

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

<p>BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF BRUCE G. FAGEL &amp; ASSOCIATES, A California Corporation; Petitioners,</p> <p>v.</p> <p>THE EIGHTH JUDICIAL DISTRICT COURT, in and for the County of Clark, State of Nevada, and THE HONORABLE JERRY A. WIESE II, District Judge; Respondents,</p> <p>And</p> <p>DARIA HARPER, an individual; and DANIEL WININGER, and individual; Real Parties in Interest.</p>	<p>Case No.</p> <p>Electronically Filed Aug 24 2021 10:25 a.m. Elizabeth A. Brown Clerk of Supreme Court</p> <p>District Court No. A-20-814541-C Dept. No. 30</p>
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**PETITION FOR WRIT OF PROHIBITION**  
**From the Eighth Judicial District Court**  
**The Honorable Jerry A. Wiese II, District Judge**

**PETITIONER'S APPENDIX**  
**VOLUME 1 OF 3**

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## **PETITIONER'S APPENDIX**

<b>Exhibit</b>	<b>Bates Nos</b>
Amended Complaint and Summons, Proof of Service, IAFD	PA00001-39, Vol. I
Motion to Dismiss and Notice of Hearing	PA00040-109, Vol. I
Notice of Entry of Order	PA00565-582, Vol. III
Opposition to Motion to Dismiss	PA00110, Vol. I – PA00534, Vol. III
Order	PA00551-564, Vol. III
Reply to Opposition	PA00535-550, Vol. III

## **CERTIFICATE OF SERVICE BY ELECTRONIC SERVICE**

I hereby certify that I am an employee of Hall Jaffe & Clayton, and that on August 23, 2021, I caused to be served a true and correct copy of the foregoing **Petitioner's Appendix for Writ of Prohibition** by way of electronic service via the Court's e-service program.

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### **SERVICE BY U.S. MAIL ONLY**

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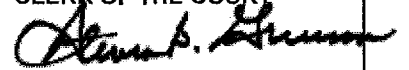
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DARIA HARPER, an individual; and DANIEL  
WININGER, an individual,

Plaintiffs,

vs.

COPPERPOINT MUTUAL INSURANCE  
HOLDING COMPANY, an Arizona  
corporation; COPPERPOINT GENERAL  
INSURANCE COMPANY, an Arizona  
corporation; LAW OFFICES OF MARSHALL  
SILBERBERG, P.C., a California corporation;  
KENNETH MARSHALL SILBERBERG aka  
MARSHALL SILBERBERG aka K.  
MARSHALL SILBERBERG, an individual;  
THOMAS S. ALCH aka THOMAS STEVEN  
ALCH, an individual; BRUCE G. FAGEL, A  
LAW CORPORATION aka LAW OFFICES  
OF BRUCE G. FAGEL & ASSOCIATES, a  
California corporation; DOES 1-50, inclusive,

Defendants.

Case No.: A-20-814541-C  
Dept. No.: 30

**AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

**Arbitration Exemptions:**

1. Action for Declaratory Relief
2. Action for Injunctive Relief
3. Damages in Excess of \$50,000

Plaintiffs hereby demand a trial by jury and complain and allege against defendants as follows:

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1 Associates ("FAGEL"). From September 16, 2017, to the present, ALCH was an agent and/or  
2 employee of SHOOP, A PROFESSIONAL LAW CORPORATION ("SHOOP"). SHOOP was and is  
3 a corporation duly incorporated under the laws of California and located in Los Angeles County,  
4 California, and procured professional liability insurance that covers the negligent acts and omissions  
5 of its agent and/or employee defendant ALCH. From September 16, 2017, to the present, ALCH was  
6 the agent of FAGEL, acting on FAGEL's behalf for the purpose of prosecuting lawsuits in the state  
7 of Nevada. At all times after September 15, 2017, ALCH and FAGEL were engaged in a joint venture,  
8 pursuant to which FAGEL paid for an office in Las Vegas, Nevada, and paid the expenses of ALCH,  
9 so that ALCH would be able to practice law in Nevada and represent the clients of FAGEL in Nevada,  
10 for the goal of earning attorney fees for themselves. FAGEL was and is a corporation duly  
11 incorporated under the laws of California and located in Los Angeles County, California, and is liable  
12 for the negligent acts and omissions of its joint venturer, agent and/or employee, defendant ALCH.

13         6.       The true names and capacities, whether individual, corporate, associate, partnership or  
14 otherwise, of the defendants herein designated as DOES 1-50, inclusive, are unknown to plaintiffs,  
15 who therefore sue said defendants by such fictitious names. Plaintiffs will seek leave of the Court to  
16 insert the true names and capacities of such defendants when the same have been ascertained and will  
17 further seek leave to join said defendants in these proceedings.

18         7.       This court has jurisdiction because the complaint arises out of events, claims, actions  
19 and omissions relating to a lawsuit prosecuted in the District Court of Clark County, Nevada,  
20 specifically but without limitation: (a) defendant THOMAS STEVEN ALCH is licensed to practice  
21 law in Nevada and was attorney of record for plaintiffs in Nevada; (b) defendant KENNETH  
22 MARSHALL SILBERBERG was admitted to practice in District Court of Clark County, pro hac vice  
23 and was counsel of record for plaintiffs in Nevada; (c) defendants COPPERPOINT GENERAL  
24 INSURANCE COMPANY, and/or COPPERPOINT MUTUAL INSURANCE HOLDING  
25 COMPANY, aka COPPERPOINT MUTUAL INSURANCE COMPANY, aka COPPERPOINT  
26 INSURANCE COMPANIES, and DOES 1-10 conduct business in Nevada, paid medical bills of  
27 plaintiff DARIA HARPER to Nevada health care providers, and claims entitlement to reimbursement  
28 of those paid medical bills from money received by plaintiffs pursuant to the laws of and litigation in

1 Clark County, Nevada.

2 8. On or about March 10, 2016, defendant SILBERBERG (a) agreed to represent  
3 plaintiffs in a medical malpractice lawsuit to be filed and prosecuted in Nevada and (b) entered into  
4 an agreement with ALCH to jointly represent plaintiffs, DARIA HARPER and DANIEL  
5 WININGER. In or about June, 2016, defendant SILBERBERG entered into a joint venture with  
6 defendants ALCH and FAGEL, the purpose of which was so that defendant SILBERBERG would be  
7 able to prosecute the lawsuit on behalf of plaintiffs in Nevada with the assistance of defendants ALCH  
8 AND FAGEL and, in the event of a monetary recovery from such lawsuit, share the attorney fees  
9 from the recovery. Pursuant to the joint venture agreement, (a) on or about June 7, 2016, defendant  
10 ALCH filed a complaint in the District Court of Nevada, Clark County, as Case Number  
11 A-16-738004-C ("the underlying medical malpractice action"), alleging that plaintiffs sustained  
12 damages as a result of the medical negligence of the named health care providers ("health care  
13 providers"); (b) thereafter, defendant ALCH sponsored defendant KENNETH MARSHALL  
14 SILBERBERG to be admitted, pro hac vice, to practice law in Nevada for the purpose of jointly  
15 representing plaintiffs; (c) defendant KENNETH MARSHALL SILBERBERG was admitted, pro hac  
16 vice, to practice law in Nevada; (d) defendant KENNETH MARSHALL SILBERBERG associated  
17 with defendant ALCH as attorney for plaintiffs in the underlying medical malpractice action; and (e)  
18 defendant FAGEL used the resources of its law firm to assist defendants ALCH and SILBERBERG  
19 in the prosecution of the underlying medical malpractice action.

20 9. At all relevant times, defendants, ALCH, FAGEL, and SILBERBERG, acted in  
21 concert with one another, were joint venturers with each other, were agents for each other, and are  
22 vicariously liable for the negligent acts and omissions of each other, whether acting jointly or  
23 severally.

24 10. When defendant COPPERPOINT became aware of the above-described underlying  
25 medical malpractice action, it (a) asserted, in writing, its right to participate in any settlement thereof  
26 and (b) claimed, in writing, its entitlement to a lien for repayment of financial benefits paid to or on  
27 behalf of plaintiff DARIA HARPER pursuant to Arizona statute A.R.S. § 23-1023. At all times  
28 mentioned herein, defendants ALCH, FAGEL and SILBERBERG, were aware of these assertions and

1 claims made by defendant COPPERPOINT and, as of March, 2018, they were aware that  
2 COPPERPOINT's lien claim was \$2,768,656.65. Nevertheless, defendant, SILBERBERG, advised  
3 plaintiffs that COPPERPOINT had no legal right to claim a lien on the proceeds from any judgment  
4 against or settlement with the health care providers and, therefore, could not claim a portion of any  
5 such settlement or judgment and that COPPERPOINT would continue to be legally obligated to pay  
6 for her care costs and disability.

7 11. In the underlying medical malpractice action, (a) the medical experts for both plaintiff  
8 DARIA HARPER and the health care providers agreed that she would require 24-hour per day care  
9 for the remainder of her life, (b) the economic expert retained by defendants, ALCH and  
10 SILBERBERG, determined that the present value of the cost of DARIA HARPER's required future  
11 care was \$14,291,374 and that she incurred past and future earnings losses of \$322,579, and (c) the  
12 economic expert retained by the health care providers determined that the present value of the cost of  
13 DARIA HARPER's future care would be \$12,057,480.

14 12. Based on the advice from defendant SILBERBERG, plaintiffs settled with the health  
15 care providers for the total sum of \$6,250,000.00. Thereafter, in or about July 2018, the lawsuit was  
16 dismissed and the settlement monies were paid by the settling health care providers, from which  
17 defendants, ALCH, FAGEL and SILBERBERG, distributed to themselves attorney's fees of  
18 \$1,130,737 and reimbursement of costs of \$125,070. On or about September 18, 2018, defendant  
19 SILBERBERG told plaintiffs, for the first time, (a) that COPPERPOINT was still claiming a lien on  
20 the settlement proceeds, (b) that COPPERPOINT might pursue its lien claim in a legal action, and (c)  
21 that plaintiffs should be prepared to defend such legal action and pay COPPERPOINT the amount of  
22 its lien if it was successful in prosecuting its lien claim.

