedent's spouse that the symptoms were normal and failed to recommend that decedent be taken to the emergency department. Additionally, Plaintiffs alleged that the Defendant failed to respond to decedent's wife and failed to supervise and/or train employees in appropriate counseling to patients. Defendant denied falling below the standard of care and maintained that decedent was comparatively at fault for not properly following the prescription's instructions and for taking more than was prescribed.

Plaintiffs sought between \$3 million and \$4 million in damages. After a 13 day trial, the jury found Defendant to be 53 percent at fault. Decedent's estate recovered \$1,592,650.00; decedent's spouse was awarded \$530,000.00; two of decedent's children received \$1,060,000.00 and the third child received \$795,000.00. *Davis and Davis, Estate v. Gautham Gummadi Reddy, M.D., Ltd.*, June 18, 2014.

Plaintiffs Awarded More Than \$2.6 Million Following Wisdom Tooth Extraction

Decedent presented to Defendant dentist for routine dental work and underwent a new patient examination. Decedent returned to Defendant one month later for an extraction of his wisdom teeth. Following the extraction, the decedent experienced ongoing severe pain in the extraction area on the right side of his face, jaw and neck, and experienced difficulty swallowing. Decedent allegedly contacted Defendant via telephone two days later and was advised to call again if his symptoms failed to subside in four to five days. Four days after the extraction, decedent continued to experience symptoms and developed difficulty eating, speaking, and breathing and was vomiting. Decedent was taken to the hospital by ambulance where he was admitted to the Intensive Care Unit. Decedent

is administered antibiotics and drainage of his neck was performed, but decedent passed nine days after the extraction.

Decedent's spouse and minor son asserted claims for wrongful death. Plaintiffs alleged that Defendant fell below the standard of care by providing decedent incorrect advice when he called after the extraction. Plaintiffs also asserted that Defendant failed to obtain decedent's informed consent regarding the use of antibiotics to prevent infection. Further, plaintiffs claimed that as a result of Defendant's negligence, decedent developed necrotizing mediastinitis, septic shock and Ludwig's angina from the dental abscess, which resulted in his death.

Plaintiffs relied on the testimony of an infectious disease specialist and a dentist who opined that Defendant fell below the standard of care. Defendant denied liability and maintained that there were no complications during the procedure. Defendant argued that decedent was given both verbal and written postoperative instructions, which instructed decedent to contact the office or go to the emergency room if he experienced any severe or unexpected complications. Defendant also asserted that he was not contacted or aware of decedent's condition and/or potential complications, nor did Defendant instruct an employee of the dental office to give medical advice and/or instructions to the decedent. Defendant relied on the testimony of an infectious disease specialist and an oral and maxillofacial surgeon at trial.

Plaintiffs sought compensatory damages plus \$600,000.00 in loss of support. After a seven day trial, the jury found decedent to be 25 percent at fault. Decedent's spouse was awarded \$738,750.00 in compensatory damages and decedent's minor child was awarded \$1,863,750.00. *Singletary v. Lee, D.D.S.*, January 22, 2014.

PREMISES LIABILITY

Defendant Not Liable For a Trip and Fall on its Premises

Plaintiff, a 57 year-old female accounts payable clerk, alleged that while on Defendant's premises she was injured when her shoe became stuck in a concrete expansion joint, which caused her to trip and fall. Plaintiff alleged Defendant was negligent in its maintenance of the premises, and failed to fill the concrete

expansion joint to a sufficient level required to prevent the hazardous condition.

Plaintiff relied on the testimony of an architect who opined that the expansion joint failed to meet the building code, and a safety engineer who opined the expansion joint could have been a tripping hazard. Defendant denied liability and maintained that it had no notice of the condition. Defendant further argued that there had never been a fall involving any of the 58,000 feet of expansion joints and that its maintenance of the premises was reasonable.

As a result of the fall, Plaintiff allegedly sustained a fractured left elbow. Her orthopedic physician opined that Plaintiff would develop arthritis and may possibly require future surgery. Defendant retained an orthopedic physician who opined that the fracture was causally related to the fall, but maintained that Plaintiff would not develop arthritis or require future surgery.

Plaintiff sought \$119,000.00 in medical expenses and more than \$10,000.00 in lost wages. Plaintiff made a pretrial demand of \$350,000.00 and Defendant offered \$135,000.00. After a five day trial, the jury returned a verdict for Defendant. *Biondi v. Paris Las Vegas Propco, L.L.C.*, May 23, 2014.

Jury Returned Verdict for Entertainer Who Suffered Injury Backstage

Plaintiff, a 61 year-old male professional comedian, was hired to perform at the Bellagio Hotel and Casino. Plaintiff alleged that Defendant's staff negligently set up the stage, causing Plaintiff to trip and fall over an unsecured speaker cord. Plaintiff sustained a complete rupture of his Achilles tendon, which resulted in a permanent limp. Defendant denied liability and argued Plaintiff was contributory negligent.

At trial, Plaintiff called an entertainment expert, an orthopedic physician and an economist who estimated Plaintiff's damages

were \$7,500,000.00. Defendant relied on the testimony of an orthopedic physician and an economist. Plaintiff sought \$3,214,632.00 in past lost wages; \$4,121,970.00 in future lost wages; and medical expenses. Plaintiff made a pretrial demand of \$500,000.00 and Defendant countered with \$175,000.00. After a 15 day trial, the jury returned a verdict for the Plaintiff and awarded \$1,308,500.00. *Wallace v. Bellagio, L.L.C.*, April 8, 2014.

BREACH OF CONTRACT

Plaintiff Awarded Damages and Ownership Interest in Business Established during Plaintiff's Divorce

Plaintiff and Defendant were engaged to be married in 1999 and allegedly established and operated Canyon Gate Cleaners as equal co-owners. Plaintiff also owned and operated a machinery sales corporation in Phoenix, Arizona, and utilized his resources and equipment to find a location and equip Canyon Gate Cleaners. Because Plaintiff was involved in divorce proceedings at the time, Defendant suggested that Plaintiff not be listed as an officer and shareholder of Canyon Gate in order to insure Plaintiff's wife would not assert a lien on the business. It was agreed that Defendant would constructively hold Plaintiff's interest in the business, which flourished over the next ten years. The parties shared the income from the business and purchased various personal properties that they jointly owned. Subsequently, however, Defendant removed Plaintiff from their home and business by filing a temporary restraining order. Plaintiff alleged that Defendant breached their agreement to sell the business and divide their personal assets.

Defendant denied liability and maintained that Plaintiff was neither an owner nor an interest holder in the business. Defendant further alleged that Plaintiff did not start or operate the business, did not contribute funds or other consideration to the operation, did not design the business and had no financial or "sweat equity." Defendant asserted she hired Plaintiff as a paid consultant through his businesses, LES Systems, Inc., and Lorenz Equipment Sales, and that she purchased the residence where they lived from 1998 through 2009.

After a nine day trial, the jury awarded Plaintiff \$944,000.00 in compensatory damages

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EXHIBIT H



nevada jury verdicts singletary

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Abdul Howard, 49, was convicted by a jury last June of one count of felon in possession of a firearm, 14 counts... More... \$0 (01-08-2015 - NV). United States of ...

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[PDF] HIGHLIGHTS IN THIS ISSUE NEVADA SUPREME COU...

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Nov 4, 2014 - NEVADA JURY VERDICTS. Personal Injury. ... jury returned a verdict for Defendant and. Plaintiff appealed. Singletary v. Lee, D.D.S.,

WATTS v. SINGLETARY | Leagle.com

www.leagle.com/decision/...11151.../WATTS%20v.%20SINGLETARY

Watts himself expressed concern that the jury's verdict had been influenced by his sleeping: WATTS: The jury made the decision because of my sleeping disorder. ...

Nevada, 504 U.S. 127, 139-40, 112 S.Ct. 1810, 1817, 118 L.Ed.2d 479 ...

[PDF] IN THE SUPREME COURT OF THE STATE OF NEVADA...

caseinfo.nvsupremecourt.us/document/view.do?csNameID...

Sep 23, 2014 - Client(s) Svetlana Singletary, individually and as the Rep. of the ...

Whether the Judgment on Jury Verdict filed April 29, 2014 imposed joint and ...

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Mar 24, 2015 - IN THE SUPREME COURT OF THE STATE OF NEVADA. SVETLANA ...

the representative of the Estate of Reginaid Singletary, and as parent and legal guardian of ... D. THE JURY'S VERDICT AND SUBSEQUENT AWARDS.

[PDF] 15-02468

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Jan 22, 2015 - IN THE SUPREME COURT OF THE STATE OF NEVADA ... A judgment

upon a jury verdict for a total of \$3,508,042.64 was entered against, inter ... Plaintiff/

appellant Svetlana Singletary, individually and in representative ...

WATTS v. SINGLETARY - FindLaw

caselaw.findlaw.com > Caselaw > United States > US 11th Cir.

Watts himself expressed concern that the jury's verdict had been influenced by his ...

Nevada, 504 U.S. 127, 139-40, 112 S.Ct. 1810, 1817, 118 L.Ed.2d 479 ...

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Jun 19, 2013 - injury." We affirm the trial court's judgment and jury verdict, and we deny

... Singletary, 166 Wn. App. at 783 (quoting Mailey, ... Exch. & Ass'n.

Singletary v. Lee - Avvo.com

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Singletary v. Lee. Jessica M. Goodey Back to profile. Practice Area: Personal Injury.
Outcome: Jury Verdict in excess of \$3 million. Description: Dental malpractice...

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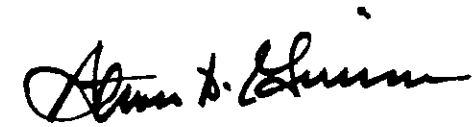
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EXHIBIT I



CLERK OF THE COURT

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Baker Law Offices

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually, and as
the Representative of the Estate of REGINALD
SINGLETARY, and as parent and legal guardian of
GABRIEL L. SINGLETARY, a Minor,

Plaintiffs,

vs.

TON VINH LEE, DDS, individually, FLORIDA
TRAIVAI, DMD, individually, JAI PARK, DDS,
individually, TON V. LEE, DDS, PROF.CORP., a
Nevada Professional Corporation d/b/a
SUMMERLIN SMILES, DOE SUMMERLIN
SMILES EMPLOYEE, DOES I through X and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A656091
Dept. No.: XXX

CASE APPEAL STATEMENT

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

CASE APPEAL STATEMENT

Plaintiffs, Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a Minor, by and through her attorneys of record, Marquis Aurbach Coffing and Baker Law Offices, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

Plaintiffs, Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a Minor

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

Honorable Jerry A. Wiese II

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

Appellants: Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a Minor

Attorneys: Micah S. Echols, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145

Lloyd W. Baker, Esq.
Ingrid Patin, Esq.
Baker Law Offices
500 S. Eighth Street
Las Vegas, Nevada 89101

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as much and provide the name and address of that respondent's trial counsel):

Respondents: Ton Vinh Lee, DDS and Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles

Attorneys: Jason Friedman, Esq.
Stark, Freidman & Chapman
200 W. Sahara Blvd., Suite 1401
Las Vegas Nevada 89102

Respondent: Florida Traivai, DMD

Attorneys: S. Brent Vogel, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
6385 S. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118

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 that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A.

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

Retained.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint indictment, information, or petition was filed):

The complaint was filed on February 7, 2012.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This appeal is taken from a wrongful death suit brought against Defendants by Plaintiffs after the death of Reginald Singletary following dental surgery to extract a wisdom tooth. The jury found for Plaintiffs against Defendants Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles and Florida

1 Traivai, DMD, and awarded a total of \$3,470,000. The Judgment on Jury Verdict
2 awarded the total of \$3,470,000, plus interest, and costs in the amount of
3 \$38,042.64 to Plaintiffs.

4 Defendants Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles and
5 Florida Traivai, DMD, filed Rule 50(b) motions for judgment as a matter of law,
6 which were granted, with the result that the District Court vacated the award by
7 the jury.

