

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE THE FULL CAPTION:

LYNN YAFCHAK, Statutory Heir and
Special Administrator to the Estate Of
JOAN YAFCHAK, Deceased

Appellant(s),
vs.

SOUTH LAS VEGAS MEDICAL
INVESTORS, LLC, d/b/a LIFE CARE
CENTER OF SOUTH LAS VEGAS,
Erroneously Named as Life Care Centers
of America, A Foreign Corporation

Respondent(s).

Supreme Court No. 82746
District Court Case No. A8-2688
Electronically Filed
Apr 30 2021 02:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department 19
County Clark Judge Crystal Eller
District Ct. Case No. A-20-822688-C

2. Attorney filing this docketing statement:

Attorney Joseph J. Troiano, Esq. Telephone 702-748-7777

Firm Cogburn Law

Address 2580 St. Rose Parkway, Suite 330, Henderson, Nevada 89074

Client(s) Lynn Yafchak, Statutory Heir and Special Administrator to the Estate of
Joan Yafchak, Deceased

If this is a joint statement by multiple appellants, add the names and address of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondent(s):

Attorney Zachary J. Thompson, Esq. Telephone 702-889-6400

Firm Hall Prangle & Schoonveld, LLC

Address 114 North Town Center Drive, Ste. 350, Las Vegas, NV 89144

Client(s) South Las Vegas Medical Investors, LLC d/b/a Life Care Center of South
Las Vegas, erroneously named as Life Care Centers of America

Attorney Casey W. Tyler, Esq. Telephone 702-889-6400

Firm Hall Prangle & Schoonveld, LLC

Address 114 North Town Center Drive, Ste. 350, Las Vegas, NV 89144

Client(s) South Las Vegas Medical Investors, LLC d/b/a Life Care Center of South
Las Vegas, erroneously named as Life Care Centers of America

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify) |

5. Does this appeal raise issues concerning any of the following:

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Petitioner filed a lawsuit alleging negligence and elder abuse/neglect causes of action against Respondent, which is licensed nursing home. Respondent filed a motion to dismiss arguing that it is entitled to protection under Nevada's medical malpractice statutes. Respondent argued that Respondent's complaint should be dismissed because it did not include an affidavit pursuant to NRS 41A.071. In support of this position, Respondent relied upon this Court's recent decision in *Estate of Curtis*. Respondent also argued that because Respondent's complaint did not include an affidavit pursuant to NRS 41A.071, it should also be dismissed because it was filed after NRS 41.097(2)'s one-year statute of limitations.

In opposition, Appellant addressed the legislative histories of both NRS 41A (medical malpractice statutes) and NRS 41.1395 (elder abuse statute). Specifically, Appellant explained that a purpose behind NRS 41.1395 providing double damages is to encourage attorneys to pursue elder neglect/abuse cases. Appellant argued that NRS 41A's \$350,000 cap on non-economic damages contradicts the purpose of NRS 41.1395. Appellant also argued that Respondent is not a provider of health care that falls under NRS 41A. Appellant also argued that the Nevada legislature failed to include facilities for skilled nursing in NRS 41.017.

In reliance upon the *Curtis* decision, the District Court agreed with Respondent and granted its motion to dismiss.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

(1) Whether a skilled nursing home is a provider of health care under NRS 41A.017.

(2) Whether the *Curtis* decision leads to inconsistent results where one cause of action will be subject to the introduction of collateral source evidence under NRS 41A and another cause of action will not subject to the introduction of collateral source evidence.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Petitioner is not aware of any such other cases.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

- ☒ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain: Petitioner contends that the *Curtis* decision leads to inconsistent results and improperly concluded that this Respondent is entitled to protections of NRS 41A.071. *See Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv. Op. 39, 446 P.3d 1263 (2020).

13. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Petitioner believes that this matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(12) because it presents an issue of statewide public importance regarding whether nursing homes should be provided protections of NRS 41A.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A
Was it a bench or jury trial? N/A

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

NO

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TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 3/10/2021.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A

17. Date written notice of entry of judgment or order was served 3/11/2021.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion N/A.

(c) Date written notice of entry of order resolving tolling motion was served N/A.

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed 04/05/2021.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

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20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other.

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The district court granted Respondent's motion to dismiss.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Appellant: Lynn Yafchak, Statutory Heir and Special Administrator to the Estate of Joan Yafchak, Deceased

Respondent: South Las Vegas Medical Investors, LLC d/b/a Life Care Center of South Las Vegas, erroneously named as Life Care Centers of America

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.

Appellant's claims: Abuse/Neglect of an Older Person, Negligence, Wrongful Death, Survival Action.

Respondent: No known claims or counterclaims.

