

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 3 PART 1

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Dated this 21st day of July, 2021.

RESNICK & LOUIS, P.C.

/s/ Prescott T. Jones

Prescott T. Jones, Esq.

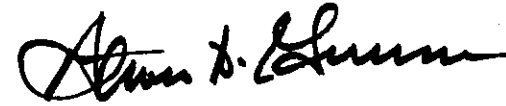
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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 TON VINH LEE, an individual,
11
12 Plaintiff,

13 v.

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

CASE NO.: A-15-723134-C
DEPT NO.: IX

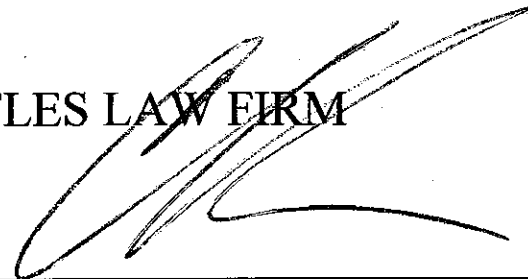
**DEFENDANT, INGRID PATIN'S
MOTION FOR SUMMARY JUDGMENT**

18 Defendant, Ingrid Patin (hereinafter "Defendant"), by and through her counsel of record,
19 Christian M. Morris, Esq. of Nettles Law Firm, hereby submits this Motion for Summary
20 Judgment and moves this honorable Court to dismiss Plaintiff's Second Amended Complaint.
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This Motion is made and based upon the papers and pleadings on file with the Court, the papers attached to this Motion, the following Memorandum of Points and Authorities, and any oral argument the Court may entertain at the hearing on the Motion.

Dated this 10th day of February, 2017.

NETTLES LAW FIRM



Christian M. Morris, Esq.
Nevada Bar No. 011218
1389 Galleria Drive, Suite 200
Henderson, NV 89014
Attorneys for Defendant, Ingrid Patin

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that Defendant, Ingrid Patin, will bring the instant **MOTION FOR SUMMARY JUDGMENT** on for hearing before the above-entitled Court on the 15 day of Mar., 2017, at the hour of 9:00 a.m. of that day, or as soon thereafter as counsel may be heard.

Dated this 10th day of February, 2017.

NETTLES LAW FIRM



Christian M. Morris, Esq.
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Henderson, NV 89014
Attorneys for Defendant, Ingrid Patin

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

During the pendency of an appeal before the Nevada Supreme Court, Plaintiff Ton Vinh Lee filed the instant action against Defendants Ingrid Patin and Patin Law Group, PLLC for allegedly posting a defamatory statement at patinlaw.com. This action was prematurely brought before the District Court, as it requested relief for a statement that was made in good faith and in direct connection with an issue under consideration by a judicial body. The statement specifically pertained to the plaintiff's verdict that was rendered in the underlying matter of Singletary, et al. v. Ton V. Lee, DDS, et al. (Case No. A-12-656091-C). The basis of the appeal was the District Court's action to vacate the award by the jury in the underlying matter. On appeal, Plaintiff Singletary, in the underlying matter, specifically requested reinstatement of the jury award among other requests for relief. On October 17, 2016, the Nevada Supreme Court issued an Order in the underlying case [Supreme Court Case No. 66278, *Singletary vs. Ton Vinh Lee, DDS, et al.*] that reversed the district court's judgment as a matter of law and directed the district court to reinstate the jury's verdict. (See Order Affirming In Part, Reversing In Part And Remanding, attached hereto as **Exhibit A**). This decision by the Nevada Supreme Court makes the statement at patinlaw.com absolutely true and renders the instant action moot.

Based upon the fact that Defendants' statement concerning the verdict received on January 25, 2014 in the underlying matter, Singletary, et al. v. Ton V. Lee, DDS, et. Al (Case No. A-12-656091-C), is *true*, Plaintiff's Second Amended Complaint should be dismissed with prejudice.

II.

BRIEF PROCEDURAL HISTORY

On or about August 17, 2015, Plaintiff commenced the instant action through the filing of an original Complaint against Ingrid Patin, an individual, and Patin Law Group, PLLC, a Nevada Professional LLC in the Eighth Judicial District Court. On or about September 16, 2015, Plaintiff properly served Defendant Ingrid Patin with a copy of the Summons and

1 Complaint.

2 On September 8, 2015, Defendants filed a Motion to Dismiss Plaintiff's Complaint.
3 Plaintiff filed an Opposition on September 25, 2015, to which Defendants replied on October 6,
4 2015. The matter came on for hearing before this honorable court on October 14, 2015. At that
5 time, the Motion to Dismiss was denied, without prejudice.

6 On October 16, 2015, Defendants filed a Special Motion to Dismiss Plaintiff's
7 Complaint, pursuant to Nevada's anti-SLAPP statute, or in the Alternative Motion to Dismiss.
8 Plaintiff filed an Opposition on November 2, 2015, to which Defendants replied on November
9 12, 2015. The matter came on for hearing before this honorable court on November 18, 2015.
10 On January 13, 2016, this Court issued its ruling denying Defendants' Special Motion to
11 Dismiss, pursuant to NRS 41.635-70 and Alternative 12(b)(5) Motion to Dismiss, as well as
12 Plaintiff's Countermotion for attorney's fees and costs. The Order and Notice of Entry of Order
13 were filed on February 4, 2016. In response to the Court's denial of Defendants' Alternative
14 12(b)(5) Motion to Dismiss, Defendants' filed a Motion for Reconsideration. The Order
15 denying Defendants' Motion for Reconsideration was filed on April 11, 2016.

16 On February 23, 2016, Plaintiff filed a First Amended Complaint.

17 On March 4, 2016, Defendants filed a Notice of Appeal and Case Appeal Statement
18 appealing the Court's order denying Defendants' Special Motion to Dismiss Pursuant to NRS
19 41.635-70. This appeal is currently pending before the Supreme Court of Nevada.

20 On April 11, 2016, Plaintiff filed a Second Amended Complaint.

21 On April 22, 2016, Defendants filed a Motion to Stay Pending Appeal on Order
22 Shortening Time. Plaintiff filed an Opposition on May 3, 2016. The matter was heard in
23 Chambers on May 4, 2016, wherein Defendants' Motion was *granted in part* as to discovery
24 and *denied in part* as to the litigation in its entirety. The Order and Notice of Entry of Order
25 were filed on May 12, 2016 and May 16, 2016, respectively.

26 In response to the Court's partial denial of Defendants' Motion for Stay Pending Appeal
27 and the filing of Plaintiff's Second Amended Complaint, Defendants filed a Renewed Special
28 Motion to Dismiss pursuant to NRS 41.635-70 on May 24, 2016. Plaintiff filed an Opposition

1 on June 13, 2016, to which Defendants replied on June 22, 2016. The matter came on for
2 hearing before this honorable court on August 10, 2016. At that time, this Court denied
3 Defendants' Renewed Special Motion to Dismiss. The Order and Notice of Entry of Order were
4 filed on September 29, 2016.

5 On October 28, 2016, Defendants filed an Amended Case Appeal Statement appealing
6 the Court's order denying Defendants' Renewed Special Motion to Dismiss Pursuant to NRS
7 41.635-70. This appeal is currently pending before the Supreme Court of Nevada.

8 III.

9 STATEMENT OF FACTS AND RELEVANT BACKGROUND

10 The underlying case, of which the instant matter is based, involved a Complaint for
11 dental malpractice brought by Plaintiff Svetlana Singletary, individually, and as the
12 Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel
13 L. Singletary, a minor, for the wrongful death of Reginald Singletary following dental surgery
14 to extract a wisdom tooth. Plaintiff Svetlana Singletary commenced the action through the
15 filing of an original Complaint in the Eighth Judicial District Court on or about February 7,
16 2012. The Complaint named Ton Vinh Lee, DDS, Florida Traivai, DMD, Jai Park, DDS and
17 Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles as Defendants. (See Caption, attached
18 hereto as **Exhibit B**).

19 The underlying action came on for trial before the Eighth Judicial District Court and a
20 jury on January 13, 2014. At the conclusion of the trial of the matter, the jury rendered a verdict
21 in favor of Plaintiffs in the amount of Three Million Four Hundred Seventy Thousand Dollars
22 and Zero Cents (\$3,470,000.00) as follows: that Plaintiff, Svetlana Singletary, individually, be
23 awarded the sum of Nine Hundred Eighty Five Thousand Dollars and Zero Cents (\$985,000.00)
24 and that Plaintiff, Gabriel Singletary, a minor, be awarded the sum of Two Million Four
25 Hundred Eighty Five Thousand Dollars and Zero Cents (\$2,485,000.00). Having found for the
26 Plaintiffs and against Defendants, Florida Traivai, DMD and Ton V. Lee, DDS, Prof. Corp.
27 d/b/a Summerlin Smiles, the jury further found that the percentage of negligence on the part of
28 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 cause of Decedent Reginald Singletary's injury, was twenty five percent (25%). (See Special Verdict Form attached hereto as **Exhibit C**). Plaintiff Svetlana Singletary filed a Memorandum of Costs and Motion for Award of Costs on February 3, 2014. The Court granted in part Plaintiff's Motion for Award of Costs and Defendant Florida Traivai, DMD's Motion to Re-tax Costs, and awarded Plaintiff Svetlana Singletary her costs of Thirty Eight Thousand Forty Two Dollars and Sixty Four Cents (\$38,042.64), as the prevailing party under Nevada Revised Statute 18.020. (See Order, attached hereto as **Exhibit D**). Plaintiff Svetlana Singletary subsequently filed a Judgment on Jury Verdict. (See Judgment of Jury Verdict attached hereto as **Exhibit E**).

In February, 2014, the Trial Reporter of Nevada published the jury verdict in its monthly publication. (See The Trial Reporter of Nevada, attached hereto as **Exhibit F**).

Following the favorable jury verdict, Patin Law Group, PLLC posted the jury verdict on its website, including the case name [Singletary v. Ton Vinh Lee, DDS, et al.] and information regarding the nature of the case and damages. Specifically, the subject statement is as follows:

DENTAL MALPRACTIC/WRONGFUL DEATH \$3.4M –
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.

In the Fall of 2014, the Nevada Legal Update also published the jury verdict and case summary in its quarterly publication. (See The Nevada Legal Update, attached hereto as **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 On May 13, 2014, Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles filed a revised
5 Motion for Judgment as a Matter of Law pursuant to NRCP 50(B). A hearing on the matter
6 took place on June 26, 2016. On July 16, 2014, Judge Wiese issued an Order from Chambers
7 granting Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles’ Motion for Judgment as a
8 Matter of Law and vacating the jury’s verdict.

9 An Appeal was filed in the underlying matter on behalf of Plaintiff Svetlana Singletary,
10 individually, and as the Representative of the Estate of Reginald Singletary, and as parent and
11 legal guardian of Gabriel L. Singletary, a minor, on or about August 8, 2014. (See Case Appeal
12 Statement, attached hereto as **Exhibit I**). A Cross-Appeal was subsequently filed in the
13 underlying matter on behalf of Ton Vinh Lee, DDS and Ton V. Lee, DDS, Prof. Corp. d/b/a
14 Summerlin Smiles. (See Case Appeal Statement (Cross-Appeal) dated September 11, 2014 and
15 Case Appeal Statement (Cross-Appeal) dated November 7, 2014, attached hereto as **Exhibit J**).
16 On September 11, 2014, Ton Vinh Lee, DDS also filed a Judgment on Jury Verdict in the
17 underlying matter. (See Judgment on Jury Verdict, attached hereto as **Exhibit K**). A Judgment
18 on Jury Verdict was never filed on behalf of Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin
19 Smiles.