23 13. On or about October 30, 2019, defendant COPPERPOINT served the "Notice of Claim  
24 Status", attached hereto as **Exhibit "1"** and made a part hereof by reference, on plaintiff DARIA  
25 HARPER, that stated in part:

- 26 • Pursuant to A.R.S. § 23-1023, CopperPoint has a lien against Claimant's third-party  
27 recovery from a medical malpractice action (Case No. A-16-738004-C) brought in  
28 the District Court of Clark County, Nevada, in an amount equal to compensation

1 and medical, surgical, and hospital benefits paid by CopperPoint.

- 2 • CopperPoint is entitled to accrued interest on the lien from the date settlement
- 3 proceeds were disbursed.
- 4 • CopperPoint is entitled to a future credit against Claimant's recovery equal to the
- 5 amount of money received by the Claimant in the malpractice action after
- 6 subtracting expenses and attorney fees.
- 7 • CopperPoint is not required to pay claimant compensation or medical, surgical, or
- 8 hospital benefits until the claimant's post-settlement accrued entitlement to
- 9 compensation and medical benefits exceeds the credit amount.
- 10 • To the extent the settlement in the malpractice action was less than the workers'
- 11 compensation benefits provided by CopperPoint, Claimant's failure to obtain
- 12 CopperPoint's prior approval before settling results in forfeiture of her workers'
- 13 compensation claim.

14 14. The lien amount claimed by defendant COPPERPOINT is \$3,171,095.

15 15. After defendant COPPERPOINT served the above-described Notice of Claim Status,

16 it terminated payments being made for the services of plaintiff DANIEL WININGER who was being

17 compensated to provide 24-hour per day care to plaintiff DARIA HARPER; and on April 2, 2020,

18 sent plaintiff DARIA HARPER the letter, attached as **Exhibit "2"** and made a part hereof by

19 reference, notifying her that it would terminate all benefits, in thirty days.

20 16. At all pertinent times, Nevada law, specifically, Nev. Rev. Stat. § 42.021, provided as

21 follows:

22 1. In an action for injury or death against a provider of health care based

23 upon professional negligence, if the defendant so elects, the defendant may

24 introduce evidence of any amount payable as a benefit to the plaintiff as a

25 result of the injury or death pursuant to the United States Social Security

26 Act, any state or federal income disability or worker's compensation act,

27 any health, sickness or income-disability insurance, accident insurance that

28 provides health benefits or income-disability coverage, and any contract or

1 agreement of any group, organization, partnership or corporation to  
2 provide, pay for or reimburse the cost of medical, hospital, dental or other  
3 health care services. If the defendant elects to introduce such evidence, the  
4 plaintiff may introduce evidence of any amount that the plaintiff has paid  
5 or contributed to secure the plaintiff's right to any insurance benefits  
6 concerning which the defendant has introduced evidence.

7 2. A source of collateral benefits introduced pursuant to subsection 1 may  
8 not: (a) Recover any amount against the plaintiff; or (b) Be subrogated to  
9 the rights of the plaintiff against a defendant.

10 17. At all pertinent times, Arizona law, specifically Ariz. Rev. Stat. Ann. § 23-1023D,  
11 provided as follows:

12 If the employee proceeds against the other person, compensation and  
13 medical, surgical and hospital benefits shall be paid as provided in this  
14 chapter and the insurance carrier or other person liable to pay the claim shall  
15 have a lien on the amount actually collectable from the other person to the  
16 extent of such compensation and medical, surgical and hospital benefits  
17 paid. This lien shall not be subject to a collection fee. The amount actually  
18 collectable shall be the total recovery less the reasonable and necessary  
19 expenses, including attorney fees, actually expended in securing the  
20 recovery. In any action arising out of an aggravation of a previously  
21 accepted industrial injury, the lien shall only apply to amounts expended for  
22 compensation and treatment of the aggravation. The insurance carrier or  
23 person shall contribute only the deficiency between the amount actually  
24 collected and the compensation and medical, surgical and hospital benefits  
25 provided or estimated by this chapter for the case. Compromise of any claim  
26 by the employee or the employee's dependents at an amount less than the  
27 compensation and medical, surgical and hospital benefits provided for shall  
28 be made only with written approval of the insurance carrier or self-insured

1 employer liable to pay the claim.

2 18. At all pertinent times, Arizona law, specifically Ariz. Rev. Stat. Ann. § 12-565,  
3 provided as follows:

4 A. In any medical malpractice action against a licensed health care provider,  
5 the defendant may introduce evidence of any amount or other benefit which  
6 is or will be payable as a benefit to the plaintiff as a result of the injury or  
7 death pursuant to the United States social security act, any state or federal  
8 workers' compensation act, any disability, health, sickness, life, income-  
9 disability or accident insurance that provides health benefits or income-  
10 disability coverage and any other contract or agreement of any group,  
11 organization, partnership, or corporation to provide, pay for, or reimburse  
12 the cost of income-disability or medical, hospital, dental or other health care  
13 services to establish that any cost, expense, or loss claimed by the plaintiff  
14 as a result of the injury or death is subject to reimbursement or  
15 indemnification from such collateral sources. Where the defendant elects to  
16 introduce such evidence, the plaintiff may introduce evidence of any  
17 amount which the plaintiff has paid or contributed to secure his right to any  
18 such benefits or that recovery from the defendant is subject to a lien or that  
19 a provider of such collateral benefits has a statutory right of recovery against  
20 the plaintiff as reimbursement for such benefits or that the provider of such  
21 benefits has a right of subrogation to the rights of the plaintiff in the medical  
22 malpractice action.

23 B. Evidence introduced pursuant to this section shall be admissible for the  
24 purpose of considering the damages claimed by the plaintiff and shall be  
25 accorded such weight as the trier of the facts chooses to give it.

26 C. Unless otherwise expressly permitted to do so by statute, no provider of  
27 collateral benefits, as described in subsection A, shall recover any amount  
28 against the plaintiff as reimbursement for such benefits nor shall such



1 provider be subrogated to the rights of the plaintiff.

2 19. Nev. Rev. Stat. Ann. § 42.021 is verbatim of California Civil Code section 3333.1,  
3 which provides as follows:

4 (a) In the event the defendant so elects, in an action for personal injury  
5 against a health care provider based upon professional negligence, he may  
6 introduce evidence of any amount payable as a benefit to the plaintiff as a  
7 result of the personal injury pursuant to the United States Social Security  
8 Act, any state or federal income disability or worker's compensation act,  
9 any health, sickness or income-disability insurance, accident insurance that  
10 provides health benefits or income-disability coverage, and any contract or  
11 agreement of any group, organization, partnership, or corporation to  
12 provide, pay for, or reimburse the cost of medical, hospital, dental, or other  
13 health care services. Where the defendant elects to introduce such evidence,  
14 the plaintiff may introduce evidence of any amount which the plaintiff has  
15 paid or contributed to secure his right to any insurance benefits concerning  
16 which the defendant has introduced evidence.

17 (b) No source of collateral benefits introduced pursuant to subdivision (a)  
18 shall recover any amount against the plaintiff nor shall it be subrogated to  
19 the rights of the plaintiff against a defendant.

20 20. In *Barme v. Wood*, 37 Cal.3d 174, 207 Cal. Rptr. 816, 689 P.2d 446 (Cal. 1984), an  
21 injured worker who had received worker's compensation benefits sued the health care providers for  
22 medical malpractice, claiming that they had caused him additional injury. The worker's compensation  
23 insurance company filed a complaint in intervention, seeking reimbursement of the compensation it  
24 had paid to the plaintiff. The California Supreme Court held that the right of a worker's compensation  
25 insurance company to seek recovery of its statutory lien – even when there had not yet been a trial,  
26 precluded recovery and dismissed the complaint in intervention.

27 21. In *Graham v. Workers' Comp. Appeals Bd.*, 210 Cal. App. 3d 499, 258 Cal. Rptr. 376,  
28 (Cal. Ct. App. 1989), the California Court of Appeal addressed the issue of whether a worker's

1 compensation insurance company that had paid compensation to the plaintiff could claim credit for  
2 future compensation based on money the plaintiff had received in a medical malpractice settlement.  
3 The California Court of Appeal held that the lien preclusion provisions of Civil Code section 3333.1,  
4 subdivision (b) applied, to settlements of medical malpractice lawsuits as well as to trials where  
5 collateral source evidence was introduced.

6 22. In 2004, NRS 42.021 was enacted after being presented to Nevada voters by ballot  
7 initiative. (Secretary of State, Statewide Ballot Questions 16 (2004),  
8 <https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2004.pdf>.) (*McCrosky v.*  
9 *Carson Tahoe Regional Medical Center*, 133 Nev. 930, 408 P.3d 149 (2017). The ballot question put  
10 to Nevada voters stated, in part, that the initiative would “prohibit third parties who provided benefits  
11 as a result of medical malpractice from recovering such benefits from a negligent provider of health  
12 care . . . .” The Secretary of State’s explanation stated, in part: “If passed, the proposal would not  
13 change the reduction of the injured person’s damages, but the third parties would no longer be  
14 permitted to recover from the wrongdoer the expenses they have paid on behalf of a medical  
15 malpractice victim.”

16 23. Although California Civil Code section 3333.1 and Nevada NRS 42.021 are identical,  
17 and although the California Supreme Court and California Court of Appeal have found that insurance  
18 companies providing benefits to a medical malpractice plaintiff have no lien against, or may take  
19 credit for, money received by a medical malpractice plaintiff in a settlement before trial, no Nevada  
20 appellate court has ever addressed the issue.

## 21 **FIRST CAUSE OF ACTION**

### 22 **(Declaratory Relief)**

#### 23 **(Alleged by Both Plaintiffs Against All Defendants)**

24 24. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the  
25 complaint as though fully set forth herein, and incorporate the same herein by reference.

26 25. An actual controversy has arisen and now exists between plaintiffs and defendants  
27 concerning the respective rights and duties of plaintiffs on the one hand and defendant  
28 COPPERPOINT on the other hand. Defendant COPPERPOINT contends that it is entitled to a lien

1 and/or credit for money received by plaintiff DARIA HARPER pursuant to Ariz. Rev. Stat. Ann. §  
2 23-1023D and that it is entitled to terminate the benefits that it has/had been making for plaintiff  
3 DARIA HARPER's benefit. Plaintiffs contend – and plaintiffs are informed and believe and thereon  
4 allege that all defendants other than COPPERPOINT contend – that defendant COPPERPOINT is not  
5 entitled to any lien or credit because Nevada NRS 42.021 should be interpreted as precluding such  
6 lien if a medical malpractice claim is settled and is and/or was not entitled to terminate the benefits  
7 that it has/had been making for plaintiff DARIA HARPER's benefit and must forthwith pay those  
8 benefits it has withheld with interest at the legal rate.

