

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.: 83213

District Court Case No. A-18-
723134-C
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APPELLANT'S APPENDIX – VOLUME 9

PRESCOTT T. JONES, ESQ.

Nevada Bar No. 11617

MYRALEIGH A. ALBERTO

Nevada Bar No. 14340

RESNICK & LOUIS, P.C.

8925 W. Russell Rd., Suite 220

Las Vegas, Nevada 89148

Telephone: (702) 997-3800

Facsimile: (702) 997-1029

pjones@rlattorneys.com

malberto@rlattorneys.com

Attorneys for Appellant Ton Vinh Lee

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1 **OPPS**
2 **RESNICK & LOUIS, P.C.**
3 PRESCOTT JONES
4 Nevada Bar No. 11617
5 pjones@rlattorneys.com
6 MYRALEIGH A. ALBERTO
7 Nevada Bar No. 14340
8 malberto@rlattorneys.com
9 8925 W. Russell Road, Suite 220
10 Las Vegas, Nevada 89148
11 Telephone: (702) 997-3800
12 Facsimile: (702) 997-3800
13 *Attorneys for Plaintiff,*
14 *Ton Vinh Lee*

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

13 TON VINH LEE,
14
15 Plaintiff,
16 v.

17 INGRID PATIN, an individual, and PATIN
18 LAW GROUP, PLLC, a Nevada Professional
19 LLC,
20 Defendants.

CASE NO.: A-15-723134-C

DEPT: 26

**PLAINTIFF TON VINH LEE'S
OPPOSITION TO DEFENDANT
INGRID PATIN'S MOTION FOR
ATTORNEYS' FEES, COSTS, AND
INTEREST**

21 COMES NOW, PLAINTIFF TON VINH LEE, by and through his attorneys of record,
22 PRESCOTT T. JONES, ESQ. and MYRALEIGH A. ALBERTO, ESQ. of the law firm of
23 RESNICK & LOUIS, P.C., and hereby submits this OPPOSITION TO DEFENDANT INGRID
24 PATIN'S MOTION FOR ATTORNEYS' FEES, COSTS, AND INTEREST ("Opposition").

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

4 DATED this 3rd day of December, 2020.

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

6 */s/ Myraleigh A. Alberto*

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8 _____
9 PRESCOTT JONES
10 Nevada Bar No. 11617
11 MYRALEIGH A. ALBERTO
12 Nevada Bar No. 14340
13 8925 W. Russell Road, Suite 220
14 Las Vegas, NV 89148
15 *Attorneys for Plaintiff,*
16 *Ton Vinh Lee*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Plaintiff opposes Defendant's Motion for Attorneys' Fees, Costs, and Interest pursuant
5 to NRS 18.020, NRS 18.005, NRCP 68, and the Beattie and Brunzell factors on the grounds that
6 Defendant's January 17, 2019, Offer of Judgment Plaintiff was not made in good faith, and on
7 the grounds that a significant portion of the fees claimed by Defendant were incurred because of
8 the seven unreasonable and unsuccessful dispositive motions filed by the Defendants prior to
9 discovery in this matter even opening. Beattie v. Thomas, 99 Nev. 579 (1983); Brunzell v.
10 Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969). Many of these dispositive motions
11 were repetitive and produced no new facts to the record regarding Defendants' statement other
12 than the contents of the statement itself. Further, these dispositive motions led to multiple
13 findings by this Court that (1) there remain material issues of genuine fact, and (2) that the truth
14 or falsity and defamatory nature of Defendants' statement was a question for the jury. See
15 February 4, 2016, Order Denying Defendants' Special Motion to Dismiss; September 29, 2016,
16 Order Denying Defendants' Renewed Special Motion to Dismiss; June 5, 2017, Order Denying
17 Defendant's Motion for Summary Judgment; and August 17, 2017, Order Denying Defendant's
18 Motion for Summary Judgment. Two of the cited Court orders holding that the truth or falsity
19 of Defendants' statement came prior to Defendant's January 17, 2019, Offer of Judgment.

20 For these reasons, Plaintiff respectfully request that if this Court is inclined to award
21 attorneys' fees, costs, and interest to Defendant, that this Court exercise its discretion and
22 reduce such fees, costs, and interest based on consideration of Defendant's failure to provide a
23 good faith offer of judgment and the high volume of unreasonable and unsuccessful dispositive
24 motions filed by the Defendants.

25 **A. Procedural History**

26 On August 17, 2015, Plaintiff Ton Vinh Lee ("Plaintiff" or "Dr. Lee") filed suit against
27 Defendants Ingrid Patin ("Defendant") and Patin Law Group, PLLC (collectively,
28

1 “Defendants”) based on a statement published on their website, patinlaw.com. The statement
2 identifies Plaintiff by name and incorrectly asserts that the Defendants’ former client obtained a
3 \$3.4 million jury verdict against Dr. Lee. Dr. Lee’s August 17, 2015, Complaint asserted a
4 claim of defamation *per se* on the grounds that the Defendants’ statement as a whole was false,
5 defamatory, and imputed to Dr. Lee a lack of fitness in his profession and as a business owner.

6 On September 8, 2015, Defendants filed their Motion to Dismiss based on insufficient
7 service and failure to state a claim upon which relief can be granted pursuant to NRCP 12(b)(5),
8 or in the alternative, Motion for Summary Judgment. Following oral argument on October 14,
9 2015, the September 8, 2015, Motion to Dismiss was dismissed without prejudice, and the
10 Court’s Order denying the Motion was entered on October 22, 2015.

11 On October 16, 2015, Defendants filed their Special Motion to Dismiss Pursuant to
12 Nevada revise Statute 41.635-70 or in the Alternative Motion to Dismiss Pursuant to NRS
13 12(b)(5). Oral argument was held on November 18, 2015, and the Court denied the October 16,
14 2015, Special Motion to Dismiss, holding that the truth or falsity of Defendants’ published
15 statement was a question for the jury. The Court’s Order was entered on February 4, 2016.

16 On January 27, 2016, Defendants filed their Motion to Dismiss Pursuant to NRCP
17 12(b)(5). The Court’s Order Denying Defendants’ Motion was entered on April 11, 2016.

18 On May 24, 2016, Defendants filed their Renewed Special Motion to Dismiss Pursuant
19 to Nevada revise Statute 41.635-70. On September 29, 2016, the Court denied Defendants’
20 Renewed Special Motion to Dismiss, again holding that the truth or falsity of Defendants’
21 published statement was a question for the jury.

22 On January 19, 2017, Defendant served Plaintiff with an Offer of Judgment in the
23 amount of one thousand dollars (\$1,000.00).

24 On February 10, 2017, Defendant Patin filed a Motion for Summary Judgment, which
25 was joined by Defendant Patin Law Group on February 15, 2017. This Motion was denied
26 without prejudice following oral argument on May 9, 2017. The Court’s Order was entered on
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1 June 5, 2017, finding, among other items, that there were genuine issues of material fact that
2 necessitated denial of summary judgment.

3 On May 30, 2017, Defendant Patin filed another Motion for Summary Judgment, which
4 was joined by Defendant Patin Law Group on May 31, 2017. This Motion was heard on July
5 11, 2017 and was denied without prejudice. The Court's August 17, 2017, Order denying the
6 Motion found that "an issue of fact related to the truth or falsity of the alleged defamatory
7 statement exists which necessitates denial of summary judgment."

8 On July 15, 2019, Defendants filed their Motion to Dismiss Pursuant to NRCP
9 16.1(e)(1). This Motion was denied after oral argument on August 20, 2019. The Court's
10 Order denying the Motion was filed on September 10, 2019.

11 On October 11, 2019, the parties filed their Joint Case Conference Report, and discovery
12 opened just over four years after Plaintiff filed his initial August 17, 2015, Complaint.

13 On August 7, 2020, Defendant filed her Motion for Judgment on the Pleadings, in the
14 Alternative, Motion for Summary Judgment ("Motion for Summary Judgment"), which was the
15 eighth dispositive motion filed by Defendant Patin in this litigation. Plaintiff filed his
16 Opposition to Defendant's Motion for Summary Judgment on the grounds that the Motion
17 failed to present substantially new information that resolved genuine issues of material fact
18 regarding the truth or falsity of Defendants' statement, as previously ruled by this Court on two
19 separate occasions. Following oral argument on September 15, 2020, the Motion for Summary
20 Judgment was granted, and Defendant Patin now brings the instant Motion for Attorneys' Fees,
21 Costs, and Interest.

22 II.

23 LEGAL ARGUMENT

24 A. Defendant's Claim for Costs Pursuant to NRS 18.020(3) is Unreasonable

25 Our legal system generally requires each party to bear their own litigation expenses,
26 including attorney fees. This principle is so firmly entrenched that it is known as the "American
27 Rule," and Congress has authorized courts to deviate from this rule only in limited
28

1 circumstances. Alyseka Pipeline Serv. Co. v. Wilderness Soc’y, 421 U.S. 240, 247 (1975). In
2 the absence of a statute, rule, or contractual provision authorizing such an award, attorney’s fees
3 may not be recovered by a party. Guild, Hagen & Clark, Ltd. v. First Nat’l Bank, 95 Nev. 621,
4 600 P.2d 238 (Nev. 1979); Rowland v. Lepire, 99 Nev. 308, 662 P.2d 1332 (Nev. 1983).
5 Further, “the determination of allowable costs is within the sound discretion of the trial court;
6 however, statutes permitting the recovery of costs are in derogation of the common law, and
7 therefore must be strictly construed.” Gilbellini v. Klindt, 110 Nev. 1201, 1205 (1994).

8 Defendant argues that she is entitled to costs in the amount of \$11,683.77 pursuant to
9 NRS 18.020(3) and NRS 18.005. Pursuant to NRS 18.020(3), “[c]osts must be allowed of
10 course to the prevailing party against any adverse party against whom judgment is rendered . . .
11 [i]n an action for the recovery of money or damages, *where the plaintiff seeks to recover more*
12 *than \$2,500.00*” (emphasis added). NRS 18.005 defines “costs” as follows:

- 13 1. Clerks’ fees.
- 14 2. Reporters’ fees for depositions, including a reporter’s fee for one copy of each
15 deposition.
- 16 3. Jurors’ fees and expenses, together with reasonable compensation of an
17 officer appointed to act in accordance with NRS 16.120.
- 18 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the
19 court finds that the witness was called at the instance of the prevailing party
20 without reason or necessity.
- 21 5. Reasonable fees of not more than five expert witnesses in an amount of not
22 more than \$1,500 for each witness, unless the court allows a larger fee after
23 determining that the circumstances surrounding the expert’s testimony were of
24 such necessity as to require the larger fee.
- 25 6. Reasonable fees of necessary interpreters.
- 26 7. The fee of any sheriff or licensed process server for the delivery or service of
27 any summons or subpoena used in the action, unless the court determines that the
28 service was not necessary.
8. Compensation for the official reporter or reporter pro tempore.
9. Reasonable costs for any bond or undertaking required as part of the action.
10. Fees of a court bailiff or deputy marshal who was required to work overtime.
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and
conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with the
action, including reasonable and necessary expenses for computerized services
for legal research.

1 The Supreme Court of Nevada has interpreted the costs defined in NRS 18.005 “. . . to mean
2 actual costs that are also reasonable, rather than a reasonable estimate or calculation of such
3 costs based upon administrative convenience.” Gilbellini, 110 Nev. at 1206.

4 Plaintiff filed his Complaint on August 17, 2015. Defendant filed a total of eight
5 dispositive motions in this litigation, and seven of those motions were filed before discovery
6 even opened on October 19, 2019:

- 7 • September 8, 2015, Defendants’ Motion to Dismiss
- 8 • October 16, 2015, Defendants’ Special Motion to Dismiss Pursuant to Nevada
9 Revised Statute 41.635-70 or in the Alternative Motion to Dismiss Pursuant to NRS
10 12(b)(5)
- 11 • January 27, 2016, Defendants’ Motion to Dismiss Pursuant to NRCP 12(b)(5)
- 12 • May 24, 2016, Defendants’ Renewed Special Motion to Dismiss Pursuant to Nevada
13 Revised Statute 41.635-70
- 14 • February 10, 2017, Defendant Ingrid Patin’s Motion for Summary Judgment
- 15 • May 30, 2017, Defendant Ingrid Patin’s Motion for Summary Judgment
- 16 • July 15, 2019, Defendants’ Motion to Dismiss Pursuant to NRCP 16.1(e)(1)
- 17 • August 7, 2020, Defendant Ingrid Patin’s Motion for Judgment on the Pleadings, in
18 the Alternative, Motion for Summary Judgment

19 See October 11, 2019, Joint Case Conference Report. Any costs awarded to Defendant pursuant
20 to NRS 18.020 and 18.005 should be reduced based on the amount of unreasonable dispositive
21 motions filed by Defendant prior to discovery in this matter opening. This Court has discretion
22 in the determining the allowable costs, which must be reasonable. Gilbellini, 110 Nev. at 1205-
23 6. Here, the volume and frequency of the dispositive motions caused Plaintiff to incur a large
24 amount of costs (as well as attorney’s fees, as discussed below) before discovery even opened.
25 As a result, Defendants’ numerous dispositive motions demonstrate an attempt to intimidate the
26 Plaintiff into foregoing his reasonable claim against Defendants. For these reasons, Plaintiff
27 respectfully requests that if this Court is inclined to grant Defendant any costs, that the amount
28 of these costs be reduced to exclude costs incurred by Defendant solely by reason of

1 Defendant's unreasonable and unsuccessful dispositive motions filed prior to the start of
2 discovery.

3 **B. Defendant's Claim for Attorney's Fees, Costs, and Interest Pursuant to**
4 **NRCP 68 is Unreasonable, and Defendant Has Not Met All Beattie and**
5 **Brunzell Factors**

6 Defendant argues that she is also entitled to attorneys' fees, costs, and interest pursuant
7 to NRCP 68(f), which states:

8 (f) **Penalties for Rejection of Offer.**

9 (1) **In General.** If the offeree rejects an offer and fails to obtain a more
10 favorable judgment:

11 (A) the offeree cannot recover any costs, expenses, or attorney fees and
12 may not recover interest for the period after the service of the offer and before the
13 judgment; and

14 (B) the offeree must pay the offeror's post-offer costs and expenses,
including a reasonable sum to cover any expenses incurred by the offeror for each
expert witness whose services were reasonably necessary to prepare for and
conduct the trial of the case, applicable interest on the judgment from the time of
the offer to the time of entry of the judgment and reasonable attorney fees, if any
be allowed, actually incurred by the offeror from the time of the offer. If the
offeror's attorney is collecting a contingent fee, the amount of any attorney fees
awarded to the party for whom the offer is made must be deducted from that
contingent fee.

15 However, Nevada Courts have recognized that where the court properly weighs the factors set
16 forth in Beattie v. Thomas, courts have discretion to allow attorney fees under NRCP 68. 99
17 Nev. 579 (1983); see Bidart v. American Title Ins. Co., 103 Nev. 175 (1987). Courts exercising
18 discretion in allowing fees and costs under NRCP 68 must evaluate the following factors:

19 (1) whether the plaintiff's claim was brought in good faith; (2) whether the
20 defendants' offer of judgment was reasonable and in good faith in both its timing
21 and amount; (3) whether the plaintiff's decision to reject the offer and proceed to
trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by
the offeror are reasonable and justified in amount.

22 Beattie, 99 Nev. at 588-9; see also Uniroyal Goodrich Tire Co. v. Mercer, 111 Nev. 318, 890
23 P.2d 785 (1995). The Beattie Court found that "[a]fter weighing the foregoing factors, the
24 district judge may, where warranted, award up to the full amount of fees requested. On the other
25 hand, where the court has failed to consider these factors, and has made no findings based on
26 evidence that the attorney's fees sought are reasonable and justified, it is an abuse of discretion
27 for the court to award the full amount of fees requested." 99 Nev. at 589. Further, the Beattie

1 Court stated that the purpose of NRCP 68 is to encourage settlement, and it is not to force
2 plaintiffs into forgoing legitimate claims. Id. at 588. As discussed below, Defendant has not met
3 the factors set forth in Beattie, and this Court should exercise its discretion with respect to NRCP
4 68 and not award Defendant any costs, attorney's fees, expenses, or interest.

5 **(1) Whether Plaintiff's Claim Was Brought in Good Faith**

6 Defendant's Motion for Summary Judgment and instant Motion for Attorneys Fees,
7 Costs, and Interest assert that Dr. Lee admitted in his deposition testimony that each *individual*
8 part of Defendants' published statement was true, and therefore, the statement is true and
9 Plaintiff's defamation *per se* claim was not brought in good faith. However, Defendants' use of
10 piecemeal admissions to *individual* portions of Defendants' published statement was improper
11 for the purpose of proving the truth of the statement because statements must be reviewed in
12 context and as a whole in order to determine whether they are defamatory. Chowdhry, 109 Nev.
13 at 484 (1993) (citing Branda v. Sanford, 97 Nev. 643, 646, 637 P.2d 1223, 1226 (1981)).

14 Dr. Lee brought the defamation *per se* claim against the Defendants on the grounds that
15 Defendants published a statement on their website (patinlaw.com) that identifies Dr. Lee by
16 name, incorrectly asserts that Defendants' former client obtained a \$3.4 million jury verdict
17 against Dr. Lee, and imputes to Dr. Lee a lack of fitness in his profession and as a business
18 owner. Below is the statement in question:

19 DENTAL MALPRACTICE/WRONGFUL DEATH –PLAINTIFF'S VERDICT,
20 \$3.4M, 2014

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

22 A dental malpractice-based wrongful death action that arose out of the death of
23 Decedent Reginald Singletary following the extraction of the No. 32 wisdom
24 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.

25 When reviewing an alleged defamatory statement, "[t]he words must be reviewed in their
26 entirety and in context to determine whether they are susceptible of a defamatory meaning." Id.
27 Read as a whole, Defendants' published statement indicates and would cause a reasonable person
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1 to conclude that Dr. Lee, in his personal and professional capacity, is one of the defendants in
2 Singletary v. Ton Vinh Lee, DDS, et al. who received the adverse jury verdict of \$3.4 million.
3 However, contrary to the Defendants' published statement, **Dr. Lee received a judgment in his**
4 **favor** and never received an adverse verdict in Singletary.

5 While Dr. Lee may have admitted that *individual* portions of the statement, taken out of
6 context, were true, this is not new information to this Court and not the proper analysis for
7 determining whether a statement is susceptible to defamatory meaning as previously held by the
8 Supreme Court of Nevada in Chowdry and Branda v. Sanford, 97 Nev. 643 (1981). The reason
9 for Dr. Lee's claim is that Defendants' published statement, read as a whole, communicates that
10 the Singletary litigation resulted in an adverse verdict for Dr. Lee when it did not, rendering the
11 statement false and defamatory. Further, the indication of such an adverse verdict imputes to Dr.
12 Lee a lack of fitness in his profession and as a business owner, which is the reason for the claim
13 of defamation *per se*. Dr. Lee maintains, and has always maintained throughout this litigation,
14 that Defendants' published statement is false and defamatory *per se*. For these reasons, Dr.
15 Lee's claim was brought in good faith.

16 **(2) Whether Defendant's Offer of Judgment Was Reasonable and in Good**
17 **Faith in Both Its Timing and Amount**

18 On January 19, 2017, Defendant served Plaintiff with an Offer of Judgment in the amount
19 of one thousand dollars (\$1,000.00). Defendant argues that her Offer of Judgment was filed
20 close to two years after Plaintiff's initial Complaint, and as a result, Plaintiff "had ample time to
21 evaluate and consider the lack of evidence . . ." Defendant's Motion at 9, lines 6-9. However,
22 Defendant fails to raise the fact that Defendant's January 19, 2017, Offer of Judgment to Plaintiff
23 came after this Court had already denied Defendants' October 16, 2015, Special Motion to
24 Dismiss and Defendants' May 24, 2016 Renewed Special Motion to Dismiss based on the same
25 facts available to this Court at the time of the January 19, 2017, Offer of Judgment, and at the
26 present time. This Court's orders denying both of Defendants' prior special motions to dismiss
27 contained the following language:
28

1 . . . even if NRS 41.637(3) or (4) did apply to complained-of communication, this
2 Court cannot find at this juncture that the Plaintiff hasn't put forth prima facie
3 evidence demonstrating a probability of prevailing on this claim. **This is**
4 **particularly true because the truth or falsity of an allegedly defamatory**
5 **statement is an issue for the jury to determine.** Posadas v. City of Reno, 109
6 Nev. 448, 453 (1993). Further, because if found to be defamatory and the
7 statement is such that would tend to injure the Plaintiff in his business or
8 profession, then it will be deemed defamation per se and damages will be
9 presumed. Nevada Ind. Broadcasting v. Allen, 99 Nev. 404, 409 (1983).

10 (emphasis added) February 2, 2014, Order Denying Defendants' Special Motion to Dismiss;
11 September 29, 2016, Order Denying Defendants' Renewed Special Motion to Dismiss.

12 With knowledge that this Court has twice held that "the truth or falsity of an allegedly
13 defamatory statement is an issue for the jury to determine," Defendant still served Plaintiff with
14 her January 19, 2017, Offer of Judgment in the amount of \$1,000.00 just short of four months
15 after the Court's September 29, 2016, Order containing the cited language. See Posadas v. City
16 of Reno, 109 Nev. 448, 453 (1993). Due to the timing and the amount of Defendant's prior
17 Offer of Judgment, it appears clear that the Offer of Judgment was not a good faith attempt to
18 settle this litigation, but rather a tactic aimed at intimidating Dr. Lee into foregoing a legitimate
19 claim of defamation *per se*. For these reasons, Defendant's \$1,000.00, January 19, 2017, Offer
20 of Judgment to Plaintiff was unreasonable in both timing and amount based on the stated purpose
21 of NRCP 68 as held by the Supreme Court of Nevada in Beattie.

22 **(3) Whether Plaintiff's Decision to Reject the Offer and Proceed to Trial**
23 **Was Grossly Unreasonable or in Bad Faith**

24 Because Defendant's January 19, 2017, Offer of Judgment to Plaintiff was unreasonable
25 in both timing and amount, as discussed above, Plaintiff's decision to reject the Offer of
26 Judgment was reasonable and in good faith. This Court's February 4, 2016 and September 29,
27 2016, Orders denying the Defendants' special motions to dismiss held that the decision on the
28 truth or falsity of Defendants' published statement was for the jury to decide. Posadas, 109 Nev.
at 453. Based on the language of these orders and Nevada case law, Plaintiff had a reasonable
expectation that this case would proceed through discovery and have a jury determine the truth
or falsity and defamatory nature of Defendants' published statement. Plaintiff had no reason to
believe that this Court would reverse its prior holdings to find that the truth or falsity of an

1 alleged defamatory statement is no longer a question for the jury. Further, Defendant's offer of
2 \$1,000.00 was without merit or genuine consideration of Plaintiff's damages. Therefore,
3 Plaintiff's decision to reject Defendant's Offer of Judgment was not unreasonable or in bad faith.

4 **(4) Whether the Fees Sought By the Offeror Are Reasonable and Justified in**
5 **Amount**

6 A significant portion of the fees, costs, and interest requested by Defendant are
7 unreasonable and are based on Defendants' numerous dispositive motions filed prior to the start
8 of discovery. As discussed above, Plaintiff filed his Complaint on August 17, 2015, and
9 Defendants filed a total of seven dispositive motions prior to discovery opening on October 11,
10 2019. The timing and frequency of Defendant's dispositive motions demonstrates an attempt to
11 cause Plaintiff to incur a large amount of attorneys fees and costs before discovery even opened.
12 Specifically, it took just over four years for the parties and Nevada courts to move through
13 Defendant's seven dispositive motions before the parties were able to begin discovery.
14 Defendants' numerous dispositive motions, combined with Defendant's bad faith Offer of
15 Judgment served after this Court had twice held that the truth or falsity of Defendants'
16 statement was a jury question, further demonstrates that Defendants attempted to intimidate
17 Plaintiff into foregoing his claims, which is contrary to the purpose of NRCP 68. Beattie, 99
18 Nev. at 588. As a result, Defendant's claim for fees, costs, and interest is unreasonable, and
19 Plaintiff should not be made to pay the fees, costs, and interest incurred by Defendants because
20 of Defendants' own dispositive motions and intimidation tactics.

21 Further, many of Defendants' dispositive motions presented no new facts to the record
22 to warrant summary judgment or dismissal of this litigation. Plaintiff included Defendants'
23 published statement in his August 17, 2015, Complaint. Accordingly, the contents of this
24 statement have been known to the parties and this Court since this litigation began. However,
25 all evidence produced regarding Defendants' statement has merely repeated the contents of the
26 statement, and the Court dismissed seven of Defendants' dispositive motions. As a result,
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Defendant's claims for attorneys fees does not meet all factors stated in Brunzell v. Golden Gate Nat'l Bank:

. . . [I]t seems advisable that we state the well-known basic elements to be considered in determining the reasonable value of an attorney's services. From a study of the authorities it would appear such factors may be classified under four general headings **(1) the qualities of the advocate:** his ability, his training, education, experience, professional standing and skill; **(2) the character of the work to be done:** its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; **(3) the work actually performed by the lawyer:** the skill, time and attention given to the work; **(4) the result:** whether the attorney was successful and what benefits were derived.

85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969) (emphasis added).

The repetitive arguments and evidence provided by Defendants in their dispositive motions have led to multiple findings by this Court that (1) there remain material issues of genuine fact, and (2) that the truth or falsity and defamatory nature of Defendants' statement was a question for the jury. See February 4, 2016, Order Denying Defendants' Special Motion to Dismiss; September 29, 2016, Order Denying Defendants' Renewed Special Motion to Dismiss; June 5, 2017, Order Denying Defendant's Motion for Summary Judgment; and August 17, 2017, Order Denying Defendant's Motion for Summary Judgment. As a result, the attorney fees charged for such repetitive arguments and evidence should be reduced pursuant to the last three Brunzell factors cited above: (2) the character of the work to be done, (3) the work actually performed by the lawyer, and (4) the result. This Court dismissed a total of seven of Defendants' dispositive motions, the majority of these dispositive motions provided no new facts regarding the statement, and the Court has found on at least two occasions that the truth or falsity of Defendants' statement is a question for the jury. February 4, 2016, Order Denying Defendants' Special Motion to Dismiss; September 29, 2016, Order Denying Defendants' Renewed Special Motion to Dismiss. For these reasons, Defendants request for attorney fees, costs, and interest is unreasonable, unjustified, and should be reduced to exclude such fees, costs, and interest for the unreasonable and unsuccessful dispositive motions filed by the Defendants. Plaintiff asserts that this may be done by simply deducting such fees and costs

1 from the exhibits produced by Defendant in the instant Motion (specifically, both exhibits titled
2 “Exhibit A”).

3 However, if this Court is inclined to grant Defendant’s attorneys fees, costs, and interest
4 in excess of Plaintiff’s request as stated in this Opposition, Plaintiff maintains that such fees,
5 costs, and interest still must only include those incurred after Defendant’s January 19, 2017,
6 Offer of Judgment. NRCP 68(f)(2). All such fees, costs, and interest incurred prior to
7 Defendant’s January 19, 2017, Offer of Judgment must be excluded pursuant to NRCP 68(f)(2).

8 **III.**

9 **CONCLUSION**

10 For the reasons set forth in this Opposition, Defendant’s claims for attorneys’ fees, costs,
11 and interest are unreasonable. Accordingly, Plaintiff respectfully requests that this Court
12 exercise its discretion and reduce any such fees, costs, and interest awarded to Defendant based
13 on this Court’s consideration of Defendant’s failure to service a good faith offer of judgment
14 and the seven unnecessary and unreasonable dispositive motions filed by Defendants prior to
15 the start of discovery.

16 DATED this 3rd day of December, 2020.

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

18 */s/ Myraleigh A. Alberto*

19
20 _____
21 PRESCOTT JONES
22 Nevada Bar No. 11617
23 MYRALEIGH A. ALBERTO
24 Nevada Bar No. 14340
25 8925 W. Russell Road, Suite 220
26 Las Vegas, NV 89148
27 *Attorneys for Plaintiff,*
28 *Ton Vinh Lee*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **PLAINTIFF TON VINH LEE'S
OPPOSITION TO DEFENDANT INGRID PATIN'S MOTION FOR ATTORNEYS'
FEES, COSTS, AND INTEREST** was served this 3rd day of December, 2020, by:

- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.
- ☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.
- ☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

Christian M. Morris, Esq.
NETTLES MORRIS
1389 Galleria Dr., Suite 200
Henderson, NV 89014
Attorney for Defendant Ingrid Patin

Kerry J. Doyle, Esq.
DOYLE LAW GROUP
7375 S. Pecos Rd., #101
Las Vegas, NV 89120
Attorney for Defendant Patin Law Group, PLLC

/s/ Susan Carbone

An Employee of Resnick & Louis, P.C.



OPPS
RESNICK & LOUIS, P.C.
PRESCOTT JONES
Nevada Bar No. 11617
pjones@rlattorneys.com
MYRALEIGH A. ALBERTO
Nevada Bar No. 14340
malberto@rlattorneys.com
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
Attorneys for Plaintiff,
Ton Vinh Lee

DISTRICT COURT
CLARK COUNTY, NEVADA

TON VINH LEE,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-15-723134-C

DEPT: 26

**PLAINTIFF TON VINH LEE'S
OPPOSITION TO DEFENDANT PATIN
LAW GROUP, LLC'S MOTION FOR
ATTORNEYS' FEES AND INTEREST**

COMES NOW, PLAINTIFF TON VINH LEE, by and through his attorneys of record,
PRESCOTT T. JONES, ESQ. and MYRALEIGH A. ALBERTO, ESQ. of the law firm of
RESNICK & LOUIS, P.C., and hereby submits this OPPOSITION TO DEFENDANT PATIN
LAW GROUP, LLC'S MOTION FOR ATTORNEYS' FEES AND INTEREST ("Opposition").

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

DATED this 3rd day of December, 2020.

RESNICK & LOUIS, P.C.

/s/ Myraleigh A. Alberto

PRESCOTT JONES
Nevada Bar No. 11617
MYRALEIGH A. ALBERTO
Nevada Bar No. 14340
8925 W. Russell Road, Suite 220
Las Vegas, NV 89148
Attorneys for Plaintiff,
Ton Vinh Lee

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Plaintiff opposes Defendant's Motion for Attorneys' Fees and Interest pursuant to NRS
5 18.020, NRS 18.005, NRCP 68, and the Beattie and Brunzell factors on the grounds that
6 Defendant's January 26, 2019, Offer of Judgment Plaintiff was not made in good faith, and on
7 the grounds that a significant portion of the fees claimed by Defendant were incurred because of
8 the seven unreasonable and unsuccessful dispositive motions filed and joined by the Defendants
9 prior to discovery in this matter even opening. Beattie v. Thomas, 99 Nev. 579 (1983); Brunzell
10 v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969). Many of these dispositive
11 motions were repetitive and produced no new facts to the record regarding Defendants'
12 statement other than the contents of the statement itself. Further, these dispositive motions led
13 to multiple findings by this Court that (1) there remain material issues of genuine fact, and (2)
14 that the truth or falsity and defamatory nature of Defendants' statement was a question for the
15 jury. See February 4, 2016, Order Denying Defendants' Special Motion to Dismiss; September
16 29, 2016, Order Denying Defendants' Renewed Special Motion to Dismiss; June 5, 2017, Order
17 Denying Defendant's Motion for Summary Judgment; and August 17, 2017, Order Denying
18 Defendant's Motion for Summary Judgment. Two of the cited Court orders holding that the
19 truth or falsity of Defendants' statement came prior to Defendant's January 26, 2019, Offer of
20 Judgment.

21 For these reasons, Plaintiff respectfully request that if this Court is inclined to award
22 attorneys' fees and interest to Defendant, that this Court exercise its discretion and reduce such
23 fees and interest based on consideration of Defendant's failure to provide a good faith offer of
24 judgment and the high volume of unreasonable and unsuccessful dispositive motions filed by
25 the Defendants.

1 **A. Procedural History**

2 On August 17, 2015, Plaintiff Ton Vinh Lee (“Plaintiff” or “Dr. Lee”) filed suit against
3 Defendants Ingrid Patin and Patin Law Group, PLLC based on a statement published on their
4 website, patinlaw.com. The statement identifies Plaintiff by name and incorrectly asserts that
5 the Defendants’ former client obtained a \$3.4 million jury verdict against Dr. Lee. Dr. Lee’s
6 August 17, 2015, Complaint asserted a claim of defamation *per se* on the grounds that the
7 Defendants’ statement as a whole was false, defamatory, and imputed to Dr. Lee a lack of
8 fitness in his profession and as a business owner.

9 On September 8, 2015, Defendants filed their Motion to Dismiss based on insufficient
10 service and failure to state a claim upon which relief can be granted pursuant to NRCP 12(b)(5),
11 or in the alternative, Motion for Summary Judgment. Following oral argument on October 14,
12 2015, the September 8, 2015, Motion to Dismiss was dismissed without prejudice, and the
13 Court’s Order denying the Motion was entered on October 22, 2015.

14 On October 16, 2015, Defendants filed their Special Motion to Dismiss Pursuant to
15 Nevada revise Statute 41.635-70 or in the Alternative Motion to Dismiss Pursuant to NRS
16 12(b)(5). Oral argument was held on November 18, 2015, and the Court denied the October 16,
17 2015, Special Motion to Dismiss, holding that the truth or falsity of Defendants’ published
18 statement was a question for the jury. The Court’s Order was entered on February 4, 2016.

19 On January 27, 2016, Defendants filed their Motion to Dismiss Pursuant to NRCP
20 12(b)(5). The Court’s Order Denying Defendants’ Motion was entered on April 11, 2016.