20 On October 17, 2016, the Supreme Court issued an Order in the underlying case
21 [Supreme Court Case No. 66278, *Singletary vs. Ton Vinh Lee, DDS, et al.*] concluding that “the
22 district court erred in granting judgment as a matter of law and finding that appellant’s general
23 dentistry expert failed to state his standard of care opinions to the required reasonable degree of
24 medical probability.” (See **Exhibit A**). The Court further reversed the district court’s judgment
25 as a matter of law and directed the district court to reinstate the jury’s verdict. Id.

26
27
28

IV.

STANDARD FOR REVIEW

There is no genuine issue of material fact if there is insufficient evidence to sustain a judgment for the non-moving party. See Matsushita Elec. Indus. Co. v. Venus Radio Corp., 475 U.S. 574 (1986); see also Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

Parties seeking to defeat summary judgment cannot stand on their pleadings. See British Airways Bd. v. Boeing Co., 585 F.2d 946, 952 (9th Cir. 1978) (noting that affidavits that do not affirmatively demonstrate personal knowledge are insufficient). The non-moving party must present admissible evidence which is of sufficient caliber or quantity to create a genuine issue of material fact. Anderson 477 U.S. at 254. Accordingly, the non-moving party must do more than "simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment. Id. at 247.

Summary Judgment is a preferred remedy in defamation cases such as the instant matter. See e.g. Time, Inc. v. McLaney, 406 F.2d 565, 566 (5th Cir.) (citing Dombrowski v. Pfister, 380 U.S. 479 (1965) (stating "that the failure to dismiss a libel suit might necessitate long and expensive trial proceedings, which, if not really warranted, would themselves offend the principles [of free express] because of the chilling effect of such litigation.")). Guided by these precepts, many judges have declared that summary judgment is to be freely used to protect individuals against the inhibition that would result from their having to defend themselves in unnecessary trials. See e.g. Wash. Post Co. v. Keogh, 365 F.2d 965, 968 (D.C. Cir. 1966) (citing Smith v. California, 361 U.S. 147 (1959)). In Keogh, the court aptly stated:

Summary Judgment serves important functions which would be left undone if courts too restrictively viewed their power. Chief among these are avoidance of long and expensive litigation productive of nothing, and curbing the danger that the threat of such litigation will be used to harass or coerce a settlement. *In the First Amendment area, summary procedures are even more essential.* For the sake here, if harassment succeeds, is free debate.

1 Id. (emphasis added). The Ninth Circuit Court of Appeals mirrored this view stating:

2 We agree with our brothers of the District of Columbia and Fifth Circuit
3 that it is important that judges focus attention on the summary judgment,
4 directed verdict and judgment notwithstanding the verdict procedures in
5 libel actions. When civil cases may have a chilling effect on the First
6 Amendment rights, special care is appropriate. Thus, a judicial
7 examination at these stages of the proceeding, closely scrutinizing the
8 evidence to determine whether the case should be terminated in a
9 defendant's favor, provides a buffer against possible First Amendment
10 interferences.

11 Guam Fed'n of Teachers, Local 1581, AF.T. v. Ysrael, 492 F.2d 438, 441 (9th Cir. 1974).¹

12 Here, this matter is sufficiently ripe for adjudication as a matter of law. The undisputed facts
13 material to the Defendants' request for summary judgment are as follows:

- 14 1. Defendant Ingrid Patin, Esq. served as lead counsel in the underlying matter, Singletary,
15 et al. v. Ton Vinh Lee, DDS, et al.
- 16 2. That the appropriately abbreviated caption for the underlying matter is Singletary, et al.
17 v. Ton Vinh Lee, DDS, et al. (See Exhibit B).
- 18 3. That Svetlana Singletary, individually, and as the Representative of the Estate of
19 Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a minor,
20 was the Plaintiff in the underlying matter represented by Ingrid Patin, Esq. (Id.).
- 21 4. That Ton Vinh Lee, DDS, Florida Traivai, DMD, Jai Park, DDS and Ton V. Lee, DDS
22 d/b/a Summerlin Smiles were named as Defendants in the underlying matter. (Id.).

23 ¹ Reiterating this sentiment, the Ninth Circuit stated "because unnecessarily protracted litigation
24 would have a chilling effect upon the exercise of First Amendment rights, speedy resolution of
25 cases involving free speech is desirable. Therefore, defamation actions should be disposed of at
26 the earliest possible stage of the proceedings if the facts as alleged are insufficient as a matter of
27 law to support a judgment for the plaintiff." Dorsey v. National Enquirer, Inc., 973 F.2d 1431,
28 1435 (9th Cir. 1992) (citing Good Government Group of Seal Beach, Inc. v. Superior Court, 586
P.2d 572 (CA 1978). The Supreme Court of Kentucky has similarly suggested that although
there is a preference for resolution of defamation action through a motion for summary judgment
stating that "[c]ourts should resolve free speech litigation more expeditiously whenever possible.
The perpetuation of meritless actions, with their attendant costs, chills the exercise of press
freedom. To avoid this, trial courts should not hesitate to use summary judgment procedures
where appropriate to bring such actions to a speedy end." Welch v. American Publishing Co. of
Kentucky, 3 S.W.3d 724, 729 (KY 1999) (citing Maressa v. New Jersey Monthly, 89 N.J. 176,
445 A.2d 376, 387 (1982) (emphasis added)).

- 1 5. That the underlying matter came on for trial before the Eighth Judicial District Court and
- 2 a jury on January 13, 2014.
- 3 6. That at the conclusion of the trial of the matter, the jury rendered a verdict in favor of
- 4 Plaintiffs in the amount of Three Million Four Hundred Seventy Thousand Dollars and
- 5 Zero Cents (\$3,470,000.00). (See Exhibit C).
- 6 7. A Special Verdict Form that was filed in open court on January 22, 2014. (Id.).
- 7 8. A Judgement on Jury Verdict was filed on behalf of Plaintiffs in the underlying matter
- 8 on April 29, 2014. (See Exhibit E).
- 9 9. An Appeal was filed in the underlying matter on behalf of Plaintiff Svetlana Singletary,
- 10 individually, and as the Representative of the Estate of Reginald Singletary, and as
- 11 parent and legal guardian of Gabriel L. Singletary, a minor, on or about August 8, 2014.
- 12 (See Exhibit I).
- 13 10. On October 17, 2016, the Supreme Court issued an Order in the underlying matter
- 14 [Supreme Court Case No. 66278, *Singletary vs. Ton Vinh Lee, DDS, et al.*] reversing the
- 15 district court's judgment as a matter of law and directing the district court to reinstate
- 16 the jury's verdict. (See Exhibit A).
- 17 11. That Respondents Ton Vinh Lee, DDS, individually, Florida Traivai, DMD,
- 18 individually, nor Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles filed a Petition
- 19 for Rehearing or Petition for En Banc Review in the underlying matter [Supreme Court
- 20 Case No. 66278, *Singletary vs. Ton Vinh Lee, DDS, et al.*].
- 21 12. That the time for filing a Petition for Rehearing or Petition for En Banc Review in the
- 22 underlying matter [Supreme Court Case No. 66278, *Singletary vs. Ton Vinh Lee, DDS,*
- 23 *et al.*] has passed.

24 V.

25 **LEGAL ARGUMENT**

26 Nevada Rule of Civil Procedure 56 allows this Court to enter summary judgment when

27 there is no genuine issue of material fact to be resolved, and the moving party is entitled to

28 judgment as a matter of law. There is no genuine issue of material fact if there is insufficient

1 evidence to sustain a judgment for the non-moving party. See Matsushita Elec. Indus. Co. v.
2 Venus Radio Corp., 475 U.S. 574 (1986); see also Celotex Corp. v. Catrett, 477 U.S. 317
3 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

4 The focus of the instant Motion for Summary Judgment is not whether Plaintiff was
5 damaged. Rather, the instant motion evidences the fact that Plaintiff cannot meet the necessary
6 elements of defamation irrespective of any damages. Specifically, Plaintiff cannot establish that
7 the single statement posted on patinlaw.com at issue is: “(1) a **false** and defamatory statement
8 by defendant concerning the plaintiff. . . .” Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851
9 P.2d 459 (1993) (citing Restatement Second of Torts, § 558 (1977)) (emphasis added). In order
10 to establish a prima facie case of defamation, a plaintiff must prove: (1) a **false** and defamatory
11 statement by defendant concerning the plaintiff; (2) an unprivileged publication to a third
12 person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.
13 Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459 (1993) (citing Restatement Second
14 of Torts, § 558 (1977)) (emphasis added).

15 A case is considered moot when it does not provide a real controversy upon which the
16 Court can grant an effective legal remedy. The Nevada Supreme Court has dismissed cases as
17 moot, with mootness generally hinging on whether or not changing circumstances have made it
18 impossible for the Court to grant effective relief. Personhood Nevada v. Briston, 245 P.3d, 572
19 (2010), Boulet v. Las Vegas, 614 P.2d 8, 10 (1980). Additionally, the Court has recognized that
20 a case may initially present a real controversy at the time of its institution, but may become
21 moot as the result of subsequent events. National Collegiate Ass’n v. U. of NV, Reno, 624, P.2d
22 10, 2 (1981). While Nevada has never directly addressed mootness in the context of a
23 defamation per se claim, courts in other jurisdictions have dismissed such claims where the
24 statement or declaration in question is proven to be true. Seitz-Partridge v. Loyola U. of
25 Chicago, 987 N.E.2d 34 (Ill. 2013). Where no reasonable jury could find that substantial truth
26 had not been established, the question is one of law. (Id.) Therefore, in such circumstances
27 Summary Judgment is appropriate.

28

A. The alleged statement is true

In order to bring a Complaint for defamation, Plaintiff must provide factual allegations of a false or defamatory statement by Defendants concerning the Plaintiff. In the Second Amended Complaint, Plaintiff alleges that “Defendants posted a false and defamatory statement on the ‘Recent Settlements and Verdicts’ portion of their business website, PatinLaw.com.” However, the statement posted by Defendants was true and not defamatory in nature.

After a seven day trial in January, 2014, the Plaintiffs in the underlying case were collectively awarded Three Million Four Hundred Seventy Thousand Dollars and Zero Cents (\$3,470,000.00) by a jury against Defendants, Florida Traivai, DMD and Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles. (See **Exhibit C**). Following the favorable jury verdict, multiple sources published the award both in print and online. Specifically, the Trial Reporter of Nevada published the jury verdict in its monthly publication in February, 2014. (See **Exhibit F**). The Nevada Legal Update also published the jury verdict and case summary in its quarterly publication in the fall of 2014. (See **Exhibit G**). Lastly, the Supreme Court of Nevada has published the jury verdict amount and costs awarded to Plaintiff in the underlying case.

A true and accurate statement was also posted at patinlaw.com briefly describing the case, identifying the defendants and stating the verdict. The statement also contained an appropriately abbreviated caption [Singletary v. Ton Vinh Lee, DDS, et al.]. Specifically, the following post appeared at patinlaw.com:

DENTAL MALPRACTIC/WRONGFUL DEATH \$3.4M – 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.