9 26. Plaintiffs desire a judicial determination of their rights and duties, and a declaration as  
10 to whether defendant COPPERPOINT is entitled to any lien or credit and/or credit for money received  
11 by plaintiffs from the above-described settlement and whether defendant COPPERPOINT remains  
12 and has always remained obligated to making the above-described benefits and must forthwith pay  
13 those benefits it has withheld with interest at the legal rate.

14 27. A judicial declaration is necessary and appropriate at this time under the circumstances  
15 in order that plaintiffs may ascertain their rights and duties.

16 28. As a direct and proximate result of the aforementioned actions of defendants, and each  
17 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees  
18 and costs to bring this action.

## 19 **SECOND CAUSE OF ACTION**

### 20 **(Injunctive Relief)**

#### 21 **(Alleged by Both Plaintiffs Against Defendants COPPERPOINT MUTUAL INSURANCE** 22 **HOLDING COMPANY, COPPERPOINT GENERAL INSURANCE COMPANY)**

23 29. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the  
24 complaint as though fully set forth herein, and incorporate the same herein by reference.

25 30. Plaintiffs rely on the workers' compensation benefits paid by defendant  
26 COPPERPOINT for the necessary and essential living and medical needs of plaintiff DARIA  
27 HARPER. Based on its claim that it has no further obligation to pay worker's compensation benefits,  
28 defendant COPPERPOINT will cease making any payments to or on behalf of plaintiffs on May 2,

1 2020.

2 31. The threatened conduct of defendant COPPERPOINT, unless and until enjoined and  
3 restrained by order of this Court, will cause great and irreparable injury to plaintiffs. The \$14,291,374  
4 life care plan itemized the medical and care needs of plaintiff DARIA HARPER. The net proceeds  
5 that were not invested in annuities have been largely expended for goods and services that are  
6 necessary for the survival of plaintiff DARIA HARPER. Because COPPERPOINT terminated  
7 payments for the services of plaintiff DANIEL WININGER, plaintiffs' sole monthly income from  
8 annuities is \$8,333, which is greatly exceeded by the monthly expenses for medical supplies  
9 (including bladder supplies, bowel program, personal care and respiratory); medical equipment  
10 (including vent, oxygenator condenser and oxygen canisters), appointments with four doctors,  
11 therapists and nurses, and prescription medications. Additionally, because plaintiff DARIA HARPER  
12 requires 24-hour per day care, plaintiff DANIEL WININGER must provide such services, but without  
13 compensation therefor.

14 32. Plaintiffs have no adequate remedy at law for the above-described injuries in that they  
15 do not have the financial means to provide for plaintiff DARIA HARPER's above-described needs.

16 33. As a proximate result of the wrongful conduct of defendant COPPERPOINT, plaintiff  
17 DANIEL WININGER has been damaged in the sum of \$2,950 per month and will continue to be  
18 damaged so long as the wrongful conduct of COPPERPOINT continues. As a proximate result of the  
19 threatened conduct of defendant COPPERPOINT, if not restrained, plaintiff DARIA HARPER will  
20 be damaged. The full amount of the damages respectively incurred by plaintiffs, DARIA HARPER  
21 and DANIEL WININGER, will be proven at trial.

22 34. As a direct and proximate result of the actions of defendants, and each of them,  
23 plaintiffs sustained damages in a sum in excess of \$15,000.

24 35. As a direct and proximate result of the aforementioned actions of defendants, and each  
25 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees  
26 and costs to bring this action.

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1 **THIRD CAUSE OF ACTION**

2 **(Legal Malpractice)**

3 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**  
4 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**  
5 **SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS**  
6 **STEVEN ALCH, BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF**  
7 **BRUCE G. FAGEL & ASSOCIATES)**

8 36. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the  
9 complaint as though fully set forth herein, and incorporate the same herein by reference.

10 37. Defendants were negligent in their advice to plaintiffs that defendant CopperPoint had  
11 no lien on a settlement because (a) the issue had never been determined by a Nevada appellate court  
12 and (b) Nevada attorneys representing plaintiffs in medical malpractice cases do not ignore workers'  
13 compensation lien claims or advise their clients that such lien claims should be ignored. But for the  
14 negligent legal advice, plaintiffs would not have settled their case for \$6,250,000 and, instead, would  
15 have (a) required that defendants seek a judicial determination whether there would be a worker's  
16 compensation lien, and (b) if such judicial determination held that there would be a worker's  
17 compensation lien, reject the settlement and insisted that defendants, ALCH and SILBERBERG try  
18 the case to verdict or judgment. If the case had been tried, a collectible judgment in the amount no  
19 less than \$15,313,953 would have been obtained, thus damaging plaintiffs in the sum of not less than  
20 \$9,063,953.

21 38. As a legal and proximate result of the wrongful withholding by defendant  
22 SILBERBERG of money to which plaintiffs were entitled, charging excessive attorney's fees,  
23 reimbursing himself for costs to which he was not entitled, and failure to obtain refunds of money  
24 deposited with the Clark County District Court, plaintiffs are entitled to further damages from  
25 defendant SILBERBERG in amounts to be proven at trial. Defendants ALCH and FAGEL are jointly  
26 and severally liable with defendant SILBERBERG for their failure to obtain refunds of money  
27 deposited with the Clark County District Court which were charged as a cost to plaintiffs. If, after the  
28 settlement money was deposited into the client trust account of defendant SILBERBERG, defendants

1 ALCH AND FAGEL were aware that defendant SILBERBERG was charging excessive attorney's  
2 fees, or reimbursing himself for costs to which he was not entitled, then defendants ALCH and  
3 FAGEL are jointly and severally liable to plaintiffs in amounts to be proven at trial.

4 39. If there is a judicial determination that defendant COPPERPOINT has a lien and is  
5 entitled to credit for payments made to plaintiffs, then as a legal and proximate result of the negligence  
6 of defendants SILBERBERG, ALCH and FAGEL, plaintiffs have sustained damages which include,  
7 but are not limited to, lost future workers' compensation benefits, an amount necessary to satisfy the  
8 lien of defendant COPPERPOINT in amounts to be proven at trial, and the damages that would have  
9 been awarded if the lawsuit had been tried. Alternatively, if there is a judicial determination that  
10 defendant COPPERPOINT has no lien and is not entitled to credit for plaintiffs' medical malpractice  
11 settlement, plaintiffs will have sustained damages for the cost of retaining attorneys to represent her  
12 in connection with (a) Arizona workers' compensation proceedings, (b) Nevada declaratory and  
13 injunctive relief claims, and (c) incurring costs to achieve such declaration, the total amount of which  
14 will be proven at trial.

15 40. As a direct and proximate result of the actions of defendants, and each of them,  
16 plaintiffs sustained damages in a sum in excess of \$15,000.

17 41. As a direct and proximate result of the aforementioned actions of defendants, and each  
18 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees  
19 and costs to bring this action.

20 **FOURTH CAUSE OF ACTION**

21 **(Fraud)**

22 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**  
23 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**  
24 **SILBERBERG aka K. MARSHALL SILBERBERG)**

25 42. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 of the  
26 complaint as though fully set forth herein, and incorporate the same herein by reference.

27 43. On or about December 26, 2015, defendants SILBERBERG entered into a "Contingent  
28 Fee Agreement" with plaintiffs that provided, in pertinent part:

1 This Agreement is made this 26 day of December, 2015, by and between  
2 Daria Harper and Daniel Winingar (hereinafter designated as 'Client') and  
3 the LAW OFFICES OF MARSHALL SILBERBERG (hereinafter  
4 designated as 'Attorney'). . . . If, and to the extent that, Client's claims are  
5 for medical malpractice subject to Section 6146 of the California Business  
6 & Professions Code (MICRA), Client agrees to pay for the services herein  
7 described and prosecution of such claims, the fee of 40% of the first  
8 \$50,000.00 recovered; 33.33% of the next \$50,000.00; 25% of the next  
9 \$500,000.00; and 15% of all sums recovered in excess of \$600,000.00.

10 44. At all times herein mentioned, Nev. Rev. Stat. Ann. § 7.095 provided in pertinent part:

11 An attorney shall not contract for or collect a fee contingent on the amount  
12 of recovery for representing a person seeking damages in connection with  
13 an action for injury or death against a provider of health care based upon  
14 professional negligence in excess of: (a) Forty percent of the first \$50,000  
15 recovered; (b) Thirty-three and one-third percent of the next \$50,000  
16 recovered; (c) Twenty-five percent of the next \$500,000 recovered; and (d)  
17 Fifteen percent of the amount of recovery that exceeds \$600,000.

18 45. At all times herein mentioned, California Business and Professions Code § 6146 (a)  
19 provided in pertinent part:

20 An attorney shall not contract for or collect a contingency fee for  
21 representing any person seeking damages in connection with an action for  
22 injury or damage against a health care such person's alleged professional  
23 negligence in excess of the following limits: (1) Forty percent of the first  
24 fifty thousand dollars (\$50,000) recovered. (2) Thirty-three and one-third  
25 percent of the next fifty thousand dollars (\$50,000) recovered. (3) Twenty-  
26 five percent of the next five hundred thousand dollars (\$500,000) recovered.  
27 (4) Fifteen percent of any amount on which the recovery exceeds six  
28 hundred thousand dollars (\$600,000).

1           46.     California Rules of Professional Conduct Rule 4-200 (A), in effect until October 31,  
2 2018, provided that "A member shall not enter into an agreement for, charge, or collect an illegal or  
3 unconscionable fee."

4           47.     Pursuant to Nevada law, (a) plaintiff DARIA HARPER had claims for economic  
5 damages and for non-economic damages of \$350,000, the maximum recovery permitted for non-  
6 economic damages in medical malpractice cases, and (b) plaintiff DANIEL WININGER had a claim  
7 for loss of consortium, for which he would be entitled to a maximum recovery of \$350,000. In July  
8 2018, after settlement agreements for a total of \$6,250,000 had been executed by the parties,  
9 defendants SILBERBERG allocated \$1,050,000 as plaintiff DANIEL WININGER's share of the  
10 settlement monies and then charged plaintiffs \$297,498.00 for his attorney's fees on plaintiff DANIEL  
11 WININGER's allocated amount.