21 On May 24, 2016, Defendants filed their Renewed Special Motion to Dismiss Pursuant
22 to Nevada revise Statute 41.635-70. On September 29, 2016, the Court denied Defendants’
23 Renewed Special Motion to Dismiss, again holding that the truth or falsity of Defendants’
24 published statement was a question for the jury.

25 On January 26, 2017, Defendant Patin Law Group served Plaintiff with an Offer of
26 Judgment in the amount of one thousand dollars (\$1,000.00).

1 On February 10, 2017, Defendant Patin filed a Motion for Summary Judgment, which
2 was joined by Defendant Patin Law Group on February 15, 2017. This Motion was denied
3 without prejudice following oral argument on May 9, 2017. The Court's Order was entered on
4 June 5, 2017, finding, among other items, that there were genuine issues of material fact that
5 necessitated denial of summary judgment.

6 On May 30, 2017, Defendant Patin filed another Motion for Summary Judgment, which
7 was joined by Defendant Patin Law Group on May 31, 2017. This Motion was heard on July
8 11, 2017 and was denied without prejudice. The Court's August 17, 2017, Order denying the
9 Motion found that "an issue of fact related to the truth or falsity of the alleged defamatory
10 statement exists which necessitates denial of summary judgment."

11 On July 15, 2019, Defendants filed their Motion to Dismiss Pursuant to NRCP
12 16.1(e)(1). This Motion was denied after oral argument on August 20, 2019. The Court's
13 Order denying the Motion was filed on September 10, 2019.

14 On October 11, 2019, the parties filed their Joint Case Conference Report, and discovery
15 opened just over four years after Plaintiff filed his initial August 17, 2015, Complaint.

16 On August 7, 2020, Defendant Patin filed her Motion for Judgment on the Pleadings, in
17 the Alternative, Motion for Summary Judgment ("Motion for Summary Judgment"), which was
18 the eighth dispositive motion filed by Defendant Patin in this litigation. Defendant Patin Law
19 Group joined in Defendant Patin's Motion on August 10, 2020. Plaintiff filed his Opposition to
20 the Defendants' Motion for Summary Judgment on the grounds that the Motion failed to present
21 substantially new information that resolved genuine issues of material fact regarding the truth or
22 falsity of Defendants' statement, as previously ruled by this Court on two separate occasions.
23 Following oral argument on September 15, 2020, the Motion for Summary Judgment was
24 granted. Defendant Patin Law Group now brings the instant Motion for Attorneys' Fees and
25 Interest.

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II.

LEGAL ARGUMENT

A. Defendant's Claim for Attorney's Fees and Interest Pursuant to NRCP 68 is Unreasonable, and Defendant Has Not Met All Beattie and Brunzell Factors

Defendant argues that it is entitled to attorneys' fees and interest pursuant to NRCP 68(f), which states:

(f) Penalties for Rejection of Offer.

(1) **In General.** If the offeree rejects an offer and fails to obtain a more favorable judgment:

(A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

(B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

However, Nevada Courts have recognized that where the court properly weighs the factors set forth in Beattie v. Thomas, courts have discretion to allow attorney fees under NRCP 68. 99 Nev. 579 (1983); see Bidart v. American Title Ins. Co., 103 Nev. 175 (1987). Courts exercising discretion in allowing fees and costs under NRCP 68 must evaluate the following factors:

(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

Beattie, 99 Nev. at 588-9; see also Uniroyal Goodrich Tire Co. v. Mercer, 111 Nev. 318, 890 P.2d 785 (1995). The Beattie Court found that "[a]fter weighing the foregoing factors, the district judge may, where warranted, award up to the full amount of fees requested. On the other hand, where the court has failed to consider these factors, and has made no findings based on evidence that the attorney's fees sought are reasonable and justified, it is an abuse of discretion for the court to award the full amount of fees requested." 99 Nev. at 589. Further, the Beattie

1 Court stated that the purpose of NRCP 68 is to encourage settlement, and it is not to force
2 plaintiffs into forgoing legitimate claims. Id. at 588. As discussed below, Defendant has not met
3 the factors set forth in Beattie, and this Court should exercise its discretion with respect to NRCP
4 68 and not award Defendant its requested attorneys fees and interest.

5 **(1) Whether Plaintiff's Claim Was Brought in Good Faith**

6 Plaintiff's claim of defamation *per se* was brought in good faith. Defendant Patin's
7 Motion for Summary Judgment, to which Defendant Patin Law Group filed its Joinder, as well
8 as the instant Motion for Attorneys Fees and Interest, assert that Dr. Lee admitted in his
9 deposition testimony that each *individual* part of Defendants' published statement was true, and
10 therefore, the statement is true and Plaintiff's defamation *per se* claim was not brought in good
11 faith. However, Defendants' use of piecemeal admissions to *individual* portions of Defendants'
12 published statement was improper for the purpose of proving the truth of the statement because
13 statements must be reviewed in context and as a whole in order to determine whether they are
14 defamatory. Chowdhry, 109 Nev. at 484 (1993) (citing Branda v. Sanford, 97 Nev. 643, 646,
15 637 P.2d 1223, 1226 (1981)).

16 Dr. Lee brought the defamation *per se* claim against the Defendants on the grounds that
17 Defendants published a statement on their website (patinlaw.com) that identifies Dr. Lee by
18 name, incorrectly asserts that Defendants' former client obtained a \$3.4 million jury verdict
19 against Dr. Lee, and imputes to Dr. Lee a lack of fitness in his profession and as a business
20 owner. Below is the statement in question:

21 DENTAL MALPRACTICE/WRONGFUL DEATH –PLAINTIFF'S VERDICT,
22 \$3.4M, 2014

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

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

1 When reviewing an alleged defamatory statement, “[t]he words must be reviewed in their
2 entirety and in context to determine whether they are susceptible of a defamatory meaning.” Id.
3 Read as a whole, Defendants’ published statement indicates and would cause a reasonable person
4 to conclude that Dr. Lee, in his personal and professional capacity, is one of the defendants in
5 Singletary v. Ton Vinh Lee, DDS, et al. who received the adverse jury verdict of \$3.4 million.
6 However, contrary to the Defendants’ published statement, **Dr. Lee received a judgment in his**
7 **favor** and never received an adverse verdict in Singletary.

8 While Dr. Lee may have admitted that *individual* portions of the statement, taken out of
9 context, were true, this is not new information to this Court and not the proper analysis for
10 determining whether a statement is susceptible to defamatory meaning as previously held by the
11 Supreme Court of Nevada in Chowdry and Branda v. Sanford, 97 Nev. 643 (1981). The reason
12 for Dr. Lee’s claim is that Defendants’ published statement, read as a whole, communicates that
13 the Singletary litigation resulted in an adverse verdict for Dr. Lee when it did not, rendering the
14 statement false and defamatory. Further, the indication of such an adverse verdict imputes to Dr.
15 Lee a lack of fitness in his profession and as a business owner, which is the reason for the claim
16 of defamation *per se*. Dr. Lee maintains, and has always maintained throughout this litigation,
17 that Defendants’ published statement is false and defamatory *per se*. For these reasons, Dr.
18 Lee’s claim was brought in good faith.

19 **(2) Whether Defendant’s Offer of Judgment Was Reasonable and in Good**
20 **Faith in Both Its Timing and Amount**

21 On January 26, 2017, Defendant served Plaintiff with an Offer of Judgment in the amount
22 of one thousand dollars (\$1,000.00). Defendant argues that its Offer of Judgment was filed close
23 to two years after Plaintiff’s initial Complaint, and as a result, Plaintiff “had ample time to
24 evaluate and consider the lack of evidence . . .” Defendant’s Motion at 6, lines 10-13. However,
25 Defendant fails to raise the fact that Defendant’s January 26, 2017, Offer of Judgment to Plaintiff
26 came after this Court had already denied Defendants’ October 16, 2015, Special Motion to
27 Dismiss and Defendants’ May 24, 2016 Renewed Special Motion to Dismiss based on the same
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1 facts available to this Court at the time of the January 26, 2017, Offer of Judgment, and at the
2 present time. This Court's orders denying both of Defendants' prior special motions to dismiss
3 contained the following language:

4 . . . even if NRS 41.637(3) or (4) did apply to complained-of communication, this
5 Court cannot find at this juncture that the Plaintiff hasn't put forth prima facie
6 evidence demonstrating a probability of prevailing on this claim. **This is**
7 **particularly true because the truth or falsity of an allegedly defamatory**
8 **statement is an issue for the jury to determine.** Posadas v. City of Reno, 109
9 Nev. 448, 453 (1993). Further, because if found to be defamatory and the
10 statement is such that would tend to injure the Plaintiff in his business or
11 profession, then it will be deemed defamation per se and damages will be
12 presumed. Nevada Ind. Broadcasting v. Allen, 99 Nev. 404, 409 (1983).

13 (emphasis added) February 2, 2014, Order Denying Defendants' Special Motion to Dismiss;
14 September 29, 2016, Order Denying Defendants' Renewed Special Motion to Dismiss.

15 With knowledge that this Court has twice held that "the truth or falsity of an allegedly
16 defamatory statement is an issue for the jury to determine," Defendant still served Plaintiff with
17 its January 26, 2017, Offer of Judgment in the amount of \$1,000.00 just short of four months
18 after the Court's September 29, 2016, Order containing the cited language. See Posadas v. City
19 of Reno, 109 Nev. 448, 453 (1993). Due to the timing and the amount of Defendant's prior
20 Offer of Judgment, it appears clear that the Offer of Judgment was not a good faith attempt to
21 settle this litigation, but rather a tactic aimed at intimidating Dr. Lee into foregoing a legitimate
22 claim of defamation *per se*. For these reasons, Defendant's \$1,000.00, January 26, 2017, Offer
23 of Judgment to Plaintiff was unreasonable in both timing and amount based on the stated purpose
24 of NRCPP 68 as held by the Supreme Court of Nevada in Beattie.

25 **(3) Whether Plaintiff's Decision to Reject the Offer and Proceed to Trial**
26 **Was Grossly Unreasonable or in Bad Faith**

27 Because Defendant's January 26, 2017, Offer of Judgment to Plaintiff was unreasonable
28 in both timing and amount, as discussed above, Plaintiff's decision to reject the Offer of
Judgment was reasonable and in good faith. This Court's February 4, 2016 and September 29,
2016, Orders denying the Defendants' special motions to dismiss held that the decision on the
truth or falsity of Defendants' published statement was for the jury to decide. Posadas, 109 Nev.

1 at 453. Based on the language of these orders and Nevada case law, Plaintiff had a reasonable
2 expectation that this case would proceed through discovery and have a jury determine the truth
3 or falsity and defamatory nature of Defendants' published statement. Plaintiff had no reason to
4 believe that this Court would reverse its prior holdings to find that the truth or falsity of an
5 alleged defamatory statement is no longer a question for the jury. Further, Defendant's offer of
6 \$1,000.00 was without merit or genuine consideration of Plaintiff's damages. Therefore,
7 Plaintiff's decision to reject Defendant's Offer of Judgment was not unreasonable or in bad faith.

8 **(4) Whether the Fees Sought By the Offeror Are Reasonable and Justified in**
9 **Amount**

10 A significant portion of the fees and interest requested by Defendant are unreasonable
11 and are based on Defendants' numerous dispositive motions filed prior to the start of discovery.
12 As discussed above, Plaintiff filed his Complaint on August 17, 2015, and Defendants filed a
13 total of seven dispositive motions prior to discovery opening on October 11, 2019. The timing
14 and frequency of Defendants' dispositive motions and joinders thereto demonstrates an attempt
15 to cause Plaintiff to incur a large amount of attorneys fees and costs before discovery even
16 opened. Specifically, it took just over four years for the parties and Nevada courts to move
17 through Defendants' seven dispositive motions before the parties were able to begin discovery.
18 Defendants' numerous dispositive motions, combined with Defendant's bad faith Offer of
19 Judgement served after this Court had twice held that the truth or falsity of Defendants'
20 statement was a jury question, further demonstrates that Defendants attempted to intimidate
21 Plaintiff into foregoing his claims, which is contrary to the purpose of NRCP 68. Beattie, 99
22 Nev. at 588. As a result, Defendant's claim for fees and interest is unreasonable, and Plaintiff
23 should not be made to pay the fees and interest incurred by Defendant because of Defendants'
24 own dispositive motions and intimidation tactics.

25 Further, many of Defendants' dispositive motions presented no new facts to the record
26 to warrant summary judgment or dismissal of this litigation. Plaintiff included Defendants'
27 published statement in his August 17, 2015, Complaint. Accordingly, the contents of this
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statement have been known to the parties and this Court since this litigation began. However, all evidence produced regarding Defendants' statement has merely repeated the contents of the statement, and the Court dismissed seven of Defendants' dispositive motions. As a result, Defendant's claims for attorneys fees does not meet all factors stated in Brunzell v. Golden Gate Nat'l Bank:

. . . [I]t seems advisable that we state the well-known basic elements to be considered in determining the reasonable value of an attorney's services. From a study of the authorities it would appear such factors may be classified under four general headings **(1) the qualities of the advocate:** his ability, his training, education, experience, professional standing and skill; **(2) the character of the work to be done:** its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; **(3) the work actually performed by the lawyer:** the skill, time and attention given to the work; **(4) the result:** whether the attorney was successful and what benefits were derived.

85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969) (emphasis added).

The repetitive arguments and evidence provided by Defendants in their dispositive motions have led to multiple findings by this Court that (1) there remain material issues of genuine fact, and (2) that the truth or falsity and defamatory nature of Defendants' statement was a question for the jury. See February 4, 2016, Order Denying Defendants' Special Motion to Dismiss; September 29, 2016, Order Denying Defendants' Renewed Special Motion to Dismiss; June 5, 2017, Order Denying Defendant's Motion for Summary Judgment; and August 17, 2017, Order Denying Defendant's Motion for Summary Judgment. As a result, the attorney fees charged for such repetitive arguments and evidence should be reduced pursuant to the last three Brunzell factors cited above: (2) the character of the work to be done, (3) the work actually performed by the lawyer, and (4) the result. This Court dismissed a total of seven of Defendants' dispositive motions, the majority of these dispositive motions provided no new facts regarding the statement, and the Court has found on at least two occasions that the truth or falsity of Defendants' statement is a question for the jury. February 4, 2016, Order Denying Defendants' Special Motion to Dismiss; September 29, 2016, Order Denying Defendants' Renewed Special Motion to Dismiss. For these reasons, Defendant's request for attorney fees

1 and interest is unreasonable, unjustified, and should be reduced to exclude such fees and interest
2 for the unreasonable and unsuccessful dispositive motions and joinders filed by the Defendants.
3 Plaintiff asserts that this may be done by simply deducting such attorney fees from the exhibits
4 produced by Defendant in the instant Motion (specifically, Exhibit C to Defendant's Motion and
5 the itemized billing to be provided for Defendant's attorney Micah S. Echols, Esq. as declared
6 in Exhibit A to Defendant's Motion).

7 However, if this Court is inclined to grant Defendant's attorneys fees and interest in
8 excess of Plaintiff's request as stated in this Opposition, Plaintiff maintains that such fees and
9 interest still must only include those incurred after Defendant's January 26, 2017, Offer of
10 Judgment. NRCP 68(f)(2). All such fees and interest incurred prior to Defendant's January 26,
11 2017, Offer of Judgment must be excluded pursuant to NRCP 68(f)(2).

12 **III.**

13 **CONCLUSION**

14 For the reasons set forth in this Opposition, Defendant's claims for attorneys' fees and
15 interest are unreasonable. Accordingly, Plaintiff respectfully requests that this Court exercise
16 its discretion and reduce any such fees and interest awarded to Defendant based on this Court's
17 consideration of Defendant's failure to service a good faith offer of judgment and the seven
18 unnecessary and unreasonable dispositive motions filed by Defendants prior to the start of
19 discovery.

20 DATED this 3rd day of December, 2020.

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

22 */s/ Myraleigh A. Alberto*

23 _____
24 PRESCOTT JONES
25 Nevada Bar No. 11617
26 MYRALEIGH A. ALBERTO
27 Nevada Bar No. 14340
28 8925 W. Russell Road, Suite 220
Las Vegas, NV 89148
Attorneys for Plaintiff,
Ton Vinh Lee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **PLAINTIFF TON VINH LEE'S
OPPOSITION TO DEFENDANT PATIN LAW GROUP, LLC'S MOTION FOR
ATTORNEYS' FEES AND INTEREST** was served this 3rd day of December, 2020, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

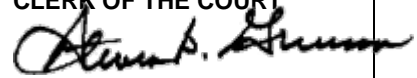
☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

Christian M. Morris, Esq.
NETTLES MORRIS
1389 Galleria Dr., Suite 200
Henderson, NV 89014
Attorney for Defendant Ingrid Patin

Kerry J. Doyle, Esq.
DOYLE LAW GROUP
7375 S. Pecos Rd., #101
Las Vegas, NV 89120
Attorney for Defendant Patin Law Group, PLLC

/s/ Susan Carbone

An Employee of Resnick & Louis, P.C.



1 **MAFC**

2 Kerry J. Doyle

3 Nevada Bar No. 10571

4 *kdoyle@DoyleLawGroupLV.com*

5 **DOYLE LAW GROUP**

6 7375 S. Pecos Rd., #101

7 Las Vegas, NV 89120

8 *Attorney for Defendant, Patin Law Group, PLLC*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 TON VINH LEE, an individual,

12 Plaintiff,

13 vs.

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

17 Defendants.

CASE NO.: A-15-723134-C

DEPT NO.: XXVI

**DEFENDANT PATIN LAW GROUP,
PLLCS SUPPLEMENT TO MOTION FOR
ATTORNEYS' FEES AND INTEREST**

18 Defendant, PATIN LAW GROUP, PLLC ("Defendant"), by and through their counsels of
19 record, Kerry J. Doyle, Esq., of the Doyle Law Group pursuant to NRS 18.010, hereby files this
20 Motion for Attorneys' Fees, Costs, and Interest.

21 This Motion is based upon the files, pleadings, and records on file herein, together with the
22 points and authorities attached hereto and the arguments of Counsel as may be considered at the time
23 of the hearing in this matter.

24 DATED this 9th day of December, 2020.

25 DOYLE LAW GROUP

26 /s/ Kerry J. Doyle

27 Kerry J. Doyle

28 Nevada Bar No. 110571

7375 S. Pecos Rod., #101

Las Vegas, NV 89120

Attorneys for Defendant, Patin Law Group

1 **DECLARATION OF KERRY J. DOYLE, ESQ. IN SUPPORT OF DEFENDANT PATIN**
2 **LAW GROUP, PLLC'S SUPPLEMENT TO MOTION FOR ATTORNEYS' FEES, COSTS,**
3 **AND INTEREST**

4 STATE OF NEVADA)
5) S.S.
6 COUNTY OF CLARK)

7 Kerry J. Doyle, Esq. declares under penalty of perjury,

8 1. I am over the age of 18 years and have personal knowledge of the facts stated herein,
9 except for those stated upon information and belief, and as to those, I believe them to be true. I am
10 competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

11 2. I am a duly licensed and practicing attorney of the State of Nevada and am employed
12 by the Doyle Law Group.

13 3. I am an attorney for the Defendant PATIN LAW GROUP, PLLC in the above
14 referenced case and am familiar with the facts and circumstances thereof and am competent to testify
15 thereto.

16 4. I have received the billing from Marquis Aurbach detailing the work performed by
17 Micah Echols, Esq. on behalf of Defendant PATIN LAW GROUP.

18 5. Micah Echols Declaration regarding the work he performed on behalf of Defendant
19 PATIN LAW GROUP, PLLC is attached hereto as **Exhibit A.**

20 6. The billing sheets and details of costs are attached hereto as **Exhibit B.**

21 7. These hours were reasonably, necessarily and actually incurred.

22 8. The Exhibits attached to this Affidavit and Application are true and correct copies of
23 what they are represented to be.

24 FURTHER AFFIANT SAYETH NAUGHT

25 DATED this 9th day of December, 2020.

26 /s/ Kerry J. Doyle
27 KERRY J. DOYLE, ESQ.

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III.

CONCLUSION

Based upon the foregoing, Defendant respectfully requests the Court grant her *Motion for Attorneys' Fees, and Interest.*

DATED this 9th day of December, 2020.

DOYLE LAW GROUP

/s/ Kerry J. Doyle

Kerry J. Doyle

Nevada Bar No. 110571

7375 S. Pecos Rod., #101

Las Vegas, NV 89120

Attorneys for Defendant, Patin Law Group

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Christian Morris	christian@nettlesmorris.com
Jenn Alexy	jenn@nettlesmorris.com
Coreene Drose	cdrose@rlattorneys.com
Ingrid Patin	ingrid@patinlaw.com
Lisa Bell	lbell@rlattorneys.com
Prescott Jones	pjones@rlattorneys.com
Susan Carbone	scarbone@rlattorneys.com
Jessica Humphrey	jhumphrey@rlattorneys.com

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EXHIBIT A

EXHIBIT A

EXHIBIT A

**DECLARATION OF MICAH S. ECHOLS, ESQ. IN SUPPORT OF DEFENDANT PATIN
LAW GROUP, PLLC'S SUPPLEMENTAL APPLICATION FOR ATTORNEYS' FEES,
COSTS, AND INTEREST**

STATE OF NEVADA)
) S.S.
COUNTY OF CLARK)

Micah S. Echols, Esq. being first duly sworn deposes and says,

1. I am a duly licensed and practicing attorney of the State of Nevada and am employed by the Claggett & Sykes Law Firm's appellate division.

2. I was the attorney for the Defendant PATIN LAW GROUP, PLLC in the above referenced case and am familiar with the facts and circumstances thereof and am competent to testify thereto.

3. My general hourly rate is \$500.00. I received my billing from Marquis Aurbach Coffing and I spent a total of 149.70 hours on the case for a total of \$71,700 in charges. I also had costs of \$1,153.52 which are detailed in the exhibit attached to this supplement. These hours were reasonably, necessarily and actually incurred.

4. The Exhibits attached to this Supplemental Application are true and correct copies of what they are represented to be.

Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 9th day of December, 2020.

/s/ Micah S. Echols
MICAH ECHOLS, ESQ.

EXHIBIT B

EXHIBIT B

EXHIBIT B

**MARQUIS AURBACH
COFFING**

ATTORNEYS AT LAW

10001 PARK RUN DRIVE
LAS VEGAS, NEVADA 89145
Telephone 702-382-0711
Fax 702-382-5816

Ingrid Patin, Esq.
Patin Law Group, PLLC
7925 W. Russell Road, No. 401714
Las Vegas, NV 89140

Invoice 328896 - 348915
November 23, 2020

ID: 14917-001 - MSE

Re: Supreme Court Case No. 69928

For Services Rendered Through February 26, 2019

Current Fees	71,700.00
Current Disbursements	1,153.52
Current Interest	294.78
Total Current Charges	73,148.30

MARQUIS AURBACH COFFING P.C.

Ingrid Patin, Esq.
Re: Supreme Court Case No. 69928
I.D. 14917-001 - MSE

November 23, 2020
Invoice 328896 -
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Fees				
Date	Atty	Description	Hours	Amount
08/16/17	MSE	Review relevant records and telephone conference with client on procedural posture of case, main arguments, and deadlines for opening brief and appendix.	1.00	500.00
08/21/17	LAD	Review appeal documents for posture of appeal; review District Court docket to make selection of documents to include in appellants' appendix.	0.80	160.00
08/21/17	LAD	Prepare initial draft index to appellants' appendix and email same to client for review.	1.60	320.00
08/21/17	MSE	Review District Court docket sheet and mark filings and transcripts to be included in Supreme Court appendix.	0.50	250.00
08/21/17	MSE	Review documents in District Court to determine which filings fall within the Supreme Court's jurisdiction and should be included in appendix.	3.50	1,750.00
08/22/17	LAD	Revise index to appellants' appendix to list out exhibits to included documents.	2.40	480.00
08/28/17	LAD	Assemble and bates stamp appellants' appendix, volumes 1 and 2; revise index with bates numbering; prepare covers to appendix.	2.40	480.00
08/28/17	MSE	Review and revise Supreme Court appendix cover pages and detailed index to appendix, including volume, page numbers, and exhibit descriptions.	1.60	800.00
09/13/17	MSE	Detailed review of Supreme Court appendix and take notes on important issues to be raised in opening brief.	4.50	2,250.00
09/13/17	MSE	Begin reviewing key cases and statutes cited in District Court briefing.	3.00	1,500.00
09/13/17	MSE	Perform legal research on mootness and the ability for the Supreme Court to summarily reverse the District Court's denial of the special motion to dismiss.	3.80	1,900.00
09/14/17	MSE	Finish reviewing key cases and statutes cited in District Court briefing.	6.50	3,250.00
09/14/17	MSE	Identify main issues on appeal and draft issues on appeal in Supreme Court opening brief with subparts.	1.50	750.00
09/14/17	MSE	Perform legal research on the absolute litigation privilege in Nevada and in other jurisdictions.	4.00	2,000.00
09/15/17	MSE	Perform legal research on anti-SLAPP statutes and cases in Nevada.	3.20	1,600.00
09/15/17	MSE	Perform legal research on anti-SLAPP statutes and cases in California.	4.40	2,200.00
09/18/17	MSE	Review summary judgment pleadings and respond to email requesting information about whether appeal will be taken from order denying motion for summary judgment.	1.00	500.00
09/20/17	MSE	Draft jurisdictional statement for Supreme Court opening brief, including review of relevant documents and legal authorities.	1.40	700.00
09/20/17	MSE	Draft detailed routing statement for Supreme Court opening brief with citations to the record and key authorities for retention of case in Supreme Court.	2.60	1,300.00

MARQUIS AURBACH COFFING P.C.

Ingrid Patin, Esq.

November 23, 2020

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Date	Atty	Description	Hours	Amount
09/20/17	MSE	Draft lengthy and detailed statement of the case and summary of argument for Supreme Court opening brief with citations to the record, key cases, and topic statements for each legal argument raised.	3.60	1,800.00
09/20/17	MSE	Perform legal research on standards of review for various issues raised on appeal.	2.00	1,000.00
09/21/17	MSE	Draft email to client and co-counsel evaluating strength of arguments for Supreme Court opening brief.	0.20	100.00
09/21/17	LAD	Prepare motion for extension of time to file opening brief.	0.30	60.00
09/21/17	LAD	Finalize appellants' appendix, volumes 1-2.	0.40	80.00
09/21/17	MSE	Draft standards of review section for Supreme Court opening brief.	1.00	500.00
09/22/17	LAD	Prepare certificate of service for appellants' appendix.	0.10	20.00
09/22/17	MSE	Draft detailed factual and procedural background for Supreme Court opening brief, including extensive review of the record.	4.60	2,300.00
09/25/17	MSE	Draft mootness and summary reversal section of Supreme Court opening brief, including review of relevant authorities and relevant parts of the record.	1.20	600.00
09/25/17	MSE	Draft absolute litigation privilege section of Supreme Court opening brief, including review of relevant authorities and relevant parts of the record.	2.40	1,200.00
09/25/17	MSE	Draft anti-SLAPP section of Supreme Court opening brief on prohibition against retroactivity for substantive changes in standards, including review of relevant authorities and portions of the record.	3.00	1,500.00
09/26/17	MSE	Perform legal research on the right to petition for purposes of anti-SLAPP laws.	1.50	750.00
09/26/17	MSE	Draft subsection of anti-SLAPP section of Supreme Court opening brief on the right to petition and judicial proceedings.	1.00	500.00
09/26/17	MSE	Draft subsection of anti-SLAPP section of Supreme Court opening brief on the statements being incapable of a defamatory per se construction, including review of relevant authorities.	2.50	1,250.00
09/27/17	MSE	Review new Adelson v. Harris opinion discussing the fair report privilege.	1.00	500.00
09/28/17	MSE	Draft subsection of anti-SLAPP section of Supreme Court opening brief on the fair report privilege, including review of relevant authorities.	1.50	750.00
09/28/17	MSE	Draft subsection of anti-SLAPP section of Supreme Court opening brief on the inapplicability of the Nevada Rules of Professional Conduct to a defamation cause of action, including review of relevant authorities.	1.00	500.00
09/28/17	MSE	Perform legal research on California anti-SLAPP discussing protected commercial speech.	2.40	1,200.00
09/28/17	MSE	Draft subsection of anti-SLAPP section of Supreme Court opening brief on the protected nature of protected commercial speech.	1.00	500.00
09/28/17	MSE	Perform comprehensive substantive changes to draft of Supreme Court opening brief.	1.40	700.00
09/28/17	MSE	Exchange emails with client on changes to draft of Supreme Court	0.30	150.00

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Ingrid Patin, Esq.

November 23, 2020

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Date	Atty	Description	Hours	Amount
		opening brief, including certain theories that will be reserved for Supreme Court reply brief.		
09/28/17	MSE	Perform comprehensive technical changes to draft of Supreme Court opening brief.	1.00	500.00
09/28/17	MSE	Draft and revise table of contents and table of authorities for Supreme Court opening brief.	0.60	300.00
09/28/17	MSE	Make final review and clean edit of Supreme Court opening brief.	1.00	500.00
10/03/17	MSE	Review Supreme Court order accepting for filing Supreme Court opening brief.	0.10	50.00
11/02/17	MSE	Review plaintiff's Supreme Court motion for extension to file answering brief and order granting same.	0.20	100.00
11/21/17	MSE	Review Lee's Supreme Court answering brief and appendix.	1.20	600.00
01/02/18	MSE	Review main authorities cited in Lee's answering brief.	2.50	1,250.00
01/02/18	MSE	Review main portions of the record cited in Lee's answering brief.	1.50	750.00
01/03/18	MSE	Draft detailed outline of Supreme Court reply brief.	1.50	750.00
01/03/18	MSE	Perform legal research on main rules and case law on requirements to cite to legal authority and cite to the record.	1.20	600.00
01/04/18	MSE	Perform legal research on case law and NRAP discussing confession of error.	1.00	500.00
01/04/18	MSE	Review case law on mootness to formulate argument for Supreme Court reply brief.	0.80	400.00
01/05/18	MSE	Review legislative history for NRS 41.660 to determine effective date.	1.00	500.00
01/16/18	MSE	Draft introduction and summary of argument for Supreme Court reply brief.	2.20	1,100.00
01/16/18	MSE	Draft legal argument section of Supreme Court reply brief on Lee's failure to cite to the record and cite supporting legal authority, including review of the relevant legal authorities and portions of the record.	2.00	1,000.00
01/17/18	MSE	Draft legal argument section of Supreme Court reply brief on Lee's failure to address arguments from the opening brief that operate as a confession of error, including review of the relevant legal authorities and portions of the record.	1.80	900.00
01/26/18	LAD	Prepare appellants' reply appendix.	0.40	80.00
01/29/18	MSE	Draft legal argument section of Supreme Court reply brief on the mootness of Lee's entire complaint, including review of the relevant legal authorities and portions of the record.	2.40	1,200.00
02/01/18	MSE	Perform legal research on exceptions to allow raising issues for the first time on appeal.	2.50	1,250.00
02/02/18	MSE	Draft legal argument section of Supreme Court reply brief on the absolute litigation privilege, including review of the relevant legal authorities and portions of the record.	3.00	1,500.00
02/05/18	LAD	Make technical revisions to reply brief; mark all cited authority in reply brief and prepare table of authorities and table of contents; finalize reply	2.10	420.00

MARQUIS AURBACH COFFING P.C.

Ingrid Patin, Esq.

November 23, 2020

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Date	Atty	Description	Hours	Amount
		brief and appendix.		
02/05/18	MSE	Draft legal argument section of Supreme Court reply brief on the interpretation of NRS 41.660, including six subparts, including review of the relevant legal authorities and portions of the record.	4.50	2,250.00
02/05/18	MSE	Make initial comprehensive review of Supreme Court reply brief.	2.60	1,300.00
02/05/18	MSE	Make additional edits to draft of Supreme Court reply brief.	1.50	750.00
02/05/18	MSE	Revise and finalization of table of contents and table of authorities for Supreme Court reply brief.	0.20	100.00
04/09/18	MSE	Review Supreme Court docket page and assignment to en banc panel. Draft email to client regarding same.	0.20	100.00
05/17/18	MSE	Review notice that case will be set for oral argument.	0.10	50.00
05/28/18	MSE	Review Supreme Court notice setting date for oral argument in Carson City. Draft email to client evaluating same.	0.20	100.00
07/05/18	MSE	Begin reviewing Supreme Court briefs, appellate record, and cases cited in brief in preparation for oral argument hearing.	3.00	1,500.00
07/06/18	MSE	Continue reviewing Supreme Court briefs, appellate record, and cases cited in brief in preparation for oral argument hearing.	4.00	2,000.00
07/07/18	MSE	Finish reviewing Supreme Court briefs, appellate record, and cases cited in brief in preparation for oral argument hearing.	5.00	2,500.00
07/08/18	MSE	Travel to Carson City for Supreme Court oral argument.	5.00	2,500.00
07/09/18	MSE	Make final preparations for Supreme Court oral argument, including outlining main arguments of case.	2.00	1,000.00
07/09/18	MSE	Meeting with client and co-counsel to discuss details of Supreme Court oral argument hearing.	1.00	500.00
07/09/18	MSE	Travel from Carson City back to Las Vegas.	5.00	2,500.00
11/15/18	MSE	Review Supreme Court opinion affirming District Court order but leaving open fair report privilege.	0.80	400.00
11/17/18	MSE	Draft email to client outlining options going forward on remand to District Court, including contours for addressing fair report privilege.	1.00	500.00
01/03/19	MSE	Review and revise draft of District Court motion for judgment on the pleadings/summary judgment. Draft email to client/co-counsel regarding evaluation of same.	1.50	750.00
Total Fees			149.70	71,700.00

Disbursements

Date	Description	Amount
	Copies	110.50
	Scanning Charges	109.75
	Westlaw Research	414.58
06/04/18	Long Distance Expense	0.35
06/12/18	Travel Expenses; R - Airfare to/from Oral Argument in Reno, NV	269.96

MARQUIS AURBACH COFFING P.C.