The statement above posted by Defendants following the jury trial in the underlying matter of Singletary v. Ton Vinh Lee, DDS, et al. was absolutely true at the time that it was posted and continues to remain true and not defamatory in nature despite Plaintiff’s unfounded

1 assertions. The original statement was posted following the jury award in the amount of Three
2 Million Four Hundred Seventy Thousand Dollars and Zero Cents (\$3,470,000.00) on behalf of
3 the Estate, Singletary and her minor son in the underlying matter of Singletary v. Ton Vinh Lee,
4 DDS, et al. (See Exhibit E). Although the verdict was subsequently reversed by the lower
5 court, the reinstatement of the verdict remained an issue on appeal. During the pendency of the
6 appeal before the Nevada Supreme Court, Plaintiff filed the instant action. The instant action
7 rests on the assumption that the subject statement was false based upon the fact that verdict was
8 not actually received or won. (See Second Amended Complaint, attached hereto as **Exhibit L**).
9 However, the Judgment on Jury Verdict and the reinstatement of the jury verdict by the Nevada
10 Supreme Court evidences that it was won. (See Exhibit E; see Exhibit A). At this time, there
11 is no question whether Plaintiff in the underlying matter of Singletary, et al. v. Ton V. Lee,
12 DDS, et al. was awarded a jury verdict against Defendants, Florida Traivai, DMD and Ton V.
13 Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles.

14 **B. The instant matter is moot**

15 Based upon the foregoing, it is clear that the instant action was prematurely brought
16 before the District Court, as it requested relief for a statement that was made in good faith and
17 in direct connection with an issue under consideration by a judicial body. The statement
18 specifically pertained to the plaintiff's verdict that was rendered in the underlying matter of
19 Singletary, et al. v. Ton V. Lee, DDS, et al. (Case No. A-12-656091-C). The basis of the appeal
20 was the District Court's action to vacate the award by the jury in the underlying matter. On
21 appeal, Plaintiff Singletary, in the underlying matter, specifically requested reinstatement of the
22 jury award among other requests for relief. On October 17, 2016, the Nevada Supreme Court
23 issued an Order in the underlying case [Supreme Court Case No. 66278, *Singletary vs. Ton Vinh*
24 *Lee, DDS, et al.*] that reversed the district court's judgment as a matter of law and directed the
25 district court to reinstate the jury's verdict. (See Exhibit A). This decision by the Nevada
26 Supreme Court makes the statement at patinlaw.com absolutely true and renders the instant
27 action moot. It does so with finality. Given the Supreme Court's decision to reinstate the jury
28 verdict in the underlying matter, the District Court has no means to grant effective relief in

1 favor of Plaintiff. There is no longer a case in controversy as the truth or falsity of alleged
2 statement, which is the crux of Plaintiff's allegations of defamation, has been confirmed as true.
3 At this point in the litigation, no reasonable jury could find that the alleged statement is false, as
4 the jury verdict in the amount of Three Million Four Hundred Seventy Thousand Dollars and
5 Zero Cents (\$3,470,000.00) has been reinstated in its entirety. As such, Plaintiff's Second
6 Amended Complaint should be dismissed with prejudice.

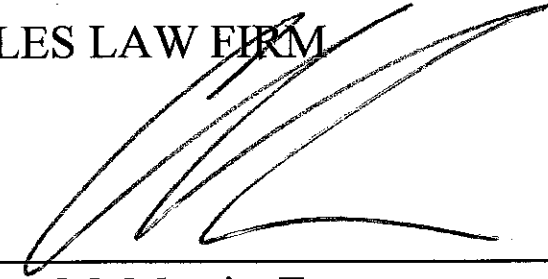
7 VI.

8 CONCLUSION

9 Based upon the foregoing, there is no genuine issue of material fact to be resolved, as the jury
10 verdict in question has been reinstated by the Nevada Supreme Court making the instant action
11 moot. Thus, dismissal of Plaintiff's Second Amended Complaint is proper and Defendants are
12 entitled to judgment as a matter of law. Defendants respectfully request this Honorable Court to
13 issue an Order dismissing, with prejudice, Plaintiff's Second Amended Complaint.

14 DATED this 10th day of February, 2017.

15 NETTLES LAW FIRM

16 
17 _____
18 Christian M. Morris, Esq.
19 Nevada Bar No. 011218
20 1389 Galleria Drive, Suite 200
21 Henderson, NV 89014
22 *Attorneys for Defendant, Ingrid Patin*
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 10 day February, 2017, I served the foregoing **DEFENDANT, INGRID PATIN'S MOTION FOR SUMMARY JUDGMENT** to the following parties by electronic transmission through the Wiznet system:

Morris Polich & Purdy LLP		
	Contact	Email
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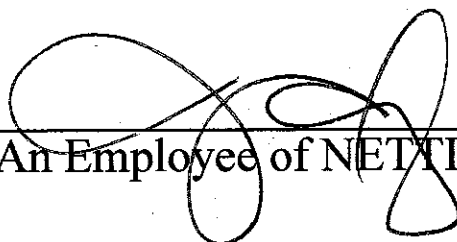

An Employee of NETTLES LAW FIRM

EXHIBIT A

EXHIBIT A

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF 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,
Appellant,

vs.

TON VINH LEE, DDS, INDIVIDUALLY;
FLORIDA TRAIVAI, DMD,
INDIVIDUALLY; AND TON V. LEE,
DDS, PROF. CORP., A NEVADA
PROFESSIONAL CORPORATION,
D/B/A SUMMERLIN SMILES,
Respondents.

No. 66278

FILED

OCT 17 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING*

This is an appeal from a district court judgment as a matter of law in a dental malpractice action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Appellant brought dental malpractice claims against respondents, alleging that Ronald Singletary died as a result of respondents' negligence following a tooth extraction. At the close of appellant's case, respondents orally moved for dismissal under NRCP 41(b), arguing that appellant's dental expert failed to testify regarding standard of care to a reasonable degree of medical probability. The district court denied those motions. Subsequently, a jury found that both Summerlin Smiles and Dr. Florida Traivai were contributorily negligent, and awarded damages to appellant. Summerlin Smiles and Dr. Traivai filed motions for judgment as a matter of law on the same ground raised in their NRCP 41(b) motions. The district court granted the motions, finding that appellant's expert failed to provide standard of care and causation

testimony to the required degree of certainty, and it entered judgment as a matter of law in favor of Summerlin Smiles and Dr. Traivai.

In deciding whether to grant an NRCP 50(b) motion, the district court “must view the evidence and all inferences in favor of the nonmoving party.” *Nelson v. Heer*, 123 Nev. 217, 222, 163 P.3d 420, 424 (2007). “To defeat the motion, the nonmoving party must have presented sufficient evidence such that the jury could grant relief to that party.” *Id.* at 222-23, 163 P.3d at 424. This court reviews a district court order granting a NRCP 50(b) motion de novo. *Id.* at 223, 163 P.3d at 425.

Having reviewed the parties’ briefs and appendices, we conclude that the district court erred in granting judgment as a matter of law and finding that appellant’s general dentistry expert failed to state his standard of care opinions to the required reasonable degree of medical probability. The district court determined that the dental expert’s testimony should have been stricken as inadmissible because the expert did not use the phrase “to a reasonable degree of medical probability” in rendering his opinion on the standard of care following a tooth extraction. We conclude that this finding was in error. While medical expert testimony regarding standard of care must be made to a reasonable degree of medical probability, there is no requirement that the specific phrase “reasonable degree of medical probability” must be used by the expert in their testimony. *Morsicato v. Sav-On Drug Stores, Inc.*, 121 Nev. 153, 157-58, 111 P.3d 1112, 1115-16 (2005). Thus, the district court should have considered the nature, purpose, and certainty of the dental expert’s testimony rather than whether he uttered a specific phrase. *Id.*; see *FCH1, LLC v. Rodriguez*, 130 Nev., Adv. Op. 46, 335 P.3d 183, 188 (2014) (recognizing that “the refrain is functional, not talismatic,” and in evaluating such testimony, the district court should “consider[] the

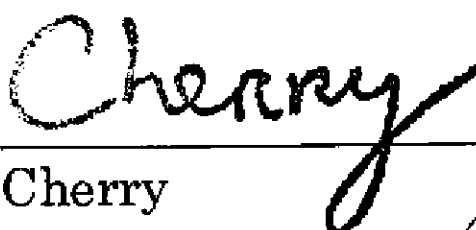
purpose of the expert testimony and its certainty in light of its context” rather than listen for specific words (citing *Williams v. Eighth Judicial Dist. Court*, 127 Nev. 518, 530, 262 P.3d 360, 368 (2011))).


In this case, the expert’s opinions were based on his extensive experience as a practicing dentist, including his experience performing tooth extractions, and his review of the documents and records in this case. In testifying that the standard of care requires antibiotic treatment and/or follow-up care to determine whether the patient is experiencing symptoms of infection and that Summerlin Smiles and Dr. Traivai breached that standard, appellant’s expert did not use speculative, hypothetical, or equivocal language. Appellant’s expert provided a definitive opinion as to the standard of care and its breach in this case, stating that Singletary’s infection could have been controlled with antibiotics, that the use of antibiotics is common practice, and that it was a violation of the standard of care not to follow up with Singletary. Although the district court also found that appellant’s expert failed to provide causation testimony with the required degree of certainty, appellant’s infectious disease expert testified that Singletary died from an infection and swelling that spread from the site of his removed tooth into his neck and the area around the lung space, but that if Singletary had been given antibiotics in the days following the tooth extraction he would not have died, and the infectious disease expert specifically stated that his opinion was made “to a reasonable degree of medical probability.” We therefore reverse the district court’s judgment as a matter of law and direct the district court to reinstate the jury’s verdict.


Appellant also challenges the district court’s award of costs to respondent Ton Vinh Lee, D.D.S. Appellant, however, expressly asked the district court to award Dr. Lee half of the costs requested in his motion.

Appellant therefore lacks standing to appeal the costs award because she is not aggrieved by that order. NRAP 3A(a); *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 874 P.2d 729 (1994); *Farnham v. Farnham*, 80 Nev. 180, 391 P.2d 26 (1964) (holding that party who prevails in the district court is not "aggrieved"). Regardless, appellant did not argue that Dr. Lee failed to file a memorandum of costs in the district court, *see Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding that a point not raised in the district court is deemed to have been waived and will not be considered on appeal), and the argument otherwise lacks merit because Dr. Lee did provide a memorandum of costs. We therefore affirm the award of costs to Dr. Lee. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹


Cherry, J.


Douglas, J.


Gibbons, J.

¹In light of this order, we need not address appellant's other assignments of error.

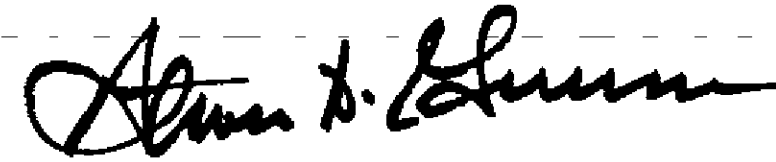
Respondents' request that we instruct the district court to address certain issues regarding statutory caps and remittitur is denied as the district court entered judgment as a matter of law without considering those issues and those issues should be addressed in the district court in the first instance.

cc: Hon. Jerry A. Wiese, District Judge
James J. Jimmerson, Settlement Judge
Patin Law Group, PLLC
Baker Law Offices
Marquis Aurbach Coffing
Maupin Naylor Braster
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
David N. Frederick
Horvitz & Levy, LLP
Stark Friedman & Chapman
Eighth District Court Clerk

EXHIBIT B

EXHIBIT B

EXHIBIT B



CLERK OF THE COURT

COMP
LLOYD W. BAKER, ESQ.
Nevada Bar No. 6893
INGRID PATIN, ESQ.
Nevada Bar No.: 011239
BAKER LAW OFFICES
500 South Eighth Street
Las Vegas, NV 89101
(702) 360-4949
Attorneys for Plaintiff

DISTRICT COURT

COUNTY OF CLARK, STATE OF 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.:

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 C

EXHIBIT C

EXHIBIT C

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,

Plaintiff,

vs.