12           48.     Defendants SILBERBERG knew (a) that his "Contingent Fee Agreement" provided  
13 that plaintiffs, collectively, and not severally, would be charged the statutory attorney's fees (b) that  
14 even if plaintiff DANIEL WININGER was obligated to pay his attorney's fees based on a separate  
15 calculation, the maximum allocation would not be \$1,050,000, but, rather, only \$350,000, and (c) that  
16 plaintiffs were not legally sophisticated and relied on him to act honestly and according to his fiduciary  
17 duty owed to them. Defendants SILBERBERG concealed from plaintiffs the above-referenced facts  
18 for the purpose of misleading them into believing that the attorney fee allocation was in accordance  
19 with the "Contingent Fee Agreement" and the law governing the limitations pertaining to attorney's  
20 fees. Moreover, defendants SILBERBERG affirmatively represented to plaintiffs that the allocation  
21 to plaintiff DANIEL WININGER was proper, as were the attorney's fees charged separately and  
22 based on said allocation. Defendants SILBERBERG concealed and misrepresented the above-  
23 mentioned facts for the purpose of obtaining an illegal fee from plaintiffs to which he was not entitled,  
24 and being their attorney, plaintiffs reasonably relied on defendants SILBERBERG's representations.  
25 As a legal and proximate result of defendants SILBERBERG's fraud, plaintiffs were damaged in a  
26 sum of approximately \$140,330.03 which is the difference between the attorney's fees to which  
27 defendants SILBERBERG was entitled, and the amount he took.

28           49.     Plaintiffs' damages, including emotional distress were a foreseeable consequence of



1 defendants SILBERBERG's fraud which was despicable and undertaken with a conscious disregard  
2 of the rights of plaintiffs, thereby entitling plaintiffs to an award of punitive damages therefor.

3 50. If defendants ALCH and FAGEL were aware of the illegal fee charged by defendants  
4 SILBERBERG, and accepted a portion of those fees for themselves, then defendants ALCH and  
5 FAGEL are similarly liable to plaintiffs for fraud, and the legal and proximate cause of plaintiffs'  
6 damages alleged in this cause of action.

7 51. As a direct and proximate result of the actions of defendants, and each of them,  
8 plaintiffs sustained damages in a sum in excess of \$15,000.

9 52. As a direct and proximate result of the aforementioned actions of defendants, and each  
10 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees  
11 and costs to bring this action.

12 **FIFTH CAUSE OF ACTION**

13 **(Breach of Fiduciary Duty)**

14 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**  
15 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**  
16 **SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS**  
17 **STEVEN ALCH, BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF**  
18 **BRUCE G. FAGEL & ASSOCIATES)**

19 53. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 and 42-  
20 52 of the complaint as though fully set forth herein, and incorporate the same herein by reference.

21 54. California Rules of Professional Conduct 4-100(B)(4), in effect until October 31, 2018,  
22 California Rules of Professional Conduct 1.15(7), in effect beginning November 1, 2018, and Nevada  
23 Rules of Professional Conduct, Rule 1.15(d), all required that attorneys promptly distribute to their  
24 client money belonging to their client. At all times herein mentioned, defendant SILBERBERG was  
25 obligated, as a California attorney and attorney permitted to practice, pro hac vice in Nevada, to  
26 comply with the California and Nevada Rules of Professional Conduct.

27 55. From approximately July 19, 2018 to approximately April 30, 2010, and in violation  
28 of the California Rules of Professional Conduct 4-100(B)(4), in effect until October 31, 2018,

1 California Rules of Professional Conduct 1.15(7), in effect beginning November 1, 2018, and Nevada  
2 Rules of Professional Conduct, Rule 1.15(d), defendants SILBERBERG kept, and did not distribute,  
3 money belonging to plaintiffs from the settlement proceeds. Plaintiffs were damaged in a sum to be  
4 proven at trial by the loss of interest on said sums.

5 56. California Rules of Professional Conduct, Rule 2-200 (A)(1), in effect until October  
6 31, 2018, provided that, "A member shall not divide a fee for legal services with a lawyer who is not  
7 a partner of, associate of, or shareholder with the member unless: The client has consented in writing  
8 thereto after a full disclosure has been made in writing that a division of fees will be made and the  
9 terms of such division." At all times herein mentioned, defendants ALCH, FAGEL and  
10 SILBERBERG were obligated, as California attorneys, to comply with the California Rules of  
11 Professional Conduct.

12 57. At no time did plaintiffs enter into an attorney-client contract with defendants ALCH  
13 or FAGEL, and at no time did plaintiffs consent in writing to any division of fees by which defendants  
14 SILBERBERG would pay money to defendants ALCH and/or FAGEL. Defendant SILBERBERG  
15 shared the fees deducted from plaintiffs' share of the settlement money with defendants ALCH and  
16 FAGEL.

17 58. Defendants SILBERBERG took money belonging to plaintiffs as a result of charging  
18 and receiving attorney fees in excess of the amount allowed by law, and charging costs to plaintiffs  
19 that should have been paid by defendants SILBERBERG.

20 59. At all times, defendants SILBERBERG owed a fiduciary duty of loyalty and fidelity  
21 to plaintiffs, pursuant to which he was required, among other things, not to put his interests ahead of  
22 those of plaintiffs, to promptly deliver to plaintiffs all money in his possession that belonged to  
23 plaintiffs, not to charge plaintiffs for costs that he should personally bear, and not to subtract money  
24 from plaintiffs' financial recovery for attorney fees to which he was not entitled, either pursuant to  
25 contract or the statutory requirements of California Business and Professions Code section 6146 and  
26 Nevada NRS 7.095.

27 60. Defendants SILBERBERG put his financial interests ahead of the interests of plaintiffs  
28 and violated his fiduciary duties to plaintiffs as follows: (a) by failing, for approximately twenty

1 months, to deliver all money in his possession that belonged to plaintiffs, (b) charging plaintiffs for  
2 costs for which he should have personally borne, including fees for membership in the Nevada State  
3 Bar, and (c) charging illegal attorney's fees in excess of those agreed upon in his contract with  
4 plaintiffs and those permitted by California Business and Professions Code section 6146 and Nevada  
5 NRS 7.095. Additionally, in 2020, after defendants SILBERBERG entered into a contract to retain a  
6 Nevada lawyer for the benefit of plaintiffs which required that he be personally responsible for  
7 payment of attorney's fees and costs, he used money belonging to plaintiffs to pay said fees and costs.

8 61. As a result of the breach of fiduciary duties by defendants SILBERBERG, plaintiffs  
9 have suffered pecuniary damages and emotional distress damages in sums to be proven at trial.

10 62. Plaintiffs' emotional distress was a foreseeable consequence of defendants  
11 SILBERBERG's breach of fiduciary duties which was despicable and undertaken with a conscious  
12 disregard of the rights of plaintiff, thereby entitling plaintiffs to an award of punitive damages therefor.

13 63. Plaintiffs are currently unaware whether defendants ALCH or FAGEL knew that  
14 defendants SILBERBERG was charging plaintiffs illegal attorney's fees in excess of those agreed  
15 upon in his contract with plaintiffs and those permitted by California Business and Professions Code  
16 section 6146. If said defendants did know, then they are similarly liable to plaintiffs for fraud, and  
17 the legal and proximate cause of plaintiffs' damages alleged in this cause of action.

18 64. As a direct and proximate result of the actions of defendants, and each of them,  
19 plaintiffs sustained damages in a sum in excess of \$15,000.

20 65. As a direct and proximate result of the aforementioned actions of defendants, and each  
21 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees  
22 and costs to bring this action.

## 23 **SIXTH CAUSE OF ACTION**

### 24 **(Breach of Contract)**

25 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**  
26 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**  
27 **SILBERBERG aka K. MARSHALL SILBERBERG)**

28 66. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 and 42-

65 of the complaint as though fully set forth herein, and incorporate the same herein by reference.

67. The "Contingency Fee Contract" between plaintiffs and defendants SILBERBERG required that attorney fees be based on the net recovery after deduction of the cost of prosecution. Said defendant calculated that his prosecution costs were \$125,070, leaving a net recovery of \$6,124,930, entitling said defendant to the sum of \$990,406.16 as his attorney fees. The deduction by defendants SILBERBERG of \$1,130,737.00 exceeded the contractual agreement, amounting to a breach of contract. Plaintiffs have been damaged by the breach of contract in the amount of \$140,330.84.

68. As a direct and proximate result of the actions of defendants, and each of them, plaintiffs sustained damages in a sum in excess of \$15,000.

69. As a direct and proximate result of the aforementioned actions of defendants, and each of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

#### **PUNITIVE DAMAGES**

70. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 and 42-65 of the complaint as though fully set forth herein, and incorporate the same herein by reference.

71. As a direct and proximate result of the aforementioned wrongful conduct of defendants, and each of them, the actions of defendants were intended to cause injury to plaintiffs and/or was despicable conduct carried on by defendants with a willful and conscious disregard of the rights of plaintiffs and/or was an intentional misrepresentation, deceit or concealment of material facts known to defendants with the intention, implied or in fact, to deprive plaintiffs of property, legal rights, or fraud within NRS 42.005, entitling an award of punitive and/or exemplary damages in an amount appropriate to punish and/or set an example of defendants.

#### **PRAYER FOR RELIEF**

Wherefore, plaintiffs pray for judgment against defendants, and each of them, as follows:

1. On the first cause of action for declaratory relief against all defendants:

a. For a declaration that defendant COPPERPOINT GENERAL INSURANCE COMPANY aka COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY aka

1 COPPERPOINT MUTUAL INSURANCE COMPANY aka COPPERPOINT INSURANCE  
2 COMPANIES is not entitled to any lien and/or credit for money received by plaintiffs as a result of  
3 the settlements they entered into regarding District Court, Clark County, Nevada Case No. A-16-  
4 738004-C and that defendants are obligated (a) to continue all benefits it previously provided and is  
5 required to provide in the future for plaintiff DARIA HARPER, (b) to forthwith reinstate all benefits  
6 it previously provided for plaintiff DARIA HARPER that were terminated and (c) to forthwith pay  
7 for the services of plaintiff DANIEL WININGER that it previously paid but were terminated, with  
8 interest thereon at the legal rate;

9 b. For reasonable attorney's fees and costs incurred in this action; and

10 c. For such other and further relief as the Court may deem just and proper.