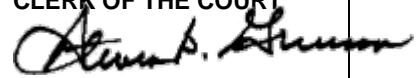
Ingrid Patin, Esq.

November 23, 2020

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Date	Description	Amount
07/16/18	Travel Expenses; R - Meal while attending oral argument in Carson City, NV	8.59
07/16/18	Travel Expenses; R - Meal while attending oral argument in Carson City, NV	1.60
07/16/18	Travel Expenses; R - Incidentals while attending oral argument in Carson City, NV	4.99
07/16/18	Travel Expenses; R - Parking fee while attending oral argument in Carson City, NV	20.00
07/16/18	Travel Expenses; R - Meal while attending oral argument in Carson City, NV	5.94
07/16/18	Travel Expenses; R - Car rental while attending oral argument in Carson City, NV	55.50
07/16/18	Travel Expenses; R - Hotel for oral argument in Carson City, NV	151.76
Total Disbursements		1,153.52



RPLY

CHRISTIAN M. MORRIS, ESQ.

Nevada Bar No. 11218

VICTORIA R. ALLEN, ESQ.

Nevada Bar No. 15005

NETTLES | MORRIS

1389 Galleria Drive, Suite 200

Henderson, Nevada 89014

Telephone: (702) 434-8282

Facsimile: (702) 434-1488

christian@nettlesmorris.com

victoria@nettlesmorris.com

Attorneys for Defendant, Ingrid Patin

DISTRICT COURT

CLARK COUNTY, NEVADA

TON VINH LEE, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-15-723134-C

DEPT NO.: XXVI

**DEFENDANT INGRID PATIN'S REPLY
TO PLAINTIFF'S OPPOSITION TO
DEFENDANT INGRID PATIN'S
MOTION FOR ATTORNEY'S FEES,
COSTS, AND INTEREST**

Defendant, INGRID PATIN, by and through her attorneys of record, Christian M. Morris, Esq., and Victoria R. Allen, Esq., of the law firm NETTLES | MORRIS, hereby submits the following as her *Reply to Plaintiff Ton Vinh Lee's Opposition to Defendant Ingrid Patin's Motion for Attorney's Fees, Costs, and Interest.*

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This Reply is based upon the following points and authorities, the pleadings and other papers on file herein, and such oral argument as may be allowed by this Court at the time of hearing.

DATED this 29th day of December, 2020.

NETTLES | MORRIS



CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN
Nevada Bar No. 15005
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Attorneys for Defendant, Ingrid Patin

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This action arises out of defamation lawsuit filed by Plaintiff Ton Vinh Lee against Defendant Ingrid Patin and Defendant Patin Law Group, PLLC. Plaintiff alleged that a verdict statement posted by Defendants, against Ton Vinh Lee, DDS, injured Plaintiff’s reputation as a dentist. Throughout the course of this litigation, Plaintiff admitted during his deposition that the statement was true and had no evidence anyone other than himself has seen the statement. Being that truth is an absolute defense to defamation, Defendants filed a Motion for Summary Judgment and Motion to Dismiss based on the statement being true, as well as the statement being protected under Fair Reporting Privilege. The Court granted Defendant’s Motion for Summary Judgment on September 15, 2020 and ruled that the statement was true, therefore not defamatory, and the statement also fell under the Fair Reporting Privilege. As the prevailing party, Defendant seeks an award of attorney’s fees, reasonable costs, and interest, pursuant to NRS 18.010.

1 II.

2 **ARGUMENT**

3 A. **Plaintiff is Entitled to an Award of Attorney's Fees and Costs Under NRS.**
4 **18.010**

5 Plaintiff argues that Defendant's request for fees and costs is unreasonable on the basis
6 that Plaintiff continues to assert the statement was defamatory. NRS 18.010 states that a prevailing
7 party of a litigation may recover reasonable and justified attorney's fees where a party "brought
8 or maintained without reasonable ground or to harass the prevailing party." Plaintiff's argument
9 that Defendant has offered no basis to support a reasonable basis to bring this motion, fails to
10 address that the instant case did not survive Defendant's Motion for Summary Judgment, per the
11 order on September 15, 2020. This order indicated that the Court recognized there were no
12 complex issues with genuine issues of material fact remaining. Despite the Court's order granting
13 Defendants Motion for Summary Judgment, Plaintiff continues to assert Defendant is liable for
14 Plaintiff's injuries.

15 Therefore, Defendant is entitled to reasonable and justified attorney's fees and costs under
16 NRS 18.010 because Plaintiff had no basis to bring this lawsuit.

17 B. **Plaintiff's Claim Was Not Brought in Good Faith**

18 Plaintiff continues to baselessly assert that Defendant's line-by-line deposition testimony
19 of the Plaintiff was taken out of context and thus the statement was defamatory, even though
20 Plaintiff admitted the statement was true. Plaintiff has failed to prove, throughout multiple
21 different motions and oppositions, how the line-by-line review of Plaintiff's statement was "out
22 of context." In fact, Defendant's attorney read each line of the statement, in order, using the exact
23 same words within the statement, and the Plaintiff did not dispute any of it. The fact that Plaintiff
24 admitted the statement was true, after years of litigating this defamation lawsuit, claiming
25 Defendant's statement was false, does not show good faith. Again, Plaintiff has set forth no
26 evidence, from the start of this lawsuit, that reflect damages to both him and his professional
27 business and reputation. In fact, Plaintiff even admitted that he does not know if anyone ever saw
28 the statement. The mere dislike of Defendant's completely true statement is not a sufficient basis

1 for Plaintiff to have brought a defamation lawsuit. Therefore, Plaintiff did not bring this lawsuit
2 in good faith.

3 It is also important to note that Plaintiff continues to assert that the lawsuit was brought
4 in good faith because he believes the statement was defamatory, however, Defendants won their
5 Motion for Summary Judgment on more than just the theory of defamation per se. The Court also
6 found that the statement was protected under the Fair Reporting Privilege because it was an
7 accurate reflection of the judicial proceeding. Plaintiff has still yet to even address this argument
8 in any of their subsequent filings with the Court and continue to rely only on the theory of
9 defamation per se. Even if Defendant's statement were to be found defamatory, it was still a
10 protected statement under the Fair Reporting Privilege. Therefore, Plaintiff cannot assert that this
11 lawsuit was brought in good faith while only relying on the issue of defamation per se and not
12 addressing the fair reporting privilege. Thus, Defendant should be awarded fees and costs for
13 prevailing on their Motion for Summary Judgment because Plaintiff cannot show the claim was
14 brought in good faith.

15 **C. Defendant's Offer of Judgment was Reasonable and in Good Faith**

16 Plaintiff asserts that Defendant's offer of judgment was made two years after Plaintiff
17 filed his initial complaint and was therefore made with the intent to intimidate Plaintiff. However,
18 this accusation is completely false. At the time Defendant made her offer of judgment, Plaintiff
19 was well aware that the statement was not false and had no basis to litigate this defamation
20 lawsuit. The fact that it took the Plaintiff years to admit that the statement was true, and he has
21 no proof anyone saw the statement proves that Plaintiff had ample time to consider the evidence
22 in this case and to take Defendant's offer. As such, Defendant's offer was reasonable and made
23 in good faith.

24 **D. Plaintiff's decision to reject the offer was grossly unreasonable.**

25 Plaintiff has known from the start of this litigation that the statement made by Defendant
26 was true. Being that truth is an absolute defense to defamation, it was unreasonable for Plaintiff
27 to reject Defendant's offer. Plaintiff knew that this case was going to require extensive work to
28 litigate and could have admitted the statement was true prior to Defendant going through

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discovery. Plaintiff knew at the time he brought this lawsuit that he had no knowledge of anyone who saw the statement and knew that the truth of the statement was not going to change. Thus, Plaintiff's decision to reject Defendant's offer was unreasonable.

III.

CONCLUSION

Based on the foregoing, Defendant respectfully requests that Defendant's Motion for Fees and Costs be GRANTED.

DATED this 29th day of December, 2020.

NETTLES | MORRIS



CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN
Nevada Bar No. 15005
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Attorneys for Defendant, Ingrid Patin

CERTIFICATE OF E-SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that on this 29th day of December, 2020, a true and correct copy of the foregoing **DEFENDANT INGRID PATIN'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT INGRID PATIN'S MOTION FOR ATTORNEY'S FEES, COSTS, AND INTEREST** was served to the following parties by electronic transmission through the Odyssey eFileNV system as follows:

Myraleigh Alberto	malberto@rlattorneys.com
Kerry Doyle	kdoyle@doylelawgroupnv.com
Mikayla Hurtt	admin@doylelawgroupnv.com
Coreene Drose	cdrose@rlattorneys.com
Ingrid Patin	ingrid@patinlaw.com
Lisa Bell	lbell@rlattorneys.com
Prescott Jones	pjones@rlattorneys.com
Susan Carbone	scarbone@rlattorneys.com
Jessica Humphrey	jhumphrey@rlattorneys.com

An employee of NETTLES | MORRIS



1 **RPLY**

2 Kerry J. Doyle

3 Nevada Bar No. 10571

4 *kdoyle@DoyleLawGroupLV.com*

5 **DOYLE LAW GROUP**

6 7375 S. Pecos Rd., #101

7 Las Vegas, NV 89120

8 *Attorney for Defendant, Patin Law Group, PLLC*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 TON VINH LEE, an individual,

12 Plaintiff,

13 v.

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

17 Defendants.

CASE NO.: A-15-723134-C

DEPT NO.: XXVI

**DEFENDANT PATIN LAW GROUP,
PLLC'S REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANT PATIN
LAW GROUP, PLLC'S MOTION FOR
ATTORNEYS' FEES AND INTEREST**

18 COMES NOW, Defendant, PATIN LAW GROUP, PLLC, by and through their
19 attorneys of record, Kerry J. Doyle, Esq. of Doyle Law Group, and hereby submits the
20 following as its *Reply to Plaintiff Ton Vinh Lee's Opposition to Defendant Patin Law Group,
21 PLLC's, Motion for Attorneys' Fees and Interest.*

22 DATED this 29th day of December, 2020.

23 DOYLE LAW GROUP

24 /s/ Kerry J. Doyle

25 Kerry J. Doyle

26 Nevada Bar No. 110571

27 7375 S. Pecos Rod., #101

28 Las Vegas, NV 89120

Attorneys for Defendant, Patin Law Group

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 This action arises out of defamation lawsuit filed by Plaintiff Ton Vinh Lee against
5 Defendant Ingrid Patin and Defendant Patin Law Group, PLLC. Plaintiff alleged that a verdict
6 statement posted on Defendant Patin Law Group, PLLCS's website was defamatory and
7 Plaintiff's professional reputation had been tainted. During discovery, Plaintiff admitted that he
8 does not know if anyone ever saw the statement posted on Patin Law Group, PLLC's website,
9 and admitted that the facts contained within the statement were true. As such, Defendants
10 brought a Motion for Summary Judgment and Motion to Dismiss based on the statement being
11 true, as well as the statement being protected by the Fair Reporting Privilege. The Court granted
12 Defendant's Motion under both theories. The Court found that the statement, being true, was not
13 defamatory, as truth is an absolute defense, and the Court also found that the statement fell under
14 the Fair Reporting Privilege because it was an accurate representation of the judicial proceeding.
15 As the prevailing party, Defendant seeks an award of attorney's fees, reasonable costs, and
16 interest, pursuant to NRS 18.010.

17 **II.**

18 **ARGUMENT**

19 **A. Plaintiff is Entitled to an Award of Attorney's Fees and Costs Under NRS.**
20 **18.010**

21 Plaintiff argues that Defendant's request for fees and costs is unreasonable on the basis
22 that Plaintiff continues to assert the statement was defamatory. NRS 18.010 states that a
23 prevailing party of a litigation may recover reasonable and justified attorney's fees where a
24 party "brought or maintained without reasonable ground or to harass the prevailing party."
25 Plaintiff's argument that Defendant has offered no basis to support a reasonable basis to bring
26 this motion, fails to address that the instant case did not survive Defendant's Motion for
27 Summary Judgment, per the order on September 15, 2020. This order indicated that the Court
28 recognized there were no complex issues with genuine issues of material fact remaining.

1 Despite the Court's order granting Defendants Motion for Summary Judgment, Plaintiff
2 continues to assert Defendant is liable for Plaintiff's injuries.

3 Therefore, Defendant is entitled to reasonable and justified attorney's fees and costs
4 under NRS 18.010 because Plaintiff had no basis to bring this lawsuit.

5 **B. Plaintiff's Claim Was Not Brought in Good Faith**

6 Plaintiff continues to baselessly assert that Defendant's line-by-line deposition
7 testimony of the Plaintiff was taken out of context and thus the statement was defamatory, even
8 though Plaintiff admitted the statement was true. Plaintiff has failed to prove, throughout
9 multiple different motions and oppositions, how the line-by-line review of Plaintiff's statement
10 was "out of context." In fact, Defendant's attorney read each line of the statement, in the order
11 of how it was posted, using the exact same words within the statement and Plaintiff did not
12 dispute any of it. The fact that Plaintiff admitted the statement was true, after years of litigating
13 this defamation lawsuit, claiming Defendant's statement was false, does not show good faith.
14 Again, Plaintiff has set forth no evidence, from the start of this lawsuit, that reflect damages to
15 both him and his professional business and reputation. In fact, Plaintiff even admitted that he
16 does not know if anyone ever saw or read the statement. The mere dislike of Defendant's
17 completely true statement is not a sufficient basis for Plaintiff to have brought a defamation
18 lawsuit. Therefore, Plaintiff did not bring this lawsuit in good faith.

19 It is also important to note that Plaintiff continues to assert that the lawsuit was brought
20 in good faith because he believes the statement was defamatory, however, Defendants won their
21 Motion for Summary Judgment on more than just the theory of defamation per se. The Court
22 also found that the statement was protected under the Fair Reporting Privilege because it was an
23 accurate reflection of the judicial proceeding. Plaintiff has still yet to even address this
24 argument in any of their subsequent filings with the Court and continue to rely only on the
25 theory of defamation per se. Even if Defendant's statement were found to be defamatory, it was
26 still a protected statement under the Fair Reporting Privilege. Therefore, Plaintiff cannot assert
27 that this lawsuit was brought in good faith while only relying on the issue of defamation per se,
28

1 and not addressing the Fair Reporting Privilege. Thus, Defendants should be awarded fees and
2 costs for prevailing on their Motion for Summary Judgment.

3 **C. Defendant's Offer of Judgment was Reasonable and in Good Faith**

4 Plaintiff asserts that Defendant's offer of judgment was made two years after Plaintiff
5 filed his initial complaint and was therefore made with the intent to intimidate Plaintiff.
6 However, this accusation is completely false. At the time Defendant made her offer of
7 judgment, Plaintiff was well aware that the statement was not false and had no basis to litigate
8 this defamation lawsuit. The fact that it took the Plaintiff years to admit that the statement was
9 true, and he has no proof anyone saw the statement proves that Plaintiff had ample time to
10 consider the evidence in this case and to take Defendant's offer. As such, Defendant's offer was
11 reasonable and made in good faith.

12 **D. Plaintiff's decision to reject the offer was grossly unreasonable.**

13 Plaintiff has known from the start of this litigation that the statement made by Defendant
14 was true. Being that truth is an absolute defense to defamation, it was unreasonable for Plaintiff
15 to reject Defendant's offer. Plaintiff knew that this case was going to require extensive work to
16 litigate and could have admitted the statement was true prior to Defendant going through
17 discovery. Plaintiff knew at the time he brought this lawsuit that he had no knowledge of
18 anyone who saw the statement and knew that the truth of the statement was not going to change.
19 Thus, Plaintiff's decision to reject Defendant's offer was unreasonable.

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III.

CONCLUSION

Based on the foregoing, Defendant respectfully requests that Defendant's Motion for Fees and Costs be GRANTED.

DATED this 29th day of December, 2020.

DOYLE LAW GROUP

/s/ Kerry J. Doyle

Kerry J. Doyle

Nevada Bar No. 110571

7375 S. Pecos Rod., #101

Las Vegas, NV 89120

Attorneys for Defendant, Patin Law Group

1 **CERTIFICATE OF E-SERVICE**

2 Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that on the 29th day
3 of December, 2020, a true and correct copy of the foregoing **DEFENDANT PATIN LAW**
4 **GROUP, PLLC'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT PATIN**
5 **LAW GROUP, PLLC'S MOTION FOR ATTORNEYS' FEES AND INTEREST** was
6 served to the following parties by electronic transmission through the Odyssey eFileNV system
7 and/or by placing a true and correct copy in the regular U.S. Mail, postage pre-paid and
8 addressed as follows:

9
10 Christian Morris christian@nettlesmorris.com
11 Jenn Alexy jenn@nettlesmorris.com
12 Myraleigh Alberto malberto@rlattorneys.com
13 Coreene Drose cdrose@rlattorneys.com
14 Ingrid Patin ingrid@patinlaw.com
15 Lisa Bell lbell@rlattorneys.com
16 Prescott Jones pjones@rlattorneys.com
17 Susan Carbone scarbone@rlattorneys.com
18 Jessica Humphrey jhumphrey@rlattorneys.com
19

20 /s/ Mikayla Hurtt
21 An employee of DOYLE LAW GROUP
22
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SUPP
RESNICK & LOUIS, P.C.
PRESCOTT JONES
Nevada Bar No. 11617
pjones@rlattorneys.com
MYRALEIGH A. ALBERTO
Nevada Bar No. 14340
malberto@rlattorneys.com
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
Attorneys for Plaintiff,
Ton Vinh Lee

DISTRICT COURT
CLARK COUNTY, NEVADA

TON VINH LEE,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-15-723134-C

DEPT: 26

**PLAINTIFF TON VINH LEE'S
SUPPLEMENTAL OPPOSITION TO
DEFENDANT INGRID PATIN'S
MOTION FOR ATTORNEYS' FEES,
COSTS, AND INTEREST**

COMES NOW, Plaintiff, TON VINH LEE, by and through his attorneys of record,
PRESCOTT T. JONES, ESQ. and MYRALEIGH A. ALBERTO, ESQ. of the law firm of
RESNICK & LOUIS, P.C., hereby submits this SUPPLEMENTAL OPPOSITION TO
DEFENDANT INGRID PATIN'S MOTION FOR ATTORNEYS' FEES, COSTS, AND
INTEREST.

///

///

1 This Supplement and the original Opposition are based upon the papers and pleadings on
2 file with the Court, the exhibits attached hereto, the following Memorandum of Points and
3 Authorities, and any oral argument the Court may entertain at the hearing on this matter.

4 DATED this 3rd day of February, 2021.

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

6 */s/ Myraleigh A. Alberto*

7 _____
8 PRESCOTT JONES
9 Nevada Bar No. 11617
10 MYRALEIGH A. ALBERTO
11 Nevada Bar No. 14340
12 8925 W. Russell Road, Suite 220
13 Las Vegas, NV 89148
14 *Attorneys for Plaintiff,*
15 *Ton Vinh Lee*

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I, TON VINH LEE, pursuant to NRS 53.045, declare:

1. I am over the age of 21 years, and I am authorized to make the below representations based upon my own personal knowledge and/or upon information and belief where stated.

2. I am the Plaintiff in Eighth Judicial District Court Case No. A-15-723134-C.

3. I make this Declaration in support of the Opposition to Defendant Ingrid Patin's Motion for Attorney's Fees, Costs, and Interest, and Supplement thereto, filed in Eighth Judicial District Court Case No. A-15-723134-C.

4. On January 19, 2017, Defendant Ingrid Patin served an Offer of Judgment in the amount of “ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00), inclusive of all accrued interest, costs, and attorney fees, and any other sums that could be claimed by Defendant, INGRID PATIN, against Plaintiff, TON VINH LEE, in the above-captioned litigation.”

5. On October 30, 2020, this Court issued its Order granting Defendant Patin's Motion for Summary Judgment and Defendant Pain Law Group's joinder.

6. On November 19, 2020, Defendant Patin filed her Motion for Attorney Fees and Costs.

7. By March 17, 2016, I had spent at least \$10,000.00 in attorney fees in this litigation.

8. Upon retaining my attorney, Prescott Jones, Esq., for this litigation, and prior to filing of my August 17, 2015, Complaint, I paid my attorney a retainer of \$10,000.00. The initial \$10,000.00 retainer was depleted by attorney fees by March 17, 2016. As a result, on March 17, 2016, I deposited an additional \$10,000.00 to my retainer account for this litigation.

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I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct to the best of my knowledge, memory, and understanding.

DATED this 3rd day of February, 2021.

/s/ Ton Vinh Lee

Ton Vinh Lee

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL ARGUMENT

A. Defendant Ingrid Patin is Not Entitled to Attorney's Fees, Costs, and Interest Pursuant to NRCP 68 Because Plaintiff Beat Defendant's Offer of Judgment, Which Was Inclusive of Attorney Fees

Defendant argues that she is also entitled to attorneys' fees, costs, and interest pursuant to NRCP 68(f), which states:

(f) Penalties for Rejection of Offer.

(1) In General. If the offeree rejects an offer and fails to obtain a more favorable judgment:

(A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

(B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

On January 19, 2017, Defendant Ingrid Patin served an Offer of Judgment ("OOJ") in the amount of "ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00), **inclusive of all accrued interest, costs, and attorney fees**, and any other sums that could be claimed by Defendant, INGRID PATIN, against Plaintiff, TON VINH LEE, in the above-captioned litigation" (emphasis added). **See Exhibit A.** Plaintiff allowed Defendant's OOJ to expire, effectively rejecting the OOJ.

By March 17, 2016, Dr. Lee had spent at least \$10,000.00 on attorney fees in this litigation, which far exceeds Defendant Ingrid Patin's \$1,000.00 OOJ. Upon retaining counsel for this litigation, Dr. Lee paid an initial retainer of \$10,000.00 prior to filing his August 17, 2015, Complaint. By March 17, 2016, the initial \$10,000.00 retainer had been depleted by attorney fees. As a result, Dr. Lee deposited an additional \$10,000.00 to his retainer account on March 17, 2016 for this litigation. Defendant Patin's \$1,000.00 OOJ is clear that it is inclusive

1 of attorney fees. Accordingly, Defendant Ingrid Patin is not entitled to an award of attorney
2 fees because her OOJ did not present a more favorable outcome for Dr. Lee based on the
3 amount he has spent in attorney fees alone.

4 **III.**

5 **CONCLUSION**

6 For the reasons set forth in this Supplemental Opposition, Defendant Ingrid Patin is not
7 entitled to an award of attorneys' fees, costs, and interest. Accordingly, Plaintiff respectfully
8 requests that this Court deny Defendant Ingrid Patin's Motion for Attorneys' Fees, Costs, and
9 Interest.

10 DATED this 3rd day of February, 2021.

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

12 */s/ Myraleigh A. Alberto*

13
14 _____
15 PRESCOTT JONES
16 Nevada Bar No. 11617
17 MYRALEIGH A. ALBERTO
18 Nevada Bar No. 14340
19 8925 W. Russell Road, Suite 220
20 Las Vegas, NV 89148
21 *Attorneys for Plaintiff,*
22 *Ton Vinh Lee*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **PLAINTIFF TON VINH LEE'S SUPPLEMENTAL OPPOSITION TO DEFENDANT INGRID PATIN'S MOTION FOR ATTORNEYS' FEES, COSTS, AND INTEREST** was served this 3rd day of February*, 2021, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

Christian M. Morris, Esq.
NETTLES MORRIS
1389 Galleria Dr., Suite 200
Henderson, NV 89014
Attorney for Defendant Ingrid Patin

Kerry J. Doyle, Esq.
DOYLE LAW GROUP
7375 S. Pecos Rd., #101
Las Vegas, NV 89120
Attorney for Defendant Patin Law Group, PLLC

/s/ Susan Carbone

An Employee of Resnick & Louis, P.C.

EXHIBIT “A”

OFFER
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
NETTLES LAW FIRM
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@nettleslawfirm.com
Attorney for Defendant, Ingrid Patin

DISTRICT COURT
CLARK COUNTY, NEVADA

TON VINH LEE, an individual,

Plaintiff,

v.

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

Defendants.

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

**DEFENDANT, INGRID PATIN'S OFFER
OF JUDGMENT TO PLAINTIFF**

TO: TON VINH LEE, Plaintiff; and

TO: PRESCOTT JONES, ESQ. of RESNICK & LOUIS, P.C., Attorney for Plaintiff.

Pursuant to Rule 68 of the N.R.C.P., Defendant, INGRID PATIN, hereby offers to allow judgment to be taken in her favor, only, and against Plaintiff, TON VINH LEE, in the above-entitled matter in the total amount of ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00), inclusive of all accrued interest, costs, and attorney fees, and any other sums that could be claimed by Defendant, INGRID PATIN, against Plaintiff, TON VINH LEE, in the above-captioned action.

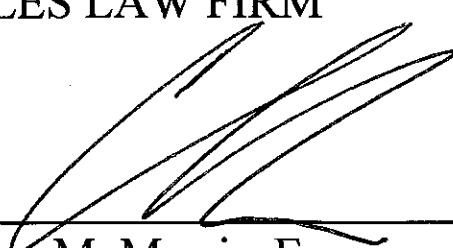
Pursuant to Rule 68 of the N.R.C.P., this offer shall be open for a period of ten (10) days from the date of service of this Offer. In the event this Offer of Judgment is accepted by Plaintiff, TON VINH LEE, Defendant, INGRID PATIN, will elect to pay the amount offered here within a

1 reasonable time and obtain a dismissal of the claim as provided by N.R.C.P. 68(d), rather than to
2 allow judgment to be entered against Defendant, INGRID PATIN.

3 This Offer of Judgment is made solely for the purposes intended by N.R.C.P. 68 and is
4 not to be construed as an admission in any form, shape or manner that Defendant, INGRID
5 PATIN, is liable for any of the allegations made by Plaintiff in the Complaint. Nor is it an
6 admission that Plaintiff is entitled to any relief, including, but not limited to, an award of
7 damages, attorney's fees, costs or interest and is nullified by any such award.

8 DATED this 19th day of January, 2017.

9 NETTLES LAW FIRM

10
11 
12 Christian M. Morris, Esq.
13 Nevada Bar No. 011218
14 1389 Galleria Drive, Suite 200
15 Henderson, NV 89014
16 *Attorneys for Defendant, Ingrid Patin*
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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 19 day January, 2017, I served the foregoing **DEFENDANT, INGRID PATIN'S OFFER OF JUDGMENT TO PLAINTIFF** to the following parties by electronic transmission through the Wiznet system:

Resnick & Louis		
	Contact	Email
	Coreene Drose	cdrose@rlattorneys.com
	Lisa Bell	lbell@rlattorneys.com
Resnick & Louis, P.C.		
	Contact	Email
	Prescott Jones	pjones@rlattorneys.com


An Employee of NETTLES LAW FIRM



SUPP
RESNICK & LOUIS, P.C.
PRESCOTT JONES
Nevada Bar No. 11617
pjones@rlattorneys.com
MYRALEIGH A. ALBERTO
Nevada Bar No. 14340
malberto@rlattorneys.com
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
Attorneys for Plaintiff,
Ton Vinh Lee

DISTRICT COURT
CLARK COUNTY, NEVADA

TON VINH LEE,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-15-723134-C

DEPT: 26

**PLAINTIFF TON VINH LEE'S
SUPPLEMENTAL OPPOSITION TO
DEFENDANT PATIN LAW GROUP'S
MOTION FOR ATTORNEYS' FEES
AND INTEREST**

COMES NOW, Plaintiff TON VINH LEE, by and through his attorneys of record,
PRESCOTT T. JONES, ESQ. and MYRALEIGH A. ALBERTO, ESQ. of the law firm of
RESNICK & LOUIS, P.C., hereby submits this SUPPLEMENTAL OPPOSITION TO
DEFENDANT PATIN LAW GROUP'S MOTION FOR ATTORNEYS' FEES AND
INTEREST.

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///

This Supplement and the original Opposition are based upon the papers and pleadings on file with the Court, the exhibits attached hereto, the following Memorandum of Points and Authorities, and any oral argument the Court may entertain at the hearing on this matter.

DATED this 3rd day of February, 2021.

RESNICK & LOUIS, P.C.

/s/ Myraleigh A. Alberto

PRESCOTT JONES
Nevada Bar No. 11617
MYRALEIGH A. ALBERTO
Nevada Bar No. 14340
8925 W. Russell Road, Suite 220
Las Vegas, NV 89148
Attorneys for Plaintiff,
Ton Vinh Lee

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I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct to the best of my knowledge, memory, and understanding.

DATED this 3rd day of February, 2021.

/s/ Ton Vinh Lee

Ton Vinh Lee

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL ARGUMENT

A. Defendant Patin Law Group is Not Entitled to Attorney's Fees, Costs, and Interest Pursuant to NRCP 68 Because Plaintiff Beat Defendant's Offer of Judgment, Which Was Inclusive of Attorney Fees

Defendant argues that it is entitled to attorneys' fees, costs, and interest pursuant to NRCP 68(f), which states:

(f) Penalties for Rejection of Offer.

(1) In General. If the offeree rejects an offer and fails to obtain a more favorable judgment:

(A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

(B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

On January 26, 2017, Defendant Patin Law group served an Offer of Judgment ("OOJ") in the amount of "ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00), **inclusive of all accrued interest, costs, and attorney fees**, and any other sums that could be claimed by Defendant, PATIN LAW GROUP, PLLC, against Plaintiff, TON VINH LEE, in the above-captioned action." (emphasis added). **See Exhibit A.** Plaintiff allowed Defendant's OOJ to expire, effectively rejecting the OOJ.

By March 17, 2016, Dr. Lee had spent at least \$10,000.00 on attorney fees in this litigation, which far exceeds Defendant Patin Law Group's \$1,000.00 OOJ. Upon retaining counsel for this litigation, Dr. Lee paid an initial retainer of \$10,000.00 prior to filing his August 17, 2015, Complaint. By March 17, 2016, the initial \$10,000.00 retainer had been depleted by attorney fees. As a result, Dr. Lee deposited an additional \$10,000.00 to his retainer account on March 17, 2016 for this litigation. Defendant Patin Law Group's \$1,000.00 OOJ is

1 clear that it is inclusive of attorney fees. Accordingly, Defendant Patin Law Group is not
2 entitled to an award of attorney fees because its OOJ did not present a more favorable outcome
3 for Dr. Lee based on the amount he has spent in attorney fees alone.

4 **III.**

5 **CONCLUSION**

6 For the reasons set forth in this Supplemental Opposition, Defendant Patin Law Group is
7 not entitled to an award of attorneys' fees, costs, and interest. Accordingly, Plaintiff
8 respectfully requests that this Court deny Defendant Patin Law Group's Motion for Attorneys'
9 Fees and Interest.

10 DATED this 3rd day of February, 2021.

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

12 */s/ Myraleigh A. Alberto*

13 _____
14 PRESCOTT JONES
15 Nevada Bar No. 11617
16 MYRALEIGH A. ALBERTO
17 Nevada Bar No. 14340
18 8925 W. Russell Road, Suite 220
19 Las Vegas, NV 89148
20 *Attorneys for Plaintiff,*
21 *Ton Vinh Lee*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **PLAINTIFF TON VINH LEE'S SUPPLEMENTAL OPPOSITION TO DEFENDANT PATIN LAW GROUP'S MOTION FOR ATTORNEYS' FEES AND INTEREST** was served this 3rd day of February, 2021, by:

- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.
- ☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.
- ☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

Christian M. Morris, Esq.
NETTLES MORRIS
1389 Galleria Dr., Suite 200
Henderson, NV 89014
Attorney for Defendant Ingrid Patin

Kerry J. Doyle, Esq.
DOYLE LAW GROUP
7375 S. Pecos Rd., #101
Las Vegas, NV 89120
Attorney for Defendant Patin Law Group, PLLC

/s/ Susan Carbone

An Employee of Resnick & Louis, P.C.

EXHIBIT “A”

OFFER

PAUL E. LARSEN

Nevada Bar No. 003756

JEREMY J. THOMPSON

Nevada Bar No. 012503

MORRIS POLICH & PURDY LLP

3800 Howard Hughes Pkwy, Suite 500

Las Vegas, NV 89169

Telephone: (702) 862-8300

Facsimile: (702) 862 -- 8400

plarsen@mpplaw.com

jthompson@mpplaw.com

Attorneys for Patin Law Group, PLLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TON VIN LEE, an individual,

Plaintiff,

v.

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

Defendants.

Case No: A723134

Dept. No: IX

**DEFENDANT PATIN LAW
GROUP, PLLC'S OFFER OF
JUDGMENT TO PLAINTIFF**

TO: TON VINH LEE, Plaintiff; and

TO: PRESCOTT JONES, ESQ. of RESNICK & LOUIS, P.C., Counsel for Plaintiff.

Pursuant to Rule 68 of the N.R.C.P., Defendant, PATIN LAW GROUP, PLLC, hereby offers to allow judgment to be taken in her favor, only, and against Plaintiff, TON VINH LEE, in the above-entitled matter in the total amount of ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00), inclusive of all accrued interest, costs, and attorney fees, and any other sums that could be claimed by Defendant, PATIN LAW GROUP, PLLC, against Plaintiff, TON VINH LEE, in the above-captioned action.

1 Pursuant to Rule 68 of the N.R.C.P., this offer shall be open for a period of ten (10) days
2 from the date of service of this Offer. In the event this Offer of Judgment is accepted by Plaintiff
3 TON VINH LEE, Defendant, PATIN LAW GROUP, PLLC, will elect to pay the amount offered
4 here within a reasonable time and obtain a dismissal of the claim as provided by N.R.C.P. 68(d),
5 rather than to allow judgment to be entered against Defendant, PATIN LAW GROUP, PLLC.