8 Defendant Ton Vinh Lee, DDS, filed a motion for costs, which was
9 granted in the amount of \$6,032.83.

10 Plaintiffs appeal from: (1) the Order [Granting in Part and Denying in Part
11 Defendant Florida Traivai's Motion to Retax Costs and Defendant Ton Vinh Lee,
12 DDS' Joinder Thereto], filed on April 11, 2014; (2) the Judgment on Jury Verdict,
13 filed on April 29, 2014; (3) the Order on Defendant Traivai's and Lee's Motions
14 for Judgment as a Matter of Law Pursuant to NRCP 50(b) and Motion for
15 Remittitur, filed on July 16, 2014; and (4) the Minute Order [Granting Costs to
16 Defendant, Ton Vinh Lee, DDS], filed on April 3, 2014.¹

17 Defendant Florida Traivai, DMD's Motion for Costs and Defendant Ton
18 V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles' Motion for Costs are currently
19 pending in the District Court.

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

23 This case was the subject of a writ petition to the Supreme Court docketed as
24 Case No. 64734.

25 12. Indicate whether this appeal involves child custody or visitation:

26 N/A.

27 ¹ The April 3, 2014 Minute Order has not yet been reduced to a written order. Plaintiff will file an
28 amended notice of appeal and an amended case appeal statement once a written order has been filed.

MARQUIS AURBACH COFFING

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13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This case does involve the possibility of a settlement.

Dated this 8th day of August, 2014.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols
Micah S. Echols, Esq.
Nevada Bar No. 8437
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

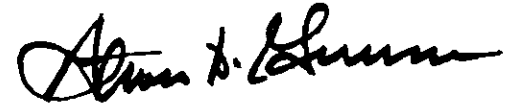
I hereby certify that the foregoing **CASE APPEAL STATEMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of August, 2014. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

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Lewis Brisbois		
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S. Brent Vogel, Esq.	Brent.Vogel@lewisbrisbois.com	
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STARK, FREIDMAN & CHAPMAN		
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Jason Friedman	jason@sfc-law.com	

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

² Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT J



CLERK OF THE COURT

JASON B. FRIEDMAN, ESQ.
Nevada State Bar No. 11799
STARK, FRIEDMAN & CHAPMAN, LLP
200 W. Sahara, #1401
Las Vegas, NV 89102

Attorneys for Defendants, **TON VINH LEE, DDS and
TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN SMILES**

DISTRICT COURT
CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of REGINALD
SINGLETARY, and as parent and legal guardian
of GABRIEL L. SINGLETARY, a Minor,

Plaintiff,

vs.

TON VINH LEE, DDS, individually, FLORIDA
TRAIVAI, DMD, individually, JAI PARK,
DDS, individually, TON V. LEE, DDS, PROF.
CORP., a Nevada Professional Corporation
d/b/a/ SUMMERLIN SMILES, DOE
SUMMERLIN SMILES EMPLOYEE, ; and
DOES I through X and ROE CORPORATIONS
I through X, inclusive,

Defendants.

Case No. A656091

Dept. No. XXX

**CASE APPEAL STATEMENT (CROSS-
APPEAL)**

CASE APPEAL STATEMENT (CROSS-APPEAL)

Defendant, TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba
SUMMERLIN SMILES, by and through her/its attorneys of record, Stark, Friedman &
Chapman, LLP, hereby files this Case Appeal Statement on Cross-Appeal.

///

///

1 1. Name of appellant filing this Case Appeal State:

2 TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN
3 SMILES

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

5 Honorable Jerry A. Wiese II
6

7 3. Identify each cross-appellant and the name and address of counsel for each cross-
8 appellant:

9 Cross-Appellants: TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba
SUMMERLIN SMILES

10 Attorneys: Jason B. Friedman, Esq.
11 Stark, Friedman & Chapman, LLP
12 200 W. Sahara, #1401
13 Las Vegas, NV 89102

14 4. Identify each respondent and the name and address of appellate counsel, if known, for
15 each respondent (if the name of a respondent's appellate counsel is unknown, indicated as
much and provide the name and address of that respondent's trial counsel):

16 Respondents: Svetlana Singletary, individually, and as the Representative of the
17 Estate of Reginald Singletary, and as parent and legal guardian of
18 Gabriel L. Singletary, a Minor

19 Attorneys: Micah S. Echols, Esq.
20 Marquis Aurbach Coffing
21 10001 Park Run Drive
Las Vegas, Nevada 89145

22 Lloyd W. Baker, Esq.
23 Ingrid Patin, Esq.
24 Baker Law Offices
500 S. Eighth Street
Las Vegas, Nevada 89101

25 ///

26 ///

27 ///

28 ///

1 Respondents: Florida Traivai, DMD

2 Attorneys: S. Brent Vogel, Esq.
3 Lewis, Brisbois, Bisgaard & Smith, LLP
4 6385 S. Rainbow Blvd., Suite 600
5 Las Vegas, Nevada 89118

- 6 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
7 licensed to practice law in Nevada and, if so, whether the district court granted that
8 attorney permission to appear under SCR 42 (attach a copy of any district court order
9 granting such permission):

10 N/A.

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

13 Retained.

- 14 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

15 Retained.

- 16 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
17 of entry of the district court order granting such leave:

18 N/A.

- 19 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint
20 indictment, information, or petition was filed):

21 The complaint was filed on February 7, 2012.

- 22 10. Provide a brief description of the nature of the action and result in the district court,
23 including the type of judgment or order being appealed and the relief granted by the
24 district court:

25 This appeal is taken from a wrongful death suit brought against Defendants by
26 Plaintiff after the death of Reginald Singletary following dental surgery to extract a
27 wisdom tooth. The jury found for Plaintiffs against Defendant Ton V. Lee, DDS, Prof.
28

1 Corp. d/b/a Summerlin Smiles and Florida Traivai, DMD, and awarded a total of
2 \$3,470,000. The Judgment on Jury Verdict awarded the total of \$3,470,000, plus interest,
3 and costs in the amount of \$38,042.64 to Plaintiffs.
4

5 Defendant Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles and Florida
6 Traivai, DMD, filed Rule 50(b) motions for judgment as a matter of law, which were
7 granted, with the result that the District Court vacated the award by the jury.
8

9 Defendant Ton Vinh Lee, DDS, filed a motion for costs, which was granted in the
10 amount of \$6,032.83. Defendant Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles
11 filed a motion for costs, which was granted in the amount of \$6,032.83.
12

13 Plaintiffs appeal from: (1) the Order [Granting in Part and Denying in Part
14 Defendant Florida Traivai's Motion to Retax costs and Defendant Ton Vinh Lee, DDS'
15 Joinder Thereto], filed on April 11th, 2014; (2) the Judgment on Jury Verdict, filed on
16 April 29th, 2014; (3) the Order on Defendant Traivai's and Lee's Motions for Judgment
17 as a Matter of Law Pursuant to NRCp 50 (b) and Motion for Remittitur, filed on July
18 16th, 2014; and (4) the Minute Order [Granting Costs to Defendant, Ton Vinh Lee, DDS],
19 filed on April 3rd, 2014.
20

21 Defendant Ton V. Lee, DDS Prof Corp dba SUMMERLIN SMILES is filing its
22 Cross-Appeal based on the question of whether the District Court erred in its application
23 of the NRS 41A.035 statutory cap on non-economic damages in the Judgment on Jury
24 Verdict filed April 29, 2014. Defendant Ton V. Lee, DDS Prof Corp dba SUMMERLIN
25 SMILES is also filing its Cross-Appeal based on the question of whether the Judgment on
26 Jury Verdict filed April 29, 2014 imposed joint and several liability on defendants in
27
28

1 violation of NRS 41A.045.

2
3 11. Indicate whether the case has previously been the subject of an appeal to or original writ
4 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
5 number of the prior proceeding:

6 This case was the subject of a writ petition to the Supreme Court docketed as Case No.
7 64734.

8 12. Indicate whether this appeal involves child custody or visitation

9 N/A.

10 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

11 This case does involve the possibility of a settlement.
12

13 Dated: November 7, 2014

STARK, FRIEDMAN & CHAPMAN

15
16 BY: 

JASON B. FRIEDMAN, ESQ.

Nevada State Bar No. 11799

STARK, FRIEDMAN & CHAPMAN

200 W. Sahara, #1401

Las Vegas, NV 89102

Attorneys for Defendants,

TON VINH LEE, DDS and TON V. LEE,

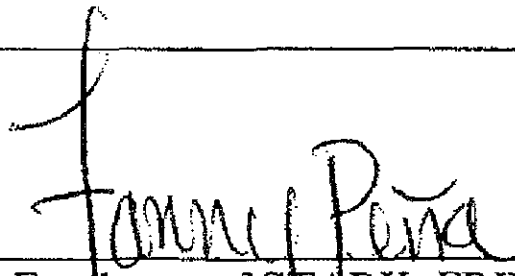
21 DDS, PROF. CORP. dba SUMMERLIN

SMILES
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing **Case Appeal Statement** was submitted for filing and/or service with the Eighth Judicial District Court made on November 7, 2014. Electronic service of the foregoing documents shall be made in accordance with the E-Service List as follows:¹

Baker Law Offices Contact: Aidee Garccia Email: Aidee@bakerattorneys.net
Lewis Brisbois Contact: Amanda Brookhyser Email: Amanda.brookhyser@lewisbrisbois.com
Lewis Brisbois Bisgaard & Smidt, LLP Contact: Carla Herndon Email: carlaherndon@lewisbrisbois.com Contact: Nicole Etienne Email: nicole.etienne@lewisbrisbois.com Contact: S. Brent Vogel, Esq. Email: Brent.Vogel@lewisbrisbois.com
Patin Law Group, LLC Contact: Ingrid Patin, Esq. Email: ingrid@patinlaw.com


An Employee of STARK, FRIEDMAN &
CHAPMAN, LLP

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).


CLERK OF THE COURT

****CODE**

JASON B. FRIEDMAN, ESQ.

Nevada State Bar No. 11799

STARK, FRIEDMAN & CHAPMAN, LLP

200 W. Sahara, #1401

Las Vegas, NV 89102

Attorneys for Defendants, TON VINH LEE, DDS and

TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN SMILES

DISTRICT COURT

CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of REGINALD
SINGLETARY, and as parent and legal guardian
of GABRIEL L. SINGLETARY, a Minor,

Plaintiff,

vs.

TON VINH LEE, DDS, individually, FLORIDA
TRAIVAI, DMD, individually, JAI PARK,
DDS, individually, TON V. LEE, DDS, PROF.
CORP., a Nevada Professional Corporation
d/b/a/ SUMMERLIN SMILES, DOE
SUMMERLIN SMILES EMPLOYEE, ; and
DOES I through X and ROE CORPORATIONS
I through X, inclusive,

Defendants.

Case No. A-12-656091-C

Dept. No. XXX

**CASE APPEAL STATEMENT (CROSS-
APPEAL)**

CASE APPEAL STATEMENT (CROSS-APPEAL)

Defendant, TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba
SUMMERLIN SMILES, by and through her/its attorneys of record, Stark, Friedman &
Chapman, LLP, hereby files this Case Appeal Statement on Cross-Appeal.