Formal disposition of Appellant's claim was made on March 10, 2021 when the Order Granting Respondent's Motion to Dismiss was entered.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Lynn Yafchak
Name of appellant

Joseph J. Troiano
Name of counsel of record

4/30/2021
Date

/s/ Joseph J. Troiano
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1)(B), I hereby certify that I am an employee of Cogburn Law, and that on the 30th day of April 2021, I submitted the foregoing DOCKETING STATEMENT to the Nevada Supreme Court's electronic docket for filing and service upon the following:

Thomas Tanksley
Settlement Judge

Casey Tyler
Zachary Thompson

Attorneys for South Las Vegas Medical Investors, LLC d/b/a Life Care Center of South
Las Vegas, erroneously named as Life Care Centers of America

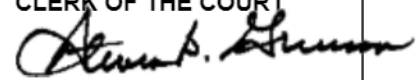
Dated this ____ day of April, 2021.

/S/ Noel Raleigh

Signature

EXHIBIT 1

EXHIBIT 1



CASE NO: A-20-822688-C
Department 2

COGBURN LAW
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

LYNN YAFCHAK, Statutory Heir and
Special Administrator to the ESTATE OF
JOAN YAFCHAK, Deceased,

Plaintiff,

vs.

LIFE CARE CENTERS OF AMERICA, a
Foreign Corporation, d/b/a LIFE CARE
CENTER OF SOUTH LAS VEGAS; and
DOES 1-10, Inclusive,

Defendants.

Case No.:

Dept. No.:

COMPLAINT

COMES NOW, Plaintiff Lynn Yafchak, Statutory Heir and Special Administrator to the
Estate of Joan Yafchak, Deceased, by and through her counsel of record, Jamie S. Cogburn, Esq.
and Joseph J. Troiano, Esq. of Coburn Law, hereby alleges as follows:

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GENERAL ALLEGATIONS

(Parties to the Action)

1
2
3 1. Joan Yafchak (hereinafter referred to as “Decedent”) was the mother of Lynn
4 Yafchak, Statutory Heir and Special Administrator to the Estate of Joan Yafchak (hereinafter
5 referred to as “Plaintiff”), suffered significant negligence while a resident at a skilled nursing
6 home, called Life Care Center of South Las Vegas. At all times relevant hereto in this Complaint,
7 Decedent died in the County of Clark, State of Nevada, and at the time of her passing, said
8 Decedent was a resident of the State of Nevada, and was considered an “older person” as the term
9 is defined under NRS §41.1395.

10 2. At all times relevant hereto, Plaintiff is the daughter of Decedent and is the
11 Statutory Heir and Special Administrator to the Estate of Joan Yafchak was, and is, an individual
12 residing in Clark County, State of Nevada.

13 3. At all times relevant hereto, and under information and belief, Defendant Life Care
14 Centers of America, a Foreign Corporation, d/b/a Life Care Center of South Las Vegas, were the
15 owners and operators of Life Care Center of South Las Vegas, located at 2325 East Harmon
16 Avenue, Las Vegas, Nevada 89119 (hereinafter referred to as “Defendants”), was, and is, a business
17 providing 24-hour custodial care, licensed to do business in Clark County, State of Nevada, and
18 subject to the requirements of Nevada state law.

19 4. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants DOE 1-10, and each of them, were the agents, servants, employees and
21 partners of the Co-Defendants, and as such, were acting with the course and scope of such
22 employment. Each and every Defendant, as aforesaid, when acting in principal, was negligent in
23 the selection, hiring, training and/or supervision of each and every other Defendant, as its agent,
24 servant, employee, and partner. Plaintiff will seek leave to amend this Complaint as the true names
25 and capacities become known. Plaintiff is informed and believes, and thereon alleges, that each

1 of the Defendants designated as DOE, is responsible in some manner, and liable herein by reason
2 of negligence and other actional conduct, and by such conduct, proximately caused the injuries
3 and damages to Plaintiff as herein alleged.

4 **FIRST CAUSE OF ACTION**

5 **(Abuse/Neglect of an Older Person – Against All Defendants)**

6 5. Plaintiff realleges, and incorporates herein by reference, each and every paragraph
7 as though fully set forth herein.

8 6. Decedent was born on August 28, 1937 and was therefore considered and “older
9 person” pursuant to NRS §41.1396.

10 7. On or about October 9, 2018, Decedent had surgery at Desert Springs Hospital to
11 remove an abscess from her spine that was causing her pain and difficulty walking.

12 8. On October 9, 2020, she was released to College Park Rehabilitation Center for
13 rehabilitation from her surgery. While at College Park Rehabilitation Center, she contracted
14 Clostridioides Difficile Infection (“C-DIFF”). After spending approximately eight weeks there,
15 and it was supposed to have healed, they released her to go home on February 20, 2019.