6 This Offer of Judgment is made solely for the purposes intended by N.R.C.P. 68 and is
7 not to be construed as an admission in any form, shape or manner that Defendant, PATIN LAW
8 GROUP, PLLC, is liable for any of the allegations made by Plaintiff in the Complaint. Nor is it
9 an admission that Plaintiff is entitled to any relief, including, but not limited to, an award of
10 damages, attorney's fees, costs or interest and is nullified by any such award.

11 DATED this 26 day of January, 2017.

12 MORRIS POLICH & PURDY LLP

13 
14 PAULE LARSEN

15 Nevada Bar No. 003756

16 JEREMY J. THOMPSON

17 Nevada Bar No. 012503

18 MORRIS POLICH & PURDY LLP

19 3800 Howard Hughes Pkwy, Suite 500

20 Las Vegas, NV 89169

21 Telephone: (702) 862-8300

22 Facsimile: (702) 862 -- 8400

23 plarsen@mpplaw.com

24 jthompson@mpplaw.com

25 Attorneys for Patin Law Group, PLLC
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 26 day
January, 2017, I served the foregoing **DEFENDANT PATIN LAW GROUP, PLLC'S OFFER
OF JUDGMENT TO PLAINTIFF** to the following parties by electronic transmission through
the Wiznet system:

Resnick & Louis

Contact

Email

Coreene Drose

cdrose@rlattorneys.com

Lisa Bell

lbell@rlattorneys.com

Resnick & Louis, P.C.

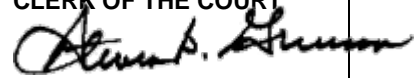
Contact

Email

Prescott Jones

pjones@rlattorneys.com


Attorney of MORRIS POLICH & PURDY LLP



NEOJ
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@nettlesmorris.com
Attorney for Defendant, Ingrid Patin

**DISTRICT COURT
CLARK COUNTY, NEVADA**

TON VINH LEE, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-15-723134-C
DEPT NO.: 26

**NOTICE OF ENTRY OF DECISION
AND ORDER**

TO: ALL PARTIES; and
TO: THEIR RESPECTIVE ATTORNEYS:

PLEASE TAKE NOTICE that a Decision and Order was duly entered in the above-entitled matter on the 23rd day of April, 2021, a true and correct copy of said Decision and Order is attached hereto.

DATED this 23rd day of April, 2021.

NETTLES | MORRIS



CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 011218
Attorney for Defendant, Ingrid Patin

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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that on this 23rd day of April, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF DECISION AND ORDER** was served to the following parties by electronic transmission through the Odyssey eFileNV system and/or by depositing in the US Mail, postage prepaid, addressed as follows:

Kerry Doyle	kdoyle@doylelawgroupnv.com
Mikayla Hurtt	admin@doylelawgroupnv.com
Coreene Drose	cdrose@rlattorneys.com
Ingrid Patin	ingrid@patinlaw.com
Lisa Bell	lbell@rlattorneys.com
Prescott Jones	pjones@rlattorneys.com
Susan Carbone	scarbone@rlattorneys.com
Jessica Humphrey	jhumphrey@rlattorneys.com



An Employee of NETTLES | MORRIS

DAO

DISTRICT COURT
CLARK COUNTY, NEVADA

TON LEE,

Plaintiff(s)

vs

INGRID PATIN,

Defendant(s)

CASE NO.: A-15-723134-C

Department 26

DECISION AND ORDER

Plaintiff Ton Vinh Lee, DDS (Lee) filed the instant defamation action against attorney Ingrid Patin (Patin) and Patin Law Group PLLC (PLG) on August 17, 2015. The alleged defamatory statement was an online posting by Patin reporting the verdict in a wrongful death lawsuit filed against Plaintiff, the dental practice he owned at the time and individual dentists who treated the decedent. A verdict was initially entered in favor of the decedent's wife and child against the practice and individual dentist; Plaintiff in his individual capacity received a defense verdict, and the jury assessed 25% comparative negligence to the decedent.

The procedural history of both cases is discussed below, but the instant Motion is before the Court following Summary Judgment in favor of Patin and Patin Law Group. As prevailing party, Defendants Patin and PLG filed the motions currently before the Court each seeking fees and costs, pursuant to Offers of Judgment.

FACTS

On Feb. 7, 2012, a lawsuit was filed against Plaintiff, his dental practice, and two assisting dentists, alleging dental malpractice (underlying case). The jury awarded \$3.4million against the individual dentist and the dental practice. Lee received a verdict in his favor and was awarded his costs against Plaintiff Singletary. Patin Law Group, as counsel for the decedent Singletary's widow and minor child in the underlying lawsuit, posted a statement on its website about the winning verdict. Following the statement being posted, the district court granted a renewed motion for judgment as a matter of law, overturning the jury award. The defense verdict in favor of Lee was not affected. The web post was removed. After the jury award in favor of the Singletarys was overturned, an appeal was filed and the verdict in favor of the Singletarys was eventually reinstated by the Supreme Court.

Plaintiff Lee filed the instant defamation action against attorney Patin and Patin Law Group on August 17, 2015. The Defendants' motion to dismiss was denied, and that denial was appealed. Defendants then filed an Anti-SLAPP motion, which was also denied, and another appeal was filed as to that issue. This case was stayed in part pending the outcome of the appeals. The Appeal of the order denying the first Motion to Dismiss was eventually dismissed. The Supreme Court affirmed denial of the Anti-SLAPP motion in a published decision. See,

Patin v Lee, 134 Nev. Adv. Op. 87, 429 P. 3d 1248 (2018). On January 19, 2017, during the pendency of the appeals, Defendant Patin served an Offer of Judgement in the amount of \$1,000 “inclusive of all accrued interest, costs, and attorneys fees and *any other sums that could be claimed by Defendant...*” Thereafter, on January 26, 2017 codefendant PLG served its offer of judgement for \$1,000 with the same language: “inclusive of all accrued interest, costs, and attorneys fees and *any other sums that could be claimed by Defendant...*” These offers were not accepted and the litigation continued.

After the remittitur, Defendant Patin filed a Motion for Summary Judgment which this Court denied on the ground that genuine issues of material fact existed. Following a period of discovery, Defendant Ingrid Patin filed a Motion for Summary Judgment, which Patin Law joined. The Court granted the Motion for Summary Judgment finding that the statement on the website was a fair and impartial reporting of the facts of the underlying case, and that statements regarding judicial proceedings are protected against defamation by the fair reporting privilege. The Court found that there is no distinction under the fair reporting privilege between an individual and a corporation, and the privilege would apply to both Defendant Ingrid Patin individually and Patin Law Group. During Plaintiff’s sworn deposition testimony, Plaintiff admitted every sentence of the statement was true, but did not admit it was true in its entirety.

LEGAL ISSUES

1. Offer of Judgment

Patin and PLG each seek an award of attorney's fees pursuant to NRCP 68. The Nevada Supreme Court addressed the rules for considering a request for attorney's fees pursuant to an offer of judgment in *Wynn, v. Smith*, 117 Nev. 6, 16 P3d 424 (2001).

In exercising its discretion under [NRCP 68](#), the district court must carefully evaluate the following factors: (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendant's offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offer or are reasonable and justified in amount. *Beattie v. Thomas*, [99 Nev. 579, 588-89, 668 P.2d 268, 274 \(1983\)](#).¹

The court's goal in considering offers of judgment is predictability and fairness. Shifting fees and costs between parties is in derogation of common law, so application of the rule should be strictly construed. This includes meeting time deadlines and other formal requirements. *See, Quinlan, v. Camden USA, Inc.*, 126 Nev. Adv. Op. 30, 236 P.3d 613, 615 (2010, *citations omitted*) There is no question that the offers of judgment were timely served.

¹ *Beattie v Thomas* was decided under Nevada's former statutory offer of judgment provision NRS 17.115, but the analysis has been extended to offers pursuant to NRCP 68.

Defendants argue Plaintiff Lee's case was not brought in good faith. The Court does not agree, this matter was vigorously contested on a number of complex legal theories, with two appeals during the pendency of the litigation. Plaintiff argues that much of the motion practice regarding these legal issues was initiated by the Defendants, and when they lost, they pursued interim appeals, which they also lost. The initial Motions for Summary Judgment, brought before any discovery was conducted, were denied on the grounds that questions of fact existed. Next Defendants pursued an Anti-SLAPP defense, also denied, which was appealed as a matter of right, but again Defendants lost, but which resulted in a published decision as the case raised a question of first impression in Nevada. Only after discovery was concluded and Defendants filed another Motion for Summary Judgment did the Court find in favor of Defendants. For this reason, the Court finds Plaintiff Lee brought the case in good faith.

The next element addressed in *Wynn v Smith*, which is relevant to the issue herein, is whether the offers were reasonable in timing and amount. The Defendants' offers were made during the pendency of their appeal of the initial denial of their motions to dismiss. This appeal was not successful, thus Plaintiff Lee argues the timing was not reasonable as the offers were so early in the litigation, and at a point where Defendants had not been successful in

their efforts to dismiss the case. Further, Plaintiff argues he beat Defendants' Offers of Judgement, which were inclusive of attorney fees. The respective offers of the Defendants each in the amount of \$1,000 inclusive of interest, costs and attorney fees did not present a more favorable outcome for Plaintiff based on the amount he has spent in attorney fees alone. However, this analysis does not include the entirety of the language of the offers, which were not inclusive of *Plaintiff's* attorneys fees, but of the Defendants attorney's fees and "any other sums that could be claimed by Defendant... against Plaintiff." Considering the entirety of the language of the offer, the Court finds that the Offers of Judgement were reasonable in timing and amount, as Defendants had signaled they intended to vigorously litigate the legal issues presented in the defamation case.

The third factor is whether Plaintiff's decision to reject the offers was grossly unreasonable or in bad faith. Plaintiff argues that it was reasonable for him to reject the offers at the time they were made, when Defendants had unsuccessfully sought dismissal of the case before the trial court, and were facing dismissal of their appeal of that decision. The Court agrees that the offers were made early in the litigation, at a time when Plaintiff Lee was in a favorable position with respect to the then pending appeal. However, Plaintiff incorrectly analyzed the offer based on the amount of the offer being

insufficient amount to pay his fees and costs at the time, when the offers should have been analyzed in light of the risk to him of paying Defendants' fees and costs. This factor is a close call between the parties as Defendants' offers were very early in the case when they were not in a favorable position, but Plaintiff did not properly consider the risk to him if Defendants ultimately prevailed. While the Court does not find Plaintiff's incorrect analysis of the offers to be "in bad faith," his choice to reject the offers was "unreasonable," although not "grossly unreasonable." The purpose of the fee shifting provision of NRCP 68 is to encourage settlement, and Defendants offered Plaintiff an early opportunity to take judgment against them, when he rejected their offers he accepted the risk that he would be responsible for attorneys fees and "any other sums that could be claimed by Defendant... against Plaintiff." See, *In re Rose Miller*, Id., at 553.

The final element, reasonableness of the fees sought is analyzed under the "*Brunzell*" test established by the Nevada Supreme Court for analysis of attorney's fees awards.

2. Reasonableness of Attorney's Fees

In the event attorney's fees are awarded, the amount must be reasonable. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345 (Nev. 1969). The Court is

generally familiar with hourly billing rates in the local community for the type of litigation and finds that the rate charged by counsel is reasonable. The total amount of fees requested appears reasonable when evaluated under the four general categories defined in *Brunzell*: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed by the lawyer; and (4) the result.

The Supreme Court has held that the determination of “a reasonable fee” is subject to the discretion of the court “tempered only by reason and fairness.” See, *Schuetz, v. Beazer Homes*, 121 Nev. 837, 123 P.3d 530 (2005). By weighing the *Brunzell* factors “...the result will prove reasonable as long as the court provides sufficient reasoning and findings in support of its ultimate determination.” *Schuetz, Id.* at 864-865.

Here, counsel for both Defendants provided invoices based on hourly billing. While Plaintiff contends that the attorney fees sought are unreasonable, the qualities of the advocates were not challenged; instead the opposition focused on the reasonableness of the time billed, as well as was the work actually done pursuing motion practice or unsuccessful appeals. Plaintiff objects to the fees sought by PLG for attorney Micah Echols who handled the appeal of the denial of the Anti-SLAPP motion; the Motion and the Appeal were unsuccessful and Plaintiff argues added needlessly to the litigation. Plaintiff extends this argument

to fees sought by counsel for Defendant Patin. The Defendants argue that fees and costs incurred on *appeal can be awarded by the trial court. See, In re Estate and Living Trust of Rose Miller*, 125 Nev 550, 216 P.3d 239 (2009):

In other contexts, we have held that an attorney fees award includes fees incurred on appeal. *See Musso v. Binick*, 104 Nev. 613, 614, 764 P.2d 477, 477–78 (1988) (holding that “a contract provision for attorney’s fees includes an award of fees for *successfully bringing or defending an appeal*”). Additionally, nothing in the language of NRCP 68...suggests that their fee-shifting provisions cease operation when the case leaves trial court. We therefore hold that the fee-shifting provisions in NRCP 68...extend to fees incurred on and after appeal. *Id.*, at 555 (*emphasis added*)

Here, the issue raised by Plaintiff is not so much whether fees incurred by the successful party may include fees for an appeal, but whether it is *reasonable* to award fees where the party was unsuccessful on an interim appeal, although ultimately *successful* in the case. Anti-SLAPP motions are a creature of statute, and attorneys fees may be awarded against the party who brings an unsuccessful anti-SLAPP motion if it is found “frivolous or vexatious.” NRS 41.670 (2). No such finding was made in this case, and the Court notes that the anti-SLAPP appeal presented unique issues of law resulting in a published decision. This statutory provision factors into the analysis of the reasonableness of the fee request.

In *Rose Miller*, the Supreme Court noted that it had held, in the context of an award of fees based on fee provision in a contract, that fees for “successful” defense of an appeal could be recovered, but that the question was better left to the

trial court to determine. See, *Musso v. Binick*, 104 Nev. 613, 614. *Rose Miller* was an offer of judgment case wherein a jury verdict in favor of Respondents was overturned on appeal, and as a result they ultimately failed to recover a verdict more favorable than that offered by the Appellant, the Supreme Court determined that upon remand to the District Court should have awarded fees for the *successful* appeal. Id, 125 Nev. at 552.

The Court will consider the reasonableness of the fee request in light of the *Brunzell* factors: the character of the work, the work actually performed, and the result. These same rules apply to those fees incurred for the *unsuccessful* appeals.

Patin Law Group PLLC: PLG requested attorney's fees for attorney Kerry Doyle for the defense of the case in the District Court from September 5, 2019 through the successful Summary Judgment Motion. Attorney Doyle's fees are all related to the post-appeal phase of the litigation, and appear reasonable for the tasks described. The rate of \$400 is reasonable in the community for an attorney of Mr. Doyle's expertise.

The Defendants had separate counsel because the interests of the corporate entity PLG and the individual, attorney Patin, were separate, therefore, the court does not find unnecessary duplication of effort as both counsel attended depositions and appeared at hearings. The attorney's fees billed by Mr. Doyle of \$10, 200 are reasonable in light of the *Brunzell* factors.

PLG retained separate counsel to handle the unsuccessful appeal of the denial of anti-SLAPP motion, attorney Micah Echols an appellate specialist. As mentioned, the anti-SLAPP issue presented a question of first impression with respect to the Nevada statute and resulted in a published decision; however, the same reasonableness factors must be applied to both the district court fees and the appellate fees. Anti-SLAPP motions involve a sophisticated and complex area of litigation; however, Plaintiff argues pursuing the issue was unreasonable and the Defendants were unsuccessful. The anti-SLAPP statute provides that attorney's fees are recoverable against a party who pursues a frivolous or vexatious motion. Further, the party whose anti-SLAPP motion is denied is entitled to an appeal as a matter of right. NRS 41.670 (4). The unique nature of the anti-SLAPP statutes factor into the consideration of whether the "result" of an unsuccessful anti-SLAPP motion and appeal should be considered to be unreasonable in a *Brunzell* analysis.

Mr. Echols billing records consist of block billed entries. In considering an award of attorney's fees where counsel block billed time, the Nevada Supreme Court has held that practice is not necessarily inappropriate so long as each entry is sufficiently detailed that the nature of the tasks billed can be determined. See, *In re Margaret Mary Adams 2006 Trust*, Case No. 61710, March 2015 (unpublished). Here, billing entries are sufficiently detailed such that, when read in context with other entries, the court can determine what tasks were performed. As a specialist

in appellate practice the hourly fee of \$500 is not unreasonable. Given the nature of the issue, it was not unreasonable to retain separate counsel for the appeal, but the Court cannot overcome the fact that the “result” of the appeal was not in Defendants’ favor. For this reason the Court finds the fees billed for the unsuccessful appeal do not satisfy the Brunzell factors, and will not be awarded. The requested costs are addressed below.

Ingrid Patin: Attorney Patin had separate counsel, Christian Morris, who represented the Defendant throughout the litigation including both appeals. Ms. Morris submitted detailed time sheets which separated pre offer of judgment hours from the post offer time. Reviewing the time sheets the Court finds no clearly identifiable post offer billing entries related to the first unsuccessful appeal, additionally most of the billing at the District Court level on the special motion to dismiss pursuant to NRS 41.635-70 (anti-SLAPP motion) pre dates the offer. Ms. Morris’ post offer billing entries detail approximately 16 hours clearly related to the anti-SLAPP appeal. Ms. Morris’ billing rate is \$500 per hour, more than reasonable given her expertise. The Court does not find the time billed for the other motion practice at the District Court level to have been unreasonable, even though the first Summary Judgment motion was denied given questions of fact at the early stage of the litigation. Generally time billed during the discovery phase seems does not appear to have been overly duplicative as both attorney Patin and

PLG had separate counsel and separate interests to defend. The post offer time billed by Ms. Morris totals 217 hours, the Court will round this down to 200 hours after deducting hours related to the unsuccessful anti-SLAPP appeal. The Court will award Ms. Morris \$100,000 attorneys fees, plus costs as discussed below.

3. Costs

The Nevada Supreme Court has held that pursuant to NRCP 68(f)(2) a party who fails to improve upon a rejected offer of judgment “...*shall pay the offeror’s post-offer costs ...and reasonable attorney’s fees, if any be allowed, actually incurred by the offeror from the time of the offer....*” See, *Logan v Abe*, 131 Nev. 260, 264-265, 350 P.3d 1139 (2015) (*Emphasis original*) Based on this language the award of costs is mandatory, while the award of attorneys fees must go through the reasonableness analysis.

Allowable costs are defined by NRS 18.005. The determination of allowable costs is within the discretion of the district court. *Gibellini v Klindt*, 110 Nev. 1201, 1205 885 P2d 540, 542-543 (Nev. 1994) However, statutes permitting costs are in derogation of the common law and therefore should be strictly construed. *Id.* The district court has courts wide, but not unlimited, discretion to award costs to prevailing parties. Cost must be documented such that the court can determine the costs were reasonable necessary and actually incurred. See, *Cadle Co., v. Woods Erickson LLP*, 131 Nev. 114, 120, 345 P.3d 1049 (2015)

Here, attorney Morris provided detailed documentation for the costs incurred, in the form of a Memorandum of Costs, affidavit of counsel stating the costs were true and correct, and necessarily incurred, and attached supporting documentation for each item except in house copy costs. However, only post-offer costs may be awarded so costs related to the initial filings and first appeal must be deducted. The deductions are: \$353.69 for filing fees, \$230 for Supreme Court filing fees, and \$500 Supreme Court Appeal Bond. Costs for the second appeal, even though unsuccessful, are recoverable under NRS 18.005 and NRS 68. It is not possible to differentiate how much of the copy costs line items were incurred prior to the offer of judgment; however, the total number of pages (812) over five years of litigation at twenty five cents per page is de minimis.

The billing statement provided by Mr. Echols from his former law firm does not include any supporting documentation provided for the costs on appeal, most of which are related to travel for the appellate argument, and Westlaw charges. The Court assumes the amounts recorded are correct; however, *Cadle* requires that the Court base an award of costs on evidence. Here, Mr. Echols has provided an affidavit that the costs incurred are accurate, but the information provided does not meet the requirements of *Cadle*.

CONCLUSION

With this guidance in mind, the court has reviewed the fees to determine whether the fees requested satisfy the reasonableness requirements of Brunzell. The Court finds that sufficient information is present upon which to evaluate the reasonableness of the claim for attorneys' fees under *Brunzell*. The Court finds that fees paid to Mr. Doyle by Patin Law Group are recoverable, but the fees and costs requested for the unsuccessful appeal billed by Mr. Echols are not reasonable, and cannot be recovered; further, absent appropriate documentation for costs, the costs must also be denied. The fee requests for Ms. Morris as adjusted for the unsuccessful appeal are recoverable, and the post offer costs are sufficiently documented to be recoverable.

WHEREFORE, the Patin Law Group, PLLC Motion for an Award of Fees and Costs is **GRANTED** in part pursuant to NRCP 68 as to the \$10,200 for fees paid to Mr. Doyle, and **DENIED** as to the fees and costs paid to Mr. Echols former law firm.

FURTHER, Defendant Ingrid Patin's Motion for an Award of Fees and Costs is **GRANTED** pursuant to NRCP 68 as to attorney's fees paid to Ms. Morris

in the amount of \$100,000, and **GRANTED** as to post offer costs in the amount of \$10,600 pursuant to NRCP 68 and NRS 18.005.

IT IS SO ORDERED

DATED: April 20, 2021

Dated this 21st day of April, 2021



D7A 7E7 92BB 91AE
Gloria Sturman
District Court Judge

Counsel for defendant to prepare a Notice of Entry.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Ton Lee, Plaintiff(s)

CASE NO: A-15-723134-C

7 vs.

DEPT. NO. Department 26

8 Ingrid Patin, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/21/2021

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

16 "Jeremy J. Thompson, Esq." . jthompson@mpplaw.com

17 "Paul E Larsen, Esq." . plarsen@mpplaw.com

18 Coreene Drose . cdrose@rlattorneys.com

19 Cristina Robertson . crobertson@mpplaw.com

20 Debbie Surowiec . dsurowiec@mpplaw.com

21 Ingrid Patin . ingrid@patinlaw.com

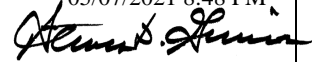
22 Jenn Alexy . jenn@nettleslawfirm.com

23 Joyce Ulmer . julmer@mpplaw.com

24 Lisa Bell . lbell@rlattorneys.com

25 Nancy C. Rodriguez . nrodriguez@mpplaw.com

1	Prescott Jones .	pjones@rlattorneys.com
2	Christian Morris	christian@nettlesmorris.com
3	Tori Allen	victoria@nettlesmorris.com
4	Kerry Doyle	kdoyle@doylelawgroup.lv.com
5	Mikayla Hurtt	admin@doylelawgroup.lv.com
6	Emily Arriviello	emily@nettlesmorris.com
7	Myraleigh Alberto	malberto@rlattorneys.com
8	Brittany Willis	bwillis@rlattorneys.com
9	Susan Carbone	Scarbone@rlattorneys.com
10	Jessica Humphrey	Jhumphrey@rlattorneys.com
11	Melanie Herman	mail@rlattorneys.com
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CLERK OF THE COURT

RESNICK & LOUIS, P.C.
PRESCOTT JONES
Nevada Bar No. 11617
pjones@rlattorneys.com
MYRALEIGH A. ALBERTO
Nevada Bar No. 14340
malberto@rlattorneys.com
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
Attorneys for Plaintiff,
Ton Vinh Lee

DISTRICT COURT
CLARK COUNTY, NEVADA

TON VINH LEE,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-15-723134-C

DEPT: 26

**ORDER SHORTENING TIME ON
PLAINTIFF TON VINH LEE'S
MOTION FOR RECONSIDERATION,
or in the alternative, MOTION TO
ALTER OR AMEND JUDGMENT
PURSUANT TO NRCP 59(e)**

ORDER SHORTENING TIME

GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED, that the time
for the hearing on **PLAINTIFF TON VINH LEE'S MOTION FOR RECONSIDERATION,**
or in the alternative, MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO
NRCP 59(e), ON ORDER SHORTENING TIME be shortened to the 19th day of
MAY, 2021, at the hour of 9:00AM, in Department 26 of
the Eighth Judicial District Court.

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IT IS SO ORDERED.

Dated this _____ day of _____, 2021.

Dated this 7th day of May, 2021



DISTRICT COURT JUDGE
788 1E3 B931 41EA
Gloria Sturman
District Court Judge

Respectfully submitted by:

RESNICK & LOUIS, P.C.

Bluejeans Videoconference Link:
Telephone: 1.408.419.1715 with the meeting ID
387 099 146 or through the URL at
https://bluejeans.com/387099146?src=join_info

/s/ Myraleigh A. Albert
PRESCOTT JONES
Nevada Bar No. 11617
pjones@rlattorneys.com
MYRALEIGH A. ALBERTO
Nevada Bar No. 14340
malberto@rlattorneys.com
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
Attorneys for Plaintiff,
Ton Vinh Lee

1 **DECLARATION OF MYRALEIGH A. ALBERTO, ESQ. IN SUPPORT OF PLAINTIFF**
2 **TON VINH LEE’S MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE,**
3 **MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 59(e), ON**
4 **ORDER SHORTENING TIME**

5 1. I am over eighteen (18) year of age, and competent to testify, and if called upon, I
6 would testify to the facts set forth in this Declaration.

7 2. I am an attorney at the law firm of Resnick & Louis, P.C., am counsel of record
8 for Plaintiff Ton Vinh Lee, and have personal knowledge of the paper and pleadings on file
9 herein as well as the information contained below.

10 3. I make this Declaration in support of Plaintiff Ton Vinh Lee’s Motion for
11 Reconsideration, or in the alternative, Motion to Alter or Amend Judgment Pursuant to NRCP
12 59(e), on Order Shortening Time (“Motion”).

13 4. On April 23, 2021, the Court issued its Notice of Entry of Decision and Order on
14 Defendants’ Motions for Attorney Fees and Costs pursuant to NRCP 68 (“Decision and Order”).

15 5. Plaintiff Ton Vinh Lee wishes to appeal the Court’s April 23, 2021, Decision and
16 Order.

17 6. Nevada Rule of Appellate Procedure (“NRAP”) 4(a) provides that a Notice of
18 Appeal must be filed no later than thirty (30) days after the date that written notice of entry of
19 judgment or order is served.

20 7. Pursuant to NRAP 4(a), Plaintiff’s deadline to file a Notice of Appeal is May 23,
21 2021.

22 8. Plaintiff submits this Motion for Reconsideration, or in the alternative, Motion to
23 Alter or Amend Judgment Pursuant to NRCP 59(e), on Order Shortening Time in order to have
24 the Motion heard prior to his deadline to file the Notice of Appeal.

25 9. This Motion is brought in good faith and with good cause.

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1 I declare under penalty of perjury under the laws of the State of Nevada that the
2 foregoing is true and correct.

3 DATED this 7th day of May, 2021.

4 /s/ Myraleigh A. Alberto

5 MYRALEIGH A. ALBERTO, ESQ.

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1 **CSERV**

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Ton Lee, Plaintiff(s)

CASE NO: A-15-723134-C

7 vs.

DEPT. NO. Department 26

8 Ingrid Patin, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/7/2021

15 "Christian M. Morris, Esq." .

christianmorris@nettleslawfirm.com

16 "Jeremy J. Thompson, Esq." .

jthompson@mpplaw.com

17 "Paul E Larsen, Esq." .

plarsen@mpplaw.com

18 Coreene Drose .

cdrose@rlattorneys.com

19 Cristina Robertson .

crobertson@mpplaw.com

20 Debbie Surowiec .

dsurowiec@mpplaw.com

21 Ingrid Patin .

ingrid@patinlaw.com

22 Jenn Alexy .

jenn@nettleslawfirm.com

23 Joyce Ulmer .

julmer@mpplaw.com

24 Lisa Bell .

lbell@rlattorneys.com

25 Nancy C. Rodriguez .

nrodriguez@mpplaw.com

1	Prescott Jones .	pjones@rlattorneys.com
2	Christian Morris	christian@nettlesmorris.com
3	Tori Allen	victoria@nettlesmorris.com
4	Kerry Doyle	kdoyle@doylelawgroup.lv.com
5	Mikayla Hurtt	admin@doylelawgroup.lv.com
6	Emily Arriviello	emily@nettlesmorris.com
7	Myraleigh Alberto	malberto@rlattorneys.com
8	Brittany Willis	bwillis@rlattorneys.com
9	Susan Carbone	Scarbone@rlattorneys.com
10	Jessica Humphrey	Jhumphrey@rlattorneys.com
11	Melanie Herman	mail@rlattorneys.com
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1 **RESNICK & LOUIS, P.C.**
2 PRESCOTT JONES
3 Nevada Bar No. 11617
4 pjones@rlattorneys.com
5 MYRALEIGH A. ALBERTO
6 Nevada Bar No. 14340
7 malberto@rlattorneys.com
8 8925 W. Russell Road, Suite 220
9 Las Vegas, Nevada 89148
10 Telephone: (702) 997-3800
11 Facsimile: (702) 997-3800
12 *Attorneys for Plaintiff,*
13 *Ton Vinh Lee*

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

12
13 TON VINH LEE,
14
15 Plaintiff,
16 v.

17 INGRID PATIN, an individual, and PATIN
18 LAW GROUP, PLLC, a Nevada Professional
19 LLC,
20
21 Defendants.

CASE NO.: A-15-723134-C

DEPT: 26

**PLAINTIFF TON VINH LEE'S
MOTION FOR RECONSIDERATION,
or in the alternative, MOTION TO
ALTER OR AMEND JUDGMENT
PURSUANT TO NRCP 59(e)**

(HEARING REQUESTED)

22 PLAINTIFF TON VINH LEE, by and through his counsel of record, Prescott T. Jones,
23 Esq. and Myraleigh A. Alberto, Esq. of the law firm of Resnick and Louis, P.C., hereby submits
24 this Motion for Reconsideration, or in the alternative, Motion to Alter or Amend Judgment
25 Pursuant to NRCP 59(e) ("Motion").
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1 This Motion is based upon the papers and pleadings on file with the Court, the exhibits
2 attached hereto, the following Memorandum of Points and Authorities, and any oral argument
3 the Court may entertain at the hearing on this Motion.

4 DATED this 7th day of May, 2021.

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

6
7 By: /s/ Myraleigh A. Alberto
8 PRESCOTT T. JONES, ESQ.
9 State Bar Number 11617
10 pjones@rlattorneys.com
11 MYRALEIGH A. ALBERTO, ESQ.
12 State Bar Number 14340
13 malberto@rlattorneys.com
14 8925 W. Russell Road, Suite 220
15 Las Vegas, NV 89148
16 Telephone: (702) 997-3800
17 Facsimile: (702) 997-3800
18 Attorneys for Plaintiff Ton Vinh Lee
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ton Vinh Lee (“Plaintiff” or “Dr. Lee”) hereby files this Motion for
4 Reconsideration and Motion to Alter or Amend Judgment respectfully requesting that the Court
5 reconsider, or alter or amend its April 23, 2021, Order (“Order”) granting Defendant Ingrid Patin
6 and Defendant Patin Law Group, PLLC’s (“PLG”) respective motions for attorney fees and costs
7 pursuant to Nevada Rule of Civil Procedure (“NRCPP”) 68. In its Order, the Court found that
8 Plaintiff did not obtain a more favorable outcome than the Defendants’ offers of judgment, and
9 that the Defendants’ offers of judgment were reasonable in timing and amount, such that
10 Defendants should be awarded fees and costs pursuant to NRCPP 68.

11 Plaintiff respectfully submits this Motion on the grounds that the Court erred in finding
12 that Plaintiff did not obtain a more favorable outcome than the Defendants’ offers of judgment
13 because the Court did not apply the complete analysis required by NRCPP 68(g). Application of
14 the complete NRCPP 68(g) analysis results in a different result than what was provided in the
15 Court’s April 23, 2021, Order.

16 NRCPP 68(g) requires Courts to compare (1) the outcome of a litigation, with (2) the
17 amount of an offer of judgment, together with the offeree’s pre-offer taxable costs, expenses,
18 interest, and attorney fees (if attorney fees are permitted by law or contract). Here, Plaintiff is the
19 offeree who was served with Defendants’ offers of judgment. The total amount of the
20 Defendants’ offers of judgment were less than the fees, costs, interest, and expenses of Plaintiff.
21 As a result, the total amount of Defendants’ offers of judgment were in the negative. Offers in
22 negative amounts are not offers at all, and therefore, are invalid. An invalid offer of judgment
23 cannot provide a proper basis for an award of attorney fees and costs. Edwards Indus., Inc. v.
24 DTE/ BTE, Inc., 112 Nev. 1025, 1035, 923 P.2d 569, 575 (1996). However, even if this Court
25 deems Defendants’ negative offers of judgment valid, Plaintiff still obtained a more favorable
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1 result by rejecting Defendants' offers of judgment based on the amount of Plaintiff's pre-offer
2 attorney fees alone.

3 **A. Procedural History**

4 On August 17, 2015, Plaintiff filed suit against Defendant Patin and Defendant PLG on
5 the grounds that Defendants published on their website (patinlaw.com) a false and defamatory
6 statement that identifies Plaintiff by name and incorrectly asserts that the Defendants' former
7 client obtained a \$3.4 million jury verdict against Dr. Lee ("Statement"). Dr. Lee's Complaint
8 asserted defamation *per se*, claiming that the Statement as a whole was false, defamatory, and
9 imputed to Dr. Lee a lack of fitness in his profession as dentist and as a business owner.