///

///

1. Name of appellant filing this Case Appeal State:

TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN SMILES

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

Honorable Jerry A. Wiese II

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

Cross-Appellants: TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN SMILES

Attorneys: Jason B. Friedman, Esq.
Stark, Friedman & Chapman, LLP
200 W. Sahara, #1401
Las Vegas, NV 89102

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as much and provide the name and address of that respondent's trial counsel):

Respondents: Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a Minor

Attorneys: Micah S. Echols, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145

Lloyd W. Baker, Esq.
Ingrid Patin, Esq.
Baker Law Offices
500 S. Eighth Street
Las Vegas, Nevada 89101

///
///
///
///

1 Respondents: Florida Traivai, DMD

2 Attorneys: S. Brent Vogel, Esq.
3 Lewis, Brisbois, Bisgaard & Smith, LLP
4 6385 S. Rainbow Blvd., Suite 600
5 Las Vegas, Nevada 89118

- 6 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
7 licensed to practice law in Nevada and, if so, whether the district court granted that
8 attorney permission to appear under SCR 42 (attach a copy of any district court order
9 granting such permission):

10 N/A.

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

13 Retained.

- 14 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

15 Retained.

- 16 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
17 of entry of the district court order granting such leave:

18 N/A.

- 19 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint
20 indictment, information, or petition was filed):

21 The complaint was filed on February 7th, 2012.

- 22 10. Provide a brief description of the nature of the action and result in the district court,
23 including the type of judgment or order being appealed and the relief granted by the
24 district court:

25 This appeal is taken from a wrongful death suit brought against Defendants by
26 Plaintiff after the death of Reginald Singletary following dental surgery to extract a
27 wisdom tooth. The jury found for Plaintiffs against Defendant Ton V. Lee, DDS, Prof.
28

1 Corp. d/b/a Summerlin Smiles ad Florida Traivai, DMD, and awarded a total of
2 \$3,470,000. The Judgment on Jury Verdict awarded the total of \$3,470,000, plus interest,
3 and costs in the amount of \$38,042.64 to Plaintiffs.
4

5 Defendant Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles and Florida
6 Traivai, DMD, filed Rule 50(b) motions for judgment as a matter of law, which were
7 granted, with the result that the District Court vacated the award by the jury.
8

9 Defendant Ton Vinh Lee, DDS, filed a motion for costs, which was granted in the
10 amount of \$6,032.83.

11 Plaintiffs appeal from: (1) the Order [Granting in Part and Denying in Part
12 Defendant Florida Traivai's Motion to Retax costs and Defendant Ton Vinh Lee, DDS'
13 Joinder Thereto], filed on April 11th, 2014; (2) the Judgment on Jury Verdict, filed on
14 April 29th, 2014; (3) the Order on Defendant Traivai's and Lee's Motions for Judgment
15 as a Matter of Law Pursuant to NRCF 50 (b) and Motion for Remittitur, filed on July
16 16th, 2014; and (4) the Minute Order [Granting Costs to Defendant, Ton Vinh Lee, DDS],
17 filed on April 3rd, 2014.
18

19
20 Defendant Florida Traivai, DMD's Motion for Costs and Defendant Ton V. Lee,
21 DDS, Prof. Corp. d/b/a Summerlin Smiles' Motion for Costs are currently pending in the
22 District Court.
23

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

27 This case was the subject of a writ petition to the Supreme Court docketed as Case No.
28 64734.

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12. Indicate whether this appeal involves child custody or visitation


N/A.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This case doe involve the possibility of a settlement.

Dated: September 11, 2014

STARK, FRIEDMAN & CHAPMAN

BY: 
JASON B. FRIEDMAN, ESQ.
Nevada State Bar No. 11799
STARK, FRIEDMAN & CHAPMAN
200 W. Sahara, #1401
Las Vegas, NV 89102
Attorneys for Defendants,
TON VINH LEE, DDS and TON V. LEE,
DDS, PROF. CORP. dba SUMMERLIN
SMILES

CERTIFICATE OF SERVICE

Singletary v. Lee, D.D.S., et al.

Case No. A-12-656091-C

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of STARK, FRIEDMAN & CHAPMAN, LLP and that on September 11, 2014, I caused the above and foregoing documents entitled: **CASE APPEAL STATEMENT (CROSS-APPEAL)** to be served as follows:

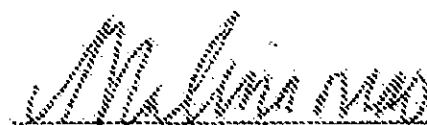
☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Long Beach, California; and/or

☐ Pursuant to EDCR 7.26, to be sent via facsimile;

☐ To be hand-delivered to the attorney listed below at the address indicated below; and/or

☐ Via electronic mail to the attorneys listed below:

Lloyd W. Baker, Esq. Ingrid Patin, Esq. BAKER LAW OFFICES 500 South Eighth Street Las Vegas, Nevada 89101	(702) 369-4949; (702) 360-3234 Fax Attorneys for Plaintiff, SVETLANA SINGLETARY, individually, as the Representative of the Estate of REGINALD SINGLETARY, and as parent and legal guardian of GABRIEL L. SINGLETARY, a Minor
Edward J. Lemons, Esq. Tiffany Barker Pagni, Esq. LEMONS, GRUNDY & EISENBERG 6005 Plumas Street, 3 rd Floor Reno, Nevada 89519	(775) 786-6868; (775) 786-9716 Fax Attorneys for Defendant, JAI PARK, D.D.S.
S. Brent Vogel, Esq. Amanda J. Brookhyser, Esq. LEWIS, BRISBOIS, BISGAARD & SMITH, LLP 6385 S. Rainbow Blvd., Suite 600 Las Vegas, Nevada 89118	Attorneys for Defendant, FLORIDA TRAIVAL, D.M.D.



MALINA MAO

EXHIBIT K

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
March 28, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:05 a.m. on Thursday, March 28, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator Joseph P. Hardy, Senatorial District No. 12
Senator Michael Roberson, Senatorial District No. 20

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Marc Randazza, Randazza Legal Group
Allen Lichtenstein, American Civil Liberties Union
Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool
Steve Balkenbush, Nevada Public Agency Insurance Pool
Rebecca Bruch, Nevada Public Agency Insurance Pool

Senator Hutchison:

Why is there a clear and convincing evidence standard? For example, the moving party initially starts by preponderance of the evidence that in fact the claim is based on free speech-First Amendment rights. Then if the court determines the moving party has met that burden of proof, the court then has to determine by clear and convincing evidence a probability of prevailing on the claim. Now the burden shifts to the plaintiff. The defendant points out the First Amendment right demonstrated by preponderance of the evidence. Is that correct?

Mr. Randazza:

Correct.

Senator Hutchison:

The burden shifts now to the plaintiff who wants to win this lawsuit by clear and convincing evidence to the court in that early stage, which is a fraud standard—a very high standard in the law. What is the rationale for setting the standard that high?

Mr. Randazza:

The way it has worked in California, Washington and Oregon cases, the plaintiff needs to front load his or her case. The plaintiff needs to show this evidence is going beyond the motion-to-dismiss standard. It is a burden-shifting statute. But without that important element, defendants can be quieted and punished for exercising free speech rights simply by winning a case. That burden-shifting is important, necessary and proper.

Chair Segerblom:

Is the lawsuit for defamation? Or is the lawsuit characterized as being something designed to suppress First Amendment rights?

Mr. Randazza:

The lawsuit is anything designed to quash First Amendment rights. This proposed law will be most frequently used in defamation lawsuits. Possibly, this proposed law could also be used in intellectual property lawsuits. For example, the company Righthaven, which operates in southern Nevada, has over 200 cases on the federal docket. Some of the cases involved Righthaven suing bloggers for exercising their right to free speech.

EXHIBIT L

Certificate of Business: Fictitious Firm Name

Please Select One:

☐ New Application

☒ Renewal of existing name

FILED

2010 OCT 26 A 10:26

Please Print or Type

The expiration date for such certificates shall be the last day of the sixtieth month from the date of filing.

The undersigned do/does hereby certify that TON V. LEE, DDS., PROPCORP.

(Name of individual, corporation, partnership or trust)

with mailing address of 6206 W. Desert Inn Rd., Ste # A, Las Vegas, NV, 89146

(Mailing Address for notification of renewal) (Street)

(City)

(State)

(Zip)

is/are conducting business in Clark County, Nevada, under the fictitious name of SUMMERLIN SMILES

(Fictitious Firm Name) or (Doing Business As)

and that said firm is composed of the following person(s) whose name(s) and address(es) are as follows:

By signing below I do solemnly swear (or affirm), under penalty of perjury, that all statements made in this document are true.

(1) Ton V. Lee President/Owner

Full Name and title (Type or Print)

4245 S. Grand Canyon Dr., Ste 108

Street Address of Business or Residence

6206 W. Desert Inn Rd., Ste # A

Mailing Address, if different from above

Signature

Date

Las Vegas, NV 89147

City, State, Zip

Las Vegas, NV 89146

City, State, Zip

(2)

Full Name and title (Type or Print)

Signature

Date

Street Address of Business or Residence

City, State, Zip

Mailing Address, if different from above

City, State, Zip

(3)

Full Name and title (Type or Print)

Signature

Date

Street Address of Business or Residence

City, State, Zip

Mailing Address, if different from above

City, State, Zip

(4)

Full Name and title (Type or Print)

Signature

Date

Street Address of Business or Residence

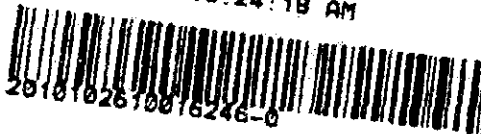
City, State, Zip

Mailing Address, if different from above

City, State, Zip

Mail to: Diana Alba, County Clerk, Attn. FFN, P.O. Box 55160
Include: Filing Fee of \$20.00 with the certificate plus 2 copies and a

Diana Alba, County Clerk
10/26/2010 10:24:18 AM



RECEIVED
OCT 25 2010
COUNTY CLERK

Certificate of Business: Fictitious Firm Name

Please Select One:

- ☐ New Application
☒ Renewal of existing fictitious firm name

Please Print or Type

2009 AUG 10 P 2:02

The expiration date for such certificates shall be the last day of the sixtieth month from the date of filing.

The undersigned do/does hereby certify that Ton V. Lee, DDS Prof. Corp.
(Name of individual, corporation, partnership or trust)

with mailing address of 4245 S Grand Canyon Dr. Ste 108, Las Vegas, NV, 89147
(Mailing Address for notification of renewal) (Street) (City) (State) (Zip)

is/are conducting business in Clark County, Nevada, under the fictitious name of

Summerlin Smiles

(Fictitious Firm Name) or (Doing Business As)

and that said firm is composed of the following person(s) whose name(s) and address(es) are as follows:

By signing below I do solemnly swear (or affirm), under penalty of perjury, that all statements made in this document are true.

(1) Ton Vinh Lee - president [Signature] 08/05/09
Full Name and title (Type or Print) Signature Date
2077 ORCHARD MIST ST. LAS VEGAS, NV 89135
Street Address of Business or Residence City, State, Zip

Mailing Address, if different from above City, State, Zip

(2) N/A
Full Name and title (Type or Print) Signature Date
Street Address of Business or Residence City, State, Zip

Mailing Address, if different from above City, State, Zip

(3) N/A
Full Name and title (Type or Print) Signature Date
Street Address of Business or Residence City, State, Zip

Mailing Address, if different from above City, State, Zip

(4) N/A
Full Name and title (Type or Print) Signature Date
Street Address of Business or Residence City, State, Zip

Mailing Address, if different from above City, State, Zip

Mail to: Shirley B. Parraguirre, County Clerk, Attn. FFN, P.O. Box 5:
Include: Filing Fee of \$20.00 with the certificate plus 2 copies and a sel

Shirley B. Parraguirre, County Clerk
08/10/2009 02:01:28 PM



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COUNTY CLERK

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TON V. LEE, DDS, PROF.CORP.