16 9. On February 24, 2019, Decedent felt ill and was taken by ambulance back to Desert
17 Springs Hospital, wherein her diagnosis was dehydration, dementia, bloody stool, and C-DIFF.
18 The hospital stabilized her, and on February 28, 2020, she was transferred to Defendant, Life Care
19 Center of South Las Vegas, a nursing home, for rehabilitation and care, where she was quarantined
20 for several weeks due to C-DIFF. Decedent also was a high risk of falling, which should have
21 been assessed at the time of admission.

22 10. While in Defendants’ care, Decedent fell numerous times.

23 11. On or about April 19, 2019 at 1:30 a.m., Decedent was sleeping in her room, which
24 room was located by the nurses’ station, fell out of her bed and onto the ground, wherein fracturing
25 her collar bone.

1 12. On or about May 6, 2019, Plaintiff found Decedent very lethargic and shaking in
2 her bed. Plaintiff questioned Defendants of what was wrong with Decedent, in which their
3 response was that she was cold. They gave her a blanket. Decedent slept from May 9-11, 2019,
4 which was not Decedent's normal sleeping pattern. Plaintiff expressed her concern to Defendants,
5 wherein Defendants ignored and disregarded her concerns.

6 13. On or about May 11, 2019, Defendants decided to transfer Decedent to Desert
7 Springs Hospital due to irregular vital signs, wherein she was immediately admitted to ICU and
8 diagnosed with a urinary tract infection, e-coli, and sepsis.

9 14. On May 15, 2019, Desert Springs Hospital informed Plaintiff that there was nothing
10 further they could do for Decedent, and therefore released her to Infinity Hospice, wherein she
11 died on May 17, 2019.

12 15. Upon admission to the nursing home, Defendants, and each of them, knew, or
13 should have known, that Decedent was a fall risk, and had a dangerous bacterial infection, and
14 depended on Defendants to monitor her infection and her safety. Decedent was also dependent
15 upon Defendants, and each of them, to assist her with her daily basic needs, including toileting
16 assistance, turning her in her bed, bathing, feeding, fluids, and making sure she does not fall. Such
17 care is generally provided by nursing homes to their residents.

18 16. Despite the knowledge, Defendants, and each of them, consciously disregarded the
19 known fact that Decedent was dangerously ill and unstable, therefore not properly cared for.

20 17. These injuries were caused because Defendants, and each of them, failed to
21 sufficiently staff the nursing home with enough qualified employees to meet all of Decedent's
22 daily needs. Defendants' staffing practices may have saved the nursing home costs of labor, but
23 cost Decedent her dignity and comfort, while jeopardizing her safety, health, and well-being in
24 failing to provide basic care and protect her from harm.

1 18. On or about April 19, 2019, Decedent fell out of her bed and landed on the floor,
2 fracturing her collar bone. Such damages will be proven at time of trial.

3 19. On May 11, 2019, Defendants transferred Decedent to the ICU at Desert Springs
4 Hospital for a urinary tract infection, e-coli and sepsis. Since Desert Springs could not do nothing
5 further for Decedent, she was released to Infinity Hospital wherein she died on May 17, 2019.

6 20. Although Defendants, and each of them, owed a duty of services of care to
7 Decedent with regard to her safety, health, and welfare, they failed to provide services necessary
8 to maintain her physical and mental health, wherein failing in Defendants' care.

9 21. Defendants' failure constituted neglect to Decedent. Said repeated failure by
10 Defendants, and each of them, made with conscious disregard of the health and safety of Decedent,
11 acted with reckless, oppression, fraud, and malice in connection with their neglect to the Decedent.

12 22. As a direct and proximate result of Defendants' neglect, recklessness, and wrongful
13 conduct, Decedent suffered unjustified pain, injury, and mental anguish.

14 23. As a direct and proximate result of Defendants' neglect, recklessness, and wrongful
15 conduct, Plaintiff incurred medical expenses for Decedent.

16 24. Decedent was an older person as defined in NRS §41.1395(4)(d) and is entitled to
17 double damages pursuant to NRS §41.1395(1).

18 25. As the above-described conduct on the part of Defendants, and each of them, these
19 Defendants are guilty of recklessness, oppression, fraud, and malice in connection of the neglect
20 to Decedent as alleged herein.