10 After filing a total of four dispositive motions, on January 19, 2017, Defendant Patin
11 served Plaintiff with an Offer of Judgment in the amount of one thousand dollars (\$1,000.00),
12 "inclusive of all accrued interest, costs, and attorney fees, and any other sums that could be
13 claimed by Defendant, INGRID PATIN, against Plaintiff, TON VINH LEE." **Exhibit A**
14 (Defendant Patin's January 19, 2017, Offer of Judgment).

15 On January 26, 2017, Defendant PLG served Plaintiff with an Offer of Judgment in the
16 amount of one thousand dollars (\$1,000.00), also "inclusive of all accrued interest, costs, and
17 attorney fees, and any other sums that could be claimed by Defendant, PATIN LAW GROUP,
18 against Plaintiff, TON VINH LEE." **Exhibit B** (Defendant PLG's January 26, 2017, Offer of
19 Judgment).

20 On August 7, 2020, Defendant filed her Motion for Judgment on the Pleadings, or in the
21 Alternative, Motion for Summary Judgment, which was the eighth dispositive motion filed by
22 the Defendants in this litigation. The Court granted this the August 7, 2020, motion following
23 oral argument on September 15, 2020.

24 On November 29, 2020, Defendant Ingrid Patin filed her Motion for Attorneys' Fees,
25 Costs, and Interest pursuant to NRS 18.020(3) and NRCP 68. Defendant Patin Law Group filed
26 its Motion for Attorneys' Fees and Interest pursuant to NRCP 68 on the same day.
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1 On April 23, 2021, the Court issued its Notice of Entry of Decision and Order granting,
2 in part, Defendant Ingrid Patin's Motion for Attorneys' Fees, Costs, and Interest, and Defendant
3 Patin Law Group's Motion for Attorneys' Fees and Interest, both pursuant to NRCP 68. For the
4 reasons set forth below, Plaintiff now requests that the Court reconsider, or alter or amend this
5 judgment.

6 **II. LEGAL STANDARD**

7 **A. Legal Standard for Motion for Reconsideration**

8 ECDR 2.24 permits parties to move for reconsideration of the Court's order:

9 (a) No motions once heard and disposed of may be renewed in the same
10 cause, nor may the same matters therein embraced be reheard, unless by leave of
11 the court granted upon motion therefor, after notice of such motion to the adverse
parties.

12 (b) **A party seeking reconsideration of a ruling of the court, other than**
13 **any order that may be addressed by motion pursuant to NRCP 50(b), 52(b),**
14 **59 or 60, must file a motion for such relief within 14 days after service of**
15 **written notice of the order or judgment** unless the time is shortened or enlarged
16 by order. A motion for rehearing or reconsideration must be served, noticed, filed
and heard as is any other motion. A motion for reconsideration does not toll the
period for filing a notice of appeal from a final order or judgment.

15 (c) If a motion for rehearing is granted, the court may make a final
16 disposition of the cause without reargument or may reset it for reargument or
resubmission or may make such other orders as are deemed appropriate under the
circumstances of the particular case.

17 (emphasis added). Pursuant to EDCR 2.24(b), a motion for reconsideration must be filed within
18 14 days after service of the court's notice of the order. Here, the Order in question was filed on
19 April 23, 2021, and as a result, the instant Motion is timely.

20 "A district court may reconsider a previously decided issue if substantially different
21 evidence is subsequently introduced or the decision is clearly erroneous." Masonry and Tile
22 Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741, 941 P.2d 486,
23 489 (1997). A court may exercise its discretion to revisit and reverse a prior ruling if one of five
24 circumstances is present. See U.S. v. Real Prop. Located at Incline Vill., 976 F. Supp. 1327,
25 1353 (D. Nev. 1997). Those circumstances are: (1) a clearly erroneous prior ruling, (2) an
26 intervening change in controlling law, (3) substantially different evidence, (4) 'other changed
27 circumstances,' and (5) that 'manifest injustice' would result were the prior ruling permitted to
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stand. Id. Further, reconsideration is proper where “the Court has overlooked or misapprehended a material matter” or “in such other circumstances as will promote substantial justice.” In Re: Dunleavy, 104 Nev. 784, 769 P.2d 1271 (1988).

Here, Plaintiff respectfully asserts that the Court erred in determining that Plaintiff failed to obtain a more favorable outcome than Defendants’ offers of judgment because it did not apply the complete analysis required by NRCP 68(g). Accordingly, Plaintiff requests, that the Court reconsider its April 23, 2021, Order granting Defendants’ motions for attorney fees and costs due the grounds set forth below.

B. Legal Standard for Motion to Alter or Amend Judgment Pursuant to NRCP 59(e)

NRCP 59(e) permits parties to move to alter or amend a judgment on a motion, within 28 days after service of written entry of judgment. Here, the Order in question was filed on April 23, 2021, and as a result, the instant Motion is timely. Additionally, pursuant to NRAP 4(C), a motion filed under Rule 59 to alter or amend a judgment will toll the time to file a notice of appeal until 30 days after entry of an order disposing such motion.

NRCP 59(e) echoes Fed. R. Civ. P. 59(e), and this Court may consult federal law in interpreting it. See AA Primo Builders, LLC v. Washington, 126 Nev. 578, 582 (2010); Coury v. Robison, 115 Nev. 84, 91 n.4, 976 P.2d 518, 522 n.4 (1999).

Because its terms are so general, Federal Rule 59(e) ‘has been interpreted as permitting a motion to vacate a judgment rather than merely amend it,’ and as ‘cover[ing] a broad range of motions, [with] the only real limitation on the type of motion permitted [being] that it must request a substantive alteration of the judgment, not merely correction of a clerical error, or relief of a type wholly collateral to the judgment.’

Id. (internal citations omitted). Among the “basic grounds” for a Rule 59(e) motion are (1) “correct[ing] manifest errors of law or fact,” (2) “newly discovered or previously unavailable evidence,” (3) the need “to prevent manifest injustice,” or (4) a “change in controlling law.” Id.

Plaintiff again respectfully asserts that the Court erred in determining that Plaintiff failed to obtain a more favorable outcome than Defendants’ offers of judgment because it did not apply the complete analysis required by NRCP 68(g). Accordingly, Plaintiff requests, in the alternative,

1 that the Court's April 23, 2021, Order granting Defendants' motions for attorney fees and costs
2 be vacated under NRCP 59(e) due the grounds set forth below.

3 **C. Legal Standard for Award of Costs Pursuant to NRCP 68**

4 NRCP 68(f) provides the penalties for rejecting an offer of judgment:

5 **(f) Penalties for Rejection of Offer.**

6 **(1) In General.** If the offeree rejects an offer and fails to obtain a more
favorable judgment:

7 (A) the offeree cannot recover any costs, expenses, or attorney fees and
may not recover interest for the period after the service of the offer and before the
8 judgment; and

9 (B) the offeree must pay the offeror's post-offer costs and expenses,
including a reasonable sum to cover any expenses incurred by the offeror for each
expert witness whose services were reasonably necessary to prepare for and
10 conduct the trial of the case, applicable interest on the judgment from the time of
the offer to the time of entry of the judgment and reasonable attorney fees, if any
11 be allowed, actually incurred by the offeror from the time of the offer. If the
offeror's attorney is collecting a contingent fee, the amount of any attorney fees
12 awarded to the party for whom the offer is made must be deducted from that
contingent fee.

13 Nevada Courts have recognized that where the court properly weighs the factors set forth in
14 Beattie v. Thomas, courts have discretion to allow attorney fees under NRCP 68. 99 Nev. 579
15 (1983); see Bidart v. American Title Ins. Co., 103 Nev. 175 (1987). Courts exercising discretion
16 in allowing fees and costs under NRCP 68 must evaluate the following factors:

17 (1) whether the plaintiff's claim was brought in good faith; (2) whether the
18 defendants' offer of judgment was reasonable and in good faith in both its timing
and amount; (3) whether the plaintiff's decision to reject the offer and proceed to
19 trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by
the offeror are reasonable and justified in amount.

20 Beattie, 99 Nev. at 588-9; see also Uniroyal Goodrich Tire Co. v. Mercer, 111 Nev. 318, 890
21 P.2d 785 (1995). The Beattie Court found that "[a]fter weighing the foregoing factors, the
22 district judge may, where warranted, award up to the full amount of fees requested. On the other
23 hand, where the court has failed to consider these factors, and has made no findings based on
24 evidence that the attorney's fees sought are reasonable and justified, it is an abuse of discretion
25 for the court to award the full amount of fees requested." 99 Nev. at 589. Accordingly, the
26 Nevada Supreme Court has reviewed awards of fees/costs based on an offers of judgment for
27 abuse of discretion. LaForge v. State ex rel. Univ. & Cmty. College Sys., 116 Nev. 415, 423-4
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(2000); O'Connell v. Wynn Las Vegas, LLC, 2018 Nev. App. LEXIS 6, 8 (2018). Further, the Beattie Court stated that the purpose of NRCP 68 is to encourage settlement, and it is not to force plaintiffs into forgoing legitimate claims. Id. at 588.

III.LEGAL ARGUMENT

A. The Court Must Apply the Full NRCP 68(g) Analysis to Determine Whether Plaintiff Obtained a More Favorable Outcome

In applying the Beattie factors, the Court found that Plaintiff's case was brought in good faith and that Plaintiff's decision to reject the offers were not grossly unreasonable or in bad faith. However, the Court also found that Defendants' offers of judgment were reasonable in time and amount. See Beattie, 99 Nev. at 588-89. Specifically, the Court ruled that Plaintiff did not beat the Defendants' offers of judgment (inclusive of Defendants' attorney fees, costs, interest, and expenses) and granted Defendants' requests for fees and costs pursuant to NRCP 68.

Plaintiff respectfully submits the instant Motion on the grounds that the Court did not apply the complete analysis required by NRCP 68(g) for determining whether the offeree obtained a more favorable judgment than the offer. NRCP 68(g) sets forth how the Court must consider costs, expenses, interest, and attorney fees in deciding whether a more favorable judgment was obtained:

(g) How Costs, Expenses, Interest, and Attorney Fees Are Considered. To invoke the penalties of this rule, the court must determine if the offeree failed to obtain a more favorable judgment. If the offer provided that costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees, would be added by the court, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees. **If a party made an offer in a set amount that precluded a separate award of costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees, the court must compare the amount of the offer, together with the offeree's pre-offer taxable costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees, with the principal amount of the judgment.**

(emphasis added). In its April 23, 2021, Order, the Court did not apply Plaintiff's pre-offer attorney fees, costs, interest, and expenses to the amounts of the Defendants' offers (inclusive of each Defendant's interest, costs, attorney fees, and expenses) when evaluating whether Plaintiff obtained a more favorable outcome. Further, Plaintiff respectfully submits that applying the

1 complete NRCP 68(g) analysis results in a different outcome than what was provided in the
2 Court's April 23, 2021, Order.

3 Pursuant to NRCP 68(g), the Court must evaluate whether Plaintiff obtained a more
4 favorable judgment by comparing (1) the outcome of the litigation, with (2) the amount of the
5 offer of judgment, together with the pre-offer costs, expenses, interest, and attorney fees
6 incurred by Plaintiff, the offeree. Applying this analysis to each Defendant's offer of judgment
7 results in a negative offer amount for each Defendant due to the amount of Plaintiff's pre-offer
8 fees, costs, expenses, and interest.

9 First, was no monetary judgment in this matter, making the judgment amount \$0.

10 Next, the amount of each Defendant's offer of judgment was for \$1,000.00, inclusive of
11 each Defendant's interest, costs, attorney fees, and expenses. **Exhibits A-B.** Each Defendant's
12 \$1,000.00 offer of judgment (inclusive of each Defendant's interest, costs, attorney fees, and
13 expenses) must then be considered with Plaintiff's pre-offer interest, costs, attorney fees, and
14 expenses. NRCP 68(g). Plaintiff had spent over \$10,000.00 in attorney fees alone by the time
15 Defendants served their offers of judgment. Defendant Patin filed her Offer of Judgment on
16 January 19, 2017, and Defendant PLG filed its offer of judgment on January 26, 2017. By
17 March 17, 2016, Plaintiff had spent at least \$10,000.00 on attorney fees in this litigation.
18 **Exhibit C** (Plaintiff's Supplemental Opposition to Defendant Patin's Motion for Attorney Fees,
19 Costs, and Interest, Declaration of Ton Vinh Lee) at p3, lines 19-24.

20 Because the amount of Plaintiff's pre-offer attorney fees alone far exceeded the amounts
21 of each Defendant's \$1,000.00 offer of judgment, the amounts of each Defendant's offer of
22 judgment were in the negative. An offer of judgment in a negative amount cannot constitute a
23 valid offer because it is not an offer at all. Nevada Courts have held that an invalid offer of
24 judgment cannot serve as the basis for an award of attorney fees. See Edwards Indus. Inc. v.
25 DTE/BTE, Inc., 112 Nev. 1025, 1035, 923 P.2d 569, 575 (1996) (concluding that
26 an invalid offer of judgment could not provide a proper basis for an award of attorney fees and
27 costs).

1 Even if Defendants' negative offers of judgment are deemed valid by this Court,
2 Defendants' offers of judgment still did not present a more favorable outcome for Plaintiff
3 based on the amount he has spent in attorney fees alone. **See Exhibit C** (regarding amount spent
4 by Plaintiff on attorney fees). There was no monetary judgment in this matter, making the
5 judgment amount \$0. If Plaintiff had accepted Defendants' offers of judgment, Plaintiff would
6 have received \$1,000.00 for each Defendant (inclusive of Defendants' fees, costs, and interest),
7 less Plaintiff's own attorney fees, costs, and interest, which amounted to over \$10,000.00 by the
8 time Defendants served their offers. As a result, Defendants' offers of judgment did not present
9 a more favorable outcome for Plaintiff.

10 **IV. CONCLUSION**

11 Based on the foregoing, Plaintiff respectfully requests that the Court reconsider, or alter
12 or amend its April 23, 2021 Order granting, in part, Defendants' motions for attorney fees and
13 costs pursuant to NRCP 68.

14 DATED this 7th day of May, 2021.

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

16
17 /s/ Myraleigh A. Alberto
18 PRESCOTT JONES
19 Nevada Bar No. 11617
20 MYRALEIGH A. ALBERTO
21 Nevada Bar No. 14340
22 8925 W. Russell Road, Suite 220
23 Las Vegas, NV 89148
24 *Attorneys for Plaintiff,*
25 *Ton Vinh Lee*
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **PLAINTIFF TON VINH LEE'S**
MOTION FOR RECONSIDERATION, or in the alternative, MOTION TO ALTER OR
AMEND JUDGMENT PURSUANT TO NRCP 59(e) was served this 7th day of May, 2021,
by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with
postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada,
addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax
number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a).
A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick
& Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set
forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing
services the document(s) listed above to the Counsel set forth on the service list on this
date pursuant to EDCR Rule 7.26(c)(4).

Christian M. Morris, Esq.
NETTLES MORRIS
1389 Galleria Dr., Suite 200
Henderson, NV 89014
Attorney for Defendant Ingrid Patin

Kerry J. Doyle, Esq.
DOYLE LAW GROUP
7375 S. Pecos Rd., #101
Las Vegas, NV 89120
Attorney for Defendant Patin Law Group, PLLC

/s/ Brittany Willis

An Employee of Resnick & Louis, P.C.

EXHIBIT A

OFFER
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
NETTLES LAW FIRM
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@nettleslawfirm.com
Attorney for Defendant, Ingrid Patin

DISTRICT COURT
CLARK COUNTY, NEVADA

TON VINH LEE, an individual,

Plaintiff,

v.

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

Defendants.

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

**DEFENDANT, INGRID PATIN'S OFFER
OF JUDGMENT TO PLAINTIFF**

TO: TON VINH LEE, Plaintiff; and

TO: PRESCOTT JONES, ESQ. of RESNICK & LOUIS, P.C., Attorney for Plaintiff.

Pursuant to Rule 68 of the N.R.C.P., Defendant, INGRID PATIN, hereby offers to allow judgment to be taken in her favor, only, and against Plaintiff, TON VINH LEE, in the above-entitled matter in the total amount of ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00), inclusive of all accrued interest, costs, and attorney fees, and any other sums that could be claimed by Defendant, INGRID PATIN, against Plaintiff, TON VINH LEE, in the above-captioned action.

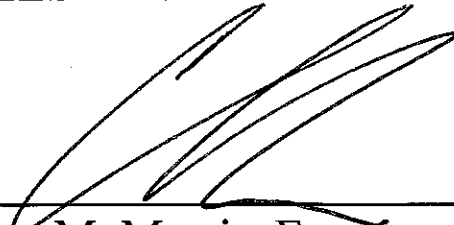
Pursuant to Rule 68 of the N.R.C.P., this offer shall be open for a period of ten (10) days from the date of service of this Offer. In the event this Offer of Judgment is accepted by Plaintiff, TON VINH LEE, Defendant, INGRID PATIN, will elect to pay the amount offered here within a

reasonable time and obtain a dismissal of the claim as provided by N.R.C.P. 68(d), rather than to allow judgment to be entered against Defendant, INGRID PATIN.

This Offer of Judgment is made solely for the purposes intended by N.R.C.P. 68 and is not to be construed as an admission in any form, shape or manner that Defendant, INGRID PATIN, is liable for any of the allegations made by Plaintiff in the Complaint. Nor is it an admission that Plaintiff is entitled to any relief, including, but not limited to, an award of damages, attorney's fees, costs or interest and is nullified by any such award.

DATED this 19th day of January, 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

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 19 day January, 2017, I served the foregoing **DEFENDANT, INGRID PATIN'S OFFER OF JUDGMENT TO PLAINTIFF** to the following parties by electronic transmission through the Wiznet system:

Resnick & Louis		
	Contact	Email
	Coreene Drose	cdrose@rlattorneys.com
	Lisa Bell	lbell@rlattorneys.com
Resnick & Louis, P.C.		
	Contact	Email
	Prescott Jones	pjones@rlattorneys.com


An Employee of NETTLES LAW FIRM

EXHIBIT B

OFFER

PAUL E. LARSEN

Nevada Bar No. 003756

JEREMY J. THOMPSON

Nevada Bar No. 012503

MORRIS POLICH & PURDY LLP

3800 Howard Hughes Pkwy, Suite 500

Las Vegas, NV 89169

Telephone: (702) 862-8300

Facsimile: (702) 862 -- 8400

plarsen@mpplaw.com

jthompson@mpplaw.com

Attorneys for Patin Law Group, PLLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TON VIN LEE, an individual,

Plaintiff,

v.

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

Defendants.

Case No: A723134

Dept. No: IX

**DEFENDANT PATIN LAW
GROUP, PLLC'S OFFER OF
JUDGMENT TO PLAINTIFF**

TO: TON VINH LEE, Plaintiff; and

TO: PRESCOTT JONES, ESQ. of RESNICK & LOUIS, P.C., Counsel for Plaintiff.

Pursuant to Rule 68 of the N.R.C.P., Defendant, PATIN LAW GROUP, PLLC, hereby offers to allow judgment to be taken in her favor, only, and against Plaintiff, TON VINH LEE, in the above-entitled matter in the total amount of ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00), inclusive of all accrued interest, costs, and attorney fees, and any other sums that could be claimed by Defendant, PATIN LAW GROUP, PLLC, against Plaintiff, TON VINH LEE, in the above-captioned action.

1 Pursuant to Rule 68 of the N.R.C.P., this offer shall be open for a period of ten (10) days
2 from the date of service of this Offer. In the event this Offer of Judgment is accepted by Plaintiff
3 TON VINH LEE, Defendant, PATIN LAW GROUP, PLLC, will elect to pay the amount offered
4 here within a reasonable time and obtain a dismissal of the claim as provided by N.R.C.P. 68(d),
5 rather than to allow judgment to be entered against Defendant, PATIN LAW GROUP, PLLC.

6 This Offer of Judgment is made solely for the purposes intended by N.R.C.P. 68 and is
7 not to be construed as an admission in any form, shape or manner that Defendant, PATIN LAW
8 GROUP, PLLC, is liable for any of the allegations made by Plaintiff in the Complaint. Nor is it
9 an admission that Plaintiff is entitled to any relief, including, but not limited to, an award of
10 damages, attorney's fees, costs or interest and is nullified by any such award.

11 DATED this 26 day of January, 2017.

12 MORRIS POLICH & PURDY LLP

13 
14 PAULE LARSEN

15 Nevada Bar No. 003756

16 JEREMY J. THOMPSON

17 Nevada Bar No. 012503

18 MORRIS POLICH & PURDY LLP

19 3800 Howard Hughes Pkwy, Suite 500

20 Las Vegas, NV 89169

21 Telephone: (702) 862-8300

22 Facsimile: (702) 862 -- 8400

23 plarsen@mpplaw.com

24 jthompson@mpplaw.com

25 Attorneys for Patin Law Group, PLLC
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 26 day
January, 2017, I served the foregoing **DEFENDANT PATIN LAW GROUP, PLLC'S OFFER
OF JUDGMENT TO PLAINTIFF** to the following parties by electronic transmission through
the Wiznet system:

Resnick & Louis

Contact

Email

Coreene Drose

cdrose@rlattorneys.com

Lisa Bell

lbell@rlattorneys.com

Resnick & Louis, P.C.

Contact

Email

Prescott Jones

pjones@rlattorneys.com


Attorney of MORRIS POLICH & PURDY LLP

EXHIBIT C



SUPP
RESNICK & LOUIS, P.C.
PRESCOTT JONES
Nevada Bar No. 11617
pjones@rlattorneys.com
MYRALEIGH A. ALBERTO
Nevada Bar No. 14340
malberto@rlattorneys.com
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
Attorneys for Plaintiff,
Ton Vinh Lee

DISTRICT COURT

CLARK COUNTY, NEVADA

TON VINH LEE,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-15-723134-C

DEPT: 26

**PLAINTIFF TON VINH LEE'S
SUPPLEMENTAL OPPOSITION TO
DEFENDANT INGRID PATIN'S
MOTION FOR ATTORNEYS' FEES,
COSTS, AND INTEREST**

COMES NOW, Plaintiff, TON VINH LEE, by and through his attorneys of record,
PRESCOTT T. JONES, ESQ. and MYRALEIGH A. ALBERTO, ESQ. of the law firm of
RESNICK & LOUIS, P.C., hereby submits this SUPPLEMENTAL OPPOSITION TO
DEFENDANT INGRID PATIN'S MOTION FOR ATTORNEYS' FEES, COSTS, AND
INTEREST.

///

///

1 This Supplement and the original Opposition are based upon the papers and pleadings on
2 file with the Court, the exhibits attached hereto, the following Memorandum of Points and
3 Authorities, and any oral argument the Court may entertain at the hearing on this matter.

4 DATED this 3rd day of February, 2021.

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

6 */s/ Myraleigh A. Alberto*

7 _____
8 PRESCOTT JONES
9 Nevada Bar No. 11617
10 MYRALEIGH A. ALBERTO
11 Nevada Bar No. 14340
12 8925 W. Russell Road, Suite 220
13 Las Vegas, NV 89148
14 *Attorneys for Plaintiff,*
15 *Ton Vinh Lee*

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I, TON VINH LEE, pursuant to NRS 53.045, declare:

2. I am the Plaintiff in Eighth Judicial District Court Case No. A-15-723134-C.

4. On January 19, 2017, Defendant Ingrid Patin served an Offer of Judgment in the amount of “ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00), inclusive of all accrued interest, costs, and attorney fees, and any other sums that could be claimed by Defendant, INGRID PATIN, against Plaintiff, TON VINH LEE, in the above-captioned litigation.”

6. On November 19, 2020, Defendant Patin filed her Motion for Attorney Fees and Costs.

7. By March 17, 2016, I had spent at least \$10,000.00 in attorney fees in this litigation.

8. Upon retaining my attorney, Prescott Jones, Esq., for this litigation, and prior to filing of my August 17, 2015, Complaint, I paid my attorney a retainer of \$10,000.00. The initial \$10,000.00 retainer was depleted by attorney fees by March 17, 2016. As a result, on March 17, 2016, I deposited an additional \$10,000.00 to my retainer account for this litigation.

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I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct to the best of my knowledge, memory, and understanding.

DATED this 3rd day of February, 2021.

/s/ Ton Vinh Lee

Ton Vinh Lee

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL ARGUMENT

A. Defendant Ingrid Patin is Not Entitled to Attorney's Fees, Costs, and Interest Pursuant to NRCP 68 Because Plaintiff Beat Defendant's Offer of Judgment, Which Was Inclusive of Attorney Fees

Defendant argues that she is also entitled to attorneys' fees, costs, and interest pursuant to NRCP 68(f), which states:

(f) Penalties for Rejection of Offer.

(1) In General. If the offeree rejects an offer and fails to obtain a more favorable judgment:

(A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

(B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

On January 19, 2017, Defendant Ingrid Patin served an Offer of Judgment ("OOJ") in the amount of "ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00), **inclusive of all accrued interest, costs, and attorney fees**, and any other sums that could be claimed by Defendant, INGRID PATIN, against Plaintiff, TON VINH LEE, in the above-captioned litigation" (emphasis added). **See Exhibit A.** Plaintiff allowed Defendant's OOJ to expire, effectively rejecting the OOJ.

By March 17, 2016, Dr. Lee had spent at least \$10,000.00 on attorney fees in this litigation, which far exceeds Defendant Ingrid Patin's \$1,000.00 OOJ. Upon retaining counsel for this litigation, Dr. Lee paid an initial retainer of \$10,000.00 prior to filing his August 17, 2015, Complaint. By March 17, 2016, the initial \$10,000.00 retainer had been depleted by attorney fees. As a result, Dr. Lee deposited an additional \$10,000.00 to his retainer account on March 17, 2016 for this litigation. Defendant Patin's \$1,000.00 OOJ is clear that it is inclusive

1 of attorney fees. Accordingly, Defendant Ingrid Patin is not entitled to an award of attorney
2 fees because her OOJ did not present a more favorable outcome for Dr. Lee based on the
3 amount he has spent in attorney fees alone.

4 **III.**

5 **CONCLUSION**

6 For the reasons set forth in this Supplemental Opposition, Defendant Ingrid Patin is not
7 entitled to an award of attorneys' fees, costs, and interest. Accordingly, Plaintiff respectfully
8 requests that this Court deny Defendant Ingrid Patin's Motion for Attorneys' Fees, Costs, and
9 Interest.

10 DATED this 3rd day of February, 2021.

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

12 */s/ Myraleigh A. Alberto*

13
14 _____
15 PRESCOTT JONES
16 Nevada Bar No. 11617
17 MYRALEIGH A. ALBERTO
18 Nevada Bar No. 14340
19 8925 W. Russell Road, Suite 220
20 Las Vegas, NV 89148
21 *Attorneys for Plaintiff,*
22 *Ton Vinh Lee*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **PLAINTIFF TON VINH LEE'S SUPPLEMENTAL OPPOSITION TO DEFENDANT INGRID PATIN'S MOTION FOR ATTORNEYS' FEES, COSTS, AND INTEREST** was served this 3rd day of February*, 2021, by:

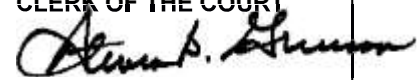
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.
- ☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.
- ☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

Christian M. Morris, Esq.
NETTLES MORRIS
1389 Galleria Dr., Suite 200
Henderson, NV 89014
Attorney for Defendant Ingrid Patin

Kerry J. Doyle, Esq.
DOYLE LAW GROUP
7375 S. Pecos Rd., #101
Las Vegas, NV 89120
Attorney for Defendant Patin Law Group, PLLC

/s/ Susan Carbone

An Employee of Resnick & Louis, P.C.



OPPM

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@nettlesmorris.com
victoria@nettlesmorris.com
Attorneys for Defendant, Ingrid Patin

DISTRICT COURT

CLARK COUNTY, NEVADA

TON VINH LEE, an individual;

Plaintiff,

vs.

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

Defendants.

CASE NO.: A-15-723134-C
DEP'T NO.: XXVI

**DEFENDANT INGRID PATIN'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION,
OR IN THE ALTERNATIVE, MOTION
TO ALTER OR AMEND JUDGMENT
PURSUANT TO NRCP 59(e)**

COMES NOW, Defendant, INGRID PATIN ("Defendant"), by and through her attorneys of record, CHRISTIAN M. MORRIS, ESQ., and VICTORIA R. ALLEN, ESQ. of the law firm NETTLES | MORRIS, hereby submits her Opposition to Plaintiff Ton Vinh Lee's Motion For Reconsideration, or in the alternative, Motion to Alter or Amend Judgment Pursuant to NRCP 59(e).

1 This Opposition is based upon the following points and authorities and Declaration of
2 counsel, the pleadings and other papers on file herein, and such oral argument as may be allowed
3 by this Court at the time of hearing.

4 DATED this 17th day of May, 2021.

5 NETTLES | MORRIS

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8 

9 CHRISTIAN M. MORRIS, ESQ.

10 Nevada Bar No. 11218

11 VICTORIA R. ALLEN

12 Nevada Bar No. 15005

13 1389 Galleria Drive, Suite 200

14 Henderson, Nevada 89014

15 *Attorneys for Defendant, Ingrid Patin*
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I.
INTRODUCTION

Plaintiff's Motion for Reconsideration does not meet the Nevada Supreme Court's standard for reconsideration, as Plaintiff does not proffer "manifest errors of law or fact," "newly discovered or previously unavailable evidence," the need "to prevent manifest injustice," or a "change in controlling law"—the valid bases recognized by that Court for reconsideration of a previous District Court ruling.

Plaintiff's Motion is built entirely upon the misperception that this Court improperly analyzed NRCP 68(g). Plaintiff argues that he received a favorable outcome by rejecting the \$1,000.00 offers from both Defendants based on the fact he spent \$10,000.00 in attorney's fees. However, Plaintiff has already made this argument to the Court and the Court had already considered it when granting Defendants Motion for fees and costs. The Court found that Plaintiff did not include the entirety of the language of Defendants' offers, which were not inclusive of Plaintiff's attorneys fees, but of the Defendants attorneys' fees. *See Notice of Entry of Decision and Order, attached hereto as Exhibit 1*. Despite the fact that the Court has already advised Plaintiff that he incorrectly analyzed the language of the offers from the Defendants, Plaintiff still relies on his own misinterpretation of NRCP 68(g) in his Motion.

Plaintiff's argument that accepting the \$1,000.00 offer from each Defendant did not present a more favorable outcome for Plaintiff because it was insufficient to cover his attorneys fees and costs is an incorrect application of NRCP 68(g). At the time Plaintiff received the offers, the applicable analysis was not whether the offers put Plaintiff in a favorable position to pay his attorneys fees and costs, but the risk of Plaintiff paying Defendants' attorneys fees and costs if Defendants' prevailed. *Id.* at p. 7. Further, Plaintiff's argument that Defendants' offers are invalid because they were less than what Plaintiff had occurred in attorney's fees and costs is an also an incorrect analysis. The fact that Defendants' offers were not in an amount that completely compensated Plaintiff's fees does not constitute an invalid offer, nor is it deemed as a negative offer.

Plaintiff's Motion for Reconsideration is nothing more than a second attempt to argue the same issues that have already been argued and decided by this Court. Plaintiff's Motion for

Reconsideration does not meet Nevada standard for reconsideration and makes no fundamental arguments for this Court to allow such reconsideration. Defendant therefore respectfully requests that this Court deny reconsideration of its prior ruling on Defendant’s Motion for Attorneys’ Fees, Costs, and Interest.

II.

LEGAL ARGUMENT

**A. PLAINTIFF’S MOTION ON ITS FACE DOES NOT PRESENT ANY
OF THE FOUR ELEMENTS THAT WOULD PERMIT
RECONSIDERATION UNDER NEVADA LAW.**

Plaintiff presents none of the four potential bases for reconsideration. Plaintiff cites no error of law or fact in this Court’s rulings, proffers no new *evidence*, identifies no “manifest injustice” that would result from those rulings, and points to no “change in controlling law.” A motion for reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court has already ruled. *In re AgriBioTech, Inc.*, 319 B.R. 207, 209 (9th Cir. 2004) (citing *Brogdon v. Nat’l Healthcare Corp.*, 103 F.Supp.2d 1322, 1338 (N.D.Ga.2000)).

A district court may only “reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Koninklijke Philips Electronics N.V. v. KXD Technology, Inc.*, 245 F.R.D. 470, 472 (D.Nev.2007). The basis for “new” evidence that would justify reversal must be evidence that was not available at the time of the hearing. *Coghill v. Board of Education of Prince George’s County*, 2017 WL 2779624, at *2 (D.Md.2017) (quoting *United States ex rel. Becker v. Westinghouse Savannah River Co.*, 205 F.3d 284, 290 (4th Cir. 2002)).

**B. PLAINTIFF INCORRECTLY APPLIES NRCP 68(g) IN HIS FAVORABLE
OUTCOME ANALYSIS**

Plaintiff fails to present any new evidence that the Court did not already have when making its prior ruling. The basis for Plaintiff’s motion for reconsideration is the continued belief that Plaintiff was reasonable in denying Defendants’ offers because the amount was not sufficient

1 to cover the attorneys' fees that Plaintiff had already incurred. Plaintiff's misinterpretation of
2 NRCP 68(g) has already been addressed by this Court and the Court has already explained how
3 Plaintiff's analysis was incorrect. Plaintiff incorrectly states that he received a favorable outcome
4 because the offers' did not cover the amount he had spent on attorneys' fees. Plaintiff knew that
5 if he did not accept Defendants' offers, that Defendants' were willingly to litigate this case all the
6 way through, presenting Plaintiff with the possibility of losing at trial. Since Defendants' motion
7 for summary judgment was granted, Plaintiff did not receive a favorable outcome because he was
8 left with \$0. At the time Defendants' sent their offers, Plaintiff could have settled the case and
9 had \$2,000.00 to pay towards his attorneys' fees and costs. This contradicts Plaintiff's argument
10 that by rejecting the offers he received a more favorable outcome than if he had accepted the
11 offers.