Business Entity Information			
Status:	Active	File Date:	02/10/2005
Type:	Domestic Professional Corporation	Entity Number:	E0093232005-7
Qualifying State:	NV	List of Officers Due:	02/29/2016
Managed By:		Expiration Date:	
Foreign Name:		On Admin Hold:	No
NV Business ID:	NV20051222746	Business License Exp:	02/29/2016

Additional Information	
	Central Index Key

Registered Agent Information			
Name:	TON V. LEE, DDS	Address 1:	2077 ORCHARD MIST STREET
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89135
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		
View all business entities under this registered agent ()			

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 10,000.00
Par Share Count:	1,000,000.00	Par Share Value:	\$.01

Officers		<input type="checkbox"/> Include Inactive Officers	
President - TON V LEE, DDS			
Address 1:	2077 ORCHARD MIST STREET	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89135	Country:	USA
Status:	Active	Email:	
Secretary - TON V LEE, DDS			
Address 1:	2077 ORCHARD MIST STREET	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89135	Country:	USA
Status:	Active	Email:	
Treasurer - TON V LEE, DDS			
Address 1:	2077 ORCHARD MIST STREET	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89135	Country:	USA
Status:	Active	Email:	
Director - TON V LEE, DDS			
Address 1:	2077 ORCHARD MIST STREET	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89135	Country:	USA
Status:	Active	Email:	

Actions\Amendments

Click here to view 13 actions\amendments associated with this company ()

Disclaimer ()

EXHIBIT M

1 CASE NO. A-12-656091

2 DEPT. NO. 30

3 DOCKET U

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 * * * * *

7 SVETLANA SINGLETARY,)
8 individually, as the)
9 representative of the Estate)
10 of REGINALD SINGLETARY, and as)
11 parent and legal guardian of)
12 GABRIEL L. SINGLETARY, a)
13 minor,)

14 Plaintiffs,)
15 vs.)

16 TON VINH LEE, DDS,)
17 individually, FLORIDA TRAIVAI,)
18 DMD, individually, JAI PARK,)
19 DDS, individually, TON V. LEE,)
20 DDS, PRO. CORP., a Nevada)
21 Professional Corporation d/b/a)
22 SUMMERLIN SMILES, DOE)
23 SUMMERLIN SMILES EMPLOYEE and)
24 DOES I through X and ROE)
25 CORPORATIONS I through X,)
inclusive,)

Defendant.)

20 REPORTER'S TRANSCRIPT OF JURY TRIAL

21 BEFORE THE HONORABLE JERRY A. WIESE, II

22 DEPARTMENT XXX

23 DATED FRIDAY, JANUARY 17, 2014

24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
25 CA CSR #13529

1 APPEARANCES:

2 For the Plaintiff:

3 BAKER LAW OFFICES
4 BY: INGRID M. PATIN, ESQ.
5 500 South Eighth Street
6 Las Vegas, Nevada 89101
(702) 360-4949
ingrid@bakerattorneys.net

7 For the Defendant Florida Traivai, DMD:

8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 BY: S. BRENT VOGEL, ESQ.
6385 South Rainbow Boulevard
Suite 600
10 Las Vegas, Nevada 89118
11 (702) 893-3383

12 For the Defendant Ton Vinh Lee, DDS and Summerlin
13 Smiles:

14 FORD WALKER HAGGERTY & BEHAR
15 BY: JASON B. FRIEDMAN, ESQ.
3960 Howard Hughes Parkway
Suite 500
16 Las Vegas, Nevada 89102
(702) 990-3580
jfriedman@fwhb.com

17
18 For the Defendant Jai Park, DDS:

19 LEMONS, GRUNDY & EISENBERG
20 BY: EDWARD J. LEMONS, ESQ.
6005 Plumas Street
Third Floor
21 Reno, Nevada 89519
(775) 786-6868
22 ejl@lge.net

23
24 * * * * *

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I N D E X

WITNESS:	PAGE
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Cross-Examination by Ms. Patin	35
Recross-Examination by Ms. Patin	81
<u>CHRISTIAN SANDROCK, D.D.S.</u>	
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Redirect Examination by Mr. Vogel	131
<u>DAVID LEVITT, D.D.S.</u>	
Direct Examination by Mr. Lemons	134
Cross-Examination by Ms. Patin	149
Redirect Examination by Mr. Lemons	158
Cross-Examination by Mr. Vogel	159
Recross-Examination by Ms. Patin	160

1 It's done at her discretion.

2 MR. VOGEL: Thank you, Doctor.

3 THE WITNESS: Welcome.

4 THE COURT: Mr. Lemons?

5 MR. LEMONS: I have nothing additional to
6 that, Your Honor. Thank you.

7 THE COURT: Ms. Patin.

8

9 CROSS-EXAMINATION

10 BY MS. PATIN:

11 Q. Good morning.

12 A. Good morning.

13 Q. Dr. Lee, you're the president and owner of
14 Summerlin Smiles, correct?

15 A. That's correct.

16 Q. And you're also the president and owner of
17 Distinctive Smiles as well, correct?

18 A. That's correct.

19 Q. And the tooth extraction that was performed
20 on Reginald Singletary by Dr. Park and Dr. Traivai was
21 done at your clinic, Summerlin Smiles, correct?

22 A. That's correct.

23 Q. And that was on April 16th of 2011?

24 A. That's correct.

25 Q. Now, Dr. Park and Dr. Traivai, they don't pay


CLERK OF THE COURT

1 CAPT
2 PRESCOTT T. JONES, ESQ.
3 Nevada State Bar No. 11617
4 AUGUST B. HOTCHKIN, ESQ.
5 Nevada State Bar No. 12780
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12 pjones@bremerwhyte.com
13 ahotchkin@bremerwhyte.com

14 Attorneys for Plaintiff,
15 TON VINH LEE

10 **DISTRICT COURT**
11 **CLARK COUNTY; NEVADA**

13 TON VINH LEE, an individual,) Case No. A-15-723134
14)
15 Plaintiff,) Dept. No.: IX
16 vs.)
17) **NOTICE OF ENTRY OF ORDER**
18 INGRID PATIN, an individual; and PATIN) **DENYING DEFENDANTS' MOTION TO**
19 LAW GROUP, PLLC, a Nevada Professional) **DISMISS**
20 LLC,)
21)
22 Defendants.)
23)

24 PLEASE TAKE NOTICE that an ORDER DENYING DEFENDANTS' MOTION TO
25 DISMISS was entered on October 22, 2015. A copy of said ORDER is attached hereto.

26 Dated: October 23, 2015

BREMER WHYTE BROWN & O'MEARA LLP

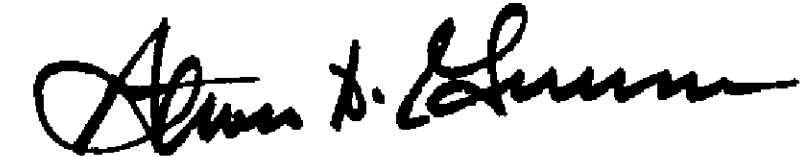


By:

Prescott T. Jones, Esq., Bar No. 11617
August B. Hotchkin, Esq., Bar No. 12780
Attorneys for Plaintiff
TON VINH LEE

ORDR
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TON VINH LEE

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY; NEVADA

TON VINH LEE, an individual

Plaintiff,

vs.

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

Defendants.

) Case No.: A723134

) Dept. No.: IX

) **ORDER DENYING DEFENDANTS'**
) **MOTION TO DISMISS**

Defendants', INGRID PATIN and PATIN LAW GROUP, PLLC (collectively
"Defendants") Motion to Dismiss came on for hearing before this Court at 9:00 a.m. on the 14th day
of October, 2015. The Court, having read all of the pleadings and papers on file herein, and good
cause appearing, therefore, it is hereby:

///

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///


1 ORDERED, ADJUDGED AND DECREED Defendants' Motion to Dismiss is deemed a
2 Motion for Summary Judgment under NRCP 56.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED Defendants' Motion to
4 Dismiss, deemed a Motion for Summary Judgment, is DENIED without prejudice pursuant to
5 NRCP 56(f).

6 DATED: this 22nd day of October, 2015.

7
8 
9 DISTRICT COURT JUDGE
10 

11 Respectfully Submitted by:
12 BREMER WHYTE BROWN & O'MEARA LLP

13
14 By: 
15 Prescott T. Jones, Esq.
16 Nevada State Bar No. 11617
17 August B. Hotchkin, Esq.
18 Nevada State Bar No. 12780
19 Attorneys for Plaintiff
20 TON VINH LEE
21
22
23
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25
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27
28


CLERK OF THE COURT

MDSM
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
NETTLES LAW FIRM
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Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@nettleslawfirm.com
Attorney for Defendants, Ingrid Patin and Patin Law Group, PLLC

DISTRICT COURT
CLARK COUNTY, NEVADA

TON VINH LEE, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO. A-15-723134-C
DEPARTMENT NO. IX

**DEFENDANTS' MOTION TO DISMISS
PURSUANT TO NRCP 12(b)(5)**

COMES NOW Defendant, Ingrid Patin, an individual (hereinafter, "Defendant Patin"),
by and through her counsel of record, Christian M. Morris, Esq. of the Nettles Law Firm, hereby
submits this Motion to Dismiss pursuant to NRCP 12(b)(5), and hereby moves for dismissal of
Plaintiff's complaint against Ingrid Patin, an individual, with prejudice.

NETTLES LAW FIRM

1389 Galleria Drive, Suite 200
Henderson, NV 89014

702 434 8282 / 702 434 1488 (fax)

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This Motion is made and based upon the papers and pleadings on file with the Court, the exhibits attached hereto, the following Memorandum of Points and Authorities, and any oral argument the Court may entertain at the hearing on the Motion.

Dated this 27th day of January, 2016.

NETTLES LAW FIRM

/s/ Christian M. Morris
Christian M. Morris, Esq.
Nevada Bar No. 011218
1389 Galleria Drive, Suite 200
Henderson, NV 89014
Attorneys for Defendants, Ingrid Patin and Patin Law Group, PLLC

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that Defendants will bring the instant **DEFENDANTS’ MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)** on for hearing before the above-entitled Court on the 2 day of March, 2016, at the hour of 9:00a a.m. of that day, or as soon thereafter as counsel may be heard.

Dated this 27th day of January, 2016.

NETTLES LAW FIRM

/s/ Christian M. Morris
Christian M. Morris, Esq.
Nevada Bar No. 011218
1389 Galleria Drive, Suite 200
Henderson, NV 89014
Attorneys for Defendants, Ingrid Patin and Patin Law Group, PLLC

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The instant action arises from a statement posted on a website, patinlaw.com. The website
5 is owned and operated by Patin Law Group, PLLC, a Nevada Professional limited liability
6 company.¹ In 2014, Plaintiff Svetlana Singletary, individually and on behalf of her minor son,
7 brought to trial a dental malpractice case for the death of her husband. The defendants in the case
8 were Ton Vinh Lee, DDS, Ton V. Lee, DDS, PC d/b/a Summerlin Smiles, Florida Traivai, DMD,
9 an individual, and Jai Park, DDS, an individual. At the conclusion of the trial, a jury returned a
10 verdict for the plaintiff. In its verdict, the jury decided that Ton V. Lee, DDS, PC d/b/a Summerlin
11 Smiles and Florida Traivai, DMD were liable for damages in excess of \$3 million dollars. Shortly
12 thereafter, a statement describing the verdict was posted to patinlaw.com. At the time of posting
13 the information, the statement was absolutely true. Sometime later, the district court in the
14 underlying matter granted a renewed motion for judgment as a matter of law, overturning the
15 jury's verdict. The court's order granting judgment as a matter of law is now an issue on appeal
16 in the underlying matter. The statement on patinlaw.com was altered to reflect the matter was on
17 appeal.

18 On or about August 17, 2015, Plaintiff Ton Vinh Lee (hereinafter "Plaintiff Lee")
19 commenced the instant action alleging defamation per se by Defendant Patin, an individual, and
20 Patin Law Group, PLLC. However, Plaintiff Lee failed to properly allege any allegations against
21 Defendant Patin as an individual. The website "patinlaw.com" is owned and operated by Patin
22 Law Group, PLLC. The website is not owned or operated by Defendant Patin, and no allegations
23 of any such ownership were ever made by Plaintiff Lee in his Complaint. Further, under Nevada
24 law, Patin Law Group, PLLC is a separate legal entity. Thus, pursuant to the Nevada Revised
25 Statutes, Defendant Patin, as an individual, is not liable for the actions of Patin Law, PLLC simply
26 by virtue of her position as a managing member of the company.

27
28 ¹ Defendant Ingrid Patin is a managing member of Patin Law Group, LLC.