TON VINH LEE, DDS, individually,
FLORIDA TRAI VAL, 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

SPECIAL VERDICT FORM

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 ☐

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 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 ☒

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 ANSWER: Yes ☒ No ☐

16
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 ☐

22

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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> %

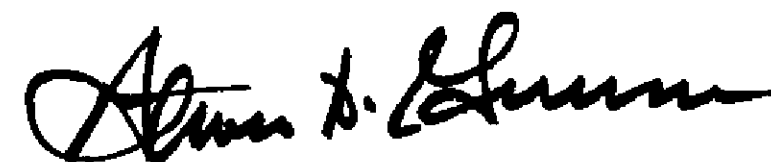
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13 DATED this 22 day of January, 2014

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EXHIBIT D

EXHIBIT D

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
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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 TRAIVAI, 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 TRAIVAI, 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.

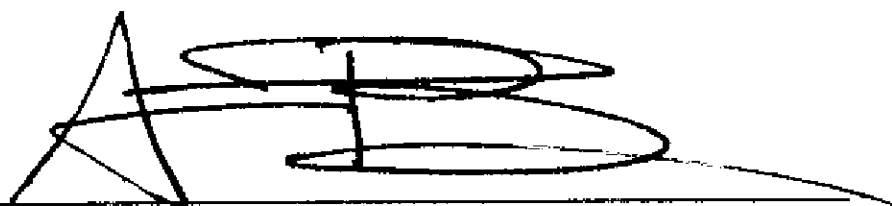
4
5
6 Honorable Jerry Wiese, II, District Court Judge

7 Respectfully Submitted By:

8 **BAKER LAW OFFICES**

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

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

16
17 

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

23
24
25 Jason Friedman, Esq.
26 STARK, FRIEDMAN & CHAPMAN
27 200 W. Sahara, #1401
28 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 
Lloyd W. Baker, Esq.

11 Nevada Bar No. 6893

Ingrid Patin, Esq.

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14 Las Vegas, NV 89101

Attorneys for Plaintiff

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

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18 Amanda Brookheyser, Esq.

19 LEWIS, BRISBOIS,

BISGAARD & SMITH, LLP.

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21 Las Vegas, NV 89118

22 Attorney for Defendant

23 Florida Traivai, DMD

24
25
26 Jason Friedman, Esq.

27 STARK, FRIEDMAN & CHAPMAN

28 200 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

EXHIBIT E

EXHIBIT E

EXHIBIT E



CLERK OF THE COURT

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Nevada Bar No. 011239
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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.: 30

JUDGMENT ON JURY VERDICT

<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
<input type="checkbox"/> Mtn to Dis (by deft)	<input type="checkbox"/> Transferred	

JUDGMENT ON JURY VERDICT

This action came on for trial before the Eighth Judicial District Court and a jury on January 13, 2014, before Honorable Jerry A. Wiese, II, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

IT IS ORDERED AND ADJUDGED that Plaintiff, SVETLANA SINGLETARY, individually, be awarded the sum of Nine Hundred Eighty Five Thousand Dollars and Zero Cents (\$985,000.00), pursuant to the Special Verdict Form, a copy of which is attached hereto as **Exhibit "1."** Having found for the Plaintiff and against Defendants, FLORIDA TRAIVAI, DMD and TON V. LEE, DDS, A 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, A PROF. CORP., d/b/a SUMMERLIN SMILES, which was the proximate cause of Decedent Reginald Singletary's injury was twenty five percent (25%).

IT IS FURTHER ORDERED AND ADJUDGED 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), pursuant to the Special Verdict Form. (See Exhibit 1). Having found for the Plaintiff and against Defendants, FLORIDA TRAIVAI, DMD and TON V. LEE, DDS, A 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, A PROF. CORP., d/b/a SUMMERLIN SMILES, which was the proximate cause of Decedent Reginald Singletary's injury was twenty five percent (25%).

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff is entitled to her costs of Thirty Eight Thousand Forty Two Dollars and Sixty Four Cents (\$38,042.64), as the prevailing party under Nevada Revised Statute 18.020.

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

DATED this 15 day of April, 2014.

DISTRICT COURT JUDGE

Prepared by:

BAKER LAW OFFICES

By:

LLOYD W. BAKER, ESQ.

Nevada Bar No. 6893

INGRID PATIN, ESQ.

Nevada Bar No.: 011239

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Attorneys for Plaintiff

EXHIBIT F

EXHIBIT F

EXHIBIT F

The Trial Reporter

NEVADA

Published Monthly

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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

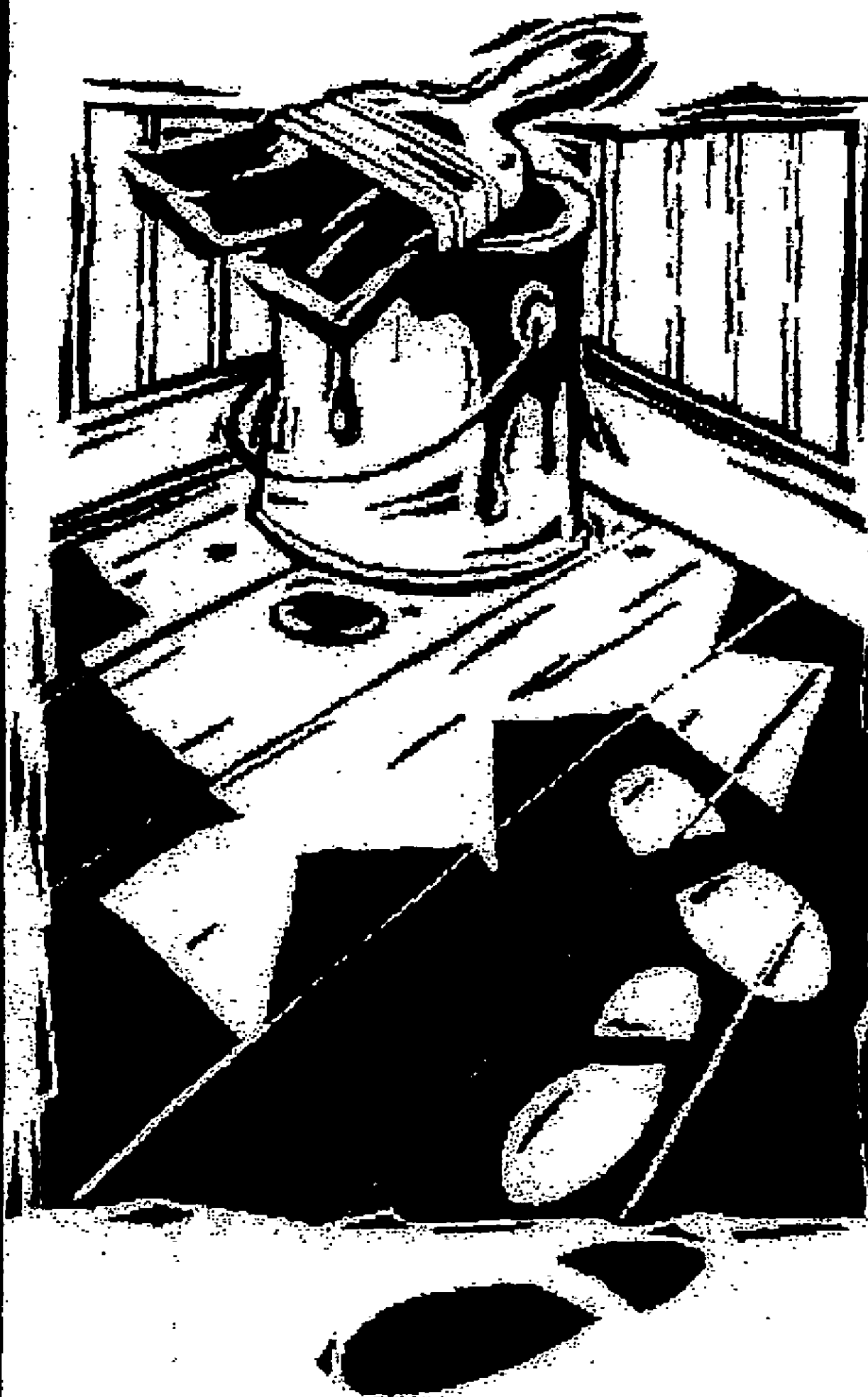
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The Trial Reporter

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 G

EXHIBIT G

EXHIBIT G



NEVADA

Legal Update

Fall 2014

Iverson Taylor Mortensen & Sanders • Nevada's Law Firm

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.

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).

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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 abscess 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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Jun 19, 2013 - injury." We affirm the trial court's judgment and **jury verdict**, and we deny **Singletary**, 166 Wn. App. at 783 (quoting Marley, Exch. & Ass'nv.

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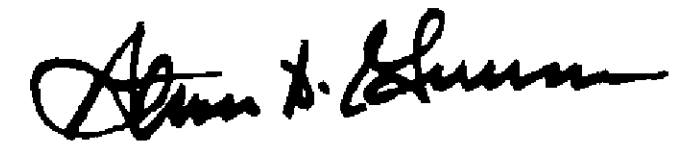
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EXHIBIT I

EXHIBIT I

EXHIBIT I



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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

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

1 Respondent: Florida Traivai, DMD

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

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

9 N/A.

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

12 Retained.

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

15 Retained.

16 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and
17 the date 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
20 complaint 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
23 court, 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
26 Defendants by Plaintiffs after the death of Reginald Singletary following dental
27 surgery to extract a wisdom tooth. The jury found for Plaintiffs against
28 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

Baker Law Offices		
Contact		Email
Aideet Garcia		Aideet@bakerattorneys.net
Lewis Brisbois		
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S. Brent Vogel, Esq.		Brent.Vogel@lewisbrisbois.com
Patin Law Group, PLLC		
Contact		Email
Ingrid Patin, Esq.		ingrid@patinlaw.com
STARK, FREIDMAN & CHAPMAN		
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Jason Friedman		jason@sfc-law.com

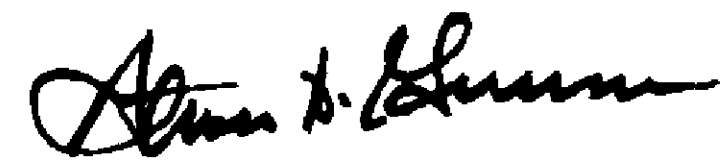
/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

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

EXHIBIT J

EXHIBIT J



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

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

1
2 12. Indicate whether this appeal involves child custody or visitation

3 N/A.

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

5
6 This case doe involve the possibility of a settlement.

7
8 Dated: September 11, 2014

STARK, FRIEDMAN & CHAPMAN

9
10 BY:  for

11 JASON B. FRIEDMAN, ESQ.

12 Nevada State Bar No. 11799

STARK, FRIEDMAN & CHAPMAN

13 200 W. Sahara, #1401

14 Las Vegas, NV 89102

Attorneys for Defendants,

15 TON VINH LEE, DDS and TON V. LEE,

16 DDS, PROE. 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:

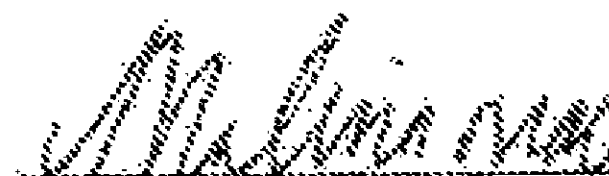
X By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Long Beach, California; and/or

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

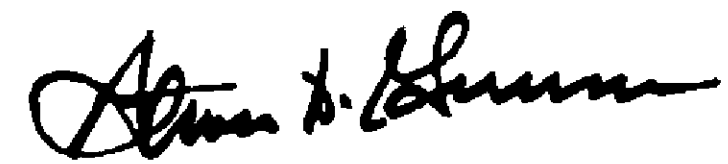
____ To be hand-delivered to the attorney listed below at the address indicated below; and/or

____ 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



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
TRAIVAL, 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.