11 2. On the second cause of action for injunctive relief against defendants COPPERPOINT  
12 GENERAL INSURANCE COMPANY aka COPPERPOINT MUTUAL INSURANCE HOLDING  
13 COMPANY aka COPPERPOINT MUTUAL INSURANCE COMPANY aka COPPERPOINT  
14 INSURANCE COMPANIES:

15 a. For issuance of a temporary restraining order, preliminary injunction and  
16 permanent injunction restraining and enjoining defendants COPPERPOINT GENERAL  
17 INSURANCE COMPANY and COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY  
18 and COPPERPOINT MUTUAL INSURANCE COMPANY and COPPERPOINT INSURANCE  
19 COMPANIES (a) from terminating any of the benefits it is providing for plaintiff DARIA HARPER  
20 and (b) to forthwith reinstate all benefits it previously provided for plaintiff DARIA HARPER that  
21 were terminated, and forthwith pay for the services it previously paid for the services of plaintiff  
22 DANIEL WININGER that were terminated, with interest thereon at the legal rate;

23 b. For damages in an amount in excess of \$15,000, to be proven at trial;

24 c. For reasonable attorney's fees and costs incurred in this action; and

25 d. For such other and further relief as the Court may deem just and proper.

26 3. On the third cause of action for legal malpractice against defendants LAW OFFICES  
27 OF MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL  
28 SILBERBERG, aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS STEVEN

1 ALCH, BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF BRUCE G. FAGEL  
2 & ASSOCIATES:

- 3 a. For damages in an amount in excess of \$15,000, to be proven at trial;
- 4 b. For an award of reasonable attorney's fees and costs incurred in this action; and
- 5 c. For such other and further relief as the Court may deem just and proper.

6 4. On the fourth cause of action for fraud against defendants LAW OFFICES OF  
7 MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL  
8 SILBERBERG aka K. MARSHALL SILBERBERG:

- 9 a. For damages in an amount in excess of \$15,000, to be proven at trial;
- 10 b. For pecuniary damages and emotional distress damages in an amount in excess  
11 of \$15,000, to be proven at trial;
- 12 c. For punitive and/or exemplary damages pursuant to NRS 42.005 in an amount  
13 appropriate to punish and/or set an example of defendants;
- 14 d. For an award of reasonable attorney's fees and costs incurred in this action; and
- 15 e. For such other and further relief as the Court may deem just and proper.

16 5. On the fifth cause of action for breach of fiduciary duty against defendants LAW  
17 OFFICES OF MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka  
18 MARSHALL SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka  
19 THOMAS STEVEN ALCH, BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF  
20 BRUCE G. FAGEL & ASSOCIATES:

- 21 a. For damages in an amount in excess of \$15,000, to be proven at trial;
- 22 b. For pecuniary damages and emotional distress damages in an amount in excess  
23 of \$15,000, to be proven at trial;
- 24 c. For punitive and/or exemplary damages pursuant to NRS 42.005 in an amount  
25 appropriate to punish and/or set an example of defendants;
- 26 d. For an award of reasonable attorney's fees and costs incurred in this action; and
- 27 e. For such other and further relief as the Court may deem just and proper.

28 6. On the sixth cause of action for breach of contract against defendants LAW OFFICES

1 OF MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL  
2 SILBERBERG aka K. MARSHALL SILBERBERG:

- 3 a. For damages in an amount in excess of \$15,000, to be proven at trial;  
4 b. For an award of reasonable attorney's fees and costs incurred in this action; and  
5 c. For such other and further relief as the Court may deem just and proper.

6 DATED this 9th day of March, 2021.

7 Respectfully submitted,

8 **MAIER GUTIERREZ & ASSOCIATES**

9 /s/ Jason R. Maier

10 JASON R. MAIER, ESQ.  
11 Nevada Bar No. 8557  
12 8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148

13 JOHN P. BLUMBERG, ESQ.  
14 California Bar No. 70200  
15 (to be admitted pro hac vice)  
16 **BLUMBERG LAW CORPORATION**  
444 West Ocean Blvd., Suite 1500  
Long Beach, California 90802-4330

17 *Attorneys for Plaintiffs*  
18  
19  
20  
21  
22  
23  
24  
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26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **AMENDED COMPLAINT** was  
3 electronically filed on the 9th day of March, 2021, and served through the Notice of Electronic  
4 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master  
5 Service List, as follows:

6 Dalton L. Hooks, Jr., Esq.  
7 HOOKS MENG & CLEMENT  
2820 West Charleston Blvd., Suite C-23  
Las Vegas, Nevada 89102  
8 *Attorneys for Defendants Copperpoint Mutual Insurance Holding Company*  
9 *and Copperpoint General Insurance Company*

10 Robert C. McBride, Esq.  
Heather S. Hall, Esq.  
11 MCBRIDE HALL  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113

12 and

13 James Kjar, Esq.  
14 Jon Schwalbach, Esq.  
KJAR, MCKENNA & STOCKALPER LLP  
15 841 Apollo Street, Suite 100  
El Segundo, California 90245  
16 *Attorneys for Defendants Kenneth Marshall Silverberg and*  
17 *Law Offices of Marshall Silverberg*

18 David A. Clark, Esq.  
LIPSON NEILSON P.C.  
19 9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
20 *Attorneys for Defendants Shoop A Professional Law Corporation*  
*and Thomas S. Alch*

21 /s/ Natalie Vazquez  
22 An Employee of MAIER GUTIERREZ & ASSOCIATES



# **EXHIBIT 1**

# **EXHIBIT 1**

## NOTICE OF CLAIM STATUS

<b>Carrier or Self-Insured Name and Address</b> CopperPoint General Insurance Company / CLAIMS DEPT. P.O. Box 33069 Phoenix, AZ 85067-3069
<b>Authorized Third Party Administrator (TPA) Name and Address</b>  
<b>Claimant's Name and Address</b> DARIA HARPER 3336 DATE PALM DR. LAKE HAVASU CITY, AZ 86404

ICA Claim No.	20142520533
Soc. Sec. No.	####/###/####
SSN not required if correct ICA claim number is provided	
Carrier Claim No.	14G01532
Employer	ISLANDER RV RESORT LLC
Address	LAKE HAVASU CITY, AZ 86403 LAKE HAVASU CITY, AZ 86403
Date of Injury	08/11/2014

- ☐ 1. Claim is accepted.
- ☐ 2. Claim is denied.
- ☐ 3. No temporary compensation paid because the claimant has not currently sustained a temporary disability entitlement attributable to this injury beyond seven consecutive days.
- ☐ 4. Enclosed check for \_\_\_\_\_ for period of \_\_\_\_\_ through \_\_\_\_\_. Seven days deducted if disability is less than 14 calendar days. Payment has been made based on 66 ⅔ percent of the wage of \_\_\_\_\_ based on the following:
  - ☐ A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days.
  - ☐ B. Average monthly wage at time of injury (see attached calculation), subject to final determination by the Industrial Commission of Arizona within 30 days.
- ☐ 5. Return to light duty effective \_\_\_\_\_. Per A.R.S. §23-1044(A) and A.R.S. §23-1062(D) benefits are payable at least monthly. Return to regular duty effective \_\_\_\_\_.
- ☐ 6. Temporary compensation and active medical treatment terminated on \_\_\_\_\_ because claimant was discharged.
- ☐ 7. Injury resulted in no permanent disability.
- ☐ 8. Injury resulted in permanent disability. Amount of permanent benefits, if any, and supportive medical maintenance benefits, if any, will be authorized by separate Notice.
- ☐ 9. Petition to Reopen accepted.
- ☐ 10. Petition to Reopen denied.
- ☒ 11. Other:
 

• Pursuant to A.R.S. § 23-1023, CopperPoint has a lien against Claimant's third-party recovery from a medical malpractice action (case No. A-16-738004-C) brought in the District Court of Clark County, Nevada, in an amount equal to compensation

Mailed on: 10/30/2019

By: Jeff de Veuve

Copy to: Industrial Commission of Arizona

(Authorized Representative) Tel. #: (602) 631-2966

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support Findings 5, 6, 7 or 8.

**NOTICE TO CLAIMANT:** If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this Notice, pursuant to A.R.S. 23-941 and 23-947. IF NO SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS NOTICE IS FINAL.

**AVISO AL RECLAMANTE:** Si usted no esta de acuerdo con este AVISO, y desea una audiencia en este caso, su peticion por escrito pidlendo una audiencia debiera ser recibida en cualquiera de las oficinas de la Comision Industrial a las direcciones abajo indicadas dentro de NOVENTA (90) DIAS despues de la fecha de este AVISO, de acuerdo con las leyes A.R.S. 23-941 y 23-947. SI DICHA PETICION NO ESTA RECIBIDA DENTRO DEL PERIODO DE NOVENTA (90) DIAS, ESTE AVISO SERA CONSIDERADO FINAL.

Phoenix Office:  
Industrial Commission of Arizona  
800 W Washington Street  
Phoenix, Arizona 85007-2922  
  
PO Box 19070  
Phoenix, AZ 85005-9070

Tucson Office:  
Industrial Commission of Arizona  
2675 E Broadway  
Tucson, Arizona 85716-5342

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

Date: 10/30/19  
Claimant Name: Daria Harper  
Claim Number: 14G01532

11. Continued from page 1

- and medical, surgical, and hospital benefits paid by CopperPoint.
- CopperPoint is entitled to accrued interest on the lien from the date settlement proceeds were disbursed.
- CopperPoint is entitled to a future credit against Claimant's recovery equal to the amount of money received by the Claimant in the malpractice action after subtracting expenses and attorney fees.
- CopperPoint is not required to pay claimant compensation or medical, surgical, or hospital benefits until the claimant's post-settlement accrued entitlement to compensation and medical benefits exceeds the credit amount.
- To the extent the settlement in the malpractice action was less than the workers' compensation benefits provided by CopperPoint, Claimant's failure to obtain CopperPoint's prior approval before settling results in forfeiture of her workers' compensation claim.