1 Based on the failure to properly allege any allegations against Defendant Patin,
2 individually, the Complaint fails on its face and the Motion to Dismiss must be granted.
3 Furthermore, based on the evidence provided to the Court in the form of a sworn affidavit, the
4 management of the website is performed by a company that is employed by Patin Law Group,
5 PLLC. Thus, even if the Complaint had properly contained allegations of defamation against Ms.
6 Patin as an individual; there is no legal theory upon which relief could be granted due to the
7 separate entity status of the corporation.

8 II.

9 ARGUMENT

10 A. Standard for Motion to Dismiss Pursuant to 12(b)(5)

11 Nevada Rule of Civil Procedure 12(b)(5) empowers the courts to dismiss a pleading for
12 failure to state a claim upon which relief can be granted. “While a Complaint does not need
13 detailed factual allegations, a plaintiff’s obligations to provide the grounds of his entitle[ment] to
14 relief requires more than labels and conclusions, a formulaic recitation of the elements of a cause
15 of actions will not do” *Straznicky v. Desert Springs Hosp.*, 642 F. Supp. 2d 1238, 1240 (D. Nev.
16 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 553-58 (2007)). A pleading is
17 subject to dismissal unless it alleges “enough facts to state a claim to relief that is plausible on its
18 face.” *Twombly*, 550 U.S. at 570.

19 This generally occurs in two circumstances: (i) the absence of a cognizable legal theory,
20 or (ii) there is insufficient facts under a cognizable legal claim. *Robertson v. Dean Witter*
21 *Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). While there is some deference given to a
22 plaintiff when considering a Rule 12(b)(5), the court not need to accept conclusory statements,
23 legal conclusions or unreasonable inferences. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
24 (“labels and conclusions” or “formulaic recitation of the elements of a cause of actions” will not
25 suffice); *In re Verifone Sec. Litig.*, 11 F.3d 865, 868 (9th Cir. 1993) (“Conclusory allegations of
26 law and unwarranted inferenced are insufficient to defeat a motion to dismiss for failure to state
27 a claim.”) Moreover, “it is not proper to assume that the [plaintiff] can prove facts that it has not
28 alleged.” *Assoc. Gen Contractors v. Cal State Counsel of Carpenters*, 459 U.S. 519, 526 (1983).

1 In this case presently before the Court, Plaintiff Lee fails to put forth a single allegation
2 connecting Defendant Patin, as an individual, to the actions of a company, Patin Law Group,
3 PLLC.

4 **B. Standard for Summary Judgment**

5 Attached to this Motion is an Affidavit of Defendant Patin. A 12(b)(5) motion to dismiss
6 that asks to the court to look outside the pleadings is treated as a Rule 56 motion for summary
7 judgment. NRCP 12(b)(5), 56. Therefore, this matter must be viewed by this Court as a Motion
8 for Summary Judgment. In a matter where a Motion for Summary Judgment is before the Court,
9 all evidence is viewed in the light most favorable to the non-moving party, and all inferences
10 settled in that party's favor. NRCP 56. However, when the evidence pointed to by the parties
11 demonstrates that an essential element of a claim fails as a matter of law, the motion should be
12 granted and the claim dismissed. NRCP 56. Under Rule 56 of the Nevada Rules of Civil Procedure
13 summary judgment is appropriate "when the pleadings, depositions, answers to interrogatories,
14 admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine
15 issue of material fact exists, and the moving party is entitled to judgment as a matter of law."
16 Wood v. Safeway, Inc., 121 Nev. 724, 731 (2005).

17 To overcome a moving party's claim that no material question of fact exists, the non-
18 moving party must present admissible evidence from the record and identify specific facts to
19 establish that a genuine issue exists which must be determined at trial. Id. at 732. To overcome a
20 motion for summary judgment a non-moving party is required to "do more than simply show that
21 there is some metaphysical doubt" as to the facts Id. quoting Matsushita Elec. Indus. Co., Ltd. v.
22 Zenith Radio Corp., 475 U.S. 574, 586 (1986). Furthermore, the non-moving party "is not entitled
23 to build a case on the gossamer threads of whimsy, speculation, and conjecture." Id. quoting
24 Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

25 In this case, the only evidence before the Court is a pleading that fails on its face, and an
26 Affidavit, which shows that under Nevada law Defendant Patin is not liable for the actions of
27 Patin Law group. PLLC.
28

1 **C. Limited Liability Companies Are Distinct Legal Entities In Nevada**

2 Nev. Rev. Stat. § 86.201(3) clearly states that a limited liability company is an entity
3 distinct from its managers and members. As such, under Nev. Rev. Stat. § 86.381 a member “of
4 a limited liability company is not a proper party to proceedings by and against the company. Per
5 Nevada law, Defendant Patin would never be a proper party to this lawsuit simply by her position
6 as a member or manager of the professional limited liability company. This is true even if Plaintiff
7 Lee had alleged Defendant Patin was an owner or a manager of Patin Law Group, PLLC, which
8 was never alleged. Indeed, under NRS 86.371 “no member or manager of any limited-liability
9 company formed under the laws of this state is individually liable for the debts or liabilities of the
10 company,” unless provided otherwise in the LLC’s forming documents. Here, Patin Law Group,
11 PLLC’s documents do not so provide. See Affidavit of Ingrid Patin, attached as **Exhibit 1**.

12 Based on the foregoing, it is clear that Defendant Patin would never be held personally
13 liable for the debts of Patin Law Group, PLLC even if there were a judgment against the company.
14 Therefore, there is no legal way to try and connect her as an individual to this matter. Frankly,
15 any liability of Defendant Patin is an issue of piercing the corporate veil (i.e., alter ego). Whether
16 Patin Law Group, PLLC was acting as an alter ego of Defendant Patin is a question to be answered
17 at another time. If Plaintiff Lee is actually able to prevail in his claims of defamation against Patin
18 Law Group, PLLC, then he will be able to argue the three prongs of Nevada’s controlling alter
19 ego case, Frank McCleary Cattle Co.. Since Defendant Patin’s liability, if any, is a decision for
20 later, then asserting the claim against Defendant Patin individually now is improper.

21
22 **D. Plaintiff Lee’s Claim of Defamation Per Se Against Defendant Patin Should Be
23 Dismissed**

- 24 1. Plaintiff’s Complaint fails to state any allegation that Defendant Patin, as
25 an individual, is responsible in any way for the actions of Patin Law Group,
26 PLLC

27 Plaintiff Lee’s Complaint fails to state a claim against Defendant Patin due to the lack of
28 any allegation that Defendant Patin in any way owns, operates, is employed or is contracted by
Patin Law Group, PLLC. The Complaint also fails to state any allegation that Defendant Patin

1 was in any way involved in the actions of Patin Law Group, PLLC or responsible for the
2 corporations actions related to a website it maintains.

3 The complaint alleges as follows: “INGRID PATIN, ESQ., is, and was at all relevant times,
4 a practicing attorney in the State of Nevada.” See Complaint, attached as **Exhibit 2**, at para 4. The
5 Complaint goes on to allege that Patin Law Group, PLLC is a Nevada professional Limited
6 Liability Company. Id. at para 5. Plaintiff Lee then alleges “Plaintiff [sic] added this statement to
7 her website for personal gain.” Id. at para 12. These allegations fail to state a claim against any
8 Defendant in this matter, as there is no allegation, or clarification, as to who “her” is in paragraph
9 twelve (12). Assuming Plaintiff Lee was attempting to allege this allegation against Defendant
10 Patin as an individual, there would need to be an allegation that this was her personal website, as
11 Plaintiff Lee is asserting it is for “her” personal gain. However, there is no such allegation, and
12 the facts state this is a company website for Patin Law Group, PLLC.

13 Plaintiff Lee goes on to allege that “Defendants posted a false and defamatory statement
14 on the ‘Recent Settlements and Verdicts’ portion of their website, PatinLaw.com.” Id. at para 14.
15 However, the website is owned and operated by Patin Law Group, LLC. See Exhibit 1. Defendant
16 Patin, as an individual, does not own or operate the website, only Patin Law Group, PLLC does.
17 Id. All posts to the website are done at the direction of Patin Law Group, PLLC by a company
18 that is employed by Patin Law Group, PLLC. Id. There has been no allegation that Defendant
19 Patin (a natural person, separate and distinct from Patin Law Group, PLLC) is the owner of the
20 website. Therefore, it is not proper to assume Defendant Patin is responsible for the actions of a
21 company, when that has never been alleged. Accordingly, the claim against Defendant Patin for
22 defamation per se must be dismissed because any publication on the website was performed by
23 or at the direction of Patin Law Group, PLLC.

24 2. Nevada law regarding limited liability companies requires dismissal
25 because Defendant Patin is not a proper party

26 Although Plaintiff Lee may try to argue that Defendant Pain is liable in this matter due to
27 the fact that she is managing member of Patin Law Group, PLLC, Nevada law is clear on the
28 distinction between the entity and its managers and members. Under Nevada law, a limited
liability company is an entity “distinct from its managers and members.” NRS § 86.201(3).

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Accordingly, a managing member of a limited liability company “is not a proper party” to proceedings against the company. NRS § 86.381.

Therefore, even if Plaintiff Lee was to try and connect Defendant Patin to the actions of Patin Law Group, PLLC via her position in the corporation, this action would fail as a matter of law. It is clear based on the foregoing that Plaintiff Lee has improperly named Defendant Patin as an individual defendant in this action. Accordingly, Plaintiff Lee’s claim for defamation per se against Defendant Patin should be dismissed.

III.

CONCLUSION

Defendants respectfully request this Honorable Court to issue an Order dismissing, with prejudice, Plaintiff Lee’s cause of action of defamation per se against Defendant Patin with prejudice.

DATED this 27th day of January, 2016.

NETTLES LAW FIRM

/s/ Christian M. Morris

Christian M. Morris, Esq.

Nevada Bar No. 011218

1389 Galleria Drive, Suite 200

Henderson, NV 89014

Attorneys for Defendants, Ingrid Patin and Patin Law Group, PLLC

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP (b) and EDCR 7.26, I certify that on this 27 day of January, 2016, I served the foregoing **DEFENDANTS' MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)** on the following parties by electronic transmission through the Wiznet system on.

Bremer Whyte Brown & O'Meara		
Contact		Email
Ashley Boyd		aboyd@bremerwhyte.com
Courtney Droessler		cdroessler@bremerwhyte.com
Jennifer Vela		jvela@bremerwhyte.com
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August B. Hotchkin		ahotchkin@bremerwhyte.com
Patin Law Group, PLLC		
Contact		Email
Ingrid Patin, Esq.		ingrid@patinlaw.com
		ingrid@patinlaw.com

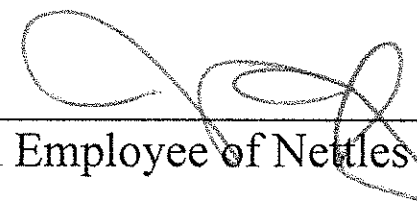

An Employee of Nettles Law Firm

Exhibit 1

Exhibit 1

Exhibit 1

1 **AFF**
2 BRIAN D. NETTLES, ESQ.
3 Nevada Bar No. 7462
4 CHRISTIAN M. MORRIS, ESQ.
5 Nevada Bar No. 11218
6 NETTLES LAW FIRM
7 1389 Galleria Drive, Suite 200
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10 Facsimile: (702) 434-1488
11 brian@nettleslawfirm.com
12 christian@nettleslawfirm.com
13 *Attorneys for Defendants, Ingrid Patin and Patin Law Group, PLLC*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 TON VINH LEE, an individual,
17
18 Plaintiff,

Case No.: A723134
Dept. No.: IX

19 v.

20 INGRID PATIN, an individual, and PATIN
21 LAW GROUP, PLLC, a Nevada Professional
22 LLC,
23 Defendants.

24 **AFFIDAVIT OF INGRID PATIN, ESQ.**

25 STATE OF NEVADA)
26) ss.
27 COUNTY OF CLARK)

28 INGRID PATIN, ESQ., being duly sworn, deposes and says that:

1. I am fully competent to testify regarding these matters set forth herein based upon my personal knowledge.
2. I am a managing member of Patin Law Group, PLLC.