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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

///
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///

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

14
15
16 BY: 
17 JASON B. FRIEDMAN, ESQ.
18 Nevada State Bar No. 11799
19 STARK, FRIEDMAN & CHAPMAN
20 200 W. Sahara, #1401
21 Las Vegas, NV 89102
22 Attorneys for Defendants,
23 TON VINH LEE, DDS and TON V. LEE,
24 DDS, PROF. CORP. dba SUMMERLIN
25 SMILES
26
27
28

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

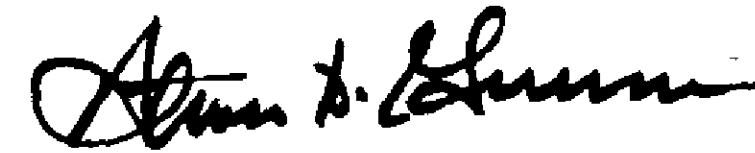

An Employee of STARK, FRIEDMAN &
CHAPMAN, LLP

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).

EXHIBIT K

EXHIBIT K

EXHIBIT K



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.: 30

**JUDGMENT ON JURY VERDICT
FOR DEFENDANT TON VINH
LEE, DDS**

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EXHIBIT L

EXHIBIT L

EXHIBIT L

CHAPTER.....

AN ACT relating to civil actions; revising provisions relating to special motions to dismiss certain claims based upon the right to petition and the right to free speech under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes certain provisions to deter frivolous or vexatious lawsuits (Strategic Lawsuits Against Public Participation, commonly known as “SLAPP lawsuits”). (Chapter 387, Statutes of Nevada 1997, p. 1363; NRS 41.635-41.670) A SLAPP lawsuit is characterized as a meritless suit filed primarily to discourage the named defendant’s exercise of First Amendment rights. “The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial advantage over one’s adversary by increasing litigation costs until the adversary’s case is weakened or abandoned.” (*Metabolic Research, Inc. v. Ferrel*, 693 F.3d 795, 796 n.1 (9th Cir. 2012))

Existing law provides that a person who engages in good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from civil liability for claims based upon that communication. (NRS 41.650) Existing law also provides that if an action is brought against a person based upon such good faith communication, the person may file a special motion to dismiss the claim. If a special motion to dismiss is filed, the court must first determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. If the court determines that the moving party has met this burden, the court must then determine whether the person who brought the claim has established by clear and convincing evidence a probability of prevailing on the claim. While the court’s ruling on the special motion to dismiss is pending and while the disposition of any appeal from that ruling is pending, the court must stay discovery. (NRS 41.660)

Section 13 of this bill revises provisions governing a special motion to dismiss a claim that is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. **Section 13** increases from 7 days to 20 judicial days the time within which a court must rule on a special motion to dismiss. **Section 13** replaces the determination of whether a person who brought the claim has established by clear and convincing evidence a probability of prevailing on the claim and instead requires a court to determine whether the person has demonstrated with prima facie evidence a probability of prevailing on the claim. **Section 13** also authorizes limited discovery for the purposes of allowing a party to obtain certain information necessary to meet or oppose the burden of the party who brought the claim to demonstrate with prima facie evidence a probability of prevailing on the claim. Finally, **section 13** requires the court to modify certain deadlines upon a finding that such a modification would serve the interests of justice.



EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Sections 1-3, 3.5, 4, 4.5, 5-9, 9.5 and 10-12. (Deleted by amendment.)

Sec. 12.5. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

The Legislature finds and declares that:

1. NRS 41.660 provides certain protections to a person against whom an action is brought, if the action is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.

2. When a plaintiff must demonstrate a probability of success of prevailing on a claim pursuant to NRS 41.660, the Legislature intends that in determining whether the plaintiff “has demonstrated with prima facie evidence a probability of prevailing on the claim” the plaintiff must meet the same burden of proof that a plaintiff has been required to meet pursuant to California’s anti-Strategic Lawsuits Against Public Participation law as of the effective date of this act.

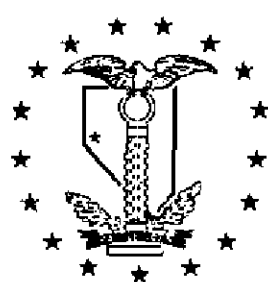
Sec. 13. NRS 41.660 is hereby amended to read as follows:

41.660 1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern:

(a) The person against whom the action is brought may file a special motion to dismiss; and

(b) The Attorney General or the chief legal officer or attorney of a political subdivision of this State may defend or otherwise support the person against whom the action is brought. If the Attorney General or the chief legal officer or attorney of a political subdivision has a conflict of interest in, or is otherwise disqualified from, defending or otherwise supporting the person, the Attorney General or the chief legal officer or attorney of a political subdivision may employ special counsel to defend or otherwise support the person.

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.



3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;

(b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has ~~{established by clear and convincing}~~ **demonstrated with prima facie** evidence a probability of prevailing on the claim;

(c) If the court determines that the plaintiff has established a probability of prevailing on the claim pursuant to paragraph (b), ensure that such determination will not:

(1) Be admitted into evidence at any later stage of the underlying action or subsequent proceeding; or

(2) Affect the burden of proof that is applied in the underlying action or subsequent proceeding;

(d) Consider such evidence, written or oral, by witnesses or affidavits, as may be material in making a determination pursuant to paragraphs (a) and (b);

(e) ~~{Stay}~~ **Except as otherwise provided in subsection 4, stay** discovery pending:

(1) A ruling by the court on the motion; and

(2) The disposition of any appeal from the ruling on the motion; and

(f) Rule on the motion within ~~{7}~~ **20** judicial days after the motion is served upon the plaintiff.

4. ***Upon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited discovery for the purpose of ascertaining such information.***

5. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

6. ***The court shall modify any deadlines pursuant to this section or any other deadlines relating to a complaint filed pursuant to this section if such modification would serve the interests of justice.***

7. ***As used in this section:***



(a) “Complaint” means any action brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern, including, without limitation, a counterclaim or cross-claim.

(b) “Plaintiff” means any person asserting a claim, including, without limitation, a counterclaim or cross-claim.

Sec. 14. The amendatory provisions of this act apply to an action commenced on or after the effective date of this act.

Sec. 15. (Deleted by amendment.)

Sec. 16. This act becomes effective upon passage and approval.

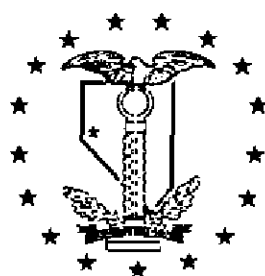


EXHIBIT M

EXHIBIT M

EXHIBIT M

Certificate of Business: Fictitious Firm Name

Please Select One:

☐ New Application

☒ Renewal of existing name

FILED

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Please Print or Type

The expiration date for such certificates shall be the last day of the sixth 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

Las Vegas, NV 89147

City, State, Zip

Las Vegas, NV 89146

City, State, Zip

Date

10/26/10

(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

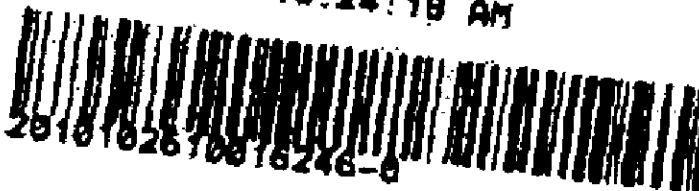
City, State, Zip

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OCT 25 2010
COUNTY CLERK

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 10:24:19 AM



Certificate of Business: Fictitious Firm Name

Please Select One:

- ☐ New Application
☒ Renewal of existing fictitious firm name

Please Print or Type

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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

Full Name and title (Type or Print)

2077 ORCHARD MIST ST.

Street Address of Business or Residence

Signature

LAS VEGAS, NV 89135

City, State, Zip

Date

08/05/09

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

Shirley B. Parraguirre, County Clerk

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Include: Filing Fee of \$20.00 with the certificate plus 2 copies and a sel



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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 N

EXHIBIT N

EXHIBIT N

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,)

11 Plaintiffs,

12 vs.

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

18 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
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7 For the Defendant Florida Traivai, DMD:

8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 BY: S. BRENT VOGEL, ESQ.
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12 For the Defendant Ton Vinh Lee, DDS and Summerlin
13 Smiles:

14 FORD WALKER HAGGERTY & BEHAR
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3960 Howard Hughes Parkway
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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

* * * * *

25

1	I N D E X	
2	WITNESS:	PAGE
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5	Cross-Examination by Mr. Vogel	33
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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?

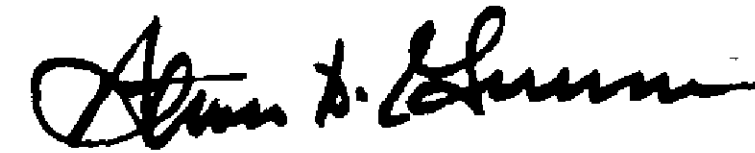
24 A. That's correct.

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

EXHIBIT K

EXHIBIT K

EXHIBIT K



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.: 30

**JUDGMENT ON JURY VERDICT
FOR DEFENDANT TON VINH
LEE, DDS**

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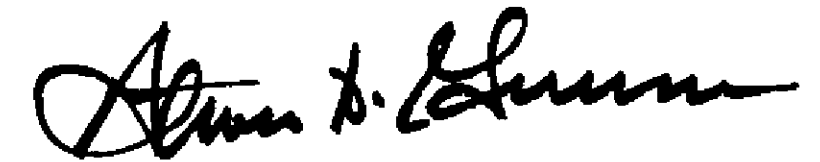
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7

EXHIBIT L

EXHIBIT L

EXHIBIT L



CLERK OF THE COURT

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

16 Defendants.

) Case No.: A723134

) Dept. No.: IX

) **SECOND AMENDED COMPLAINT**

17
18 COMES NOW, Plaintiff TON VINH LEE (hereinafter "Plaintiff"), by and through his
19 attorneys of record, Prescott T. Jones, Esq. and August B Hotchkin, Esq. of the law firm BREMER,
20 WHYTE, BROWN & O'MEARA, LLP, and hereby complains and alleges as follows:

21 **I.**

22 **PARTIES**

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

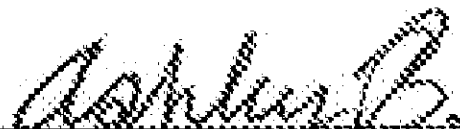
14
15 By: 

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
22
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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

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1 TUESDAY, MAY 9, 2017 AT 9:51 A.M.

2
3 MR. JONES: Good morning, Your Honor. Prescott Jones for the Plaintiff.

4 MS. MORRIS: Good morning, Your Honor. Christian Morris for Ingrid
5 Patin as an individual.

6 MR. LARSEN: Good morning, Your Honor. Paul Larsen representing
7 Patin Law Group.

8 THE COURT: Okay. So this is a Motion for Summary Judgment?

9 MS. MORRIS: Yes, that's correct. And just as an update, Your Honor, in
10 the pleadings we explained that the – the appeal had been decided by the
11 Supreme Court.

12 THE COURT: Uh-huh.

13 MS. MORRIS: That the trial jury verdict had been reinstated, and now it
14 has been paid and completely resolved. So there won't be any additional
15 appeals –

16 THE COURT: Uh-huh.

17 MS. MORRIS: – moving forward in that case whatsoever. So we're here
18 regarding the issue of the posting which was made on the website. The action
19 by Plaintiff was filed during the pendency of the appeal.