21 26. As a direct and proximate result of the aforesaid willful, intentional, and unjustified
22 conduct of the Defendants, and each of them, including conduct committed by their highest
23 managing agents, Decedent suffered significant and multiple injuries, including a broken collar
24 bone, contracting e-coli and sepsis, and other damages to be proven at time of trial. The conduct
25 set forth above was the direct and proximate result of Defendants, and each of them, and therefore

1 guilty of malice, oppression, recklessness, and fraud, therefore justifying an award of punitive and
2 exemplary damages.

3 27. As a further result of Defendants' conduct, Plaintiff had to retain the services of
4 Cogburn Law in this matter, and therefore seek reimbursement of attorneys' fees and costs. Such
5 amount will be proven at time of trial.

6 **SECOND CAUSE OF ACTION**

7 **(Negligence – Against All Defendants)**

8 28. Plaintiff realleges, and incorporates herein by reference, each and every paragraph
9 contained in said paragraph, as though fully set forth herein.

10 29. Defendants, and each of them, in caring for Decedent, had a duty to exercise the
11 level of knowledge, skill, and care of those in good standing in the community.

12 30. Defendants, and each of them, had a duty to properly train their staff and employees
13 to act with the level of knowledge, skill, and care of nursing homes in good standing in the
14 community.

15 31. Defendants, and each of them, breached their duties to Decedent, and were
16 negligent and careless in their actions and omissions, as though fully set forth herein.

17 32. As direct and proximate result of Defendants' breaches, Decedent suffered
18 numerous injuries as referenced in this Complaint.

19 33. As a direct and proximate result of Defendants' negligence, Plaintiff may recover
20 any penalties, including, but not limited to, exemplary and/or punitive damages, that Decedent
21 would have recovered if she had survived.

22 ...

23 ...

24 ...

25 ...

THIRD CAUSE OF ACTION

(Wrongful Death – Against All Defendants)

34. Plaintiff realleges and incorporates herein by reference, each and every allegation contained in each and every paragraph, as though fully set forth therein.

35. That the death of Decedent was caused by the wrongful acts and negligence of Defendants, and each of them, jointly and severally, by and through their employees, servants, and agents regarding a foreseeable harm.

36. Plaintiff is entitled to maintain an action for wrongful death against Defendants, and each of them, for damages and to join the action pursuant to NRS §41.085(3).

37. Plaintiff is entitled to pecuniary damages for the grief, sorrow, loss of probable support, companionship, society, comfort, and damages for pain and suffering of the Decedent, and no such damage shall be liable for any debt of the Decedent.

38. That Plaintiff recover any special damages, such as medical expenses in which Decedent incurred or sustained before her death, including funeral expenses.

39. That Plaintiff recover any penalties, including, but not limited to, exemplary or punitive damages that Decedent would have recovered if she survived.

40. That Plaintiff suffered severe emotional distress, loss of society, companionship and comfort, grief, sorrow, mental pain and suffering, psychiatric impairment and loss of enjoyment of life as proximately caused by Defendants, and each of them, in excess of Fifteen Thousand Dollars (\$15,000.00).

41. Plaintiff is informed and believes, and thereon alleges, that the acts of Defendants, and each of them, were done with conscious disregard, and deliberate indifference of the rights, welfare, and safety of the Decedent.

42. As a further result of said Defendants' conduct, Plaintiff had to retain the services of Cogburn Law in this matter, and therefore seek reimbursement of attorneys' fees and costs. Such amount will be determined at time of trial.

FOURTH CAUSE OF ACTION

(Survival Action – Against All Defendants)

43. Plaintiff realleges and incorporates herein by reference, each and every paragraph as though fully set forth herein.

44. Prior to Decedent's death, in or about April, 2019, Decedent sustained damages caused by Defendants' neglect. Therefore, Plaintiff is entitled to maintain a survival action against Defendants, and each of them, for damages and to join the action pursuant to NRS §41.100.

45. Plaintiff may recover pecuniary damages of grief, sorrow, and loss of probable support, companionship, society, comfort, and damages for pain and suffering of the Decedent, and no such damages shall be liable for any debt of the Decedent.

46. That Plaintiff recover any special damages, such as medical expenses, which the Decedent incurred or sustained before her death, including funeral expenses.

47. That Plaintiff recover any penalties, including, but not limited to, exemplary and punitive damages that the Decedent would have recovered if she had survived.

48. Plaintiff has individually suffered severe emotional distress, loss of society, companionship and comfort, grief, sorrow, mental pain and suffering, and loss of enjoyment of life as a proximate cause of the acts and omissions of Defendants, and each of them, in excess of Fifteen Thousand Dollars (\$15,000.00).

49. Plaintiff is informed and believes, and thereon alleges, that the acts of Defendants, and each of them, were done with conscious disregard and deliberate of the rights, welfare, and safety of the Decedent.