CC: Marshall Silberberg  
William Stephens Collins  
LAW OFFICES OF MARSHALL  
SILBERBERG  
3333 Michelson Drive, Suite 710  
Irvine, CA 92612

# **EXHIBIT 2**

# **EXHIBIT 2**



April 2, 2020

**VIA CERTIFIED AND U.S. MAIL**

Ms. Daria Harper  
3336 Date Palm Drive  
Lake Havasu, AZ 86404

Re: Daria Harper  
Claim No.: 14G01532  
DOI: 08/11/2014  
Employer: Islander RV Resort LLC

Dear Ms. Harper:

We are writing to you with regard to the status of your workers' compensation claim and CopperPoint Mutual Insurance Company's ("CopperPoint") lien rights. As you already know, you settled your medical malpractice action (Case No. A-16-738004-C in the District Court of Clark County, Nevada) without CopperPoint's consent, as is required by Arizona law. You also have not resolved CopperPoint's lien for the worker's compensation benefits paid to you. As you are also well aware, CopperPoint has tried to work toward a resolution of these matters for over a year through your counsel but to no avail. As a result, there are presently pending proceedings before the Arizona Industrial Commission pertaining to CopperPoint's lien.

Throughout the last several years, and despite the lack of cooperation on your behalf in seeking resolution of the lien, CopperPoint has continued to pay to you a full range of workers compensation benefits which to date amounts to millions of dollars. CopperPoint has tried repeatedly to work with you on resolving the lien, even though you did: a) not bother to inform CopperPoint of the settlements when they were reached, b) failed to obtain CopperPoint's consent to the settlements as required by law, and c) continually refused to provide the amounts of the settlements. In fact, the amounts paid appear to exceed the amount of funds received by you personally in the settlement of your litigation.

CopperPoint is entitled to interest on the lien amount since the date of your medical malpractice settlements in 2018. Further, CopperPoint is entitled to a credit against future workers compensation payments to you equal to the amount of money you received in the medical malpractice settlements less appropriate expenses and attorneys' fees.

CopperPoint has been very accommodating in seeking a resolution of the lien issue for so long. This is especially true given the medical malpractice settlements were effectively and intentionally kept secret from CopperPoint. Moreover, when CopperPoint learned on its own of the settlements, information concerning the amount and terms of the settlements were still withheld and no attempt to resolve the lien was made on your behalf. As of this letter, we are approximately five months since the filing of CopperPoint's Notice of Claim Status and there still has been no

April 2, 2020

action by you to address CopperPoint's outstanding lien. Nevertheless, CopperPoint continued to pay full workers compensation payments to you even though it was not legally required. However, this benevolent conduct by CopperPoint cannot continue indefinitely.

Therefore, please be informed:


**COPPERPOINT WILL TERMINATE PAYMENT OF YOUR  
WORKERS' COMPENSATION BENEFITS EFFECTIVE THIRTY DAYS  
FROM THE DATE OF THIS LETTER.**

No further benefits will be paid until your post-settlement accrued entitlement to compensation and medical benefits exceeds CopperPoint's credit for its lien. It is anticipated this may result in no further benefits becoming payable in the future.<sup>1</sup>

If you have any questions, please feel free to contact us.

Very truly yours,

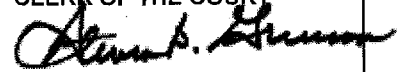
COPPERPOINT MUTUAL INSURANCE COMPANY

By   
Ginny Arnett Caro

cc: Adam Palmer, Esq.

---

<sup>1</sup> Moreover, to the extent the settlement in your malpractice action was less than the workers' compensation benefits provided by CopperPoint, your failure to obtain CopperPoint's prior approval before settling the malpractice claim results in a forfeiture of your workers' compensation claim.



**SUMM**

JOHN P. BLUMBERG, ESQ.  
California Bar No. 70200  
(admitted pro hac vice)

**BLUMBERG LAW CORPORATION**

444 West Ocean Blvd., Suite 1500  
Long Beach, California 90802-4330  
Telephone: 562.437.0403  
Facsimile: 562.432.0107  
E-mail: [advocates@blumberglaw.com](mailto:advocates@blumberglaw.com)

JASON R. MAIER, ESQ.  
Nevada Bar No. 8557

**MAIER GUTIERREZ & ASSOCIATES**

8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Telephone: 702.629.7900  
Facsimile: 702.629.7925  
E-mail: [jrm@mgalaw.com](mailto:jrm@mgalaw.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DARIA HARPER, an individual; and DANIEL  
WININGER, an individual,

Plaintiffs,

vs.

COPPERPOINT MUTUAL INSURANCE  
HOLDING COMPANY, an Arizona corporation;  
COPPERPOINT GENERAL INSURANCE  
COMPANY, an Arizona corporation; LAW  
OFFICES OF MARSHALL SILBERBERG,  
P.C., a California corporation; KENNETH  
MARSHALL SILBERBERG aka MARSHALL  
SILBERBERG aka K. MARSHALL  
SILBERBERG, an individual; THOMAS S.  
ALCH aka THOMAS STEVEN ALCH, an  
individual; BRUCE G. FAGEL, A LAW  
CORPORATION aka LAW OFFICES OF  
BRUCE G. FAGEL & ASSOCIATES, a  
California corporation; DOES 1-50, inclusive,

Defendants.

Case No.: A-20-814541-C  
Dept. No.: XXX

**SUMMONS - CIVIL**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ**

1 **THE INFORMATION BELOW.**

2 **BRUCE G. FAGEL, A LAW CORPORATION**  
3 **aka LAW OFFICES OF BRUCE G. FAGEL & ASSOCIATES**

4 A civil complaint has been filed by the Plaintiffs against you for the relief set forth in the  
5 complaint.

6 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on  
7 you, exclusive of the day of service, you must do the following:

8 (a) File with the Clerk of the Court, whose address is shown below, a formal  
9 written response to the Complaint in accordance with the rules of the Court,  
10 with the appropriate filing fee.

11 (b) Serve a copy of your response upon the attorney whose name and address is  
12 shown below.

13 2. Unless you respond, your default will be entered upon application of the Plaintiffs and  
14 failure to so respond will result in a judgment of default against you for the relief demanded in the  
15 complaint, which could result in the taking of money or property or other relief requested in the  
16 complaint.

17 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly  
18 so that your response may be filed on time.

19 ///

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1           4.     The State of Nevada, its political subdivisions, agencies, officers, employees, board  
2 members, commission members and legislators each have 45 days after service of this Summons  
3 within which to file and Answer or other responsive pleading to the complaint.

4                                 STEVEN D. GRIERSON  
5                                 CLERK OF THE COURT

6                                 *Mary Anderson*

3/12/2021

7                                 Deputy Clerk             Mary Anderson     Date  
8                                 Regional Justice Court  
9                                 200 Lewis Avenue  
10                                Las Vegas, Nevada 89155

11     Respectfully submitted,

12     **MAIER GUTIERREZ & ASSOCIATES**

13     /s/ Jason R. Maier

14     JASON R. MAIER, ESQ.  
15     Nevada Bar No. 8557  
16     8816 Spanish Ridge Avenue  
17     Las Vegas, Nevada 89148  
18     Attorneys for Plaintiffs

Attorney or Party Without Attorney (Name and Address) JOHN P. BLUMBERG SBN 70200 BLUMBERG LAW CORP 444 W. OCEAN BLVD STE. 1500 LONG BEACH CA 90802 562/437-0403 Attorney For (Name): PLAINTIFF		Telephone No. 562/437-0403  Ref. No. or File No. C30291/HARPER	FOR COURT USE ONLY	
Insert name of court and name of judicial district and branch court, if any. UNITED STATES DISTRICT COURT DISTRICT OF NEVADA				
Short Title of Case: HARPER VS COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY				
Invoice No.: 797079	Date:	Time:	Dep./Div.:	Case Number: A-20-814541-C

PROOF OF SERVICE OF SUMMONS

I certify that I am authorized to serve the summons and complaint in the within action pursuant to F.R.Civ.P.4(c) and that I served the summons and complaint as follows:

SUMMONS- CIVIL

AMENDED COMPLAINT

1. Name and title of person served:

BRUCE G. FAGEL, A LAW CORPORATION AKA LAW OFFICES  
 OF BRUCE G. FAGEL & ASSOCIATES, A CALIFORNIA  
 CORPORATION

2. Person with whom left: TIM HARRIS

TITLE: AGENT FOR SERVICE OF PROCESS

3. Date and time of delivery: 04/01/21 , 02:25 PM

5. Place of service:

BUSINESS CHARLSTON, REVICH ET AL  
 1925 CENTRUY PARK EAST  
 SUITE 320  
 LOS ANGELES CA 90067

PERSONAL SERVICE

UPON A BUSINESS ENTITY (DOMESTIC OR FOREIGN CORPORATION OR PARTNERSHIP OR ASSOCIATION SUBJECT TO SUIT UNDER A COMMON NAME)

by delivering a copy of the summons and complaint to an officer or a managing or general agent, any other agent authorized by appointment or by law to receive service of process (if the agent is authorized by statute and the statute so requires, copies of the summons and complaint must also be mailed to the defendant) [FRCP Rule 4(h) (1) (B)] AND

SIGNAL ATTORNEY SERVICE, INC.

P.O. Box 91985

Long Beach CA 90809

(562)595-1337 FAX (562)595-6294

I declare under penalty of perjury, under the laws of the State of California and of the United States of America that the foregoing is true and correct.

DATE: 04/02/21

SIGNATURE



Attorney or Party Without Attorney (Name and Address) JOHN P. BLUMBERG SBN 70200 BLUMBERG LAW CORP 444 W. OCEAN BLVD STE. 1500 LONG BEACH CA 90802 562/437-0403 Attorney For (Name): PLAINTIFF		Telephone No. 562/437-0403  Ref. No. or File No. C30291/HARPER	FOR COURT USE ONLY	
Insert name of court and name of judicial district and branch court, if any. UNITED STATES DISTRICT COURT DISTRICT OF NEVADA				
Short Title of Case: HARPER VS COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY				
Invoice No.: 797079	Date:	Time:	Dep./Div.:	Case Number: A-20-814541-C

Pursuant to the law to the law of the state in which the district court is located or of the state in which service is made [FRCP Rule 4 (h) (1) (A)] (CCP 416.10 (b))

I declare under the penalty of perjury that the foregoing is true and correct

Executed at Signal Hill, State of California on 04/02/21

SERVED BY: DANIEL F. MARION FEE FOR SERVICE: \$85.30

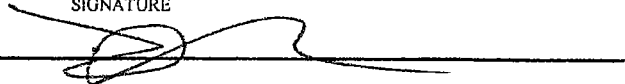
SIGNAL ATTORNEY SERVICE, INC.  
 P.O. Box 91985  
 Long Beach CA 90809  
 (562)595-1337 FAX(562)595-6294

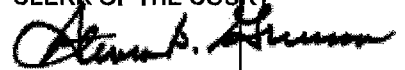
d. Registered California process server  
 (1) ☒ Employee or ☐ Independent Contractor  
 (2) Registration No. 2017348203  
 (3) County: LOS ANGELES  
 (4) Expiration: 11/30/21

I declare under penalty of perjury, under the laws of the State of California and of the United States of America that the foregoing is true and correct.