3. Patin Law Group, PLLC was formed on April 16, 2010, and has remained an active business entity in the State of Nevada.

4. Patin Law Group, PLLC is a professional LLC with an active Nevada State Business License.

5. The articles of organization of Patin Law Group, PLLC do NOT provide that its managing members are individually liable for the debts or liabilities of the company.

6. Patin Law Group, PLLC owns and operates a company website, patinlaw.com.

7. In 2013, Patin Law Group, PLLC employed Technology Mechanics, Inc. to build its website, patinlaw.com, and has continually employed Technology Mechanics, Inc. to manage its website, patinlaw.com.

8. I, as an individual, do not own, operate and/or manage patinlaw.com.

9. I, as an individual, do not employ or pay Technology Mechanics, Inc. to manage Patin Law Group, PLLC's website, patinlaw.com.

DATED this 27th day of January, 2016.



INGRID PATIN, ESQ.

SUBSCRIBED and SWORN to before me
this 27th day of January, 2016.

Dorothy A. Allen
NOTARY PUBLIC in and for the
County of Clark, State of Nevada.

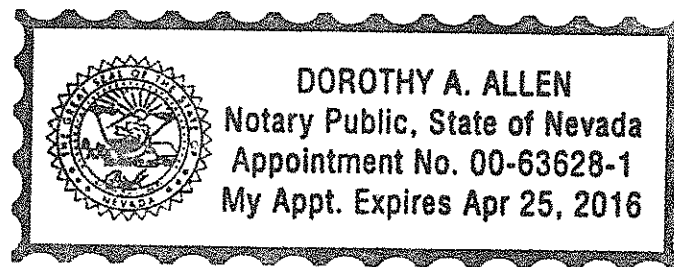


Exhibit 2

Exhibit 2

Exhibit 2

DISTRICT COURT CIVIL COVER SHEET

A-15-723134-C

Clark

County, Nevada

IX

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Ton V. Lee, DDS

9525 W. Russell Rd.

Las Vegas, NV 89148

(702) 579-7645

Defendant(s) (name/address/phone):

Ingrid Patin, individual; Patin Law Group, PLLC

6671 S. Las Vegas, Blvd., Suite 210

Las Vegas, NV 89119

(702) 461-5241

Attorney (name/address/phone):

Prescott T. Jones, Esq.--Bremer Whyte Brown & O'Meara, LLP

1160 North Town Center Dr., Suite 250

Las Vegas, NV 89144

(702) 258-6665

Attorney (name/address/phone):

Patin Law Group, PLLC

6671 S. Las Vegas Blvd., Suite 210

Las Vegas, NV 89119

(702) 461-5241

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property		Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input checked="" type="checkbox"/> Other Tort
Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property	Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	
Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property		
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency
Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency
		Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

August 17, 2015

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 PRESCOTT T. JONES, ESQ.
2 Nevada State Bar No. 11617
JESSICA M. FRIEDMAN, ESQ.
3 Nevada State Bar No. 13486
BREMER WHYTE BROWN & O'MEARA LLP
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6 FACSIMILE: (702) 258-6662
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7 Attorneys for Plaintiff,
8 TON VINH LEE

9
10 **DISTRICT COURT**
11 **CLARK COUNTY; NEVADA**

12 TON VINH LEE, an individual

13 Plaintiff,

14 vs.

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

17 Defendants.

) Case No.: A - 15 - 723134 - C

) Dept. No.: IX

) **COMPLAINT**

18
19 COMES NOW, Plaintiff TON VINH LEE (hereinafter "Plaintiff"), by and through his
20 attorneys of record, Prescott T. Jones, Esq. and Jessica M. Friedman, Esq. of the law firm
21 BREMER, WHYTE, BROWN & O'MEARA, LLP, and hereby complains and alleges as follows:

22 **I.**

23 **PARTIES**

- 24 1. Plaintiff is, and at all times relevant herein, was a resident of Clark County, Nevada.
- 25 2. The actions complained of herein occurred in Clark County, Nevada.
- 26 3. Plaintiff, TON VINH LEE (hereinafter "Plaintiff") is a Doctor of Dental Surgery
- 27 (DDS), and owner of Ton V. Lee, DDS, P.C., d/b/a Summerlin Smiles located at 9525 West
- 28 Russell Rd. Suite 100, Las Vegas, NV 89148.

4. Plaintiff is informed, believes, and thereupon alleges, Defendant INGRID PATIN, ESQ. is, and was at all relevant times, a practicing attorney in the State of Nevada.

5. Plaintiff is informed, believes, and thereupon alleges, Defendant PATIN LAW GROUP, PLLC is a Nevada Professional Limited Liability Company licensed to do business in Clark County, Nevada.

6. Defendants, and each of them, were the handling attorney and/or handling law firm in *Svetlana Singletary v. Ton Lee, DDS*, Case Number A-12-656091-C.

II.

GENERAL ALLEGATIONS

7. Plaintiff incorporates herein by reference the preceding paragraphs, inclusive, as though fully set forth herein.

8. On or about February 7, 2012, Svetlana Singletary, Gabriel Singletary, Gabriel I Singletary, and the Estate of Reginald Singletary filed suit against, *inter alia*, TON VINH LEE for various causes of action arising out of the death of Reginald Singletary, in Case Number A-12-656091-C.

9. On September 10, 2014, a Judgement on Jury Verdict was entered in favor of Defendant TON VINH LEE, in which TON VINH LEE was also awarded his cost in the amount of Six Thousand Thirty-Two Dollars and Eighty-Three Cents (\$6,032.83), as the prevailing party under NRS 18.020.

10. Despite the Judgment entered, Defendants lists on their website, PatinLaw.com, under a section entitled “Recent Settlements and Verdicts,” a Plaintiff’s Verdict in the amount of \$3.4M for *Svetlana Singletary v. Ton Lee, DDS* .wherein it explicitly refers to Plaintiff Ton Vinh Lee by name.

11. Nevada Rules of Professional Conduct, Rule 7.2, requires any statement made by an attorney that includes a monetary sum, the amount involved must have been actually received by the client.

12. Plaintiff added this statement to her website for her own personal gain.

1 **FIRST CLAIM FOR RELIEF**

2 **Defamation Per Se**

3 13. Plaintiff incorporates herein by reference the preceding paragraphs, inclusive, as
4 though fully set forth herein.

5 14. Defendants posted a false and defamatory statement on the "Recent Settlements and
6 Verdicts" portion of their business website, PatinLaw.com.

7 15. The defamatory statement directly names both the Plaintiff and his Medical Practice.

8 16. The defamatory statement lists the case name, *Singletary v. Ton Vinh Lee, DDS, et*
9 *al.*, as well as a detailed description of the case: "A dental malpractice-based wrongful death action
10 that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32
11 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office,
12 Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traivai, DMD
13 and Jai Park, DDS, on behalf of the Estate, herself and minor son."

14 17. Defendants have posted this statement on their website, which constitutes an
15 unprivileged publication to a third person.

16 18. Defendants knew or should have known that the statement was false.

17 19. Nevada Rules of Professional Conduct, Rule 7.2, prohibit attorneys from advertising
18 verdicts or recoveries that were not actually received or won.

19 20. The defamatory statement imputes to TON VINH LEE a lack of fitness as a dentist
20 in that it claims Plaintiffs were able to recover a \$3.4 million judgment for wrongful death.

21 21. The defamatory statement injures TON VINH LEE in his business as a simple
22 internet search reveals the claimed verdict for wrongful death.

23 WHEREFORE, Plaintiff expressly reserving the right to amend this complaint prior to or at
24 the time of trial of this action, to insert those items of damage not yet fully ascertainable, prays
25 judgement against all Defendants, and each of them, as follows:

26 1. For general damages in excess of \$10,000.00.

27 2. For reasonable attorney's fees and costs

28 3. For pre- and post-judgement interest on any award rendered herein; and

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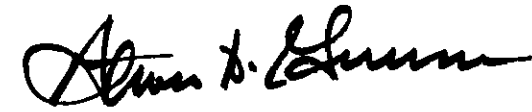
4. For such other and further relief as the Court deems just and proper

Dated: August 17, 2015

BREMER WHYTE BROWN & O'MEARA LLP

By: 

Prescott T. Jones, Esq.
Nevada State Bar No. 11617
Jessica M. Friedman, Esq.
Nevada State Bar No. 13486
Attorney for Plaintiff,
TON VINH LEE



CLERK OF THE COURT

1 **ORDER**

2 PRESCOTT T. JONES, ESQ.
3 Nevada State Bar No. 11617
4 AUGUST B. HOTCHKIN, ESQ.
5 Nevada State Bar No. 12780
6 BREMER WHYTE BROWN & O'MEARA LLP
7 1160 N. TOWN CENTER DRIVE
8 SUITE 250
9 LAS VEGAS, NV 89144
10 TELEPHONE: (702) 258-6665
11 FACSIMILE: (702) 258-6662
12 pjones@bremerwhyte.com
13 ahotckin@bremerwhyte.com

14 Attorneys for Plaintiff,
15 TON VINH LEE

16 **DISTRICT COURT**

17 **CLARK COUNTY; NEVADA**

18 TON VINH LEE, an individual,

19 Plaintiff,

20 vs.

21 INGRID PATIN, an individual; and PATIN
22 LAW GROUP, PLLC, a Nevada Professional
23 LLC,

24 Defendants.

) Case No. A-15-723134

) Dept. No.: IX

) **ORDER DENYING DEFENDANTS'**
) **SPECIAL MOTION TO DISMISS**
) **PURSUANT TO NRS 41.635-70, OR IN**
) **THE ALTERNATIVE, MOTION TO**
) **DISMISS PURSUANT TO NRCP 12(B)(5)**

25 Defendants INGRID PATIN and PATIN LAW GROUP, PLLC's (collectively
26 "Defendants") Special Motion to Dismiss Pursuant to NRS 41.635-70, or in the Alternative,
27 Motion to Dismiss Pursuant to NRCP 12(b)(5) came on for hearing before this Court on December
28 2, 2015. The Court, having read all of the pleadings and papers on file herein, and good cause
appearing, therefore, it is hereby:

ORDERED, ADJUDGED AND DECREED that Defendants' Motion is timely filed
pursuant to NRS 41.660.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the communication at
issue (as detailed by the Plaintiff Ton Vinh Lee in his Opposition to this Motion) under the
circumstances of the nature, content, and location of the communication is not a good faith

1 communication in furtherance of the right to petition or the right to free speech in direct connection
2 with an issue of public concern. Specifically, NRS 41.637(3) does not apply because the
3 communication does not reference an appeal, nor does there appear to be any connection to the
4 communication and its timing to any purpose other than attorney advertising. NRS 41.637(4) does
5 not apply because it appears there is no direct connection to a matter of public interest, and instead
6 it appears to be for the purpose of attorney advertising. However, even if NRS 41.637(3) or (4) did
7 apply to complained-of communication, this Court cannot find at this juncture that the Plaintiff
8 hasn't put forth prima facie evidence demonstrating a probability of prevailing on this claim. This
9 is particularly true because the truth or falsity of an allegedly defamatory statement is an issue for
10 the jury to determine. Posadas v. City of Reno, 109 Nev. 448, 453 (1993). Further, because if
11 found to be defamatory and the statement is such that would tend to injure the Plaintiff in his
12 business or profession, then it will be deemed defamation per se and damages will be presumed.
13 Nevada Ind. Broadcasting v. Allen, 99 Nev. 404, 409 (1983).

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as set forth herein, the
15 Special Motion to Dismiss pursuant to Nevada's Anti-SLAPP law is DENIED.

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all of Defendants' other
17 arguments are not properly decided in a Motion to Dismiss and/or are without merit. Defendants'
18 Alternative 12(b)(5) Motion to Dismiss is DENIED.

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's
20 Countermotion for attorney's fees and costs is DENIED as this Court does not find the Special
21 Motion to be frivolous or vexatious.