50. As a further result of Defendants' conduct, Plaintiff had to retain the services of Cogburn Law in this matter, and therefore seek reimbursement of attorneys' fees and costs.

PRAYER FOR RELIEF

1. For compensatory damages in an amount in excess of \$15,000.00;
2. For special damages in an amount in excess of \$15,000.00;
3. For punitive damages in an amount in excess of \$15,000.00;
4. For reasonable attorneys' fees to be proven at time of trial;
5. For all costs of suit herein incurred;
6. For additional damages pursuant to NRS Chapter 41;
7. For pre-judgment and post-judgment interest; and
8. For such other and further relief as to this Court shall deem just and proper.

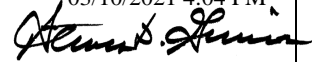
Dated this 8th day of October, 2020.

COGBURN LAW

By: /s/Joseph J. Troiano
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Nevada Bar No. 8409
Joseph J. Troiano, Esq.
Nevada Bar No. 12505
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Attorneys for Plaintiff

EXHIBIT 2

EXHIBIT 2


CLERK OF THE COURT

ORDR

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Nevada Bar No. 9706
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
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Attorneys for Defendant
South Las Vegas Medical Investors, LLC
d/b/a Life Care Center of South Las Vegas,
erroneously named as Life Care Centers of
America

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LYNN YAFCHAK, Statutory Heir and Special
Administrator to the ESTATE OF JOAN
YAFCHAK, Deceased,

Plaintiff,

vs.

LIFE CARE CENTERS OF AMERICA, A
FOREIGN CORPORATION, D/B/A LIFE CARE
CENTER OF SOUTH LAS VEGAS; AND DOES
1-10, INCLUSIVE,

Defendants.

CASE NO. A-20-822688-C

DEPT NO. 19

**ORDER GRANTING DEFENDANT
LIFE CARE CENTER OF SOUTH
LAS VEGAS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

Defendant Life Care Center of South Las Vegas' Motion to Dismiss Plaintiffs' Complaint came on for hearing in Department 19 on January 27, 2021. Zachary J. Thompson, Esq., of HALL PRANGLE & SCHOONVELD, LLC, appeared on behalf of Defendant South Las Vegas Medical Investors, LLC d/b/a Life Care Center of South Las Vegas, erroneously named as Life Care Centers of America (hereinafter referred to as "Life Care Center of South Las Vegas"). Joseph Troiano, Esq. of COGBURN LAW, appeared on behalf of Plaintiff LYNN YAFCHAK, Statutory Heir and Special Administrator to the ESTATE OF JOAN YAFCHAK, Deceased (hereinafter referred to as "Plaintiff"). Having considered the pleadings on file in the

above-referenced matter and after entertaining oral argument of counsel, the Court hereby finds, concludes, and orders as follows:

FINDINGS AND CONCLUSIONS OF LAW

1. NRS 41A.071 mandates dismissal of a complaint sounding in professional negligence unless a plaintiff files an affidavit or declaration of merit.

2. NRS 41A.071 applies to Life Care Center of South Las Vegas where the alleged injury was caused by the alleged professional negligence of that entity's providers of health care, such as nurses and doctors. *See Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d 1263 (2020).

3. "Professional negligence" under NRS 41A.015 is defined as the failure of a provider of health care, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care. This definition includes more than simply medical malpractice, which is a subset of professional negligence.

4. To determine whether a cause of action sounds in "professional negligence" or ordinary negligence, the court must consider the following: (1) whether the claim pertains to an action that occurred within the course of a professional relationship; and (2) whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience. If both these questions are answered in the affirmative, the action is subject to the procedural and substantive requirements that govern professional negligence actions. *Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d 1263, 1268 (2020).

5. "If the alleged breach involves 'medical judgment, diagnosis, or treatment,' it is likely a claim for medical malpractice." *Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136

1 Nev. Adv. Op. 39, 466 P.3d 1263, 1267 (2020) (quoting *Szymborski v. Spring Mountain*
2 *Treatment Ctr.*, 133 Nev. 638, 642, 403 P.3d 1280, 1284 (Nev. 2017)).

3 6. In conducting this evaluation, the Court should look to the gravamen of the claim
4 or substantial point of essence of the claim to determine the character of the action, not the form
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7 P.3d 1280, 1285 (Nev. 2017).