20 THE COURT: Uh-huh.

21 MS. MORRIS: And as you know it's been kind of – I know it's probably
22 a long history that you were reading through on what's been going on in the
23 case. We do currently have appeal pending on the issue of anti-SLAPP because
24 we believe it was an issue of public concern simply because it was a trial report
25 that was also reported in many different court reporters.

1 But if you look at the statement itself, it is now specifically,
2 because the appeal has been finalized and the jury verdict has been reinstated,
3 an absolutely true statement that there was, in fact, a verdict with that amount
4 be title, and it does not say anything that the verdict was, in fact, against Ton
5 Vinh Lee, DDS. It said that he was sued. That's specifically what the
6 statement says, and all of that is absolutely true.

7 THE COURT: All right. Well, what it actually reads is, "General
8 malpractice, wrongful death, 3.4 million, Plaintiff's verdict, 2014. Description,
9 Singletary versus Von Vinh Lee – Ton Vinh Lee, DDS, et al., a dental
10 malpractice based wrongful death action that arose out of the death of
11 Decedent Reginald Singletary following the extraction of the number 32 wisdom
12 tooth by Defendant on or about April 16, 2011. Defendants. Plaintiffs sued
13 the dental offices – office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS,
14 and the treating dentist, Florida Travai and Ji Park, a DDS, on behalf of the
15 estate and herself and a minor son."

16 MS. MORRIS: Correct.

17 THE COURT: Okay. So Dr. Lee's point is that if you look at the special
18 verdict form, question number one: Was Ton Vinh Lee, DDS, negligent? No.
19 Was the negligence on the part of Ton Vinh Lee a cause of injury to Reginald
20 Singletary? No. Was Florida Travai negligent in her care? Yes. Was it
21 negligence of – I don't know. I can't pronounce her name, the cause of injury
22 to Reginald Singletary? Yes. Was Ji Park negligent? No. Was the negligence
23 on the part of Ji Park a cause of injury? No. Was Summerlin Smiles negligent
24 in its care and treatment? Yes. Was the negligence on the part of Summerlin
25 Smiles a cause of injury to Reginald Singletary? Yes.

1 So it kind of begs the question. If you post an essentially – I agree
2 that it's true. There is a malpractice action, it was captioned in a certain way,
3 but the – the body of it reads, "Plaintiff sued the dental offices, Summerlin
4 Smiles, the owner and the treating dentists on behalf of the estate, Tom Vinh
5 Lee. It doesn't say we successfully recovered a verdict against one of the
6 dentists and the entity. So it seems to imply to me that the recovery was
7 against all of them. In fact, it was not.

8 MS. MORRIS: Well, if you looked in our Reply brief as well, and I think
9 this is kind of another layer of it, too, Summerlin Smiles is simply a fictitious
10 firm name, and under the law you cannot hide under a fictitious firm name.
11 And Tom Vinh Lee, DDS, is the owner of that fictitious firm name. So he, in
12 fact, is Summerlin Smiles. So even if he wanted to say, well, it's a separate
13 entity, is, in fact, he's – it's just a fictitious firm name. It's Exhibit C to our
14 Reply.

15 THE COURT: Uh-huh.

16 MS. MORRIS: So – and, you know, as you see, Dr. Park hasn't brought
17 this action either as well, and Mr. Ton Vinh Lee has been fully involved in the
18 entire appeal because he is Summerlin Smiles.

19 THE COURT: Uh-huh.

20 MS. MORRIS: And so when you look at the statement. it's a question of
21 law of whether it can have defamatory construction. And even Plaintiff agreed
22 with that. It's the *Branda* case, and in the *Branda* case, he had called a girl a
23 swear word, a B name –

24 THE COURT: Uh-huh.

25 MS. MORRIS: – and said that – you know, he was harassing her and said

1 her name was like Charity. And in that case they said, okay, that could have a
2 defamatory construction. But we're looking at absolutely true statements. It
3 was arising out of an action in which they alleged the Defendant had been
4 negligent in that treatment, and they found that Summerlin Smiles, who is Ton
5 Vinh Lee, DDS, was responsible as was the other dentists in that action.

6 So the statement is, in fact, absolutely true, and for it – we're using
7 a proper – they say we call it an appropriate caption. We all know when
8 there's multiple names to a case, we use the first name and say et al. That is
9 simply the appropriate way to address that. So what we have here – it's not as
10 though it's a statement that is meant to be mean and, oh, we have to look at
11 what it means. It's absolutely true. And so it's a question of law as to
12 whether or not it's out – it's a false statement that is defamatory. and what it
13 does is, in fact, state everything that happened in the case.

14 Those were the allegations in the Complaint. The Complaint was
15 never amended. That's a filed document. It's a public document. The verdict
16 form has Summerlin Smiles on it, who is Ton Vinh Lee, DDS, on it, and he was
17 fully involved. He even had a cross-appeal in it. It's all issues of public record
18 and was published by multiple reporters, of which he's not suing them. He's
19 just chosen to sue her.

20 THE COURT: Okay. Before we hear from Mr. Larsen, anything to add?

21 MR. LARSEN: I have nothing to add, Your Honor.

22 THE COURT: Okay. All right. Great. Thanks.

23 MR. JONES: Again, Prescott Jones again for the Plaintiff. Just one
24 point of clarification. Ton Vinh Lee in his personal capacity, he is an owner of
25 Ton Vinh Lee, DDS, PC, the professional corporation that is doing business

1 through a fictitious firm name as Summerlin Smiles. Summerlin Smiles is not
2 the fictitious firm name for my client personally; it's for the professional
3 corporation, Ton Vinh Lee, DDS, comma, PC.

4 THE COURT: Uh-huh.

5 MR. JONES: So I think with that in mind, what Defendants are
6 essentially asking this Court to do is make an alter ego type finding that Mr. Lee
7 is personally liable for his professional corporation, which in an offensive motion
8 for summary judgment in a case where there's been no discovery conducted
9 whatsoever, I think is completely inappropriate at this stage.

10 THE COURT: Uh-huh. Well, you know, because we do have the
11 fictitious firm name here, and it did – I understand the argument or the
12 contention that if you have sort of an alter ego argument that Ton Vinh Lee is
13 Summerlin Smiles and we have to go one more step back to say it's actually
14 Ton Vinh Lee, Professional Corporation, and then Ton Vinh Lee is Ton Vinh Lee,
15 Professional Corporation, so we're like two steps removed from – from Dr. Lee,
16 who specifically the jury found was not negligent.

17 MR. JONES: Okay.

18 THE COURT: His business was. The business he owns through his
19 professional corporation may have been, but he personally was not negligent.

20 MR. JONES: And that's correct, Your Honor, and we attached the jury
21 verdict.

22 THE COURT: So what – what would the point of discovery be? I'm
23 trying to understand if – if it's the Defendant's contention that it's a true
24 statement, then are you saying, no, we have to go all the way to a jury trial and
25 have a jury determine if it's true or do you – is it the issue of what? Can we

1 prove through some discovery that it's really a professional corporation and
2 there's no alter ego? I mean, what are we trying to prove here?

3 MR. JONES: And, Your Honor, we believe the statement's demonstrably
4 false.

5 THE COURT: Uh-huh.

6 MR. JONES: We asserted in the alternative that at the very least, if this
7 Court's willing to consider summary judgment in favor of the Defendants, that
8 there's at least a jury question there to the truth or falsity of the statement.
9 And, again, we go back to the *Branda* case, which I think we're in agreement,
10 whether – "a jury question arises when the statement is susceptible of different
11 meanings, one of which is defamatory."

12 And, again, we asserted that in the alternative. We believe it's
13 demonstrably false because we've attached a copy of the jury verdict form that
14 found –

15 THE COURT: Uh-huh.

16 MR. JONES: – in favor of my client, who is, again, the only Plaintiff in
17 this case. His professional corporation and the other dentists are not parties to
18 this case. It's only my client personally. My client personally owns several
19 different businesses, including another dental practice in Las Vegas. And by
20 him being named personally, it impacts not only Summerlin Smiles, but his other
21 practice in Henderson as well, as well as all the other businesses that he owns
22 throughout Nevada and California.

23 In fact, that's why we brought this claim in the first place, is that a
24 Google search of my client's name, one of the first things that comes up was –
25 at the time it was the Defendant's website statement saying he was found

1 negligent in a wrongful death action, which you can imagine certainly injures
2 him in his profession as required under a defamation per se claim.

3 THE COURT: Right. Again, it's – it's kind of how you parse this. To be
4 fair, it doesn't say a jury found Dr. Lee negligent. It says, "Plaintiff sued the
5 dental office, Summerlin Smiles, the owner, Tom Vinh Lee, and the treating –
6 which technically he's not. It was – in fact, it's his professional corporation
7 that is the owner. He was sued individually –

8 MR. JONES: Correct, and received a –

9 THE COURT: – in his individual capacity.

10 MR. JONES: Correct, and received a verdict in his favor –

11 THE COURT: Right.

12 MR. JONES: – despite the fact that Summerlin Smiles and Dr. Travai
13 received verdicts in favor of the Plaintiff. But when we look at the statement,
14 the fact that they don't actually say –

15 THE COURT: Uh-huh.

16 MR. JONES: – who was found negligent in the case. They simply list
17 wrongful death, Plaintiff's verdict, 3.4 million –

18 THE COURT: Right.

19 MR. JONES: – and then list all the parties. We submit in our briefs that a
20 reasonable person who reads that statement must infer that, in fact, it was all
21 of those parties who received negligence findings or a verdict in the favor of the
22 Plaintiff. So because they don't delineate between the responsible parties and
23 the parties who receive verdicts in their favor –

24 THE COURT: Right.

25 MR. JONES: – I always submit that it's – the statement must be

1 considered to be false and, at the very least, could go to a jury to determine
2 whether or not that statement has – is true or false, but – and we submit it's –
3 on its face, it's false.

4 THE COURT: Okay. But, again, my question is, as I understood what
5 you said, you believe that this is something that would be a jury question
6 because the jury would have to determine if, given the circumstances where it's
7 a – Summerlin Smiles is just a – is just a DBA. It's just a fictitious name. That
8 business, Summerlin Smiles, is owned by a professional corporation. The
9 professional corporation is owned by Dr. Lee. Dr. Lee personally was not found
10 to have done anything negligent, but the business was.

11 So you think that's a question for a jury or is it just that you need
12 more discovery to prove since this was in the Reply that the fictitious firm was
13 not personally owned by Dr. Lee? It's not his alter ego. It's a professional
14 corporation.

15 MR. JONES: Your Honor, again, we submitted that in the alternative.
16 We believe it's demonstrably false. There may be discovery that needs to be
17 conducted relating to the degree of control that Ms. Patin exercised in a
18 personal capacity over the contents of the website. That's why we sued both
19 Patin Law Group, PLLC, as well as Ms. Patin individually, but –

20 THE COURT: Oh, so you're saying that with respect to your claims
21 against the Defendant, you also want to do discovery with respect to whether
22 the individual was –

23 MR. JONES: We may need discovery, Your Honor, but –

24 THE COURT: – responsible for the posting versus her business?

25 MR. JONES: You're correct. And we recognize, of course, that there's

1 a corporate form issue involved there –

2 THE COURT: Uh-huh.

3 MR. JONES: – but, again, we haven't even had an early case conference
4 in this case. We're still very early on.

5 THE COURT: Okay.

6 MR. JONES: But we'll still, of course, you know, reserve our right to
7 bring our own Motion for Summary Judgment if we deem that to be proper
8 down the road. But this stage of the case, we just had the Defendant to
9 answer not too long ago while the case was in a discovery stay pursuant to the
10 anti-SLAPP appeal.