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the misstatement of the
23 evidentiary burden cannot be considered more than a harmless error on the part of counsel
24 considering the facts here.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties have not in
26 any Motion to Dismiss thus far distinguished between allegations of conduct of the individual
27 Defendant versus the corporate Defendant, and therefore, any rulings herein and regarding the
28 previous Motion to Dismiss do not address this issue.

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IT IS SO ORDERED.

DATED this 3rd day of January, 2016.

February

A723134

*Order Denying Defendants' Special
Motion to Dismiss Pursuant to NRS 41.035-70
or, in the Alternative, Motion to Dismiss Pursuant
Respectfully submitted, to NREDA 12(b)(5)*

Ann P. Zwick
DISTRICT COURT JUDGE

BREMER WHYTE BROWN & O'MEARA LLP

By: *[Signature]* #12780

Prescott T. Jones, Esq.
Nevada State Bar No. 11617
August B. Hotchkin, Esq.
Nevada State Bar No. 12780

Approved as to form and content,

NETTLES LAW GROUP

By: *[Signature]*

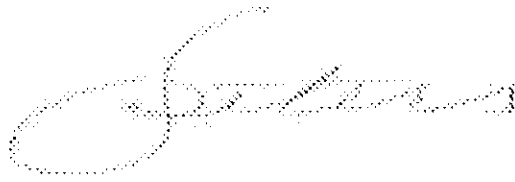
Christian M. Morris, Esq.
Nevada State Bar No. 11218

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CERTIFICATE OF SERVICE

I hereby certify that on 4th day of February, 2016, the following document was electronically served to all registered parties for case number A723134 as follows:

Name	Email	Select
Christian M. Morris, Esq.	christianmorris@nettlawfirm.com	<input checked="" type="checkbox"/> <input type="checkbox"/>
Kim Alverson	kim@nettlawfirm.com	<input checked="" type="checkbox"/> <input type="checkbox"/>
Patin Law Group, PLLC		
Name	Email	Select
Ingrid Patin, Esq.	ingrid@patinlaw.com	<input checked="" type="checkbox"/> <input type="checkbox"/>



Jo Peters, an employee of Bremer Whyte Brown & O'Meara


CLERK OF THE COURT

1 PRESCOTT T. JONES, ESQ.
2 Nevada State Bar No. 11617
3 AUGUST B. HOTCHKIN, ESQ.
4 Nevada State Bar No. 12780
5 BREMER WHYTE BROWN & O'MEARA LLP
6 1160 N. TOWN CENTER DRIVE
7 SUITE 250
8 LAS VEGAS, NV 89144
9 TELEPHONE: (702) 258-6665
10 FACSIMILE: (702) 258-6662
11 pjones@bremerwhyte.com
12 ahotchkin@bremerwhyte.com

13 Attorneys for Plaintiff,
14 TON VINH LEE

15 **DISTRICT COURT**
16 **CLARK COUNTY; NEVADA**

17 TON VINH LEE, an individual) Case No.: A723134
18)
19 Plaintiff,) Dept. No.: IX
20 vs.)
21) **FIRST AMENDED COMPLAINT**
22 INGRID PATIN, an individual, and PATIN)
23 LAW GROUP, PLLC, a Nevada Professional)
24 LLC,)
25 Defendants.)

26 COMES NOW, Plaintiff TON VINH LEE (hereinafter "Plaintiff"), by and through his
27 attorneys of record, Prescott T. Jones, Esq. and August B Hotchkin, Esq. of the law firm BREMER,
28 WHYTE, BROWN & O'MEARA, LLP, and hereby complains and alleges as follows:

29 **I.**

30 **PARTIES**

- 31 1. Plaintiff is, and at all times relevant herein, was a resident of Clark County, Nevada.
32 2. The actions complained of herein occurred in Clark County, Nevada.
33 3. Plaintiff, TON VINH LEE (hereinafter "Plaintiff") is a Doctor of Dental Surgery
34 (DDS), and owner of Ton V. Lee, DDS, P.C., d/b/a Summerlin Smiles located at 9525 West

1 Russell Rd. Suite 100, Las Vegas, NV 89148.

2 4. Plaintiff is informed, believes, and thereupon alleges, Defendant INGRID PATIN,
3 ESQ. is, and was at all relevant times, a practicing attorney in the State of Nevada, and the sole
4 managing member of PATIN LAW GROUP, PLLC.

5 5. Plaintiff is informed, believes, and thereupon alleges, Defendant PATIN LAW
6 GROUP, PLLC is a Nevada Professional Limited Liability Company licensed to do business in
7 Clark County, Nevada.

8 6. Defendants, and each of them, were the handling attorney and/or handling law firm
9 in Svetlana Singletary v. Ton Lee, DDS, Case Number A-12-656091-C.

10 II.

11 GENERAL ALLEGATIONS

12 7. Plaintiff incorporates herein by reference the preceding paragraphs, inclusive, as
13 though fully set forth herein.

14 8. On or about February 7, 2012, Svetlana Singletary, Gabriel Singletary, Gabriel I
15 Singletary, and the Estate of Reginald Singletary filed suit against, inter alia, TON VINH LEE for
16 various causes of action arising out of the death of Reginald Singletary, in Case Number A-12-
17 656091-C.

18 9. On September 10, 2014, a Judgement on Jury Verdict was entered in favor of
19 Defendant TON VINH LEE, in which TON VINH LEE was also awarded his cost in the amount of
20 Six Thousand Thirty-Two Dollars and Eighty-Three Cents (\$6,032.83), as the prevailing party
21 under NRS 18.020.

22 10. Despite the Judgment entered, Defendants lists on their website, PatinLaw.com,
23 under a section entitled "Recent Settlements and Verdicts," a Plaintiff's Verdict in the amount of
24 \$3.4M for Svetlana Singletary v. Ton Lee, DDS .wherein it explicitly refers to Plaintiff Ton Vinh
25 Lee by name.

26 11. Nevada Rules of Professional Conduct, Rule 7.2, requires any statement made by an
27 attorney that includes a monetary sum, the amount involved must have been actually received by
28 the client.

1 12. Defendant INGRID PATIN y and through PATIN LAW GROUP PLLC added this
2 statement to her website for her own personal gain.

3 13. Defendant INGRID PATIN personally participated in the tortious act of making a
4 defamatory statement.

5 14. Plaintiff is informed, believes, and thereupon alleges, that at all relevant times
6 Defendant INGRID PATIN, ESQ. influenced and governed PATIN LAW GROUP, PLLC by
7 unilaterally dictating the form and content of its website for the purposes of advertisement and to
8 bolster her reputation by and through publishing a defamatory statement.

9 15. Plaintiff is informed, believes, and thereupon alleges, that at all relevant times
10 Defendant INGRID PATIN, ESQ. had such unity of interest and ownership with PATIN LAW
11 GROUP, PLLC that Defendant INGRID PATIN, ESQ. is inseparable from PATIN LAW GROUP,
12 PLLC.

13 16. Plaintiff is informed, believes, and thereupon alleges, that at all relevant times
14 Defendant PATIN LAW GROUP, PLLC was controlled by Defendant INGRID PATIN, ESQ. who
15 is the sole owner and manager of PATIN LAW GROUP, PLLC.

16 17. Plaintiff is informed, believes, and thereupon alleges, that at all relevant times
17 Defendant INGRID PATIN, ESQ. treated the assets of PATIN LAW GROUP, PLLC as her own,
18 including but not limited to, utilizing the PATIN LAW GROUP, PLLC website for her own
19 benefit.

20 18. Adherence to the corporate fiction of PATIN LAW GROUP, PLLC would result in
21 an injustice to Plaintiff.

22 19. Plaintiff has been forced to retain the services of an attorney to prosecute this matter
23 and is entitled to recover reasonable costs and attorneys' fees incurred herein.

24 20. Plaintiff requests that Defendants INGRID PATIN, ESQ. and PATIN LAW
25 GROUP, PLLC be declared the alter egos each other and the Court hold Defendants INGRID
26 PATIN, ESQ. and PATIN LAW GROUP, PLLC liable in solido.

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1 **FIRST CLAIM FOR RELIEF**

2 **Defamation Per Se**

3 21. Plaintiff incorporates herein by reference the preceding paragraphs, inclusive, as
4 though fully set forth herein.

5 22. Defendants posted a false and defamatory statement on the “Recent Settlements and
6 Verdicts” portion of their business website, PatinLaw.com.

7 23. The defamatory statement directly names both the Plaintiff and his Medical Practice.

8 24. The defamatory statement lists the case name, Singletary v. Ton Vinh Lee, DDS, et
9 al., as well as a detailed description of the case: “A dental malpractice-based wrongful death action
10 that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32
11 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office,
12 Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traivai, DMD
13 and Jai Park, DDS, on behalf of the Estate, herself and minor son.”

14 25. Defendants have posted this statement on their website, which constitutes an
15 unprivileged publication to a third person.

16 26. Defendants knew or should have known that the statement was false.

17 27. Nevada Rules of Professional Conduct, Rule 7.2, prohibit attorneys from advertising
18 verdicts or recoveries that were not actually received or won.

19 28. The defamatory statement imputes to TON VINH LEE a lack of fitness as a dentist
20 in that it claims Plaintiffs were able to recover a \$3.4 million judgment for wrongful death.

21 29. The defamatory statement injures TON VINH LEE in his business as a simple
22 internet search reveals the claimed verdict for wrongful death.

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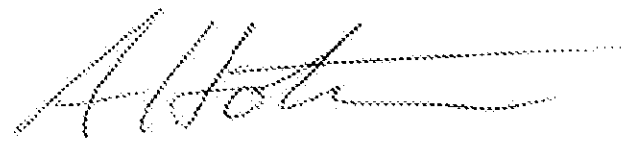
28 ///

1 WHEREFORE, Plaintiff expressly reserving the right to amend this complaint prior to or at
2 the time of trial of this action, to insert those items of damage not yet fully ascertainable, prays
3 judgement against all Defendants, and each of them, as follows:

- 4 1. For general damages in excess of \$10,000.00.
5 2. For reasonable attorney's fees and costs
6 3. For pre- and post-judgement interest on any award rendered herein; and
7 4. For such other and further relief as the Court deems just and proper

8 Dated: February 23, 2016

BREMER WHYTE BROWN & O'MEARA LLP

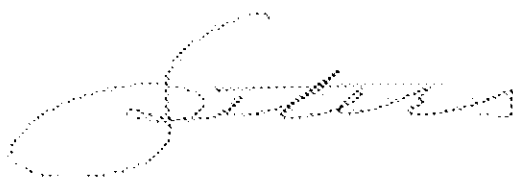
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11 By: _____

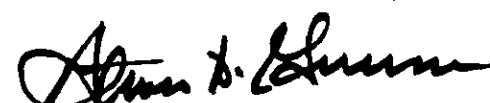
Prescott T. Jones, Esq.
Nevada State Bar No. 11617
August B. Hotchkin, Esq.
Nevada State Bar No. 12780
Attorneys for Plaintiff,
TON VINH LEE

12
13
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16
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on this 23rd day of February, 2016, a true and correct copy of the
19 foregoing document was electronically served on Wiznet upon all parties on the master e-file and
20 serve list.

21 
22

23 _____
24 Jo Peters, an employee of Bremer Whyte Brown & O'Meara
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26
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28



CLERK OF THE COURT

1 **NEO**
2 **PRESCOTT T. JONES, ESQ.**
3 **Nevada State Bar No. 11617**
4 **AUGUST B. HOTCHKIN, ESQ.**
5 **Nevada State Bar No. 12780**
6 **BREMER WHYTE BROWN & O'MEARA LLP**
7 **1160 N. TOWN CENTER DRIVE**
8 **SUITE 250**
9 **LAS VEGAS, NV 89144**
10 **TELEPHONE: (702) 258-6665**
11 **FACSIMILE: (702) 258-6662**
12 **pjones@bremerwhyte.com**
13 **ahotchk@bremerwhyte.com**
14 **Attorneys for Plaintiff.**
15 **TON VINH LEE**

9
10 **DISTRICT COURT**
11 **CLARK COUNTY; NEVADA**

12 TON VINH LEE, an individual

13 Plaintiff,

14 vs.