8
9 7. The Court finds that the gravamen or substantial point of essence of Plaintiffs'
10 Complaint is "professional negligence" under NRS 41A.015 as to Life Care Center of South Las
11 Vegas' nursing and/or medical staff. Plaintiffs' claims for Abuse/Neglect of an Older Person,
12 Negligence, Wrongful Death, and a Survival Action, despite their labels, each sound in the
13 alleged professional negligence of Life Care Center of South Las Vegas' nursing or medical
14 staff, who are providers of health care, during the course of their professional relationship with
15 their patient.
16

17 8. Since Plaintiffs' alleged acts or omissions sounded in professional negligence of
18 Life Care Center of South Las Vegas' nursing or other medical staff during the course of their
19 professional relationship with the resident, Plaintiffs were required to submit an affidavit or
20 declaration of merit to support their allegations in accordance with NRS 41A.071.
21

22 9. Plaintiffs did not file or submit an affidavit or declaration of merit with their
23 Complaint.
24

25 10. Since Plaintiffs did not file an affidavit or declaration of merit with their
26 Complaint, the Court holds that the Complaint is void ab initio and must be dismissed without
27
28

1 prejudice. *See Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex rel. Cty. of*
2 *Washoe*, 122 Nev. 1298, 1306, 148 P.3d 790, 795 (2006).

3 11. Alternatively, the Court holds that Plaintiffs' Complaint should be dismissed with
4 prejudice because the Complaint was not filed within the statute of limitations set forth in NRS
5 41A.097(2).

6 12. Since Plaintiffs' claims against LCCSLV sound in professional negligence, they
7 are also subject to the statute of limitations set forth in NRS 41A.097(2).

8 13. Pursuant to NRS 41A.097(2), an action for injury or death against a provider of
9 health care may not be commenced more than one year after the plaintiff discovers or through
10 the use of reasonable diligence should have discovered the injury of a person based upon alleged
11 professional negligence and/or from an error or omission by a provider of health care. *See* NRS
12 41A.097(2). A plaintiff "discovers" his injury, for purposes of that statute, when he/she knows
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17 someone's negligence. In order to be placed on "inquiry notice," the plaintiff does not have to
18 discover the precise facts pertaining to his or her legal theory; rather, plaintiff only has to have
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20 into whether the injury was caused by someone's negligence.

21 14. The Court finds that NRS 41A.071's one-year statute of limitations began to run
22 on the date of Ms. Yafchak's death, which was May 17, 2019.
23
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28

15. The Court finds that the statute of limitations period expired on or about May 17, 2020, and expired prior to the filing of the Complaint on October 8, 2020.

16. The Court holds that Plaintiffs' claim shall be dismissed with prejudice for failure to timely file the Complaint within the statute of limitations set forth in NRS 41A.097(2).

ORDER

IT IS ORDERED, ADJUDGED, AND DECREED that Defendant Life Care Center of South Las Vegas' Motion to Dismiss Plaintiffs' Complaint is granted in its entirety.

IT IS SO ORDERED.

Dated this 10th day of March, 2021

Crystal Eller

E48 E64 4A9A 7EC7
Crystal Eller
District Court Judge

Respectfully Submitted by:

Approved as to Form and Content:

/s/ Zachary J. Thompson, Esq.

/s/ Joseph J. Troiano, Esq.

CASEY W. TYLER, ESQ.
Nevada Bar No. 9706
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
HALL PRANGLE & SCHOONVELD, LLC
1140 North Town Center Drive, Ste. 350
Las Vegas, Nevada 89144
Attorneys for Defendant
South Las Vegas Medical Investors, LLC
d/b/a Life Care Center of South Las Vegas,
erroneously named as Life Care Centers of
America

JAMIE S. COGBURN, ESQ
Nevada Bar No. 8409
JOSEPH TROIANO, ESQ.
Nevada Bar No. 12505
COGBURN LAW
2580 St. Rose Parkway, Ste. 330
Las Vegas, NV 89074
Attorneys for Plaintiffs`

Casey Henley

From: Joseph J. Troiano <JJT@cogburncares.com>
Sent: Wednesday, March 10, 2021 11:24 AM
To: Zachary Thompson
Cc: Casey Henley
Subject: RE: Yafchak order

[External Email] CAUTION!.

You can affix my e-signature to the proposed order.

Joseph J. Troiano

Attorney

2580 St. Rose Parkway, Suite 330
Henderson, NV 89074

Ph. (702) 748-7777

Fax (702) 966-3880

www.CogburnCares.com

COGBURN
— LAW —

From: Zachary Thompson <zthompson@HPSLAW.COM>

Sent: Wednesday, March 3, 2021 12:31 PM

To: Joseph J. Troiano <JJT@cogburncares.com>

Cc: Casey Henley <CHenley@HPSLaw.com>

Subject: RE: Yafchak order

No problem at all and no rush.