12 Additionally, as stated above, the Court has already found that Plaintiff's analysis of
13 obtaining a favorable outcome misinterpreted the language of Defendants' offer and being
14 inclusive of attorneys' fees and costs were for Defendants' attorneys' fees and costs, not
15 Plaintiff's. Accordingly, Plaintiff's analysis for favorable outcome is incorrect and should not be
16 considered by this Court.

17 **C. DEFENDANTS' OFFERS WERE NOT INVALID OR NEGATIVE**
18 **OFFERS**

19 Plaintiff's basis for asserting that Defendants' offers were "invalid" or "negative offers,"
20 is because he continues to misinterpret NRCP 68. An offer containing a provision that states
21 "inclusive of attorneys' fees and costs" is not a provision to compensate Plaintiff for their
22 attorneys' fees and costs but is instead providing a Plaintiff the opportunity to settle a case without
23 having to pay the Defendants' attorneys' fees and costs in the event the Plaintiff does not prevail.
24 Plaintiff's misinterpretation of this rule consequently leads to Plaintiff's argument that an offer
25 below the cost of Plaintiff's attorneys' fees is somehow invalid and a negative offer.

26 Plaintiff cites to no case law to support their argument that Defendants' offers were
27 classified as invalid or negative offers. The crux of Plaintiff's argument is his belief that
28 Defendants' offers were invalid because it did not cover the complete cost of Plaintiff's attorneys'

1 fees at the time the offers were sent. Nowhere within NRCP 68 does it state that in order for an
2 offer to be valid, it must entail an amount that is equal to or above a Plaintiff's current attorney
3 bill. Further, Plaintiff does not cite to anything in NRCP 68 or any other Nevada case law that
4 supports the argument that an offer below a Plaintiff's current attorney bill is deemed to be an
5 invalid or negative offer. Once again, the Court has already stated that Plaintiff incorrectly relied
6 on the offers being insufficient to pay the attorneys' fees as a reasonable basis to reject the offers.
7 Rather, Plaintiff should have analyzed the offer in light of the risk to him paying Defendants' fees
8 and costs. *Id.* at p. 7.

9 It is also important to point out to the Court that the case Plaintiff relies on in their motion
10 to support their argument of Defendants' offer being invalid is not analogous to these facts and
11 misleads the Court. Plaintiff simply pulled one line out of the *Edwards* case that taken out of
12 context, appears to support Plaintiff's argument of an invalid offer. However, the *Edwards* case
13 analyzed whether an unapportioned joint offer was deemed to be valid. *See generally, Edwards*
14 *Indust. Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 923 P.2d 569 (1996). The Court found that an
15 unapportioned joint offer was invalid and that is the sentence Plaintiff quoted in their motion.
16 Here, this case is not dealing with an unapportioned joint offer and the mere quoting of one
17 sentence from this case misleads the Court into thinking that Defendants' offer was invalid
18 because it fell below the amount that Plaintiff wanted to compensate all of his attorneys' fees and
19 costs. As such, Plaintiff has provided no supporting evidence or argument that would allow this
20 Court to believe that Defendants' offers were invalid or negative offers due to the fact they fell
21 below \$10,000.00. As such, Plaintiff cannot prove that the offers were invalid or were negative
22 offers.

23 Plaintiff has offered no new arguments and has recycled the same facts and analysis from
24 its previous Motions. Thus, it can only be concluded Plaintiff is using this Motion to re-litigate
25 this same issue in hopes of a different outcome. Based on the above arguments, Defendant
26 respectfully requests the Court should deny Plaintiff's Motion for Reconsideration, or in the
27 alternative, Motion to Alter or Amend Judgment Pursuant to NRCP 59(e).
28

III.

CONCLUSION

Plaintiff's Motion cites nothing that would form a legitimate basis for reconsideration of this Court's prior decision, as Nevada law requires "manifest errors of law or fact," "newly discovered or previously unavailable evidence," the need "to prevent manifest injustice," or "a change in controlling law" before reconsideration is permitted to overrule the law of the case. Defendant therefore respectfully requests that this Court deny reconsideration of its prior ruling on Defendant's Motion for Attorneys' Fees, Costs, and Interest.

DATED this 17th day of May, 2021.

NETTLES | MORRIS



CHRISTIAN M. MORRIS, ESQ.

Nevada Bar No. 11218

VICTORIA R. ALLEN

Nevada Bar No. 15005

1389 Galleria Drive, Suite 200

Henderson, Nevada 89014

Attorneys for Defendant, Ingrid Patin

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that on this 17th day of May, 2021, a true and correct copy of the foregoing **DEFENDANT INGRID PATIN'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE, MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 59(e)** was served to the following parties by electronic transmission through the Odyssey E-File NV System:

Myraleigh Alberto	malberto@rlattorneys.com
Kerry Doyle	kdoyle@doylelawgroupnv.com
Mikayla Hurtt	admin@doylelawgroupnv.com
Coreene Drose	cdrose@rlattorneys.com
Ingrid Patin	ingrid@patinlaw.com
Lisa Bell	lbell@rlattorneys.com
Prescott Jones	pjones@rlattorneys.com
Susan Carbone	scarbone@rlattorneys.com
Jessica Humphrey	jhumphrey@rlattorneys.com

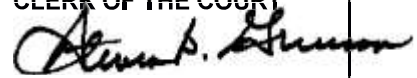


An Employee of NETTLES | MORRIS

Exhibit 1

Exhibit 1

Exhibit 1



NEOJ
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@nettlesmorris.com
Attorney for Defendant, Ingrid Patin

**DISTRICT COURT
CLARK COUNTY, NEVADA**

TON VINH LEE, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-15-723134-C
DEPT NO.: 26

**NOTICE OF ENTRY OF DECISION
AND ORDER**

TO: ALL PARTIES; and
TO: THEIR RESPECTIVE ATTORNEYS:

PLEASE TAKE NOTICE that a Decision and Order was duly entered in the above-entitled matter on the 23rd day of April, 2021, a true and correct copy of said Decision and Order is attached hereto.

DATED this 23rd day of April, 2021.

NETTLES | MORRIS



CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 011218
Attorney for Defendant, Ingrid Patin

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that on this 23rd day of April, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF DECISION AND ORDER** was served to the following parties by electronic transmission through the Odyssey eFileNV system and/or by depositing in the US Mail, postage prepaid, addressed as follows:

Kerry Doyle	kdoyle@doylelawgroupnv.com
Mikayla Hurtt	admin@doylelawgroupnv.com
Coreene Drose	cdrose@rlattorneys.com
Ingrid Patin	ingrid@patinlaw.com
Lisa Bell	lbell@rlattorneys.com
Prescott Jones	pjones@rlattorneys.com
Susan Carbone	scarbone@rlattorneys.com
Jessica Humphrey	jhumphrey@rlattorneys.com



An Employee of NETTLES | MORRIS

DAO

DISTRICT COURT
CLARK COUNTY, NEVADA

TON LEE,

Plaintiff(s)

vs

INGRID PATIN,

Defendant(s)

CASE NO.: A-15-723134-C

Department 26

DECISION AND ORDER

Plaintiff Ton Vinh Lee, DDS (Lee) filed the instant defamation action against attorney Ingrid Patin (Patin) and Patin Law Group PLLC (PLG) on August 17, 2015. The alleged defamatory statement was an online posting by Patin reporting the verdict in a wrongful death lawsuit filed against Plaintiff, the dental practice he owned at the time and individual dentists who treated the decedent. A verdict was initially entered in favor of the decedent's wife and child against the practice and individual dentist; Plaintiff in his individual capacity received a defense verdict, and the jury assessed 25% comparative negligence to the decedent.

The procedural history of both cases is discussed below, but the instant Motion is before the Court following Summary Judgment in favor of Patin and Patin Law Group. As prevailing party, Defendants Patin and PLG filed the motions currently before the Court each seeking fees and costs, pursuant to Offers of Judgment.

FACTS

On Feb. 7, 2012, a lawsuit was filed against Plaintiff, his dental practice, and two assisting dentists, alleging dental malpractice (underlying case). The jury awarded \$3.4million against the individual dentist and the dental practice. Lee received a verdict in his favor and was awarded his costs against Plaintiff Singletary. Patin Law Group, as counsel for the decedent Singletary's widow and minor child in the underlying lawsuit, posted a statement on its website about the winning verdict. Following the statement being posted, the district court granted a renewed motion for judgment as a matter of law, overturning the jury award. The defense verdict in favor of Lee was not affected. The web post was removed. After the jury award in favor of the Singletarys was overturned, an appeal was filed and the verdict in favor of the Singletarys was eventually reinstated by the Supreme Court.

Plaintiff Lee filed the instant defamation action against attorney Patin and Patin Law Group on August 17, 2015. The Defendants' motion to dismiss was denied, and that denial was appealed. Defendants then filed an Anti-SLAPP motion, which was also denied, and another appeal was filed as to that issue. This case was stayed in part pending the outcome of the appeals. The Appeal of the order denying the first Motion to Dismiss was eventually dismissed. The Supreme Court affirmed denial of the Anti-SLAPP motion in a published decision. See,

Patin v Lee, 134 Nev. Adv. Op. 87, 429 P. 3d 1248 (2018). On January 19, 2017, during the pendency of the appeals, Defendant Patin served an Offer of Judgement in the amount of \$1,000 “inclusive of all accrued interest, costs, and attorneys fees and *any other sums that could be claimed by Defendant...*” Thereafter, on January 26, 2017 codefendant PLG served its offer of judgement for \$1,000 with the same language: “inclusive of all accrued interest, costs, and attorneys fees and *any other sums that could be claimed by Defendant...*” These offers were not accepted and the litigation continued.

After the remittitur, Defendant Patin filed a Motion for Summary Judgment which this Court denied on the ground that genuine issues of material fact existed. Following a period of discovery, Defendant Ingrid Patin filed a Motion for Summary Judgment, which Patin Law joined. The Court granted the Motion for Summary Judgment finding that the statement on the website was a fair and impartial reporting of the facts of the underlying case, and that statements regarding judicial proceedings are protected against defamation by the fair reporting privilege. The Court found that there is no distinction under the fair reporting privilege between an individual and a corporation, and the privilege would apply to both Defendant Ingrid Patin individually and Patin Law Group. During Plaintiff’s sworn deposition testimony, Plaintiff admitted every sentence of the statement was true, but did not admit it was true in its entirety.

LEGAL ISSUES

1. Offer of Judgment

Patin and PLG each seek an award of attorney's fees pursuant to NRCP 68. The Nevada Supreme Court addressed the rules for considering a request for attorney's fees pursuant to an offer of judgment in *Wynn, v. Smith*, 117 Nev. 6, 16 P3d 424 (2001).

In exercising its discretion under [NRCP 68](#), the district court must carefully evaluate the following factors: (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendant's offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offer or are reasonable and justified in amount. *Beattie v. Thomas*, [99 Nev. 579, 588-89, 668 P.2d 268, 274 \(1983\)](#).¹

The court's goal in considering offers of judgment is predictability and fairness. Shifting fees and costs between parties is in derogation of common law, so application of the rule should be strictly construed. This includes meeting time deadlines and other formal requirements. *See, Quinlan, v. Camden USA, Inc.*, 126 Nev. Adv. Op. 30, 236 P.3d 613, 615 (2010, *citations omitted*) There is no question that the offers of judgment were timely served.

¹ *Beattie v Thomas* was decided under Nevada's former statutory offer of judgment provision NRS 17.115, but the analysis has been extended to offers pursuant to NRCP 68.

Defendants argue Plaintiff Lee's case was not brought in good faith. The Court does not agree, this matter was vigorously contested on a number of complex legal theories, with two appeals during the pendency of the litigation. Plaintiff argues that much of the motion practice regarding these legal issues was initiated by the Defendants, and when they lost, they pursued interim appeals, which they also lost. The initial Motions for Summary Judgment, brought before any discovery was conducted, were denied on the grounds that questions of fact existed. Next Defendants pursued an Anti-SLAPP defense, also denied, which was appealed as a matter of right, but again Defendants lost, but which resulted in a published decision as the case raised a question of first impression in Nevada. Only after discovery was concluded and Defendants filed another Motion for Summary Judgment did the Court find in favor of Defendants. For this reason, the Court finds Plaintiff Lee brought the case in good faith.

The next element addressed in *Wynn v Smith*, which is relevant to the issue herein, is whether the offers were reasonable in timing and amount. The Defendants' offers were made during the pendency of their appeal of the initial denial of their motions to dismiss. This appeal was not successful, thus Plaintiff Lee argues the timing was not reasonable as the offers were so early in the litigation, and at a point where Defendants had not been successful in

their efforts to dismiss the case. Further, Plaintiff argues he beat Defendants' Offers of Judgement, which were inclusive of attorney fees. The respective offers of the Defendants each in the amount of \$1,000 inclusive of interest, costs and attorney fees did not present a more favorable outcome for Plaintiff based on the amount he has spent in attorney fees alone. However, this analysis does not include the entirety of the language of the offers, which were not inclusive of *Plaintiff's* attorneys fees, but of the Defendants attorney's fees and "any other sums that could be claimed by Defendant... against Plaintiff." Considering the entirety of the language of the offer, the Court finds that the Offers of Judgement were reasonable in timing and amount, as Defendants had signaled they intended to vigorously litigate the legal issues presented in the defamation case.

The third factor is whether Plaintiff's decision to reject the offers was grossly unreasonable or in bad faith. Plaintiff argues that it was reasonable for him to reject the offers at the time they were made, when Defendants had unsuccessfully sought dismissal of the case before the trial court, and were facing dismissal of their appeal of that decision. The Court agrees that the offers were made early in the litigation, at a time when Plaintiff Lee was in a favorable position with respect to the then pending appeal. However, Plaintiff incorrectly analyzed the offer based on the amount of the offer being

insufficient amount to pay his fees and costs at the time, when the offers should have been analyzed in light of the risk to him of paying Defendants' fees and costs. This factor is a close call between the parties as Defendants' offers were very early in the case when they were not in a favorable position, but Plaintiff did not properly consider the risk to him if Defendants ultimately prevailed. While the Court does not find Plaintiff's incorrect analysis of the offers to be "in bad faith," his choice to reject the offers was "unreasonable," although not "grossly unreasonable." The purpose of the fee shifting provision of NRCP 68 is to encourage settlement, and Defendants offered Plaintiff an early opportunity to take judgment against them, when he rejected their offers he accepted the risk that he would be responsible for attorneys fees and "any other sums that could be claimed by Defendant... against Plaintiff." See, *In re Rose Miller*, Id., at 553.

The final element, reasonableness of the fees sought is analyzed under the "*Brunzell*" test established by the Nevada Supreme Court for analysis of attorney's fees awards.

2. Reasonableness of Attorney's Fees

In the event attorney's fees are awarded, the amount must be reasonable. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345 (Nev. 1969). The Court is

generally familiar with hourly billing rates in the local community for the type of litigation and finds that the rate charged by counsel is reasonable. The total amount of fees requested appears reasonable when evaluated under the four general categories defined in *Brunzell*: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed by the lawyer; and (4) the result.

The Supreme Court has held that the determination of “a reasonable fee” is subject to the discretion of the court “tempered only by reason and fairness.” See, *Schuetz, v. Beazer Homes*, 121 Nev. 837, 123 P.3d 530 (2005). By weighing the *Brunzell* factors “...the result will prove reasonable as long as the court provides sufficient reasoning and findings in support of its ultimate determination.” *Schuetz, Id.* at 864-865.

Here, counsel for both Defendants provided invoices based on hourly billing. While Plaintiff contends that the attorney fees sought are unreasonable, the qualities of the advocates were not challenged; instead the opposition focused on the reasonableness of the time billed, as well as was the work actually done pursuing motion practice or unsuccessful appeals. Plaintiff objects to the fees sought by PLG for attorney Micah Echols who handled the appeal of the denial of the Anti-SLAPP motion; the Motion and the Appeal were unsuccessful and Plaintiff argues added needlessly to the litigation. Plaintiff extends this argument

to fees sought by counsel for Defendant Patin. The Defendants argue that fees and costs incurred on *appeal can be awarded by the trial court. See, In re Estate and Living Trust of Rose Miller*, 125 Nev 550, 216 P.3d 239 (2009):

In other contexts, we have held that an attorney fees award includes fees incurred on appeal. *See Musso v. Binick*, 104 Nev. 613, 614, 764 P.2d 477, 477–78 (1988) (holding that “a contract provision for attorney’s fees includes an award of fees for *successfully bringing or defending an appeal*”). Additionally, nothing in the language of NRCP 68...suggests that their fee-shifting provisions cease operation when the case leaves trial court. We therefore hold that the fee-shifting provisions in NRCP 68...extend to fees incurred on and after appeal. *Id.*, at 555 (*emphasis added*)

Here, the issue raised by Plaintiff is not so much whether fees incurred by the successful party may include fees for an appeal, but whether it is *reasonable* to award fees where the party was unsuccessful on an interim appeal, although ultimately *successful* in the case. Anti-SLAPP motions are a creature of statute, and attorneys fees may be awarded against the party who brings an unsuccessful anti-SLAPP motion if it is found “frivolous or vexatious.” NRS 41.670 (2). No such finding was made in this case, and the Court notes that the anti-SLAPP appeal presented unique issues of law resulting in a published decision. This statutory provision factors into the analysis of the reasonableness of the fee request.

In *Rose Miller*, the Supreme Court noted that it had held, in the context of an award of fees based on fee provision in a contract, that fees for “successful” defense of an appeal could be recovered, but that the question was better left to the

trial court to determine. See, *Musso v. Binick*, 104 Nev. 613, 614. *Rose Miller* was an offer of judgment case wherein a jury verdict in favor of Respondents was overturned on appeal, and as a result they ultimately failed to recover a verdict more favorable than that offered by the Appellant, the Supreme Court determined that upon remand to the District Court should have awarded fees for the *successful* appeal. Id, 125 Nev. at 552.

The Court will consider the reasonableness of the fee request in light of the *Brunzell* factors: the character of the work, the work actually performed, and the result. These same rules apply to those fees incurred for the *unsuccessful* appeals.

Patin Law Group PLLC: PLG requested attorney's fees for attorney Kerry Doyle for the defense of the case in the District Court from September 5, 2019 through the successful Summary Judgment Motion. Attorney Doyle's fees are all related to the post-appeal phase of the litigation, and appear reasonable for the tasks described. The rate of \$400 is reasonable in the community for an attorney of Mr. Doyle's expertise.

The Defendants had separate counsel because the interests of the corporate entity PLG and the individual, attorney Patin, were separate, therefore, the court does not find unnecessary duplication of effort as both counsel attended depositions and appeared at hearings. The attorney's fees billed by Mr. Doyle of \$10, 200 are reasonable in light of the *Brunzell* factors.

PLG retained separate counsel to handle the unsuccessful appeal of the denial of anti-SLAPP motion, attorney Micah Echols an appellate specialist. As mentioned, the anti-SLAPP issue presented a question of first impression with respect to the Nevada statute and resulted in a published decision; however, the same reasonableness factors must be applied to both the district court fees and the appellate fees. Anti-SLAPP motions involve a sophisticated and complex area of litigation; however, Plaintiff argues pursuing the issue was unreasonable and the Defendants were unsuccessful. The anti-SLAPP statute provides that attorney's fees are recoverable against a party who pursues a frivolous or vexatious motion. Further, the party whose anti-SLAPP motion is denied is entitled to an appeal as a matter of right. NRS 41.670 (4). The unique nature of the anti-SLAPP statutes factor into the consideration of whether the "result" of an unsuccessful anti-SLAPP motion and appeal should be considered to be unreasonable in a *Brunzell* analysis.

Mr. Echols billing records consist of block billed entries. In considering an award of attorney's fees where counsel block billed time, the Nevada Supreme Court has held that practice is not necessarily inappropriate so long as each entry is sufficiently detailed that the nature of the tasks billed can be determined. See, *In re Margaret Mary Adams 2006 Trust*, Case No. 61710, March 2015 (unpublished). Here, billing entries are sufficiently detailed such that, when read in context with other entries, the court can determine what tasks were performed. As a specialist

in appellate practice the hourly fee of \$500 is not unreasonable. Given the nature of the issue, it was not unreasonable to retain separate counsel for the appeal, but the Court cannot overcome the fact that the “result” of the appeal was not in Defendants’ favor. For this reason the Court finds the fees billed for the unsuccessful appeal do not satisfy the Brunzell factors, and will not be awarded. The requested costs are addressed below.

Ingrid Patin: Attorney Patin had separate counsel, Christian Morris, who represented the Defendant throughout the litigation including both appeals. Ms. Morris submitted detailed time sheets which separated pre offer of judgment hours from the post offer time. Reviewing the time sheets the Court finds no clearly identifiable post offer billing entries related to the first unsuccessful appeal, additionally most of the billing at the District Court level on the special motion to dismiss pursuant to NRS 41.635-70 (anti-SLAPP motion) pre dates the offer. Ms. Morris’ post offer billing entries detail approximately 16 hours clearly related to the anti-SLAPP appeal. Ms. Morris’ billing rate is \$500 per hour, more than reasonable given her expertise. The Court does not find the time billed for the other motion practice at the District Court level to have been unreasonable, even though the first Summary Judgment motion was denied given questions of fact at the early stage of the litigation. Generally time billed during the discovery phase seems does not appear to have been overly duplicative as both attorney Patin and

PLG had separate counsel and separate interests to defend. The post offer time billed by Ms. Morris totals 217 hours, the Court will round this down to 200 hours after deducting hours related to the unsuccessful anti-SLAPP appeal. The Court will award Ms. Morris \$100,000 attorneys fees, plus costs as discussed below.

3. Costs

The Nevada Supreme Court has held that pursuant to NRCp 68(f)(2) a party who fails to improve upon a rejected offer of judgment “...*shall pay the offeror’s post-offer costs ...and reasonable attorney’s fees, if any be allowed, actually incurred by the offeror from the time of the offer....*” See, *Logan v Abe*, 131 Nev. 260, 264-265, 350 P.3d 1139 (2015) (*Emphasis original*) Based on this language the award of costs is mandatory, while the award of attorneys fees must go through the reasonableness analysis.

Allowable costs are defined by NRS 18.005. The determination of allowable costs is within the discretion of the district court. *Gibellini v Klindt*, 110 Nev. 1201, 1205 885 P2d 540, 542-543 (Nev. 1994) However, statutes permitting costs are in derogation of the common law and therefore should be strictly construed. *Id.* The district court has courts wide, but not unlimited, discretion to award costs to prevailing parties. Cost must be documented such that the court can determine the costs were reasonable necessary and actually incurred. See, *Cadle Co., v. Woods Erickson LLP*, 131 Nev. 114, 120, 345 P.3d 1049 (2015)

Here, attorney Morris provided detailed documentation for the costs incurred, in the form of a Memorandum of Costs, affidavit of counsel stating the costs were true and correct, and necessarily incurred, and attached supporting documentation for each item except in house copy costs. However, only post-offer costs may be awarded so costs related to the initial filings and first appeal must be deducted. The deductions are: \$353.69 for filing fees, \$230 for Supreme Court filing fees, and \$500 Supreme Court Appeal Bond. Costs for the second appeal, even though unsuccessful, are recoverable under NRS 18.005 and NRS 68. It is not possible to differentiate how much of the copy costs line items were incurred prior to the offer of judgment; however, the total number of pages (812) over five years of litigation at twenty five cents per page is de minimis.

The billing statement provided by Mr. Echols from his former law firm does not include any supporting documentation provided for the costs on appeal, most of which are related to travel for the appellate argument, and Westlaw charges. The Court assumes the amounts recorded are correct; however, *Cadle* requires that the Court base an award of costs on evidence. Here, Mr. Echols has provided an affidavit that the costs incurred are accurate, but the information provided does not meet the requirements of *Cadle*.

CONCLUSION

With this guidance in mind, the court has reviewed the fees to determine whether the fees requested satisfy the reasonableness requirements of Brunzell. The Court finds that sufficient information is present upon which to evaluate the reasonableness of the claim for attorneys' fees under *Brunzell*. The Court finds that fees paid to Mr. Doyle by Patin Law Group are recoverable, but the fees and costs requested for the unsuccessful appeal billed by Mr. Echols are not reasonable, and cannot be recovered; further, absent appropriate documentation for costs, the costs must also be denied. The fee requests for Ms. Morris as adjusted for the unsuccessful appeal are recoverable, and the post offer costs are sufficiently documented to be recoverable.

WHEREFORE, the Patin Law Group, PLLC Motion for an Award of Fees and Costs is **GRANTED** in part pursuant to NRCP 68 as to the \$10,200 for fees paid to Mr. Doyle, and **DENIED** as to the fees and costs paid to Mr. Echols former law firm.

FURTHER, Defendant Ingrid Patin's Motion for an Award of Fees and Costs is **GRANTED** pursuant to NRCP 68 as to attorney's fees paid to Ms. Morris

in the amount of \$100,000, and **GRANTED** as to post offer costs in the amount of \$10,600 pursuant to NRCP 68 and NRS 18.005.

IT IS SO ORDERED

DATED: April 20, 2021

Dated this 21st day of April, 2021



D7A 7E7 92BB 91AE
Gloria Sturman
District Court Judge

Counsel for defendant to prepare a Notice of Entry.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Ton Lee, Plaintiff(s)

CASE NO: A-15-723134-C

7 vs.

DEPT. NO. Department 26

8 Ingrid Patin, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/21/2021

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

16 "Jeremy J. Thompson, Esq." . jthompson@mpplaw.com

17 "Paul E Larsen, Esq." . plarsen@mpplaw.com

18 Coreene Drose . cdrose@rlattorneys.com

19 Cristina Robertson . crobertson@mpplaw.com

20 Debbie Surowiec . dsurowiec@mpplaw.com

21 Ingrid Patin . ingrid@patinlaw.com

22 Jenn Alexy . jenn@nettleslawfirm.com

23 Joyce Ulmer . julmer@mpplaw.com

24 Lisa Bell . lbell@rlattorneys.com

25 Nancy C. Rodriguez . nrodriguez@mpplaw.com

1	Prescott Jones .	pjones@rlattorneys.com
2	Christian Morris	christian@nettlesmorris.com
3	Tori Allen	victoria@nettlesmorris.com
4	Kerry Doyle	kdoyle@doylelawgroup.lv.com
5	Mikayla Hurtt	admin@doylelawgroup.lv.com
6	Emily Arriviello	emily@nettlesmorris.com
7	Myraleigh Alberto	malberto@rlattorneys.com
8	Brittany Willis	bwillis@rlattorneys.com
9	Susan Carbone	Scarbone@rlattorneys.com
10	Jessica Humphrey	Jhumphrey@rlattorneys.com
11	Melanie Herman	mail@rlattorneys.com
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1 **JOIN**

2 Kerry J. Doyle

3 Nevada Bar No. 10571

4 *kdoyle@DoyleLawGroupLV.com*

5 **DOYLE LAW GROUP**

6 7375 S. Pecos Rd., #101

7 Las Vegas, NV 89120

8 *Attorney for Defendant, Patin Law Group, PLLC*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 TON VINH LEE, an individual,

12 Plaintiff,

13 v.

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

17 Defendants.

CASE NO.: A-15-723134-C

DEPT NO.: XXVI

**DEFENDANT PATIN LAW GROUP,
PLLC'S JOINDER TO DEFENDANT
INGRID PATIN'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION, OR IN THE
ALTERNATIVE, MOTION TO ALTER
OR AMEND JUDGMENT PURSUANT
TO NRCP 59(e)**

18 COMES NOW, Defendant, PATIN LAW GROUP, PLLC, by and through their
19 attorneys of record, Kerry J. Doyle, Esq. of Doyle Law Group, and hereby joins Defendant
20 Ingrid Patin's Opposition to Plaintiff's Motion for Reconsideration, or in the Alternative,
21 Motion to Alter or Amend Judgment Pursuant to NRCP 59(e).

22 DATED this 18th day of May, 2021.

23 DOYLE LAW GROUP

24 /s/ Kerry J. Doyle

25 Kerry J. Doyle

26 Nevada Bar No. 110571

27 7375 S. Pecos Rod., #101

28 Las Vegas, NV 89120

Attorneys for Defendant, Patin Law Group

1 **CERTIFICATE OF E-SERVICE**

2 Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that on the 18th day
3 of May, 2021, a true and correct copy of the foregoing **DEFENDANT PATIN LAW GROUP,**
4 **PLLC'S JOINDER TO DEFENDANT INGRID PATIN'S OPPOSITION TO**
5 **PLAINTIFF'S MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE,**
6 **MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 59(e)** was
7 served to the following parties by electronic transmission through the Odyssey eFileNV system
8 and/or by placing a true and correct copy in the regular U.S. Mail, postage pre-paid and
9 addressed as follows:

10 Myraleigh Alberto: malberto@rlattorneys.com

11 Susan Carbone: Scarbone@rlattorneys.com

12 Melanie Herman: mail@rlattorneys.com

13 Jessica Humphrey: Jhumprey@rlattorneys.com

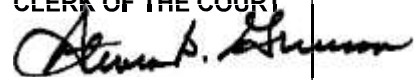
14 Brittney Willis: BWillis@rlattorneys.com

15 Christian M. Morris: christian@nettlesmorris.com

16 Jeremy J. Thompson, Esq: jthompson@mpplaw.com

17 Paul E. Larsen, Esq: plarsen@mpplaw.com

18 /s/ Mikayla Hurtt
19 An employee of DOYLE LAW GROUP
20
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1 RTRAN

2
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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 TON VINH LEE,

8 Plaintiff,

9 vs.

10 INGRID PATIN, ET AL.,

11 Defendants.

CASE#: A-15-723134-C

DEPT. XXVI

12
13 BEFORE THE HONORABLE GLORIA STURMAN
14 DISTRICT COURT JUDGE

15 TUESDAY, FEBRUARY 9, 2021

16 **RECORDER'S TRANSCRIPT OF PENDING MOTIONS**

17 APPEARANCES VIA BLUEJEANS:

18 For the Plaintiff: PRESCOTT T. JONES, ESQ.

19 For Defendant Ingrid Patin: CHRISTIAN MORRIS, ESQ.

20 For Defendant Patin Law
21 Group, PLLC: KERRY J. DOYLE, ESQ.
MICAH S. ECHOLS, ESQ.

22
23
24
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, February 9, 2021

2
3 [Case called at 10:50 a.m.]

4 THE COURT: 723134.

5 MR. JONES: Good morning, Your Honor. Prescott Jones for
6 the Plaintiff.

7 THE COURT: Good morning.

8 MS. MORRIS: Good morning, Your Honor. Christian Morris
9 for the Defendant Ingrid Patin.

10 THE COURT: Okay. Good morning. So --

11 MR. DOYLE: Sorry, Your Honor. Kerry Doyle for the
12 corporate Defendant Patin Law Group.

13 THE COURT: I keep forgetting there is a corporate
14 Defendant. Thanks very much for reminding me. Thanks.

15 Okay. So we have first the motion for reconsideration, and
16 then we have the fee and cost issue. So that makes more sense to do
17 them in that order. So if you want to discuss the reconsideration. This is
18 -- has a long history. We're all familiar with it. So if you want to just
19 address briefly the issues on reconsideration?

20 MR. JONES: Certainly. I understand Your Honor has had
21 quite the morning so far today, so I'll keep it brief.

22 I think the issues are briefed fairly well. I wanted to focus on
23 three main points. You know, we're asking this Court to reconsider the
24 order on summary judgment, largely on the grounds that there was a
25 prior order of the predecessor court when Judge Togliatti was the

1 presiding judge in this matter.

2 In 2016, there was a motion for summary judgment under
3 consideration by the Court. And one of the arguments put forth was
4 very similar, and I would argue identical, to the argument that was put
5 forth in front of Your Honor in the present motion. And that is that each
6 individual statement, when considered on its own, devoid of context, is
7 true. Therefore, the statement as a whole, must be true. And Judge
8 Togliatti ultimately rejected the Plaintiff's motion -- or, I'm sorry, the
9 Defendants' motion, ruled in my client's favor. And we attached a copy
10 as Exhibit A to our motion for reconsideration of the order.

11 And the pertinent language of that order was that the judge
12 found that the truth or falsity of an allegedly defamatory statement is an
13 issue for the jury to determine. And I would ask Your Honor, and we
14 certainly posed the question to opposing counsel, is what's changed
15 since then? Defendants are probably going to tell you that they took the
16 deposition of Dr. Lee, and Dr. Lee admitted that each of -- each portion of
17 the statement, when considered devoid of context, is true.

18 The problem is that's the exact same argument that was
19 before. Dr. Lee's testimony only confirmed the arguments that were
20 made before. That's been our position, Your Honor, from day one, is
21 that each individual portion of the statement is true, but there is the
22 *Chowdhry* case, various opinions of the Supreme Court.

23 I implore this Court to look at the statement as its -- in its
24 entirety, with the context of the entire statement being taken under
25 consideration. So because the arguments were already made and

1 decided by the predecessor court to Your Honor, really the Defendants'
2 motion for summary judgment that was granted by this Court recently is
3 essentially a motion for reconsideration. It brought forth no new facts, it
4 was untimely, contained no new arguments, no new arguments of law.
5 So we think that the Court should consider reconsideration of the order
6 granting motion for summary judgment on those grounds.

7 Two more points very quickly, Your Honor. The statement
8 that was made on the Defendants' website was never true at any time
9 that it was published. Now keep in mind we were unable to take the
10 deposition of the Plaintiff -- I'm sorry, the Defendant -- either Defendant
11 to determine the exact dates as to when exactly the statement was
12 published and when it was taken down.