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

17 Defendants.

) Case No.: A723134

) Dept. No.: IX

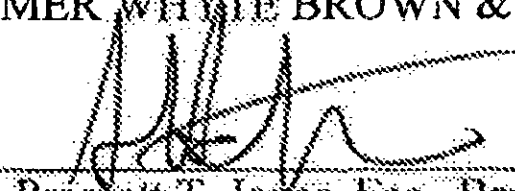
) **NOTICE OF ENTRY ORDER DENYING**
) **DEFENDANTS' MOTION TO DISMISS**
) **PURSUANT TO NRCP 12(B)(5)**

18
19 PLEASE TAKE NOTICE that an **ORDER DENYING DEFENDANTS' MOTION TO**
20 **DISMISS PURSUANT TO NRCP 12(B)(5)** was entered on April 11, 2016. A copy of said
21 ORDER is attached hereto.

22 Dated: April 11, 2016

BREMER WHYTE BROWN & O'MEARA LLP

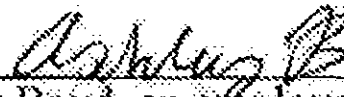
23
24 By:


Prescott T. Jones, Esq., Bar No. 11617
August B. Hotchkim, Esq., Bar No. 12780
Attorneys for Plaintiff
TON VINH LEE

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2016, a true and correct copy of the foregoing document was electronically served on Wiznet upon all parties on the master e-file and serve list.



Ashley Boyd, an employee of Bremer Whyte Brown &
O'Meara


CLERK OF THE COURT

1 **ORDR**
2 PRESCOTT T. JONES, ESQ.
3 Nevada State Bar No. 11617
4 AUGUST B. HOTCHKIN, ESQ.
5 Nevada State Bar No. 12780
6 BREMER WHYTE BROWN & O'MEARA LLP
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10 TELEPHONE: (702) 258-6665
11 FACSIMILE: (702) 258-6662
12 pjones@bremerwhyte.com
13 ahotchkin@bremerwhyte.com
14 Attorneys for Plaintiff,
15 TON VINH LEE

9
10 **DISTRICT COURT**
11 **CLARK COUNTY; NEVADA**

12 TON VINH LEE, an individual) Case No.: A723134
13)
14 Plaintiff,) Dept. No.: IX
15 vs.)
16 INGRID PATIN, an individual, and PATIN) ORDER DENYING DEFENDANTS'
17 LAW GROUP, PLLC, a Nevada Professional) MOTION TO DISMISS PURSANT TO
18 LLC,) NRCP 12(B)(5)
19)
20 Defendants.)
21)

22 Defendants, INGRID PATIN and PATIN LAW GROUP, PLLC's (collectively
23 "Defendants") Motion to Dismiss came on for hearing before this Court at 9:00 a.m. on the 9th day
24 of March, 2016. The Court, having read all of the pleadings and papers on file herein, the
25 arguments of counsel; and good cause appearing, it is hereby:

26 **ORDERED, ADJUDGED AND DECREED** that a Motion to Dismiss is not a responsive
27 pleading and Defendants have not yet answered the Plaintiff's Complaint, therefore Plaintiff's
28 Amended Complaint is properly on file;

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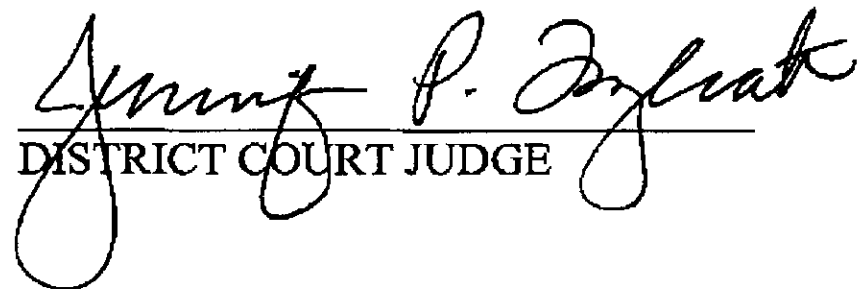
1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in light of the
2 allegations in the Amended Complaint which this Court must accept as true, that the Motion to
3 Dismiss is DENIED;

4 IT IS FURTHER ORDERED, ADJUGED AND DECREED that Defendants Motion to
5 Dismiss as to the alter ego claims is GRANTED;


6 IT IS FURTHER ORDERED, ADJUGED AND DECREED Plaintiff will file a Second
7 Amended Complaint in accordance with this Order.

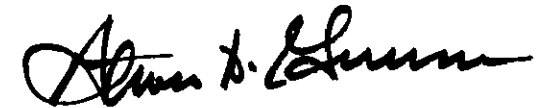
8 IT IS SO ORDERED.

9 DATED: this 6 day of April, 2016.

10
11 
12 DISTRICT COURT JUDGE
13

14 Respectfully Submitted by:
15 BREMER WHYTE BROWN & O'MEARA LLP

16
17 By: 
18 Prescott T. Jones, Esq.
19 Nevada State Bar No. 11617
20 August B. Hotchkin, Esq.
21 Nevada State Bar No. 12780
22 Attorneys for Plaintiff
23 TON VINH LEE
24
25
26
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28



CLERK OF THE COURT

1 **SACOM**
2 **PRESCOTT T. JONES, ESQ.**
3 Nevada State Bar No. 11617
4 **AUGUST B. HOTCHKIN, ESQ.**
5 Nevada State Bar No. 12780
6 **BREMER WHYTE BROWN & O'MEARA LLP**
7 1160 N. TOWN CENTER DRIVE
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10 TELEPHONE: (702) 258-6665
11 FACSIMILE: (702) 258-6662
12 pjones@bremerwhyte.com
13 ahotchkin@bremerwhyte.com
14 Attorneys for Plaintiff,
15 **TON VINH LEE**

9
10 **DISTRICT COURT**

11 **CLARK COUNTY; NEVADA**

12 TON VINH LEE, an individual

13 Plaintiff,

14 vs.

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

18 Defendants.

) Case No.: A723134

) Dept. No.: IX

) **SECOND AMENDED COMPLAINT**

19 COMES NOW, Plaintiff TON VINH LEE (hereinafter "Plaintiff"), by and through his
20 attorneys of record, Prescott T. Jones, Esq. and August B Hotchkin, Esq. of the law firm BREMER,
21 WHYTE, BROWN & O'MEARA, LLP, and hereby complains and alleges as follows:

22 **I.**

23 **PARTIES**

- 24 1. Plaintiff is, and at all times relevant herein, was a resident of Clark County, Nevada.
- 25 2. The actions complained of herein occurred in Clark County, Nevada.
- 26 3. Plaintiff, TON VINH LEE (hereinafter "Plaintiff") is a Doctor of Dental Surgery
27 (DDS), and owner of Ton V. Lee, DDS, P.C., d/b/a Summerlin Smiles located at 9525 West
28 Russell Rd. Suite 100, Las Vegas, NV 89148.
4. Plaintiff is informed, believes, and thereupon alleges, Defendant INGRID PATIN,

1 ESQ. is, and was at all relevant times, a practicing attorney in the State of Nevada, and the sole
2 managing member of PATIN LAW GROUP, PLLC.

3 5. Plaintiff is informed, believes, and thereupon alleges, Defendant PATIN LAW
4 GROUP, PLLC is a Nevada Professional Limited Liability Company licensed to do business in
5 Clark County, Nevada.

6 6. Defendants, and each of them, were the handling attorney and/or handling law firm
7 in *Svetlana Singletary v. Ton Lee, DDS*, Case Number A-12-656091-C.

8 II.

9 GENERAL ALLEGATIONS

10 7. Plaintiff incorporates herein by reference the preceding paragraphs, inclusive, as
11 though fully set forth herein.

12 8. On or about February 7, 2012, Svetlana Singletary, Gabriel Singletary, Gabriel I
13 Singletary, and the Estate of Reginald Singletary filed suit against, *inter alia*, TON VINH LEE for
14 various causes of action arising out of the death of Reginald Singletary, in Case Number A-12-
15 656091-C.

16 9. On September 10, 2014, a Judgement on Jury Verdict was entered in favor of
17 Defendant TON VINH LEE, in which TON VINH LEE was also awarded his cost in the amount of
18 Six Thousand Thirty-Two Dollars and Eighty-Three Cents (\$6,032.83), as the prevailing party
19 under NRS 18.020.

20 10. Despite the Judgment entered, Defendants lists on their website, PatinLaw.com,
21 under a section entitled "Recent Settlements and Verdicts," a Plaintiff's Verdict in the amount of
22 \$3.4M for *Svetlana Singletary v. Ton Lee, DDS* wherein it explicitly refers to Plaintiff Ton Vinh
23 Lee by name.

24 11. Nevada Rules of Professional Conduct, Rule 7.2, requires any statement made by an
25 attorney that includes a monetary sum, the amount involved must have been actually received by
26 the client.

27 12. Defendant INGRID PATIN by and through PATIN LAW GROUP PLLC added this
28 statement to her website for her own personal gain.

13. Defendant INGRID PATIN personally participated in the tortious act of making a defamatory statement.

14. Plaintiff is informed, believes, and thereupon alleges, that at all relevant times Defendant INGRID PATIN, ESQ. influenced and governed PATIN LAW GROUP, PLLC by unilaterally dictating the form and content of its website for the purposes of advertisement and to bolster her reputation by and through publishing a defamatory statement.

15. Plaintiff is informed, believes, and thereupon alleges, that at all relevant times Defendant PATIN LAW GROUP, PLLC was controlled by Defendant INGRID PATIN, ESQ. who is the sole owner and manager of PATIN LAW GROUP, PLLC.

16. Plaintiff has been forced to retain the services of an attorney to prosecute this matter and is entitled to recover reasonable costs and attorneys' fees incurred herein.

FIRST CLAIM FOR RELIEF

Defamation Per Se

17. Plaintiff incorporates herein by reference the preceding paragraphs, inclusive, as though fully set forth herein.

18. Defendants posted a false and defamatory statement on the "Recent Settlements and Verdicts" portion of their business website, PatinLaw.com.

19. The defamatory statement directly names both the Plaintiff and his Medical Practice.

20. The defamatory statement lists the case name, *Singletary v. Ton Vinh Lee, DDS, et al.*, as well as a detailed description of the case: “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, DMD and Jai Park, DDS, on behalf of the Estate, herself and minor son.”

21. Defendants have posted this statement on their website, which constitutes an unprivileged publication to a third person.

22. Defendants knew or should have known that the statement was false.

23. Nevada Rules of Professional Conduct, Rule 7.2, prohibit attorneys from advertising

1 verdicts or recoveries that were not actually received or won.

2 24. The defamatory statement imputes to TON VINH LEE a lack of fitness as a dentist
3 in that it claims Plaintiffs were able to recover a \$3.4 million judgment for wrongful death.

4 25. The defamatory statement injures TON VINH LEE in his business as a simple
5 internet search reveals the claimed verdict for wrongful death.

6 WHEREFORE, Plaintiff expressly reserving the right to amend this complaint prior to or at
7 the time of trial of this action, to insert those items of damage not yet fully ascertainable, prays
8 judgement against all Defendants, and each of them, as follows:

- 9 1. For general damages in excess of \$10,000.00.
10 2. For reasonable attorney's fees and costs
11 3. For pre- and post-judgement interest on any award rendered herein; and
12 4. For such other and further relief as the Court deems just and proper

13 Dated: April 11, 2016

BREMER WHYTE BROWN & O'MEARA LLP


14
15 By: 

16 Prescott T. Jones, Esq.
17 Nevada State Bar No. 11617
18 August B. Hotchkin, Esq.
19 Nevada State Bar No. 12780
20 Attorneys for Plaintiff,
21 TON VINH LEE
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2016, a true and correct copy of the foregoing document was electronically served on Wiznet upon all parties on the master e-file and serve list.



Ashley Boyd, an employee of Bremer Whyte Brown &
O'Meara