11 But at this stage of the case, you know, certainly, I think all bets
12 are on the table with regards to which discovery we believe would be best to –
13 to do in this case. But we have an appeal that just had briefing reinstated a
14 couple weeks ago, so we may be safe for quite a while in this case.

15 THE COURT: Okay. Thanks.

16 MR. JONES: Thank Your Honor.

17 MS. MORRIS: Just in brief response. I mean, this case has been going on
18 for almost two years. We're not early on. Discovery has stayed because of the
19 appeal. So we won't be able to dive into discovery, and that's really the point
20 of the motion for summary judgment. They filed a complaint saying this was a
21 defamatory false statement. That's what their Complaint states. It doesn't say
22 people could read it and think innuendos about it. It says it's a false statement.

23 And everything in that statement is absolutely true. And for them
24 to say they must have thought that he did something wrong, it's clearly stated
25 on the website that he wasn't a treating physician, that he was the owner of

1 Summerlin Smiles in which –

2 THE COURT: But he wasn't. It was a professional corporation that was
3 the owner.

4 MS. MORRIS: In which – but that's not what they've sued for, right?
5 They didn't say, oh, they said he was the owner and he wasn't. That's
6 nowhere in their Complaint. That's not –

7 THE COURT: Okay.

8 MS. MORRIS: – even before it. But the statement in itself where they're
9 saying, now, we have brought a Motion for Summary Judgment to show that
10 this is an absolutely true statement based on the fact that there's no question
11 about it because the appeal was successful.

12 They then have the burden to show a genuine issue of material
13 fact because we've shown that everything in that statement, they can't argue
14 about it, has truth to it, unless he's going argue it's defamatory to say he's the
15 owner of Summerlin Smiles, which they haven't alleged and they won't be
16 putting in their Complaint.

17 So here we have a statement that states absolutely what happened
18 in open court, that anyone could go onto the court website and read, because
19 he was, in fact, sued, and there was, in fact, a jury verdict in which Summerlin
20 Smiles was found to be responsible and the other treating physician. We didn't
21 even allege he was a treating physician who did anything to cause the wrongful
22 death. That's nowhere in here.

23 And so it's a question of law. If he agrees with the *Branda* case,
24 then why is he saying it's a question for the jury? Because it's a question of
25 law as to whether – this is a defamatory statement that was posted when

1 everything in it is true. And so what we have here is an issue that – it has to
2 be determined, and this is why we have summary judgment.

3 He wants to go on and do discovery on his own client? When
4 what we have is filing to the Secretary of State. You know, is he going to
5 dispute that those are the fictitious firm name and all of those other things? I
6 don't know what discovery would do regarding that. It's just to simply
7 continue on in the years that this litigation has dragged.

8 But at this point, during all of this time, litigation has been open
9 the appeal has been pending, and we didn't know what the outcome of it was.
10 But the Supreme Court affirmed it, and it has been paid, and it is over. And so,
11 therefore, nothing in this statement can now – can they – and he's saying on
12 its face, it's false when he can't point to anything in it that says it is. Because
13 we didn't even –

14 And I know you're looking at the – the owner, the owner part, but,
15 Your Honor, to be fair, that's not really part of what we're talking about here
16 because they're alleging that there's an innuendo that he did something wrong.

17 THE COURT: The extraction of the number 32 wisdom tooth by
18 Defendants.

19 MS. MORRIS: That was alleged in the Complaint. That's absolutely
20 correct. That was alleged in the Complaint.

21 THE COURT: But it wasn't the jury's finding.

22 MS. MORRIS: But it's what the action that arose out of, which is how
23 it's alleged in the Complaint. The action arose out of that –

24 THE COURT: But it wasn't a finding of –

25 MS. MORRIS: – the accusation that he had passed away –

1 THE COURT: – the jury.

2 MS. MORRIS: – due to an extraction by the 32 tooth. That is absolutely
3 true.

4 THE COURT: Okay. All right. I'm going to deny the motion without
5 prejudice. At this point I think this is premature. There is a partial stay in
6 place. It's – I'm not sure what Judge Togliatti meant, and it – by the way, we
7 should note that Judge Togliatti upon receiving this realized that she is now on
8 a team. I believe it's a tennis team with Doctor – I think it's – it's one of the
9 doctors' wives. I think maybe Dr. Lee's wife.

10 MS. MORRIS: Okay.

11 THE COURT: So that's why she recused herself on it because she has
12 since – it's just through happenstance, Mrs. Lee is now on her tennis team, so
13 that's why she recused. But when she entered this order on May 11th, 2016,
14 the Defendant's motion for stay pending appeal on order shortening time is
15 denied in part as to litigation in its entirety. I don't know what she meant by
16 that.

17 MR. JONES: Your Honor, if I could clarify briefly.

18 THE COURT: It's stayed as to discovery. I don't know how –

19 MR. LARSEN: Your Honor, before we get to that –

20 THE COURT: How do you stay something as to discovery, but not as to
21 litigation? I don't –

22 MR. LARSEN: Can we circle back to your denying the motion –

23 THE COURT: Yeah.

24 MR. LARSEN: – without prejudice? If I could ask for clarification. What
25 aspect of the statement in question gives you pause? What – what aspect of

1 that statement is –

2 THE COURT: Okay.

3 MR. LARSEN: – incorrect? Untrue? I'd like to get some direction on
4 that.

5 THE COURT: Okay. All right. I understand Counsel's argument that
6 the – possibly a sophisticated consumer or another attorney reading this would
7 understand that "a dental malpractice case, wrongful death action relates to the
8 allegation that arose out of the death of Decedent Roman Singletary following
9 the extraction of the number 32 tooth by Defendants on or about" – no problem
10 there. "Plaintiff sued the dental office, Summerlin Smiles, the owner."

11 This is my problem. I mean, when I read this, it looked like the
12 allegations were against Dr. Lee in his individual capacity. I'm not sure what he
13 did in his individual capacity. He didn't own Summerlin Smiles in his individual
14 capacity. So they had to be suing him for dental malpractice, and the jury
15 specifically found he wasn't negligent. So I guess that's my problem, is that if
16 it had said perhaps only the – only the employer or only the dental office and
17 the dentist who did this were –

18 MR. LARSEN: Your Honor –

19 THE COURT: – found negligent –

20 MR. LARSEN: – I'm just trying to boil this down to –

21 THE COURT: – that's my problem.

22 MR. LARSEN: – a simplistic, simple –

23 THE COURT: Right.

24 MR. LARSEN: – ruling, simple finding.

25 THE COURT: Uh-huh.

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

2 THE COURT: Yeah.

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

5 THE COURT: Well –

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

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

14 MR. LARSEN: You know, Your Honor, that – that is nowhere stated in
15 that paragraph.

16 THE COURT: I – that's my – that's what my question is. I think that it
17 could raise a question in the eyes of a typical consumer, and the question is,
18 has anybody ever told Dr. Lee that, in fact, I read that and I didn't want –I'm
19 leaving my practice?

20 MR. LARSEN: That's our question.

21 THE COURT: I'm not coming back?

22 MS. MORRIS: Right.

23 MR. LARSEN: And there's no – there's no affidavit to that effect.
24 There's no factual representation to that effect.

25 THE COURT: Uh-huh.

1 MR. LARSEN: And because there is no factual representation to that
2 effect, it's – it's not an issue of fact. The only evidence before the Court
3 indicates that these are factually accurate questions.

4 THE COURT: Right.

5 MR. LARSEN: Or factually accurate statements.

6 THE COURT: Right. And here's the thing –

7 MR. LARSEN: So where does the –

8 THE COURT: – because it's in the Reply.

9 MR. LARSEN: – issue of fact come from?

10 THE COURT: In the Reply, in the Reply, not in the motion itself. It's
11 alleged that Summerlin Smiles is a fictitious name for Dr. Lee. It's not. It's a
12 professional corporation. And if we're going to say, as a matter of law, Dr.
13 Lee is responsible as the owner of Summerlin Smiles, how do we get there?
14 How do we get there because –

15 MR. LARSEN: Well, Your Honor, they also have – make the linkage that
16 that is somehow defamatory.

17 THE COURT: Right, and that's –

18 MR. LARSEN: They don't allege that either.

19 THE COURT: That's my – my problem, it's in the Reply. It wasn't in the
20 motion itself; it's in the Reply. And when I read this, I thought, Dr. Lee – it was
21 a DBA for Dr. Lee. Then we get the Reply, and it's, in fact, a professional
22 corporation. I can't say as a matter of law that this is not –

23 MR. LARSEN: How is that defamatory, Your Honor?

24 THE COURT: I don't know that it is. I can't say –

25 MR. LARSEN: Exactly my point, Your Honor.

1 THE COURT: I cannot say as a matter of law that it is not. There's a
2 distinction.

3 MR. JONES: And, Your Honor, to clarify –

4 THE COURT: I'm not saying that it is defamatory. I'm saying, you're
5 asking me, now to say that it is not, and I don't know that it is not. Because in
6 the Reply, not in the motions itself, it was alleged this is a fictitious firm name.
7 That was in the Reply.

8 MR. LARSEN: Your Honor, this paragraph's never going to get any
9 different. It's always going to be factually accurate.

10 THE COURT: I –

11 MR. LARSEN: And what you're saying is that somehow presents an issue
12 of fact precluding summary judgment.

13 THE COURT: Okay.

14 MR. LARSEN: So that's why you're giving us the ability to come back at
15 a later date.

16 THE COURT: Right. Yeah.

17 MR. LARSEN: So –

18 THE COURT: I'm not saying that it is defamatory.

19 MR. LARSEN: – the paragraph's –

20 THE COURT: I'm not saying it's not defamatory.

21 MR. LARSEN: – still going to be the same at a later date.

22 THE COURT: Correct.

23 MR. LARSEN: What are you asking us to present at a later date to
24 address that issue?

25 THE COURT: That's why I asked counsel, and he said that they had pled

1 this in the alternative to be able to prove that it is, in fact, defamatory. I don't
2 know that it would be. It may be. I'm not – I'm not making a finding that it is.

3 MR. LARSEN: My point, Your Honor.

4 THE COURT: I have not made a finding.

5 MR. LARSEN: My point.

6 THE COURT: Mr. Larsen, if you want to argue this, you should have
7 stood up and argued it when you had a chance. So you can just –

8 MR. LARSEN: I'm standing up now, Your Honor.

9 THE COURT: You had a chance. I asked you early –

10 MR. LARSEN: I'm asking for clarification.

11 THE COURT: I asked you earlier if you had anything else to add, and you
12 said you didn't.

13 MR. LARSEN: I'm simply asking for clarification of your order.

14 THE COURT: I'm simply saying, you're asking me to declare as a matter
15 of law that this is not defamatory. I cannot declare as a matter of law at this
16 point that is or is not because I have concerns about the wording, and
17 specifically that in the Reply, evidence was provided that says this was a DBA
18 for Dr. Lee. It was not a DBA for Dr. Lee. It was a DBA for Dr. Lee's
19 professional corporation. To me, I have to understand what that is before I can
20 say as a matter of law, it's not defamatory as to Dr. Lee individually.

21 MR. LARSEN: So we're focused on that particular point.

22 THE COURT: I'm just saying I cannot tell you today that it is – is or is
23 not defamatory.

24 MR. LARSEN: Based on that specific point?

25 THE COURT: No, based on the language of this – of this paragraph. If

1 it – if as it's written, it's not defamatory. when, in fact –

2 MR. LARSEN: I agree with that.

3 THE COURT: – "the extraction of the number 32 wisdom tooth by
4 Defendants." It doesn't say the Complaint alleged. It doesn't say that. It just
5 says, "Following the extraction of the number 32 wisdom tooth by Defendants.
6 On or about such and such a date, the Plaintiff sued.