13 But as far as we can tell, the statement was published after
14 the Court in the *Singletary* case ruled that, as a matter of law, the jury's
15 verdict in favor of the Plaintiff must be overturned. And it was taken
16 down prior to the Supreme Court reinstating the Plaintiff's verdict in
17 favor of the Singletarys. So, therefore, because of that, any time the
18 statement was up on the website it was never true in any sense of the
19 term. It wasn't -- it was never true as to Dr. Lee, because he had never
20 had a verdict against him, and it wasn't true to any of the defendants in
21 the *Singletary* case because there was simply no plaintiff's verdict in
22 existence during any time that the statement was published on the
23 website.

24 And lastly, Your Honor, I want to discuss the fair reporting
25 privilege because Your Honor did grant summary judgment on two

1 grounds. One, the statement was true; and, two, under the fair reporting
2 privilege. And I want to point out *Sahara Gaming* case requires that the
3 statement be an accurate and complete or fair abridgement of the trial.
4 For all the reasons I just discussed, the statement is neither accurate, and
5 it certainly is not complete, because it omits the fact that Dr. Lee, who is
6 named in the statement, named as a defendant, named as a party, it
7 completely omits the fact that he had a judgment in favor of him and
8 was not found liable, whatsoever.

9 So with that, Your Honor, unless Your Honor has any
10 questions, I'll simply save any arguments for the reply.

11 THE COURT: Thank you. I appreciate that.

12 MS. MORRIS: Thank you, Your Honor. Christian Morris for
13 Defendant Ingrid Patin.

14 I want to address first the order that Plaintiff's counsel
15 referenced from prior to when the Plaintiff was deposed in this case. It
16 was based on the pleadings. And in the pleadings, the Plaintiff alleged
17 that the statement was false. When his deposition was taken, he
18 admitted that every sentence of the statement is true. Therefore, the
19 question -- there's no genuine issue of material fact as to whether or not
20 the statement is true. The Plaintiff admits it's true and truth is an
21 absolute defense.

22 So for the arguments he made that there's no new evidence
23 when we finally were able to drill down and take the deposition of the
24 Plaintiff, and he admitted that, yes, in fact, every single sentence is true.

25 Now the Plaintiff's counsel also referenced the Fair Reporting

1 Act, but that was nowhere in the motion for reconsideration. And the
2 Fair Reporting Act is an absolute privilege,

3 and this is a summary of an official proceeding. It clearly
4 was taken from an official proceeding and stated. And those are
5 protected from claims of defamation. This was a factually accurate
6 statement with the recitation of the facts that the Plaintiff admits are true.

7 So there's no new information. He has not met any of the
8 prongs for a motion for reconsideration. This has been the information
9 that was previously before this Court. They've argued that they didn't
10 get the opportunity to take the Defendant's deposition. They never
11 asked for it. They never sent any written discovery. This case has been
12 filed since 2015, we're six years later. And the information is, is that the
13 Plaintiff, at all times, knew that it was in fact factually accurate and every
14 single sentence he admitted to in his deposition was true.

15 So we sit essentially where we sat before. There's no new
16 information. There's nothing that the Plaintiff has offered that would be
17 considered for reconsideration. This was --

18 THE COURT: Did we lose Ms. Morris?

19 THE COURT RECORDER: She may have dropped --

20 MS. MORRIS: I'm sorry, can you hear me?

21 THE COURT RECORDER: Oh, there she is.

22 THE COURT: We lost you there for just a minute. Sorry
23 about that.

24 MS. MORRIS: Thank you. No, no. So I'm not sure where
25 you lost me, but there is no new information that would rise to the level

1 of something to be reconsidered. We had additional information, which
2 was honestly the most important, which is the sworn testimony of the
3 Plaintiff admitting that every sentence was true. So, therefore, I don't
4 believe that --

5 THE COURT: Okay. And so the issue that counsel raised is
6 that this is an inconsistent decision from this judge, versus what Judge
7 Togliatti did. But your position is, no, it's not because that was an initial
8 pleading. At the time, that was the information Judge Togliatti had.
9 Subsequently, with the additional information that led to the different
10 result.

11 MS. MORRIS: That's exactly it. At the time Judge Togliatti
12 looked at this, the Plaintiff had alleged it was false. At the time we have
13 now, he has now admitted it is all true. That is incredibly different
14 information that needed to be considered and at the time was not
15 available to her.

16 THE COURT: Okay. Anything else on the reconsideration?

17 UNIDENTIFIED SPEAKER: Just briefly, Your Honor.

18 MS. MORRIS: Nothing from [indiscernible].

19 THE COURT: There were other issues, which were, you
20 know, as I recall like some of the issues like while there are -- it was
21 allegedly about business, you could -- the damages could be presumed,
22 but he didn't prove any damages. That was part of the problem was he
23 had no information about damages.

24 MS. MORRIS: That is correct, Your Honor. No one ever read
25 the statement. The only person he knew that read the statement was his

1 own attorney, who is his patient at his dental office. And he was unable
2 to provide any information, at all, regarding if he lost money, how he lost
3 money. He was not able to say a patient ever saw this statement. He
4 had no information at all as to his damages. And while I tried to take his
5 deposition on that issue, he kept saying, you know, I don't know what
6 year, I don't know how much I make, I have no idea what I've lost, and
7 provided no information, whatsoever, that he had in fact been damaged
8 since he's the only one who read the statement, to his knowledge, and
9 the only other person he showed it to was his attorney.

10 THE COURT: Okay. Thanks. I think that we, as mentioned,
11 had a separate joinder from the business entity, although I don't know if
12 you have different issues to raise in opposition?

13 MR. DOYLE: No, Your Honor. It's an identical argument.

14 THE COURT: Okay. Thanks. Thank you.

15 Okay. So then returning to the motion for reconsideration, it
16 was kind of what you predicted with respect to the opposition. So
17 anything further?

18 MR. JONES: Just a couple points, Your Honor. Again,
19 Prescott Jones on behalf of the Plaintiff.

20 My client did not admit that the statement was true. He just
21 admitted that each portion, each individual sentence without context was
22 true. Notably, the Defendants, in their opposition omit the portion of his
23 testimony at the end of admitting each portion of the statement was true
24 where he says that the statement, when read as a whole, is misleading
25 and is untrue, because he was never -- he never had a verdict against

1 him.

2 And one other brief statement about the damages issue that
3 got brought up by counsel. This is a defamation per se claim, Your
4 Honor. It presumes damages and there's a reason why damages are
5 presumed. When someone is injured in their profession it's very difficult
6 to quantify and to identify persons who actually read the statement.
7 Because, typically, if I read my dentist was accused and found guilty or
8 found liable in a wrongful death case, I'm just not going to call him
9 anymore, Your Honor. And I think that's exactly what happened here.
10 And I think that's why our claim in Nevada for defamation per se
11 contemplates that damages are presumed and don't have to be proven
12 for the purposes of summary judgment.

13 So with that, Your Honor, unless you have any questions,
14 we're happy to submit.

15 THE COURT: Okay. Great. So with respect to the issue on
16 the reconsideration, which is that -- you know, initially, in the early part
17 of -- I think it was at the motion to dismiss stage, that Judge Togliatti
18 denied it saying that it was not true, but the issue with further discovery
19 -- and we've been through a lot in this case. It's taken a tortuous journey
20 to the Supreme Court, the companion case did, and all -- it's been a long,
21 long road for this case.

22 And so the -- as I indicated, to me it appears that while the
23 initial claim certainly withstood even if it was a motion for summary
24 judgment -- considered to be a motion for summary judgment, initially it
25 was like at a motion to dismiss page where there is no -- absolutely no

1 way to -- you have to take everything as true in the complaint.

2 So it just seems like at this point where we have further
3 discovery where it was the -- a different time in the case with different
4 information upon which to base the summary judgment, and it was
5 granted on that basis that as the case had evolved over all this period of
6 time and the companion case had as well.

7 So I'm going to deny the motion for reconsideration, and
8 we'll move on to the other issue, which is that we had offers of
9 judgment.

10 MS. MORRIS: Yes. Thank you, Your Honor. Christian Morris
11 for the Plaintiff [sic] Ingrid Patin. Regarding the motion for attorney's
12 fees --

13 THE COURT: Defendant. Defendant. I know it's not a
14 [indiscernible - Ms. Morris speaking over the Court]

15 MS. MORRIS: Defendant. I apologize, Your Honor. For
16 Defendant Ingrid Patin. I'm sorry. Christian Morris for Defendant Ingrid
17 Patin on the motion for attorney's fees and costs.

18 You know, as we laid out in the pleadings, the complaint was
19 originally filed in August of 2015, and an offer of judgment was sent
20 from the Defendant Ingrid Patin on January 19th of 2015, for \$1,000,
21 inclusive of attorney's fees, costs, and interest. As we laid out in the
22 pleadings, there was \$41,375 in attorney's fees at that time. There was
23 approximately \$1100 in costs that had been incurred.

24 And, you know, at that time, the information in this case is
25 kind of what the Plaintiff has always known. The information was known

1 to the Plaintiff that he was the only one who had read it, that it was
2 factually accurate as to how it had been pled. He was aware that he, you
3 know, wasn't able to articulate any damages, since he wasn't able to
4 articulate them in the year 2020 when his deposition was taken. And so,
5 you know, in this case he failed to obtain a more favorable judgment
6 than that offer of judgment back in 2017.

7 So looking through the *Beattie* factors, was this claim made
8 in good faith? And when you know that the statement has not changed
9 and his knowledge of who read the statement had not changed, to bring
10 this and to push it toward a jury trial knowing that he had no articulable
11 damages, and that the statement was true, you have to look at, well, was
12 his rejection unreasonable for being able to walk away from this in 2017,
13 for \$1,000 and be free of any attorney's fees, costs, or interest at that
14 time.

15 And then you have to look at whether it was reasonable for
16 the Defendant in the amount that it was sent, because there was no
17 evidence of damages. And, obviously, the position of the Defendant has
18 always been that this was a factually accurate statement. So to make the
19 offer in good faith of the \$1,000 for this walk away back in 2017 sits well.

20 And then looking again at the fees that are sought, I know we
21 have to go through the *Brunzell* factors, which we've laid out in the
22 motion, but this has been a very long, arduous, motion heavy case.
23 There has been hours of work done on it. We have dived into many
24 areas of law until we were finally able to drill down and get the real
25 information, which is that this was in fact a true statement for the

1 entirety of the six years that it has been in litigation. There was a --

2 THE COURT: Ms. Morris, can I ask on the timeline here?

3 This case goes way back. The case was originally filed in 2015.

4 MS. MORRIS: Correct.

5 THE COURT: And then it went up on -- in this case, it went
6 up on the SLAPP -- the Anti-SLAPP issue, I think.

7 MS. MORRIS: That's correct.

8 THE COURT: Okay. And came back. And so was that the
9 time frame then when the offer was made?

10 MS. MORRIS: The offer was made in January of 2017, and I
11 believe it was at the time of the Anti-SLAPP hearing.

12 THE COURT: Okay. Yeah. So -- okay. Yeah. So I see that is
13 -- so that's the -- I see that now. That's right around the time, January
14 2017. Okay. Yeah, I'm there. I see -- yeah, that is the amended notice of
15 appeal. Yeah. Okay. Got it. And so --

16 MS. MORRIS: And obviously, you know --

17 THE COURT: -- there had already been the motion to dismiss
18 that counsel was talking about earlier. And that was -- again, that motion
19 to dismiss standard is a very different standard from the summary
20 judgment standard. Okay. I see what it was. Okay. Thanks.

21 MS. MORRIS: Thank you, Your Honor. And then the Plaintiff
22 filed a supplement. I don't know if you saw it last week. You know, the
23 supplement is procedurally inappropriate under EDCR 2.20, but it also
24 misconstrued, you know, Rule 68, since that analysis is really for the
25 prevailing party. He didn't obtain a more favorable judgment.

1 THE COURT: Okay.

2 MS. MORRIS: So, you know, the analysis and the way he
3 looked at it isn't appropriate. And I'm not sure if you got that and were
4 able to analyze it, but I did want to address that.

5 THE COURT: Yeah. Right. I did see that. And that the issue
6 that -- Dr. Lee says, when they made me the offer of judgment that was
7 inclusive of my attorney's fees -- \$1,000 inclusive of my attorney's fees
8 and costs, I had already incurred more than that in attorney's fees, so it
9 wasn't a reasonable offer to me to accept. So it was -- that's how I read
10 it. Is they were saying, basically, it was an unreasonable offer because
11 my attorney's fees were so much more at that time.

12 MS. MORRIS: Correct. That's, you know, obviously, not the
13 analysis under Rule 68, because that's what the prevailing party looks at
14 to see if they got a more favorable judgment. We don't know his
15 attorney's fees, but we know ours, which were 41,000.

16 And so, you know, his analysis to say these were my
17 attorney's fees and that's how I made the determination, isn't the
18 appropriate analysis for whether or not it was reasonable to push
19 forward at trial knowing what evidence you had and proof of damages,
20 at the time, which is the more appropriate analysis for the penalties
21 under the rule if you do -- if you reject the offer, and you do not obtain a
22 more favorable judgment, as we have in this case.

23 THE COURT: Okay. And so then with respect to the motion
24 for fees and costs, just in looking through the supporting documentation,
25 there was one attorney who -- because you've got the *Brunzell* affidavits

1 and the information on your fees and costs, except there was one
2 attorney whose name I don't remember, it starts with a W, who we didn't
3 see anywhere else in the case and didn't know who he was, because he's
4 not mentioned in your *Brunzell* affidavit. It starts with a W. Winch or
5 something like that.

6 MS. MORRIS: It might be Ed Wynder in my office.

7 THE COURT: Wynder. Wynder. Wynder. Thank you. Yeah,
8 he wasn't mentioned in your *Brunzell* affidavit, so can you tell me about
9 that?

10 MS. MORRIS: Let me see where I can find that. I know he
11 covered a few things for me.

12 THE COURT: Okay.

13 MS. MORRIS: He's my associate attorney. He's been with
14 me since law school for the last six years, and I think he did cover a
15 few --

16 THE COURT: Okay.

17 MS. MORRIS: -- like status checks and things like that for me.

18 THE COURT: Okay. So he is a member of the firm. Because
19 the name just popped up, and it wasn't anywhere else mentioned in like
20 the *Brunzell* affidavit or anything, but we saw like a billing reference to
21 him, and I was just like, I don't remember him.

22 MS. MORRIS: Yeah.

23 THE COURT: Okay.

24 MS. MORRIS: Let me see if I can find that because I think he
25 did cover a status check for me.

1 THE COURT: Okay. Okay. All right. I got it. Thank you.
2 Thank you.

3 MS. MORRIS: Thank you.

4 THE COURT: And then separately, I believe, the co-
5 Defendant -- it probably makes more sense to have the co-Defendant
6 address their motion, and then that way Mr. Jones can address both of
7 them.

8 MR. DOYLE: That's fine, Your Honor. Really quickly. I mean,
9 the arguments are the same. There's the offer of judgment. The same
10 arguments with respect to prevailing party and being an offer of
11 judgment.

12 The only difference is the motion filed on behalf of Patin Law
13 Group does include a lot of the fees and costs that were associated with
14 the appeal as supported by the affidavit of Mr. Echols. So the only real
15 difference to the argument is the amount of fees and costs, which are set
16 forth in total, including costs, \$83,000 -- \$83,085.20. Ten thousand, two
17 hundred of that is the work that I've done since I came onto the case in
18 substituting in for the corporate entity.

19 THE COURT: Okay. And the balance of it was Mr. Echols
20 during the appeal. So I guess -- I mean, is it strictly a function of the
21 timing of the offer of judgment or is the issue of attorney's fees for the
22 appeal, would that have had to been addressed as part of the appeal?

23 MR. DOYLE: Well, Your Honor, I think that under the offer of
24 judgment statute, it was issued -- the offer of judgment was issued prior
25 to incurring all of those costs. As the Court noted, the notice of appeal

1 went out after the fact, in which case all of the work, and research, and
2 oral argument for the appeal would have been included. But it would be
3 our position too that under the prevailing party statute, it indicates all
4 attorney's fees and costs are considered. It doesn't really delineate for
5 what purpose other than litigating the case.

6 THE COURT: Got it. Thank you. Okay. Mr. Jones.

7 MR. JONES: Your Honor, again, Prescott Jones for the
8 Plaintiff.

9 Your Honor, two main arguments that we have opposition.
10 One is that the offer of judgment, which forms the basis for the Plaintiff --
11 or the Defendants' claim to award of attorney's fees wasn't actually beat,
12 because it wasn't an effective offer of judgment. As was discussed
13 before, the offer of judgment was \$1,000, inclusive of not only costs and
14 prejudgment interest, but attorney's fees. And because the Defendants
15 chose to make it inclusive of attorney's fees, you know, let me be clear,
16 Rule 68 allows for simply it being inclusive of costs and prejudgment
17 interest, but they chose to include attorney's fees.

18 So because of that, when my client received the offer of
19 judgment, he would have had to then forego any opportunity to get
20 awarded his attorney's fees and his attorney's fees incurred to that point
21 in time, had to be included as part of the offer of judgment.

22 We submitted our supplemental -- our supplement to our
23 opposition because at the time the offer of judgment was made, I was at
24 a prior firm and my client had some difficulty in obtaining the billing
25 records, but we submitted a declaration from him -- from my client

1 stating that prior to the time of the offer of judgment being filed, he had
2 incurred at least \$10,000 in attorney's fees and costs by that point in
3 time. And, in fact, you just heard Defendants argue that by the time of
4 the offer of judgment they had incurred \$41,000 of fees and \$11,000 of
5 costs.

6 I think there's not dispute that the fees and costs portion of
7 that offer of judgment were well in excess of \$1,000. So subtracting that
8 amount, the offer of judgment was essentially a negative one, Your
9 Honor, and that should be ineffective on those grounds alone.

10 THE COURT: Okay. So I want to make sure I understand that
11 argument. It's not that -- it's the analysis of what is a reasonable offer
12 and was it simple to reject it. And your client's position is that was
13 reasonable to reject because my fees and costs were so much by that
14 point in time that that nominal offer wouldn't cover my fees and costs to
15 dismiss the case.

16 You're not saying that it was required to be valid that it be in
17 there, it's just his analysis was that's not reasonable. It's unreasonable
18 to reject it because it's so low.

19 MR. JONES: I think that's the second part of my argument,
20 Your Honor, and that goes to the *Beattie* factors as to whether or not it
21 was a good faith offer, and I'll get to that in a second.

22 The first part of the argument is that the offer of judgment
23 was invalid on its face --

24 THE COURT: It was invalid, okay.

25 MR. JONES: -- because it was inclusive -- yeah, because it

1 was inclusive of attorney's fees and costs that were well in excess of the
2 total amount of the offer of judgment.

3 THE COURT: Okay.

4 MR. JONES: And, Your Honor, I want to just touch on the
5 *Beattie* factors briefly. At the point in time when the offer of judgment
6 was made it was just after that 2016 order was issued that we spoke
7 about before. My client had secured a big win in the case, finding not
8 only that the truth or falsity of the statement was an issue for the jury to
9 determine at that point in time, but also that he had demon -- he had put
10 forth prima facie evidence demonstrating a probability of prevailing on
11 his claim. That was one of the factors the Court had to consider when
12 ruling on a special motion to dismiss, and the Court, at that time, had
13 found that he had put forth prima facie evidence demonstrating
14 probability of prevailing on his claim.

15 So, Your Honor, I ask this. Why in the world would my client
16 accept \$1,000 offer of judgment when his damages -- we were looking
17 potentially in the \$1 million range at that point in time. Why in the world
18 would he accept an offer of judgment for \$1,000? It was just simply not a
19 good faith offer at that point in time in the case, especially coming off of
20 those rulings.

21 So, Your Honor, I think that goes to the second and the third
22 *Beattie* factor, whether or not the Defendants' offer of judgment was
23 reasonable and in good faith in both its timing and amount. We set forth
24 the reasons we argue now and also for the same reasons we argued in
25 the motion for reconsideration, quite frankly, that given the timing of that

1 2016 order, it simply wasn't a good faith offer, and it was -- it couldn't
2 possibly be accepted by my client.

3 THE COURT: Now I just want to make sure I'm remembering
4 because the appeal happened before I took it over. So what was
5 appealed was not the finding that Judge Togliatti made on the motion to
6 dismiss, it was the other issue, the Anti-SLAPP motion issue. So that
7 earlier order of Judge Togliatti's was never appealed?

8 MR. JONES: Not quite, Your Honor. The 2016 order was an
9 order on the special motion to dismiss by the Defendants, which dealt
10 with the Anti-SLAPP issue. That was the order that was ultimately
11 appealed and resolved in, I believe, November of 2018.

12 THE COURT: Uh-huh. And so then the actual findings of
13 Judge Togliatti that she -- that it survived the motion to dismiss on just
14 the merits of the complaint, that particular issue, that one did not get
15 appealed?

16 MR. JONES: That's correct. The only appeal that was taken,
17 and there were two of them, because there were two special motions,
18 but it was only the Anti-SLAPP issue that was appealed.

19 THE COURT: Okay. I just wanted -- I wanted to make sure I
20 understood that. Thank you. Because that was before my time. So
21 thank you.

22 MR. JONES: Understood, Your Honor. And you inherited
23 quite the case at the point in time that you took it over, certainly.

24 THE COURT: Yeah.

25 MR. JONES: Your Honor, I just want to touch briefly on the

1 other two *Beattie* factors.

2 The first one being whether the Plaintiff's claim was brought
3 in good faith. Again, you know, at the point in time that the offer of
4 judgment was made, my client had, as we've discussed thoroughly,
5 survived several motions to dismiss, including obtaining a finding that
6 his -- he brought forth prima facie evidence and that the statement -- the
7 truth or falsity of the statement was an issue for the jury.

8 And, lastly, I want to touch just sort of a big picture argument
9 as to whether the fees sought by the offeror are reasonable and justified
10 in the amount.

11 Your Honor, it's the Defendants who decided to take --
12 undertake the tactics they took in the defense of this case. This case has
13 been going on for -- now we're in our sixth year of litigation on this one,
14 and I also admit to Your Honor that's solely because of the tactics the
15 Defendants decided to take in this case. They filed eight or nine
16 dispositive motions. They took two separate appeals, one which was
17 rejected. Those motions were entirely the creation of the Defendants.
18 They were duplicative, as we argued several times, both to this Court
19 and to the prior court. We moved for our fees and costs multiple times
20 on those grounds alone.

21 I think based on that alone, the fees sought are simply
22 unreasonable given the tactics that were undertaken by the Defense. But
23 with that, Your Honor, unless you have any other questions, I'll submit.

24 THE COURT: I do have one last question, and that's this -- on
25 the timing of the offers of judgment. And, as was mentioned, the

1 corporate entity seems to be seeking fees and costs for not only the
2 appeal on the Anti-SLAPP, which I'm trying to remember, I think they lost
3 that.

4 MR. JONES: Correct.

5 THE COURT: And so seeking those fees and -- but the
6 individual I don't think is. And so I guess that was one of my questions
7 was about the corporate entity's claim for this -- like the biggest portion
8 of their claim is, I think, mostly related to the appeal.

9 MR. JONES: And, Your Honor, my understanding was it was
10 both Defendants who brought the special motion to dismiss. It was done
11 in a joint fashion and both Defendants took the appeal. I'm not sure why
12 they allocated all of those fees to the corporate Defendant, but I'm sure
13 they have an explanation as to that, Your Honor.

14 THE COURT: Okay. All right. So again my question -- and,
15 you know, counsel is like, well, it's -- the offer of judgment rule is strictly
16 based on your timing of the offer, and so, I guess that's just like a
17 question for me, because it seems like the point on -- yes, they may have
18 incurred those fees after the time the appeal -- was after the time they
19 served the offer, but it just seems odd to me when they lose the appeal
20 that they would then seek attorney's fees for that, because of the timing.
21 Because it was after the offer of judgment. I mean, I guess that's true. I
22 mean it just seems odd.

23 Is it strictly a function of time or is that part of the whole
24 analysis of -- is that part of a reasonable award of fees? I guess, that's
25 really what the analysis is.

1 UNIDENTIFIED SPEAKER: Your Honor, to I guess --

2 MR. ECHOLS: Your Honor, this is --

3 UNIDENTIFIED SPEAKER: Oh, go ahead.

4 MR. ECHOLS: Your Honor, this is Mike Echols, and I did
5 the --

6 THE COURT: Oh, hi, Mr. Echols.

7 MR. ECHOLS: I can just answer that question if it's okay with
8 the Court.

9 THE COURT: I'm sorry [indiscernible] --

10 MR. ECHOLS: So one of the cases --

11 THE COURT: -- Mr. Echols did handle it. So I'm just -- I don't,
12 I'm just confused about the request for fees for the appeal when the
13 appeal was unsuccessful.

14 MR. ECHOLS: So there's a great case that's cited in the
15 Defendant's briefs, the *Rose Miller* case.

16 THE COURT: Okay.

17 MR. ECHOLS: It was published in 2009. And I did the *Rose*
18 *Miller* case, and it involved like seven appeals that came out of probate
19 and trust cases, and it lasted like 11 or 12 years.

20 But basically what the Supreme Court said -- basically, what
21 we had in *Rose Miller* is we had whittled the case down to a jury trial in a
22 probate case down to undue influence, and then as the Defendants in
23 that probate case, we lost at trial. We appealed the defense verdict -- or,
24 I'm sorry, we appealed the plaintiff's verdict in the case to the Supreme
25 Court and said lack of substantial evidence. You know, basically,

1 eliminate the jury verdict in favor of the opposing party. The Supreme
2 Court agreed with us that there was a lack of substantial evidence, so we
3 became the prevailing party as the defense in that probate and trust
4 contest.

5 Then when we got back in front of Judge Denton, it had gone
6 through several judges in the courthouse at that time. We got back to
7 Judge Denton, and we said, Judge, we ought to get our attorney's fees
8 now because if you look at the offer of judgment, at the time it was
9 offered it was very early in the case. We are now the prevailing party.
10 He said, well, but you lost at trial, so I don't know if I can give you your
11 fees for losing at trial.

12 And so we appealed that denial of our fees, and then that's
13 where *Rose Miller* comes in and says, you look at the time the offer was
14 issued, and then you take the whole train ride until you get to the
15 eventual end of the case. The eventual end of the case in this case was
16 summary judgment to the defense, and then the denial of
17 reconsideration today.

18 And so, really, when you say, hey, well, we lost the appeal,
19 well, we did lose the appeal, but it also focused for us the one issue that
20 they wouldn't decide in the opinion, which the Court has now decided,
21 the fair reporting privilege. And so it wasn't a total loss. What it was is a
22 focus of the issues.

23 And so to suggest that we have to put on a flimsy defense in
24 order to recover attorney's fees, I think, is inaccurate, and I know Mr.
25 Jones is primarily a defense attorney and, I mean, he wants to pull out

1 everything in his tool box and [indiscernible - Mr. Echols and the Court
2 speaking at the same time] --

3 THE COURT: Everybody here has on different hats than
4 they're used to. So *In the Matter of the Estate and Living Trust of Rose*
5 *Miller*, 125 Nev. 550 (2009), just if anybody wants to look at it. 125 Nev.
6 550. Okay. Thanks.

7 So going back around then, I don't know if there's anything
8 else, Ms. Morris, that you wanted to add, or that your co-counsel would
9 want to be heard on before we wrap it up.

10 MS. MORRIS: Yes, just briefly and for clarity, Your Honor.
11 The order that the Plaintiff has referenced by Togliatti was done in
12 September of 2016, and that's the order that was up on appeal at the
13 time the Defendants put in their offer of judgment to the Plaintiff in the
14 amount of \$1,000. So it was a pending appeal of the decision when you
15 look at the timing of it, and why the timing is so important.

16 You heard Plaintiff's counsel say, we were looking at millions
17 of dollars in damages. Now in 2017, that posting had been removed for
18 years, and so -- and the damage is that he has none, zero -- it would have
19 been done from the posting that was put up in 2015. And so it is
20 disingenuous to say we were looking at millions of dollars in damages in
21 2017, regarding a post that had been removed for years, that he knew no
22 one else had seen, and he had no proof of how it had damaged him. It
23 was a statement that only he read.

24 And so to look at the value of that -- and he had a problem
25 with it -- look at the value of that and say, you know, this is in the

1 millions of dollars range is not what the evidence is. It's not what the
2 evidence has turned out to be. And this is not an invalid offer of
3 judgment. \$1,000 inclusive of attorney's fees and costs means that if you
4 pay \$1,000, you walk away from having all of this liability of all of these
5 attorney's fees and costs, and prejudgment interest that we're now
6 sitting here talking about, and that has a very high value. And to say that
7 the offer of judgment wasn't valid because it is inclusive, is not
8 appropriate under the rules. It is a valid offer. For the evidence that we
9 have, \$1,000 and not being saddled with these attorney's fees, costs, and
10 interests at the time an appeal is pending is where you make these
11 strategic decisions, and the decision to reject it comes with the penalties
12 under the rules.

13 THE COURT: Thank you. Anything else? Anything further
14 from the joinder? Or, I guess, technically, it was a separate motion for
15 fees and costs.

16 MR. JONES: Your Honor, could I respond briefly to what Ms.
17 Morris said, I think there's a misstatement?

18 THE COURT: Sure.

19 MR. JONES: Okay. And I'll be brief, Your Honor. The offer
20 of judgment was made by the Defendant to the Plaintiff. The Defendant
21 offered to have judgment taken against them in favor of my client, which
22 is inclusive of my client's claim for attorney's fees and costs. Those are
23 their words, not mine. It has nothing to do with what the Defendants'
24 attorney's fees were at that point in time. It has to do entirely with what
25 my client's claim for attorney's fees would be.

1 That's why we're arguing the offer of judgment is invalid
2 because the attorney's fees were well in excess of \$1,000. And that also
3 is why we're arguing that my client's decision to reject the offer and
4 proceed through discovery and to trial was certainly not grossly
5 unreasonable or in bad faith. My client was put in a position where he
6 had no choice but to reject it, by the way that the Defendants decided to
7 word their offer of judgment, Your Honor.

8 I've been on the other side of that, unfortunately, years ago.
9 My firm has dealt with that quite a bit. You know, I've been dinged for
10 including attorney's fees and costs in an offer of judgment that was
11 accepted by a plaintiff and, before you know it, I got hit with a request for
12 their attorney's fees and costs, where there was no such claim before,
13 Your Honor. So I just want to clarify that for the Court.

14 THE COURT: Okay. Thanks. Anything further? You can
15 have final word, one or the other, if you wish.

16 MS. MORRIS: Nothing for me, Your Honor.

17 THE COURT: Okay. Thanks. Anything else for the corporate
18 defendant?

19 MR. DOYLE: Nothing, Your Honor.

20 THE COURT: Okay. I do believe this was a valid offer of
21 [indiscernible - audio breaking up] were valid offers of judgment. But we
22 have to do the *Beattie* analysis, and I do want to look at the attorney's
23 fees and cost requests. They seemed really reasonable to me. I mean,
24 they weren't excessive, but I did -- like I said, I did have this question,
25 and so I appreciate the citation to the *Rose Miller Trust* case, and I'll

1 certainly look at that. So, Louisa, if we could put this on the chambers
2 calendar for the 26th? And I'll do a decision on an award of fees and
3 costs.

4 As I indicated, I think that the offer is valid. Even though it
5 was only \$1,000, it was inclusive of fees and costs incurred up to that
6 time. The timing -- I appreciate the timing. If they had been successful
7 in winning the appeal on the Anti-SLAPP, the case would have been
8 over. So to me, I get the analysis that Ms. Morris was making that that is
9 a valid offer. At the time it was reasonable because if we had won that
10 appeal, which they didn't, it would have been over. And at that point in
11 time, it would have allowed the Plaintiff to get out of the case with no
12 further litigation.

13 So I think it's a valid offer with respect to the -- just is it a
14 valid offer? I think it is. But the next step is the *Beattie* analysis, and as I
15 said, I want to take a look at this *Rose Miller* case and the billing
16 statements. The costs look pretty reasonable. I didn't really see a
17 challenge. I don't want to put words in your mouth, Mr. Jones. I didn't
18 really see a challenge that any of these costs that they were claiming had
19 not actually been incurred. It seems more --

20 MR. JONES: That's correct, Your Honor. There's no
21 challenge to that.

22 THE COURT: Yeah. So the costs, it appears, are reasonable,
23 necessary, and actually incurred. And we'll do, you know, a decision on
24 those as they appear to be warranted. The question is whether there
25 should be attorney's fees additionally under these offers. If that's

1 reasonable, how much? And that's my next step is doing the *Beattie*
2 analysis, is what should the award of fees be?

3 So thanks very much. And we'll put it on that chamber's
4 calendar, and I'll get you a decision on how much the award is. Thank
5 you all very much.

6 Mr. Jones, are you going to do the order on the denial of
7 your motion for reconsideration or do you want one of the Defendants to
8 do it?

9 MR. JONES: We're happy to do the order and run it by the
10 Defendants before we submit it to the Court.

11 THE COURT: Okay. Okay. If that's agreeable, counsel, Mr.
12 Jones said he would do the order on the denial of his motion for
13 reconsideration.

14 MS. MORRIS: Yeah. No, we appreciate that.

15 THE COURT: Okay. Thanks very much. I appreciate it.
16 Thank you, counsel. Thanks for your time this morning.

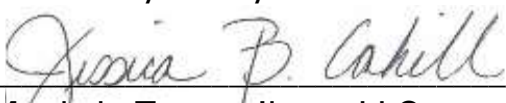
17 MR. JONES: Thank you, Your Honor.