1140 North Town Center
Suite 350
Las Vegas, NV 89144
F: 702.384.6025

Zachary Thompson

Partner

O: 702.212.1448

Email: zthompson@HPSLAW.COM

Legal Assistant: Reina Claus

O: 702.212.1475

Email: rclaus@hpslaw.com

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Cc: Casey Henley <CHenley@HPSLaw.com>
Subject: Yafchak order

[External Email] CAUTION!.

Zachary,

Just wanted to let you know that I'll take a thorough look at the proposed order soon and get back to you early next week. I was out of the office the last couple of days and so I'm catching up on things.

Joseph J. Troiano

Attorney

2580 St. Rose Parkway, Suite 330
Henderson, NV 89074

Ph. (702) 748-7777

Fax (702) 966-3880

www.CogburnCares.com

COGBURN
— LAW —

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Lynn Yafchak, Plaintiff(s)

CASE NO: A-20-822688-C

7 vs.

DEPT. NO. Department 19

8 Life Care Centers of America,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/10/2021

15 E-File Admin

efile@hpslaw.com

16 Joseph Troiano

jjt@cogburncares.com

17
18 Nicolle Etienne

netienne@hpslaw.com

19 File Clerk

efile@cogburncares.com

20 Reina Claus

rclaus@hpslaw.com

21 Noel Raleigh

ncr@cogburncares.com

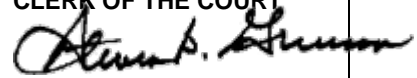
22 Sarah Wilder

scw@cogburncares.com

23
24
25
26
27
28

EXHIBIT 3

EXHIBIT 3



NEO
CASEY W. TYLER, ESQ.
Nevada Bar No. 9706
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
HALL PRANGLE & SCHOONVELD, LLC
1140 North Town Center Drive, Ste. 350
Las Vegas, Nevada 89144
Phone: 702-889-6400
Facsimile: 702-384-6025
efile@hpslaw.com
Attorneys for Defendant
South Las Vegas Medical Investors, LLC
d/b/a Life Care Center of South Las Vegas,
erroneously named as Life Care Centers of
America

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LYNN YAFCHAK, Statutory Heir and Special
Administrator to the ESTATE OF JOAN
YAFCHAK, Deceased,

Plaintiff,

vs.

LIFE CARE CENTERS OF AMERICA, A
FOREIGN CORPORATION, D/B/A LIFE CARE
CENTER OF SOUTH LAS VEGAS; AND DOES
1-10, INCLUSIVE,

Defendants.

CASE NO. A-20-822688-C

DEPT NO. 19

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT LIFE
CARE CENTER OF SOUTH LAS
VEGAS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

HALL PRANGLE & SCHOONVELD, LLC
1140 NORTH TOWN CENTER DRIVE, STE. 350
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

PLEASE TAKE NOTICE that an Order Granting Defendant Life Care Center of South Las Vegas' Motion to Dismiss Plaintiffs' Complaint was entered in the above entitled matter on the 10th day of March, 2021, a copy of which is attached hereto.

DATED this 11th day of March, 2021.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/ Zachary Thompson
CASEY W. TYLER, ESQ.
Nevada Bar No. 9706
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
HALL PRANGLE & SCHOONVELD, LLC
1140 North Town Center Drive, Ste. 350
Las Vegas, Nevada 89144
Attorneys for Defendant
South Las Vegas Medical Investors, LLC
d/b/a Life Care Center of South Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 11th day of March, 2021, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT LIFE CARE CENTER OF SOUTH LAS VEGAS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT** as follows:

X the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules;

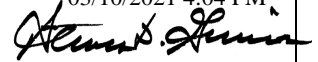
_____ U.S. Mail, first class postage pre-paid to the following parties at their last known address;

_____ Receipt of Copy at their last known address:

Jamie Cogburn, Esq.
Joseph Troiano, Esq.
COGBURN LAW
2580 St. Rose Parkway, Suite 330
Henderson, NV 89074
Attorney for Plaintiff

/s/ Casey Henley

An employee of HALL PRANGLE & SCHOONVELD, LL


CLERK OF THE COURT

ORDR

CASEY W. TYLER, ESQ.
Nevada Bar No. 9706
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
HALL PRANGLE & SCHOONVELD, LLC
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Phone: 702-889-6400
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Attorneys for Defendant
South Las Vegas Medical Investors, LLC
d/b/a Life Care Center of South Las Vegas,
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America

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LYNN YAFCHAK, Statutory Heir and Special
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Plaintiff,

vs.

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FOREIGN CORPORATION, D/B/A LIFE CARE
CENTER OF SOUTH LAS VEGAS; AND DOES
1-10, INCLUSIVE,

Defendants.