DATE: 04/02/21

SIGNATURE





1 **IAFD**

2 **RILEY A. CLAYTON**

3 Nevada Bar No. 005260

4 rclayton@lawhjc.com

5 **HALL JAFFE & CLAYTON, LLP**

6 7425 PEAK DRIVE

7 LAS VEGAS, NEVADA 89128

8 (702) 316-4111

9 FAX (702)316-4114

10 Attorneys for Defendant, *Bruce G. Fagel, A Law Corporation*  
11 *aka Law Offices of Bruce G. Fagel & Associates*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **DARIA HARPER, an individual; and DANIEL**  
15 **WININGER, an individual,**

16 Plaintiff,

17 vs.

18 **COPPERPOINT MUTUAL INSURANCE**  
19 **HOLDING COMPANY, an Arizona corporation;**  
20 **COPPERPOINT GENERAL INSURANCE**  
21 **COMPANY, an Arizona corporation; LAW**  
22 **OFFICES OF MARSHALL SILBERGERG, P.C., a**  
23 **California corporation; KENNETH MARSHALL**  
24 **SILBERBERG aka MARSHALL SILBERGER,**  
25 **aka K. MARSHALL SILBERBERG, an individual;**  
26 **THOMAS S. ALCH aka THOMAS STEVEN**  
27 **ALCH, an individual; BRUCE G. FAGEL, A LAW**  
28 **CORPORATION aka LAW OFFICES OF BRUCE**  
**G. FAGEL & ASSOCATES, a California**  
**corporation DOES 1-50, inclusive,**

Defendants.

CASE NO.: A-20-814541-C

DEPT NO.: 30

**INITIAL APPEARANCE FEE**  
**DISCLOSURE (NRS CHAPTER 19)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

///

///

Bruce G. Fagel, A Law Corporation  
aka Law Offices of Bruce G. Fagel & Associates \$223.00

TOTAL REMITTED: \$223.00

Dated this 21<sup>st</sup> day of May 2021.

HALL JAFFE & CLAYTON, LLP

*/s/ Riley A. Clayton*

---

RILEY A. CLAYTON  
Nevada Bar No. 005260  
7425 Peak Drive  
Las Vegas, Nevada 89128  
Attorneys for Defendant, *Bruce G. Fagel, A Law  
Corporation aka Law Offices of Bruce G. Fagel &  
Associates*

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Pursuant to NEFCR 9, NRCF 5(b) and EDCR 7.26, I hereby certify that I am an employee of HALL JAFFE & CLAYTON, LLP and on the 21<sup>st</sup> day of May 2021, I served the foregoing **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)** on the following parties by electronic transmission through the Court's e-filing and service program, addressed to the following:

7 John P. Blumberg, Esq.  
BLUMBERG LAW CORPORATION  
8 444 West Ocean Blvd. Suite 1500  
o Long Beach, CA 90802-4330

0 Jason R. Maier, Esq.  
1 MAIER GUTIERREZ & ASSOCIATES  
2 8816 Spanish Ridge Avenue  
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*Attorneys for Plaintiff*

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Sami Randolph, Esq.  
5 HOOKS MENG & CLEMENT  
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6 Las Vegas, NV 89102  
Attorneys for Defendants Copperpoint Mutual  
7 Insurance Holding Co. and Copperpoint General Insurance Company

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Heather S. Hall, Esq.  
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Las Vegas, Nv 89113

Robert L. McKenna, III, Esq.  
James Kjar, Esq.  
Jon Schwalbach, Esq,  
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El Segundo CA 90245  
*Attorneys for Defendants,*  
*Law Offices of Marshall Silberberg, P.C. and*  
*Kenneth Marshall Silberberg*

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5 *Attorneys for Defendants*  
6 *Shoop A. Professional Law Corporation*  
7 *and Thomas A. Alch*

8 /s/ Joann deJonge

---

9 An Employee of  
10 HALL JAFFE & CLAYTON, LLP  
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1 **MTD**  
2 RILEY A. CLAYTON  
3 Nevada Bar No. 005260  
4 [rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)

5 **HALL JAFFE & CLAYTON, LLP**  
6 7425 PEAK DRIVE  
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8 (702) 316-4111  
9 FAX (702) 316-4114

10 Attorneys for Defendant, *Bruce G. Fagel, A Law Corporation*  
11 *aka Law Offices of Bruce G. Fagel & Associates*

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 DARIA HARPER, an individual; and DANIEL  
15 WININGER, an individual,

16 Plaintiff,

17 vs.

18 COPPERPOINT MUTUAL INSURANCE  
19 HOLDING COMPANY, an Arizona corporation;  
20 COPPERPOINT GENERAL INSURANCE  
21 COMPANY, an Arizona corporation; LAW  
22 OFFICES OF MARSHALL SILBERGERG, P.C., a  
23 California corporation; KENNETH MARSHALL  
24 SILBERBERG aka MARSHALL SILBERGER,  
25 aka K. MARSHALL SILBERBERG, an individual;  
26 THOMAS S. ALCH aka THOMAS STEVEN  
27 ALCH, an individual; BRUCE G. FAGEL, A LAW  
28 CORPORATION aka LAW OFFICES OF BRUCE  
G. FAGEL & ASSOCATES, a California  
corporation DOES 1-50, inclusive,

Defendants.

CASE NO.: A-20-814541-C  
DEPT NO.: 30

**DEFENDANT BRUCE G. FAGEL,  
A LAW CORPORATION AKA  
LAW OFFICES OF BRUCE G.  
FAGEL & ASSOCIATES MOTION  
TO DISMISS BASED UPON LACK  
OF PERSONAL JURISDICTION**

**[HEARING REQUESTED]**

Defendant, Bruce G. Fagel, a Law Corporation aka Law Offices of Dr. Bruce G. Fagel & Associates ("Fagel Law"), hereby submits this Motion to Dismiss Based Upon Lack of Personal Jurisdiction pursuant to NRCP 12(b)(2). As set forth below, there is no basis for this Court to assert either general jurisdiction or specific personal jurisdiction over Fagel Law given the



1 absence of a continuous or systematic presence in the state of Nevada, and because Fagel Law's  
2 limited involvement in the underlying medical malpractice case is insufficient to establish  
3 "minimum contacts" to make the exercise of personal jurisdiction over Fagel Law reasonable or  
4 constitutional. Therefore, this Court should grant Fagel Law's motion and dismiss pursuant to  
5 NRCP 12(b)(2).

6 This motion is made and based upon the Declaration of Dr. Bruce G. Fagel, the  
7 Memorandum of Points and Authorities, the exhibits attached herewith, and any oral argument  
8 that the Court may entertain in the matter.

9 Dated this 21<sup>st</sup> day of May 2021.

10 HALL JAFFE & CLAYTON, LLP

11 */s/ Riley A. Clayton*

12  
13 RILEY A. CLAYTON  
14 Nevada Bar No. 005260  
15 7425 Peak Drive  
16 Las Vegas, Nevada 89128  
17 Attorneys for Defendant, *Bruce G. Fagel, A Law*  
18 *Corporation aka Law Offices of Bruce G. Fagel &*  
19 *Associates*

## 20 MEMORANDUM OF POINTS AND AUTHORITIES

### 21 I. INTRODUCTION

22 Given the parties' prior motions and the Court's prior rulings surrounding the same,  
23 the Court is familiar with the general nature of the present case. Briefly, the present legal  
24 malpractice/declaratory relief action filed by the two Arizona plaintiffs, Daria Harper and  
25 Daniel Wininger ("Plaintiffs"), stems from the mediated settlement in 2018 of the Plaintiffs'  
26 underlying medical malpractice case, which was filed in Nevada. The Plaintiffs hired a  
27 California law firm, the Law Offices of Marshall Silberberg, P.C. and/or Kenneth Marshall  
28 Silberberg (collectively referred to as "Silberberg"), to represent them in the underlying  
matter.

1 The essence of the legal malpractice/declaratory relief case is that Silberberg did  
2 not adequately advise and otherwise protect the Plaintiffs from a workers compensation  
3 lien asserted by Defendants Copperpoint Mutual/General Insurance Company  
4 ("Copperpoint") with respect to the settlement proceeds that were recovered in the  
5 underlying medical malpractice case. Fagel Law provided some initial and nominal  
6 assistance with respect to the prosecution of the underlying medical malpractice matter;  
7 however, Fagel Law does not have a continuous or systematic presence in the state of  
8 Nevada, nor was Fagel Law even remotely involved in the critical handling/decision-  
9 making (aka "suit related" activity) with respect to the Copperpoint lien and other  
10 allegations of misconduct, which now serves as the basis for the present legal malpractice  
11 action. Thus, in the absence of either general or specific jurisdiction over Fagel law, this  
12 Court should dismiss Fagel Law from this case pursuant to NRCP 12(b)(5).

## 13 **II. FACTS NEGATING PERSONAL JURISDICTION**

14 1. Initially, it is important to note that Fagel Law has not consented to jurisdiction in  
15 the State of Nevada, nor made a general appearance in this case. (Declaration of Bruce G. Fagel,  
16 attached as Exhibit "A", ¶ 2). By way of background, Fagel Law is incorporated in the state of  
17 California, and its principal place of business is and was, for approximately 20 years, located in  
18 Beverly Hills, California. *Id.* at ¶ 27. Fagel Law has recently relocated its offices to the city of  
19 Los Angeles. *Id.* Fagel Law maintains other offices in California, but does not maintain physical  
20 offices outside the state of California. *Id.* Fagel Law has never held any licenses in or issued by  
21 the state of Nevada. *Id.* at ¶ 3. Fagel Law has not maintained and does not maintain any bank  
22 accounts in Nevada. *Id.* at ¶ 4. Likewise, Fagel Law has not owned and does not own any interest  
23 in any Nevada companies, partnerships, limited liability entities, or corporations. *Id.* at ¶ 5. Fagel  
24 Law has not held and does not hold any managerial or employment positions with any such  
25 companies, entities, or corporations, either. *Id.* at ¶ 6.