18 MS. MORRIS: Thank you. Have a good day.

19 MR. DOYLE: Thank you, Your Honor.

20 [Proceedings concluded at 11:30 a.m.]

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

24 

25 Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708

Other Tort

COURT MINUTES

May 19, 2021

A-15-723134-C Ton Lee, Plaintiff(s)
vs.
Ingrid Patin, Defendant(s)

May 19, 2021 09:00 AM Plaintiff Ton Vihh Lee's Motion for Reconsideration, or in the
Alternative, Motion to Alter or Amend Judgment Pursuant to
NRCp 59(e)

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Ortega, Natalie

RECORDER: Esparza, Kerry

REPORTER:

PARTIES PRESENT:

Christian Morris

Attorney for Cross Claimant, Cross
Defendant, Defendant

Kerry J. Doyle

Attorney for Cross Defendant, Defendant

Prescott T. Jones

Attorney for Plaintiff

JOURNAL ENTRIES

Arguments by counsel regarding the merits of Plaintiff Ton Vihh Lee's Motion for Reconsideration, or in the Alternative, Motion to Alter or Amend Judgment Pursuant to NRCp 59(e). COURT stated FINDINGS and ORDERED, Motion for Reconsideration DENIED as well as Motion to Alter DENIED.

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Case Number: A-15-723134-C

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Las Vegas, Nevada, Wednesday, May 19, 2021

[Case called at 9:25 a.m.]

THE COURT: Moving on, our last thing, I think, on the 9 a.m. is the Lee versus Patin, 723134, 723134.

MR. JONES: Good morning, Your Honor, Prescott Jones for the plaintiff.

THE COURT: Good morning.

MS. MORRIS: Good morning, Your Honor, Christian Morris for defendant Ingrid Patin.

THE COURT: Okay.

MR. DOYLE: Good morning, -- good morning, Your Honor, Kerry Doyle for --

THE COURT: Did we lose, Mr. Doyle?

MR. DOYLE: No, I'm here, Your Honor, --

THE COURT: Oh, I'm sorry.

MR. DOYLE: [Indiscernible].

THE COURT: -- because I -- it dropped off, we couldn't hear you. Sorry about that.

MR. DOYLE: My apologies.

THE COURT: Okay. Mr. Jones, this is your motion so I'm trying to -- were you looking to a have -- were you looking for reconsideration of the award of attorney's fees and costs? That's my understanding what the request for reconsideration was directed, because it very similar to the previous request for

1 reconsideration. But I just wanted to make sure that it's -- we're
2 specifically talking here about the award of fees and costs and
3 whether that award of fees and costs was appropriate under the
4 offer of judgment rule.

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

6 THE COURT: Got it.

7 MR. JONES: This is my client's motion for
8 reconsideration of the Court's April 21st 2021 order. We also filed
9 an alternative request to alter or amend the judgment pursuant to
10 Rule 59(e). And, Your Honor, that was a procedural alternative
11 request in the event that the Court did not grant our order
12 shortening time. I'm sure you can appreciate that, even though
13 functionally they have very similar analysis. But that's correct, Your
14 Honor, we're seeking reconsideration of the April 21st, 2021 order
15 from --

16 THE COURT: And it wasn't --

17 MR. JONES: -- under --

18 THE COURT: If I understood, it wasn't so much like
19 quibbling with the amounts. It was just there should not have been
20 an award of fees and costs, because the analysis under the rule is
21 that in fact they did not receive a better outcome. They were not
22 entitled to award at all. I just wanted to make sure that, I mean, we
23 aren't talking here about oh she shouldn't really have billed at that
24 rate or that was too many hours or whatever. We weren't getting
25 into that kind of -- getting out the weed like that. It's more a

1 philosophical question as to whether an award is even appropriate?

2 MR. JONES: That's absolutely correct, Your Honor.

3 THE COURT: Okay.

4 MR. JONES: Our analysis in the motion relates to the
5 second *Beatty* factor.

6 THE COURT: Got it.

7 MR. JONES: And I think I can keep this argument fairly
8 brief, Your Honor, is the in the Court's order the analysis was that
9 we should look to the defendant's attorney's fees and costs based
10 on the language of the offer of judgment Rule 68.

11 THE COURT: Uh-huh.

12 MR. JONES: Our motion for reconsideration focuses on
13 Rule 68(g) and specifically the portion of it, and if I could just briefly
14 read into the record, Your Honor, the portion of the rule that reads if
15 a party made an offer and a set amount that precluded a separate
16 award of costs, expenses, and interest, which we believe this is
17 because it is an inclusive of attorney's fees and costs, and if
18 attorney's fees are permitted by law or contract, attorney's fees, the
19 Court must compare the amount of the offer together with -- and
20 this is key -- the offeree's pre-offer taxable costs, expense, interest,
21 and attorney's fees.

22 So the rule says we have to look to the offer, which of
23 course is my client was the offeree in this analysis. We have to
24 look to the offeree's attorney's fees. And that's why we attached
25 and affidavit of my client in the initial opposition to their motion for

1 attorney's fees stating that the attorney's fees were above a
2 thousand dollars making it essentially an invalid offer, because the
3 offer --

4 THE COURT: Okay.

5 MR. JONES: -- was in the negative. So and that's the
6 gist of the argument, Your Honor.

7 THE COURT: Okay.

8 MR. JONES: And, you know, unless Your Honor has any
9 other questions, you know, I'm happy to hear what the other side
10 has to say and reserve reply.

11 THE COURT: Yeah, that's unusual. That's a -- that's an
12 interesting argument. Okay, thanks.

13 MS. MORRIS: Thank you, Your Honor, good morning.
14 Christian Morris for defendant Ingrid Patin. We're here on a kind of
15 a two-fold argument they're making here, a motion for
16 reconsideration or to alter and amend. And they are making kind of
17 the same argument that they've made before. So, even as we sit
18 here, this motion for reconsider we don't have any new information.
19 We don't have any change in law. We don't have or manifest
20 injustice.

21 And when you look at the way the offer was presented,
22 which is a valid offer of judgment and the only case law that they
23 cited was this *Edwards* case, which was dealing with an un-
24 apportioned joint offer, which has nothing to do with what we're
25 dealing with here.

1 Defendant Ingrid Patin offered a thousand dollars
2 inclusive of any interest costs, and attorney's fees that she could
3 claim against the plaintiff. And that would be hey, we will pay you a
4 thousand dollars and you don't have to be subject to what we have
5 now if you don't get a verdict or a judgment greater than this
6 amount. And so, we did kind of already go through this in the last
7 hearing and kind of go thru this analysis again.

8 And so, his analysis of 68 is not what the offer is stating.
9 And if that were to be the case, what his argument is, then no offer
10 of judgment could be valid, because how would you ever know the
11 other side's costs or attorney's fees at the time you make an offer of
12 judgment. And so the risk in the analysis is what the evidence is at
13 the time, where the case is portioned and the language of the offer
14 or judgment, which is Ms. Patin was saying I will give you a
15 thousand dollars and you -- which is inclusive of my attorney's fees,
16 costs, and interest that I could claim against you plaintiff. And so
17 Prescott's analysis of Rule 68 is just incorrect and therefore no offer
18 of judgment would ever be valid if his argument were to even have -
19 - hold any water.

20 THE COURT: Okay. All right. And so that's the analysis
21 68(g) how cost, expenses, interest and attorney's fees are
22 considered. So, all right, thanks very much.

23 And I don't -- Mr. Doyle, did you have anything to add? I
24 know you filed --

25 MR. DOYLE: I just had a joinder, Your Honor. I didn't

1 have anything to add to Ms. Morris' argument.

2 THE COURT: Okay. And as I mentioned, I did not see
3 any challenge to like the amount of the award challenging the costs
4 or the rates. Now and that's why I wanted to ask is because I did
5 not award a substantial amount that your client was seeking. So I
6 did not see any counter saying you should have given us that
7 amount of attorney's fees for that -- I think it was SLAPP suit
8 appeal. I think it was a SLAPP suit appeal. It was one of the
9 appeals.

10 So in other words, you're not challenging -- nobody
11 counterclaimed and said you didn't give us enough. I mean, this is
12 just -- we're just here talking today about whether this analysis of
13 Rule 68 granting fees to the defendants was the proper analysis.
14 Nobody else has challenged the actual order itself which was just
15 the specifics of the dollar amounts awarded.

16 MS. MORRIS: Yes, Your Honor, Christian Morris for the
17 defendant Ingrid Patin, that's absolutely correct. We don't have any
18 dispute with the amounts and it wasn't raised obviously by Prescott,
19 so that is not on the table today.

20 THE COURT: And that's --

21 MR. JONES: Correct, Your Honor.

22 THE COURT: -- also true for you, Mr. Doyle?

23 MR. DOYLE: Yes, Your Honor.

24 THE COURT: Okay. Thanks very much. I just wanted to
25 make a record on that.

1 Okay so, Mr. Jones, so just as I said, I just want to make
2 it perfectly clear that nobody is challenging the specifics of cost
3 awards, fee awards. It's more the overarching premise of was this
4 a valid offer upon which an award of fees and costs could be
5 calculated. The Court properly calculate whether the defendant's
6 bettered their outcome. And your position being at the time the
7 analysis for your client was that doesn't cover my fees and costs
8 that I've already incurred. If -- and even though -- and to be clear, it
9 was a thousand dollars from Ms. Patin and a thousand dollars from
10 the law firm. There were two offers.

11 And so I know that he incurred probably more than this,
12 so and that was kind of when Ms. Morris talked about un-
13 apportioned joint offers, there were two separate offers. So would
14 you do the same analysis on each of them? I mean, hypothetically
15 speaking, if the person -- if maybe there were two offers that did
16 add up to a total amount. Or was it each offer has to be -- and
17 that's why I'm just trying to figure how this analysis works. Is each
18 offer analyzed in its own vacuum or are they considered -- I guess I
19 was -- which may not be a -- there may not be any point to that,
20 because it's just 2 thousand dollars total. So it probably doesn't
21 make a difference.

22 MR. JONES: Very interesting question, Your Honor. You
23 know, my client's affidavit said that he an excess of 10 thousand
24 dollar of attorney's fees and costs, so I think in some way the
25 argument may be academic. But I think, you know, no matter how

1 you slice it, if you look at together, if you look at individually as
2 directed to each defendant, I think my client easily satisfies the --
3 having his attorney's fees and costs above each one of the offers.

4 THE COURT: Okay. All right. Yeah, it is an interesting
5 theory and I hadn't really seen it as mentioned -- there doesn't
6 seem be a lot of case on subsection (g) specifically and how you
7 would calculate it. Instead we just usually do this analysis under
8 *Beatty* factors, you know, was it reasonable at the time?

9 And I know a long time ago there was this theory that,
10 you know, when you used to make an offer that was like for \$100,
11 you know, I've been around a lot longer than you guys, then that
12 was totally unreasonable because it wouldn't even cover the cost of
13 filing a complaint. And so, that would be how you would -- kind of
14 theory that you know, you had to a go a certain amount above that,
15 because otherwise you're not covering just the cost of beginning the
16 action. And then you get into fees and all these other things that --
17 just on its face it would be unreasonable to offer somebody a \$100,
18 because even though if you think you're going to get a total defense
19 verdict, you know, zero.

20 So but just the theory that they file their case, you have to
21 at least cover the cost of filing the case. I mean, that's just kind of
22 like an informal sort of theory. I don't know that it was ever reduced
23 to a decision. I just know that that used to be -- when you'd go in
24 and argue these things, that's kind of the analysis the judges would
25 give you.

1 So, you know, a thousand dollars with all due respect,
2 you know, does cover the cost of that initial bringing of the case.
3 And so the question then is do you continue to analyze that further
4 and go all the way into, well how much did he think that the other
5 side had incurred at this point for their attorney's fees? We know
6 how much we have incurred maybe they've got the same or similar
7 amount.

8 Yeah, so that's where I have to agree with Ms. Morris. I
9 just don't understand how any offeror would ever be in a position to
10 say I believe I'm covering your fees and costs. There's no way they
11 would ever know. Like I said, costs you could -- you kind of know
12 what costs at least whatever a filing fee is, \$350 whatever it is.

13 So for that reason, I just -- I respectfully disagree with the
14 analysis of Rule 68(g) that we have to consider what the offerees
15 own costs are. The offeree, I believe Ms. Morris' analysis is correct,
16 has to say I know what I've paid so far. I run the risk of having to
17 pay them that much or more. So I should just take this offer. I think
18 that's the analysis as opposed to they aren't covering my fees and
19 costs. They don't know what fees and costs are. They're saying
20 we're waiving ours. So I think that's what 68(g) means. It's an
21 interesting issue and who knows maybe we'll get a decision on this,
22 because it is an interesting question as to what's meant by that
23 language.

24 So I'm going to deny the motion for reconsideration. As
25 indicated, none of the parties have sought reconsideration on the

1 actual amounts. This was just directed to the question of whether
2 an award of fees and costs was appropriate in the first place. So
3 I'm going to deny the reconsideration on that ground and who's
4 going to do the order?

5 Do you want to do it, Mr. Jones, if you want tee up this
6 issue the way you want -- because I'm assuming you want me to
7 make a record for the appeal?

8 MR. JONES: Certainly, Your Honor. Yeah, I'd be happy
9 to draft order and run it by counsel.

10 THE COURT: Is that agreeable counsel? I think that --
11 like I said, I know that this is -- there's -- we're making a record here
12 and I'm fine with that. As I said, I think that it's an interesting legal
13 question and that who knows maybe we'll get a decision that might
14 be a benefit to the Bar, but and so perhaps --

15 MS. MORRIS: Thank you, no.

16 THE COURT: -- Mr. Jones could phrase it --

17 MS. MORRIS: I appreciate that, Your Honor. I don't
18 have a problem with Mr. Jones preparing the order. My -- I just
19 want to make it kind of clear for the record because if -- I can't tell if
20 his argument is that it isn't a valid offer because it was a thousand
21 dollars and that didn't cover his client's cost. Or is he saying it
22 shouldn't have invoked the penalties of the rule because I have so
23 much in costs? And I think I kind of want that to be clear for record,
24 because --

25 THE COURT: Okay.

1 MS. MORRIS: -- under the law, it is a valid offer of
2 judgment. He's arguing under Rule 68 that it doesn't invoke the
3 penalties because he had so much in costs. And I just want to
4 make sure that that's what we're discussing so it's clear in the
5 order.

6 THE COURT: That's what -- when I said I thought --

7 MR. JONES: Just to clarify for the record --

8 THE COURT: Pardon.

9 MR. JONES: Oh, my apologies. Just to clarify for the
10 record. It's not our costs. It's the attorney's fee portion of the offer
11 of judgment and my client's attorney's fees that make it, I think, both
12 arguments are true. It's invalid offer because it's negative. And it
13 also wasn't beat by the granting of the motion for summary
14 judgment.

15 THE COURT: Okay. So if we can clarify that. That's
16 why I said I thought we probably needed to make sure we have it
17 really clear what the issue is. Because I assume it's an issue in the
18 appeal. And we want to make sure that he tees it up the way it is
19 and it's perfectly clear to opposing counsel. So I -- that's why I
20 suggested maybe that Mr. Jones write the order, that way he's got
21 the issue framed the way he wants it framed. And you're on notice
22 of what it is.

23 MR. JONES: Your Honor, to clarify --

24 THE COURT: Okay.

25 MR. JONES: Your Honor, to clarify the alternative

1 request to amend the judgment under 59(e) is also denied, correct?

2 THE COURT: It also be denied, yeah.

3 MR. JONES: Yeah.

4 THE COURT: Okay. Thank you, counsel, appreciate
5 your time. Good luck.

6 MR. JONES: Thank you, Your Honor.

7 MS. MORRIS: Thank you, Your Honor. Have a good
8 day.

9 THE COURT: And look forward to hearing what
10 happens. Thank you.

11 MR. DOYLE: Thank you.

12 [Hearing concluded at 9:40 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

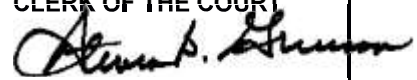
23

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Jessica Kirkpatrick
Court Recorder/Transcriber



1 **NEOJ**
2 **RESNICK & LOUIS, P.C.**
3 PRESCOTT JONES
4 Nevada Bar No. 11617
5 pjones@rlattorneys.com
6 MYRALEIGH A. ALBERTO
7 Nevada Bar No. 14340
8 malberto@rlattorneys.com
9 8925 W. Russell Road, Suite 220
10 Las Vegas, Nevada 89148
11 Telephone: (702) 997-3800
12 Facsimile: (702) 997-3800
13 *Attorneys for Plaintiff,*
14 *Ton Vinh Lee*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

11 TON VINH LEE,
12
13 Plaintiff,
14 v.

CASE NO.: A-15-723134-C

DEPT: 26

NOTICE OF ENTRY OF ORDER

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

18 PLEASE TAKE NOTICE that the ORDER DENYING PLAINTIFF'S MOTION FOR
19 RECONSIDERATION, OR IN THE ALTERNATIVE, MOTION TO AMEND OR ALTER
20 JUDGMENT PURSUANT TO NRCP 59(E) was entered on the 11th day of June, 2021, a copy of
21 which is attached hereto.

22 DATED this 11th day of June, 2021.

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

24 */s/ Prescott Jones*

25 _____
26 PRESCOTT JONES, SBN: 11617
27 MYRALEIGH A. ALBERTO, SBN: 14340
28 8925 W. Russell Road, Suite 220
Las Vegas, NV 89148
Attorneys for Plaintiff, Ton Vinh Lee

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that service of the foregoing **NOTICE OF ENTRY OF**
3 **ORDER** was served this 11th day of June, 2021, by:

4
5 [] **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with
6 postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada,
addressed as set forth below.

7 [] **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax
8 number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a).
9 A printed transmission record is attached to the file copy of this document.

10 [] **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick
11 & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set
forth below.

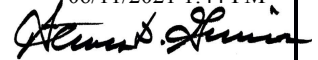
12 [X] **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing
13 services the document(s) listed above to the Counsel set forth on the service list on this
14 date pursuant to EDCR Rule 7.26(c)(4).

15 Christian M. Morris, Esq.
16 **NETTLES MORRIS**
17 1389 Galleria Dr., Suite 200
Henderson, NV 89014
18 *Attorney for Defendant Ingrid Patin*

19 Kerry J. Doyle, Esq.
20 **DOYLE LAW GROUP**
21 7375 S. Pecos Rd., #101
Las Vegas, NV 89120
22 *Attorney for Defendant Patin Law Group, PLLC*

23
24 /s/ Susan Carbone

25 _____
An Employee of Resnick & Louis, P.C.


CLERK OF THE COURT

ORDR
RESNICK & LOUIS, P.C.
PRESCOTT JONES
Nevada Bar No. 11617
pjones@rlattorneys.com
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Telephone: (702) 997-1029
Facsimile: (702) 997-3800
Attorneys for Plaintiff,
Ton Vinh Lee

DISTRICT COURT

CLARK COUNTY, NEVADA

TON VINH LEE,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-15-723134-C

DEPT: 26

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION,
OR IN THE ALTERNATIVE, MOTION
TO AMEND OR ALTER JUDGMENT
PURSUANT TO NRCP 59(E)**

This matter came on for Hearing on May 19, 2021, before the Honorable Judge Gloria J. Sturman. The Court having read and considered the pleadings on file, having heard the oral arguments of counsel, and having considered the matter and being fully advised, and good cause appearing therefore, finds as follows:

THIS COURT FINDS that Plaintiff's Motion for Reconsideration or, in the Alternative, Motion to Amend or Alter Judgment, does not challenge the amount of attorney's fees awarded, but rather challenges the granting of attorney's fees itself.

1 Reviewed and approved as to form and content by:

2 **NETTLES MORRIS**

3 */s/ Christian Morris*

4
5

CHRISTIAN MORRIS, ESQ.
6 Nevada Bar. No. 11218
7 1389 Galleria Drive, Suite 200
8 Henderson, Nevada 89014
9 *Attorneys for Defendant,*
10 *Ingrid Patin*

11
12 **DOYLE LAW GROUP, LLC**

13 */s/ Kerry Doyle*

14
15

KERRY DOYLE, ESQ.
16 Nevada Bar. No. 11218
17 7375 S. Pecos Rd., Suite 101
18 Las Vegas, Nevada 89120
19 *Attorneys for Defendant,*
20 *Patin Law Group PLLC*

From: [Christian Morris](#)
To: [Prescott Jones](#); kdoyle@doylelawgrouplv.com
Cc: [Jenn Alexy](#); [Susan Carbone](#); [Myraleigh Alberto](#)
Subject: RE: Lee v. Patin - Proposed Order
Date: Monday, May 31, 2021 2:11:54 PM
Attachments: [image001.png](#)

Hi Prescott,
You may affix my signature.
Thank you,
Christian

From: Prescott Jones <pjones@rlattorneys.com>
Sent: Friday, May 28, 2021 3:01 PM
To: Christian Morris <Christian@nettlesmorris.com>; kdoyle@doylelawgrouplv.com
Cc: Jenn Alexy <Jenn@nettlesmorris.com>; Susan Carbone <scarbone@rlattorneys.com>; Myraleigh Alberto <malberto@rlattorneys.com>
Subject: Lee v. Patin - Proposed Order

Hi Christian and Kerry –

Attached is the proposed order on my client's Motion for Reconsideration for your review. Please let me know if you have any revisions by the end of the day Tuesday, June 1, 2021. Hope you both have a great holiday weekend.

Regards,

Prescott T. Jones, Esq.

Resnick & Louis, P.C.
8925 West Russell Road, Suite 220
Las Vegas, NV 89148
Direct Phone: 702-997-1029
pjones@rlattorneys.com
<http://www.rlattorneys.com>



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To: [Prescott Jones](#)
Cc: [Christian Morris](#); [Jenn Alexy](#); [Susan Carbone](#); [Myraleigh Alberto](#)
Subject: Re: Lee v. Patin - Proposed Order
Date: Tuesday, June 1, 2021 9:30:51 AM
Attachments: [PastedGraphic-2.tiff](#)

Yes. Please.

Kerry J. Doyle, Esq.
Doyle Law Group
7375 S. Pecos Rd. #101
Las Vegas, NV 89120
702.706.3323 (general)
702.921.7823 (fax)
kdoyle@DoyleLawGroupLV.com
www.DoyleLawGroupLV.com



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On Jun 1, 2021, at 9:29 AM, Prescott Jones <pjones@rlattorneys.com> wrote:

Thank you Christian. Kerry – do we have your authority to include your signature?

Prescott T. Jones, Esq.

Resnick & Louis, P.C.
8925 West Russell Road, Suite 220
Las Vegas, NV 89148
Direct Phone: 702-997-1029
pjones@rlattorneys.com
<http://www.rlattorneys.com>

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Cc: Jenn Alexy <Jenn@nettlesmorris.com>; Susan Carbone
<scarbone@rlattorneys.com>; Myraleigh Alberto <malberto@rlattorneys.com>
Subject: RE: Lee v. Patin - Proposed Order

Hi Prescott,
You may affix my signature.
Thank you,
Christian

From: Prescott Jones <pjones@rlattorneys.com>
Sent: Friday, May 28, 2021 3:01 PM
To: Christian Morris <Christian@nettlesmorris.com>; kdoyle@doylelawgroup.lv.com
Cc: Jenn Alexy <Jenn@nettlesmorris.com>; Susan Carbone
<scarbone@rlattorneys.com>; Myraleigh Alberto <malberto@rlattorneys.com>
Subject: Lee v. Patin - Proposed Order

Hi Christian and Kerry –

Attached is the proposed order on my client's Motion for Reconsideration for your review. Please let me know if you have any revisions by the end of the day Tuesday, June 1, 2021. Hope you both have a great holiday weekend.

Regards,

Prescott T. Jones, Esq.

Resnick & Louis, P.C.
8925 West Russell Road, Suite 220
Las Vegas, NV 89148
Direct Phone: 702-997-1029
pjones@rlattorneys.com
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 Ton Lee, Plaintiff(s)

CASE NO: A-15-723134-C

7 vs.

DEPT. NO. Department 26

8 Ingrid Patin, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/11/2021

15 "Christian M. Morris, Esq." .

christianmorris@nettleslawfirm.com

16 "Jeremy J. Thompson, Esq." .

jthompson@mpplaw.com

17 "Paul E Larsen, Esq." .

plarsen@mpplaw.com

18 Coreene Drose .

cdrose@rlattorneys.com

19 Cristina Robertson .

crobertson@mpplaw.com

20 Debbie Surowiec .

dsurowiec@mpplaw.com

21 Ingrid Patin .

ingrid@patinlaw.com

22 Jenn Alexy .

jenn@nettleslawfirm.com

23 Joyce Ulmer .

julmer@mpplaw.com

24 Lisa Bell .

lbell@rlattorneys.com

25 Nancy C. Rodriguez .

nrodriguez@mpplaw.com

1	Prescott Jones .	pjones@rlattorneys.com
2	Christian Morris	christian@nettlesmorris.com
3	Tori Allen	victoria@nettlesmorris.com
4	Kerry Doyle	kdoyle@doylelawgroup.lv.com
5	Mikayla Hurtt	admin@doylelawgroup.lv.com
6	Emily Arriviello	emily@nettlesmorris.com
7	Myraleigh Alberto	malberto@rlattorneys.com
8	Brittany Willis	bwillis@rlattorneys.com
9	Susan Carbone	Scarbone@rlattorneys.com
10	Jessica Humphrey	Jhumphrey@rlattorneys.com
11	Melanie Herman	mail@rlattorneys.com
12	Prescott Jones	pjones@rlattorneys.com
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1 **ASTA**
2 **RESNICK & LOUIS, P.C.**
3 PRESCOTT JONES
4 Nevada Bar No. 11617
5 pjones@rlattorneys.com
6 MYRALEIGH A. ALBERTO
7 Nevada Bar No. 14340
8 malberto@rlattorneys.com
9 8925 W. Russell Road, Suite 220
10 Las Vegas, Nevada 89148
11 Telephone: (702) 997-3800
12 Facsimile: (702) 997-3800
13 *Attorneys for Plaintiff,*
14 *Ton Vinh Lee*

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

13 TON VINH LEE,
14
15 Plaintiff,
16 v.

17 INGRID PATIN, an individual, and PATIN
18 LAW GROUP, PLLC, a Nevada Professional
19 LLC,
20 Defendants.

CASE NO.: A-15-723134-C

DEPT: 26

CASE APPEAL STATEMENT

21
22 PLAINTIFF TON VINH LEE, by and through his attorneys of record, PRESCOTT T.
23 JONES, ESQ. and MYRALEIGH A. ALBERTO, ESQ. of the law firm of RESNICK & LOUIS,
24 P.C., hereby files this CASE APPEAL STATEMENT.

25 1. Name of appellant filing this Case Appeal Statement:

26 Plaintiff Ton Vinh Lee

27 2. Identify the Judge issuing the decision, judgment, or order appealed from:
28

1 The Honorable Gloria Sturman.

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

3 Appellant:

4 TON VINH LEE (an individual)

5 Attorneys: Prescott T. Jones, Esq.
6 Myraleigh A. Alberto, Esq.
7 Resnick & Louis, PC
8 8925 W. Russell Rd., Suite 220
9 Las Vegas, NV 89144

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

12 Respondents: Ingrid Patin (an individual) and Patin Law Group, PLLC

13 Attorneys: Christian M. Morris, Esq.
14 Nettles Morris
15 1398 Galleria Drive, Suite 200
16 Henderson, NV 89014
17 *Attorney for Ingrid Patin*

18 Kerry J. Doyle, Esq.
19 DOYLE LAW GROUP
20 7375 S. Pecos Rd., #101
21 Las Vegas, NV 89120
22 *Attorney for Patin Law Group, PLLC*

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

26 N/A.

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

Retained counsel.

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

3 Retained counsel.

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

6 N/A.

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

10 The complaint was filed on August 17, 2015.

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

14 This appeal is taken from the District Court's award for attorney fees and costs in
15 a civil action for defamation *per se* brought by Plaintiff Ton Vinh Lee, a dentist, against
16 Defendants Ingrid Patin and Patin Law Group. Defendants are the attorney and legal practice that
17 represented a plaintiff who had previously filed suit against Plaintiff, and other parties, in
18 Singletary v. Ton Lee, DDS et. al. (Eighth Judicial District Court Case No. A-12-656091-C).
19 Plaintiff brought his defamation *per se* claim on the grounds that Defendants published a
20 defamatory statement on the website of Patin Law Group, PLLC that falsely asserted that
21 Defendants' former client in the Singletary case recovered a \$3.4 million jury verdict against all
22 named Singletary defendants, including Plaintiff, and that Defendants' statement imputed to
23 Plaintiff a lack of fitness as a dentist and as a business owner. On October 28, 2020, the District
24 Court granted Defendant Ingrid Patin's Motion for Judgment on the Pleadings, or in the
25 Alternative, Summary Judgment, which was joined by Defendant Patin Law Group, PLLC.
26 Plaintiff's appeal on the October 28, 2020, Order is currently pending before the Supreme Court
27 as Supreme Court Case No. 82516.
28

On November 29, 2020, Defendant Ingrid Patin filed her Motion for Attorneys' Fees, Costs, and Interest pursuant to NRS 18.020(3) and NRCP 68. Defendant Patin Law Group filed its Motion for Attorneys' Fees and Interest pursuant to NRCP 68 on the same day.

On April 23, 2021, the District Court issued its Notice of Entry of Decision and Order granting, in part, Defendant Ingrid Patin's Motion for Attorneys' Fees, Costs, and Interest, and Defendant Patin Law Group's Motion for Attorneys' Fees and Interest, finding that Defendants were entitled to fee and costs pursuant to NRCP 68. On May 7, 2021, Plaintiff filed his Motion for Reconsideration, or in the alternative, Motion to Alter/Amend Judgment Pursuant to NRCP 59(e). Following oral argument on May 19, 2021, the Court denied Plaintiff's Motion. The Court filed its Notice of Entry of Order denying the Motion on June 11, 2021.

Plaintiff now appeals the District Court's April 23, 2021, Order.

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

Yes. There have been three appeals in this litigation.

- Ingrid Patin, an individual, and Patin Law Group, PLLC, a professional LLC v. Ton Vinh Lee, an individual. Supreme Court Case No. 69928, and Supreme Court Case No. 72122.
- Ton Vinh Lee, an individual, v. Ingrid Patin, an individual, and Patin Law Group, PLLC, a professional LLC. Supreme Court Case No. 82516.

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

No.

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

No.

DATED this 8TH day of July, 2021.

RESNICK & LOUIS, P.C.

/s/ Prescott Jones

PRESCOTT JONES

Nevada Bar No. 11617

MYRALEIGH A. ALBERTO

Nevada Bar No. 14340

8925 W. Russell Road, Suite 220

Las Vegas, NV 89148

Attorneys for Plaintiff,

Ton Vinh Lee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **CASE APPEAL STATEMENT** was served this 8th day of July, 2021, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

Christian M. Morris, Esq.
NETTLES MORRIS
1389 Galleria Dr., Suite 200
Henderson, NV 89014
Attorney for Defendant Ingrid Patin

Kerry J. Doyle, Esq.
DOYLE LAW GROUP
7375 S. Pecos Rd., #101
Las Vegas, NV 89120
Attorney for Defendant Patin Law Group, PLLC

/s/ Susan Carbone

An Employee of Resnick & Louis, P.C.



1 **NOAS**
2 **RESNICK & LOUIS, P.C.**
3 PRESCOTT JONES
4 Nevada Bar No. 11617
5 pjones@rlattorneys.com
6 MYRALEIGH A. ALBERTO
7 Nevada Bar No. 14340
8 malberto@rlattorneys.com
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10 **DISTRICT COURT**
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13 TON VINH LEE,
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15 Plaintiff,
16 v.

17 INGRID PATIN, an individual, and PATIN
18 LAW GROUP, PLLC, a Nevada Professional
19 LLC,
20 Defendants.

CASE NO.: A-15-723134-C

DEPT: 26

NOTICE OF APPEAL

21 Notice is hereby given that PLAINTIFF TON VINH LEE, by and through his attorneys
22 of record, PRESCOTT T. JONES, ESQ. and MYRALEIGH A. ALBERTO, ESQ. of the law
23 firm of RESNICK & LOUIS, P.C., hereby appeals to the Supreme Court of Nevada from the
24 Decision and Order granting Defendant Ingrid Patin's Motion for Attorneys' Fees, Costs, and
25 Interest and Defendant Patin Law Group's Motion for Attorneys' Fees and Interest, entered in
26 this action on April 23, 2021, and attached as Exhibit A.

On May 7, 2021, Plaintiff filed his Motion for Reconsideration, or in the alternative, Motion to Alter/Amend Judgment Pursuant to NRCp 59(e). Following oral argument on May 19, 2021, the Court denied Plaintiff's Motion. The Court filed its Notice of Entry of Order denying the Motion on June 11, 2021.

DATED this 8TH day of July, 2021.

RESNICK & LOUIS, P.C.

/s/ Prescott Jones

PRESCOTT JONES
Nevada Bar No. 11617
MYRALEIGH A. ALBERTO
Nevada Bar No. 14340
8925 W. Russell Road, Suite 220
Las Vegas, NV 89148
Attorneys for Plaintiff,
Ton Vinh Lee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **NOTICE OF APPEAL** was served this 8th day of July, 2021, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

Christian M. Morris, Esq.
NETTLES MORRIS
1389 Galleria Dr., Suite 200
Henderson, NV 89014
Attorney for Defendant Ingrid Patin

Kerry J. Doyle, Esq.
DOYLE LAW GROUP
7375 S. Pecos Rd., #101
Las Vegas, NV 89120
Attorney for Defendant Patin Law Group, PLLC

/s/ Susan Carbone

An Employee of Resnick & Louis, P.C.