CASE NO. A-20-822688-C

DEPT NO. 19

**ORDER GRANTING DEFENDANT
LIFE CARE CENTER OF SOUTH
LAS VEGAS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

Defendant Life Care Center of South Las Vegas' Motion to Dismiss Plaintiffs' Complaint came on for hearing in Department 19 on January 27, 2021. Zachary J. Thompson, Esq., of HALL PRANGLE & SCHOONVELD, LLC, appeared on behalf of Defendant South Las Vegas Medical Investors, LLC d/b/a Life Care Center of South Las Vegas, erroneously named as Life Care Centers of America (hereinafter referred to as "Life Care Center of South Las Vegas"). Joseph Troiano, Esq. of COGBURN LAW, appeared on behalf of Plaintiff LYNN YAFCHAK, Statutory Heir and Special Administrator to the ESTATE OF JOAN YAFCHAK, Deceased (hereinafter referred to as "Plaintiff"). Having considered the pleadings on file in the

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FINDINGS AND CONCLUSIONS OF LAW

1. NRS 41A.071 mandates dismissal of a complaint sounding in professional negligence unless a plaintiff files an affidavit or declaration of merit.

2. NRS 41A.071 applies to Life Care Center of South Las Vegas where the alleged injury was caused by the alleged professional negligence of that entity's providers of health care, such as nurses and doctors. *See Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d 1263 (2020).

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12 Negligence, Wrongful Death, and a Survival Action, despite their labels, each sound in the
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17 8. Since Plaintiffs' alleged acts or omissions sounded in professional negligence of
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20 declaration of merit to support their allegations in accordance with NRS 41A.071.
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22 9. Plaintiffs did not file or submit an affidavit or declaration of merit with their
23 Complaint.
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25 10. Since Plaintiffs did not file an affidavit or declaration of merit with their
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2 *Washoe*, 122 Nev. 1298, 1306, 148 P.3d 790, 795 (2006).

3 11. Alternatively, the Court holds that Plaintiffs' Complaint should be dismissed with
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21 14. The Court finds that NRS 41A.071's one-year statute of limitations began to run
22 on the date of Ms. Yafchak's death, which was May 17, 2019.
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15. The Court finds that the statute of limitations period expired on or about May 17, 2020, and expired prior to the filing of the Complaint on October 8, 2020.

16. The Court holds that Plaintiffs' claim shall be dismissed with prejudice for failure to timely file the Complaint within the statute of limitations set forth in NRS 41A.097(2).

ORDER

IT IS ORDERED, ADJUDGED, AND DECREED that Defendant Life Care Center of South Las Vegas' Motion to Dismiss Plaintiffs' Complaint is granted in its entirety.

IT IS SO ORDERED.

Dated this 10th day of March, 2021

Crystal Eller

E48 E64 4A9A 7EC7
Crystal Eller
District Court Judge

Respectfully Submitted by:

Approved as to Form and Content:

/s/ Zachary J. Thompson, Esq.

/s/ Joseph J. Troiano, Esq.

CASEY W. TYLER, ESQ.
Nevada Bar No. 9706
ZACHARY J. THOMPSON, ESQ.
Nevada Bar No. 11001
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Attorneys for Defendant
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Nevada Bar No. 8409
JOSEPH TROIANO, ESQ.
Nevada Bar No. 12505
COGBURN LAW
2580 St. Rose Parkway, Ste. 330
Las Vegas, NV 89074
Attorneys for Plaintiffs`

Casey Henley

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Cc: Casey Henley
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Joseph J. Troiano

Attorney

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Henderson, NV 89074

Ph. (702) 748-7777

Fax (702) 966-3880

www.CogburnCares.com

COGBURN
— LAW —

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Sent: Wednesday, March 3, 2021 12:31 PM

To: Joseph J. Troiano <JJT@cogburncares.com>

Cc: Casey Henley <CHenley@HPSLaw.com>

Subject: RE: Yafchak order

No problem at all and no rush.



1140 North Town Center
Suite 350
Las Vegas, NV 89144
F: 702.384.6025

Zachary Thompson

Partner

O: 702.212.1448

Email: zthompson@HPSLAW.COM

Legal Assistant: Reina Claus

O: 702.212.1475

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COGBURN
— LAW —

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Lynn Yafchak, Plaintiff(s)

CASE NO: A-20-822688-C

7 vs.

DEPT. NO. Department 19

8 Life Care Centers of America,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
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14 Service Date: 3/10/2021

15 E-File Admin

efile@hpslaw.com

16 Joseph Troiano

jjt@cogburncares.com

17
18 Nicolle Etienne

netienne@hpslaw.com

19 File Clerk

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20 Reina Claus

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21 Noel Raleigh

ncr@cogburncares.com

22 Sarah Wilder

scw@cogburncares.com

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28