7 And here's where it says Plaintiff sued. "Plaintiff sued the dental
8 office," that's true, "Summerlin Smiles, the owner, Von Vinh Lee" – technically,
9 it's a professional corporation – "and the treating dentists."

10 MR. LARSEN: Your Honor, I continue to vex you, and I apologize for that.
11 I'm asking for a specific identification of what issue is precluding summary
12 judgment in here.

13 THE COURT: Okay.

14 MR. LARSEN: And you've – I understand it. you've explained it to me.
15 It's simply the allegation that Mr. Lee owned the business.

16 THE COURT: No, no, no, no, no. No, no, no, no. I'm going to go back.
17 My problem starts with, "Extraction of the number 32 wisdom tooth by
18 Defendants. Plaintiff sued." It doesn't say Plaintiff sued the following people,
19 these people for this, and this person was found negligent. It doesn't say that.

20 It simply says, "Arose out of the death of Reginald Singletary
21 following the extraction of the number 32 wisdom tooth by Defendants." Then
22 it says, "Plaintiff sued the dental office, Summerlin Smiles, the owner, Vinh
23 Lee – that's the second problem – "and the treating dentists." So I have more
24 than one problem with this. I have some problems –

25 MR. LARSEN: Your Honor –

1 THE COURT: – with the way it's worded.

2 MR. LARSEN: – and I'm – I know I'm appearing to you to be obtuse and
3 I apologize for that.

4 THE COURT: Uh-huh, uh-huh.

5 MR. LARSEN: I'm just trying to identify specifically which factual
6 allegations in this paragraph you find –

7 THE COURT: Okay. I'm going to do it one more time.

8 MR. LARSEN: Okay.

9 THE COURT: All right.

10 MR. LARSEN: Well, I, I think you have.

11 THE COURT: Counsel argued – counsel argued –

12 MR. LARSEN: I'm just not understanding.

13 THE COURT: Counsel argued that this could not be defamatory because
14 the Complaint, which was captioned Singletary v. Lee – I agree that's true, it
15 was captioned Singletary v. Lee. That's the allegation in the Complaint that the
16 extraction happened of the 32 wisdom tooth by Defendants. That's the
17 allegation of the Complaint. It doesn't read that way. It's a factual statement
18 that he died following the extraction of the number 32 wisdom tooth by
19 Defendants.

20 Is that an affirmative statement that it was the Defendants who
21 extracted this wisdom tooth? Because the next sentence says –

22 MR. LARSEN: So – so –

23 THE COURT: – "Plaintiff sued" –

24 MR. LARSEN: – can we stop there, Your Honor? So you're saying
25 there's a question of fact as to who removed the tooth or is that –

1 THE COURT: I mean, as you read this – I think that a typical person
2 reading this by Defendants would assume that that meant – because that's a
3 factual statement. We've got this verdict. It's a medical malpractice action
4 based on wrongful – wrongful death action that rose out of the death of
5 Reginald Singletary following the extraction of his number 32 wisdom tooth by
6 Defendants.

7 Then the next sentence says, "Plaintiff sued." As counsel's arguing
8 it, her position was it's the allegations of the Complaint. It's based simply on
9 the allegations of the Complaint. That first sentence doesn't say that. It
10 doesn't say the Complaint alleged it was based on extraction by the
11 Defendants.

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

13 MS. MORRIS: Uh-huh.

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

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

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

6 MR. LARSEN: Exactly my point, Your Honor.

7 THE COURT: I've read this about you.

8 MR. LARSEN: There's no affidavit to that effect –

9 THE COURT: Right.

10 MR. LARSEN: – attached to this.

11 THE COURT: Right.

12 MR. LARSEN: So we don't have any evidence the issues that your
13 espousing upon –

14 THE COURT: Uh-huh.

15 MR. LARSEN: – have even been presented factually.

16 THE COURT: Right. Okay.

17 MR. LARSEN: Which means the motion is essentially unopposed on that
18 basis. It should be granted.

19 THE COURT: Okay. Thank you. I don't know why you're standing,
20 but –

21 MR. JONES: Certainly. Your Honor, I'm just responding to your –

22 THE COURT: Yeah.

23 MR. JONES: – original point –

24 THE COURT: Uh-huh.

25 MR. JONES: – which began this discussion, which relates to the stay of

1 discovery without a stay of litigation.

2 THE COURT: Uh-huh.

3 MR. JONES: Defendants brought a motion under anti-SLAPP that was
4 denied.

5 THE COURT: Yeah.

6 MR. JONES: As their right, they took an appeal to Nevada Supreme
7 Court. That statute that provides the automatic appeal also provides for a stay
8 of discovery only. Defendants moved for a stay of the entire litigation. We
9 opposed on the grounds that it should only be a stay of discovery. Judge
10 Togliatti –

11 THE COURT: How do you stay discovery and not like – it doesn't make
12 any sense.

13 MR. JONES: That's under our –

14 THE COURT: So that's why they were able to file this motion is because
15 they weren't stayed from filing this motion.

16 MR. JONES: That's correct, Your Honor.

17 THE COURT: So, you know, since Mr. Larsen's raised it and we didn't
18 discuss it earlier, there are no affidavits, but are you essentially – I mean, to me
19 this was just a statement that this was premature, there's been no discovery,
20 and we shouldn't be in this position. It didn't require an affidavit.

21 MR. JONES: That's correct, Your Honor. We didn't believe it was
22 necessary. We could find – I could very easily get an affidavit of Mr. Lee
23 saying that he had customers approach him saying, what is this you've been
24 accused of and had a verdict against you for wrongful death? I'm taking my
25 business elsew here.

1 That's what necessitated this lawsuit in the first place, Your
2 Honor. And we didn't believe it was necessary to provide the affidavit in
3 response to this, what we believed to be a relatively narrow motion for
4 summary judgment. If counsel does want to file a different Motion for
5 Summary Judgment, we, of course, would be happy to provide an affidavit of
6 Dr. Lee to that effect.

7 THE COURT: Yeah. All right. Thank you. Anything else? As I've said,
8 to me – I'm not saying that I'm making any finding on this. I'm not. It's simply
9 that to me, it's kind of an unusually drafted – and maybe it's very artfully
10 drafted; I don't know – statement that I cannot say at this point in time as a
11 matter of law is or is not defamatory.

12 I'm just going to say I can't find that today. So it's without
13 prejudice, but – and I – I don't understand how you can only stay discovery. I
14 don't know – what are we supposed to do in a case that's only stayed – I
15 mean, where are you in the anti-SLAPP?

16 MS. MORRIS: Yeah. I mean, basically. it's pursuant to the statute to
17 essentially save costs –

18 THE COURT: Uh-huh.

19 MS. MORRIS: – of litigation –

20 THE COURT: Yeah.

21 MS. MORRIS: – while something that's protected speech would be taken
22 care of, so –

23 THE COURT: Uh-huh.

24 MS. MORRIS: I mean, that's the reason why we're at it. Briefing is
25 open. I think it's due at the end of the month.

1 THE COURT: Okay. Yeah, because, you know – unless I looked at the
2 actual appeal, I wouldn't really be able to tell. Yeah, it looks like the most
3 recent order was April 27th. I just didn't know where you were with respect
4 to – with respect to the appeal. Okay. So, essentially, it was – just looked like
5 they said you're allowed to take this appeal, and they give you like a briefing
6 schedule or something?

7 MS. MORRIS: Yes, exactly.

8 THE COURT: Okay. Okay. So there was more than one appeal?

9 MS. MORRIS: Correct, because there was –

10 THE COURT: And so they dismissed one of them.

11 MS. MORRIS: – multiple motions – two Complaints were filed, and so
12 we had multiple appeals going, based on the fact that there's two operative
13 Complaints.

14 THE COURT: Okay.

15 MS. MORRIS: But now there's only one appeal.

16 THE COURT: There's only one?

17 MS. MORRIS: Yeah.

18 THE COURT: Okay. Got it. Yeah, like I said, I'm coming into this after –
19 You know, after –

20 MS. MORRIS: I know, it's –

21 THE COURT: Judge Togliatti handled it for like all those years. I'm –
22 you know, literally she was just like, I just realized I know this person. Yeah.
23 So okay. All right. Because, yeah, I see there were two. There is 72144 and
24 69928.

25 MS. MORRIS: I believe there's just one matter.

1 THE COURT: And I –
2 MS. MORRIS: Looks like Your Honor's seeing two?
3 THE COURT: And it looks like they dismissed –
4 MR. JONES: Correct. Yes, 72144 was dismissed –
5 THE COURT: Dismissed.
6 MR. JONES: – as the original is proceeding now with briefing reinstated,
7 and I believe that 45 days –
8 THE COURT: Okay.
9 MR. JONES: – I think, from the last order to file their opening brief.
10 THE COURT: Well, so if it's stayed as to discovery, then –
11 MS. MORRIS: And I think what we'll do here, Your Honor, and just to
12 give you some perspective, I do believe that he properly should have attached
13 affidavits –
14 THE COURT: Uh-huh.
15 MS. MORRIS: – if he's asking for more discovery. He should have had
16 an affidavit in there, and this is the time for it.
17 THE COURT: Yeah.
18 MS. MORRIS: - Pursuant to the rules –
19 THE COURT: Right.
20 MS. MORRIS: – that is exactly where we are.
21 THE COURT: Understand.
22 MS. MORRIS: And so I probably will be refiling, and I think that – here's
23 the issue that we didn't really address, and I'm not asking you to.
24 THE COURT: Yeah.
25 MS. MORRIS: Truth is an absolute defense, and there you don't get to

1 look at the defamatory construction, and I don't think that was really addressed
2 in the briefing that we have here, and I would like to bring it in that fashion.

3 THE COURT: Okay.

4 MS. MORRIS: Because if you can find an absolute truth in it, then the
5 defamatory construction is out the window.

6 THE COURT: Right. And – and that may be the problem because maybe
7 in my discussion with Mr. Larsen, that's the problem here –

8 MS. MORRIS: I think so, too.

9 THE COURT: – is that I reading this, I – those words mean certain things
10 to me –

11 MS. MORRIS: Right.

12 THE COURT: – in my profession. What do they mean to a layperson?
13 And that's your argument, is it doesn't matter what it means because it's not
14 about –

15 MS. MORRIS: Right.

16 THE COURT: – the construction. Okay.

17 MS. MORRIS: And so I think that's –

18 THE COURT: Okay.

19 MS. MORRIS: – probably what we'll do while we have our time pending
20 for the appeal.

21 THE COURT: Okay. Yeah.

22 MS. MORRIS: Okay. I'll prepare the order?

23 THE COURT: Very bizarre. Okay. Yeah, uh-huh.

24 MS. MORRIS: Thank you.

25 MR. JONES: Thank Your Honor.

1 MR. LARSEN: Thank Your Honor.

2 THE COURT: That's without prejudice. And see you guys back,
3 obviously.

4 MS. MORRIS: Okay.

5 THE COURT: So it's – but it's mine now , so –

6 MS. MORRIS: All right. Thank you.

7 MR. LARSEN: Thank you, Your Honor.

8 THE COURT: I'll be looking forward to learning all about what happened
9 in this.

10 MS. MORRIS: Okay.

11 [Proceeding concluded at 10:26 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio/visual recording in the above entitled case to the best of my ability.

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Kerry Esparza, Court Recorder/Transcriber
District Court, Department XXVI