26 2. The Plaintiffs were not Nevada residents when this case arose, rather they were  
27 from Arizona. *Id.* at ¶ 7. The Plaintiffs were not solicited by Fagel Law Office or any of its  
28

1 attorneys. *Id.* In fact, Plaintiffs contacted Silberberg, another California medical malpractice  
2 attorney, and entered into an attorney-client contingency fee agreement with him and his  
3 California firm. *Id.*

4 3. Neither Dr. Bruce G. Fagel nor anyone affiliated with Fagel Law participated in  
5 the settlement of the underlying medical malpractice case for the Plaintiffs. *Id.* at ¶ 8. Fagel Law  
6 did not assist in the preparation of the mediation brief, consult with the Plaintiffs concerning the  
7 mediation, participate in the mediation, give any advice concerning the settlement offers made at  
8 the mediation, or otherwise have any involvement in any aspect with the mediation and ultimate  
9 settlement of the underlying medical malpractice case. *Id.* Rather, Fagel Law's only involvement  
10 occurred in 2016, years before Plaintiffs' case settled and the alleged negligence occurred. *Id.* at  
11 ¶ 9. After the Plaintiffs had retained Silberberg, Mr. Marshall Silberberg telephoned Dr. Fagel  
12 in California, requesting some assistance from Fagel Law's then affiliate law office in Nevada,  
13 the Law Offices of Thomas S. Alch. *Id.* Mr. Silberberg knew that Fagel Law had an affiliate  
14 office in Nevada and said that he needed Nevada co-counsel so he could pursue the Nevada  
15 portion of the case. *Id.* Mr. Silberberg discussed the general nature of the case with Dr. Fagel,  
16 and Dr. Fagel agreed that Mr. Silberberg could associate with the affiliate office, The Law Office  
17 of Thomas S. Alch. *Id.* Mr. Silberberg promised that in return for some nominal assistance by Mr.  
18 Alch, a share of any recovery would be paid to Fagel Law in California. *Id.* Dr. Fagel agreed. *Id.*  
19 Mr. Alch then nominally assisted Silberberg by providing him with "form" examples of expert  
20 declarations that were required to be filed with any complaint in Nevada. *Id.*

21 4. Mr. Alch would then assist with the preparation and filing of the Nevada complaint,  
22 and assist on a very limited basis once Mr. Silberberg and his attorneys completed the *Pro Hac*  
23 *Vice* application process in Nevada. *Id.* at ¶ 10. Alch would assist with any appearances that had  
24 to be made in routine and uncontested Master Calendar matters, but Silberberg would handle the  
25 depositions, expert retention, and discovery. *Id.* Importantly, Fagel Law was not to be involved  
26 with the prosecution of the lawsuit in any way. *Id.* at ¶ 11. Once Mr. Silberberg and his associates  
27 were admitted *Pro Hac Vice*, Dr. Fagel understood that Mr. Silberberg and his lawyers would be  
28

1 conducting all the depositions, moving the case through discovery, advising the Plaintiffs, and  
2 otherwise managing the case from that point forward. *Id.*

3 5. Mr. Alch left Fagel Law on September 15, 2017, and it was Dr. Fagel's  
4 understanding that thereafter, Mr. Alch would remain on the Plaintiffs' medical malpractice case  
5 to serve as local counsel to Silberberg in Mr. Alch's independent capacity, and not as an employee  
6 or affiliate of Fagel Law. *Id.* at 12. Dr. Fagel does not believe that he had any further contact  
7 with Mr. Silberberg or his staff or Mr. Alch and his staff regarding the Plaintiffs' underlying  
8 medical malpractice case from September 2017, until after it settled at mediation. *Id.*

9 6. The Amended Complaint alleges various theories of purported malpractice and/or  
10 professional wrongdoing by Fagel Law. *Id.* at ¶ 13. As set forth herein, none of the allegations  
11 of improper or actionable conduct occurred with Fagel Law's involvement or knowledge, nor was  
12 the outcome of such alleged conduct, in any way, connected with Fagel Law's actions, inactions,  
13 statements, representations, or conduct. *Id.* Specifically, the legal malpractice complaint alleges  
14 the purported mis-handling of and decision-making with respect to an alleged workers  
15 compensation lien/subrogation right asserted by Copperpoint against any potential recovery  
16 obtained by the Plaintiffs in the underlying medical malpractice case. *Id.* at ¶ 14. The handling  
17 of and decisions with respect to the workers compensation lien were all performed by Mr.  
18 Silberberg or persons reporting to him. *Id.* No one at Fagel Law was asked to consult, research,  
19 advise, evaluate, or analyze that issue and/or how that issue may impact the Plaintiffs' underlying  
20 medical malpractice case, and no such advice was given. *Id.* Dr. Fagel's understanding is that  
21 the issues relating to Copperpoint were exclusively handled, evaluated, and discussed with the  
22 Plaintiffs by Silberberg, and any/all interaction with Copperpoint and any advice given to the  
23 Plaintiffs on that issue came from Mr. Silberberg and his lawyers. *Id.* Mr. Silberberg's office  
24 may have copied Mr. Alch with a memo relating to Copperpoint when Mr. Alch was functioning  
25 as a Nevada office for Mr. Silberberg, and was an affiliate office of Fagel Law. *Id.* But Fagel  
26 Law had no discussion with Mr. Silberberg about the ability of Copperpoint to lien the settlement  
27 proceeds in Nevada. *Id.* Moreover, when the Copperpoint lien/subrogation issue came to a head  
28

1 at the mediation in 2018, Mr. Alch had been gone from Fagel law for many months and had  
2 affiliated with another California law office. *Id.* at ¶ 15.

3 7. The Amended Complaint also alleges purported improprieties surrounding and/or  
4 non-existence of contingency fee agreements. *Id.* at ¶ 16. But no one at Fagel Law was asked to  
5 prepare, review, evaluate, advise, negotiate, and/or otherwise become involved in the  
6 determination of the fees to be paid from the settlement sums. *Id.* Mr. Silberberg and his office  
7 handled the contingency fee agreement, identified what amounts would be charged, how the fees  
8 were calculated, etc. *Id.* In fact, Dr. Fagel never saw a copy of the contingency fee agreement  
9 until after the settlement had been funded and fee amounts had been paid. *Id.* Thus, in terms of  
10 drafting, negotiating, discussing, and executing the contingency fee agreement, Fagel Law was  
11 not involved. *Id.*

12 8. With respect to the alleged issue of untimely or insufficient distributions of  
13 settlement funds, once again, no one associated with Fagel Law was involved in that process. *Id.*  
14 at ¶ 17. Instead, the distribution of potential proceeds was, to Dr. Fagel's understanding, handled  
15 exclusively by Mr. Silberberg and his personnel as it related to the Plaintiffs' funds, long after  
16 Mr. Alch was no longer employed by Fagel Law. *Id.*

17 9. The Amended Complaint also alleges the purported improper and/or untimely  
18 distribution of settlement funds. *Id.* at ¶ 18. But assuming any such thing occurred, neither Dr.  
19 Fagel nor anyone associated with Fagel Law was aware that Silberberg was allegedly withholding  
20 a portion of the Plaintiffs' funds for any purpose or withholding a portion of the funds as a  
21 potential source of money to litigate the enforceability of Copperpoint's lien/subrogation rights.  
22 *Id.* More specifically, no one from Fagel law had any involvement in how distributions to the  
23 Plaintiffs were made, how they were calculated, whether any funds were being withheld, the  
24 reason for withholding any funds, etc. *Id.* at ¶ 19. Mr. Silberberg's office provided Dr. Fagel in  
25 California with an after the fact copy of a disbursement sheet, after the case resolved, along with  
26 a check for a portion of the settlement proceeds. *Id.*

1           10.     The Amended Complaint finally alleges that the purported distribution of proceeds  
2 to Fagel Law was somehow improper, but Fagel Law never had a fee agreement with the Plaintiffs.  
3 *Id.* at ¶ 20. Dr. Fagel is aware that Mr. Silberberg's office entered into a contingency fee  
4 agreement, and that he provided a document along with the contingency fee agreement  
5 mentioning the involvement of outside lawyers in the case. *Id.* However, neither Dr. Fagel nor  
6 anyone affiliated with Fagel Law was involved in drafting, negotiating, or executing those  
7 documents, or was aware of any concerns that the Plaintiffs had with the contingency fee  
8 agreement until this suit was filed. *Id.*

9           11.     Nothing in Fagel Law's limited and pre-2017 connection with the Plaintiffs'  
10 underlying medical malpractice case has any connection to the Plaintiffs current cause of action  
11 for legal malpractice against Fagel Law. *Id.* at ¶ 21. Rather, Fagel Law was not involved, in any  
12 way whatsoever, with respect to the alleged actions, representations, improper advice, etc.  
13 allegedly supporting Plaintiffs' professional negligence or misconduct claims. *Id.*

14           12.     After Mr. Alch left his employment with Fagel Law in 2017, he was no longer in  
15 any sort of an agency or employment relationship with Fagel Law. *Id.* at ¶ 22. Because of Mr.  
16 Alch's ongoing involvement after 2017, Dr. Fagel agreed that if the case resolved favorably, Mr.  
17 Alch would be compensated by receiving 10 percent of the fee otherwise payable to Fagel Law,  
18 although such payment would be made to him pursuant to Form 1099 – Miscellaneous Income as  
19 an independent contractor -- as opposed to a W-2 employee. *Id.* There was no written contract  
20 between Fagel Law and Mr. Alch once he left his employment with the firm in 2017. *Id.* There  
21 was only an oral agreement with him that for any cases that Mr. Alch continued to work on, which  
22 were somehow affiliated with Fagel Law, he would be compensated as an independent contractor  
23 for that work. *Id.*

24           13.     Fagel Law's attorneys are licensed in California. *Id.* at ¶ 23. One lawyer named  
25 Devon Fagel is licensed in Nevada, but his license has been on inactive status for approximately  
26 20 years. *Id.* Devon Fagel only became employed with Fagel Law in 2019, after the underlying  
27 case settled, and he never handled a matter in Nevada. *Id.* The number of Fagel Law lawyers  
28

1 and staff members has remained relatively consistent over the past 20 years. *Id.* Moreover, the  
2 number of lawyers also licensed in Nevada has only been either one or two during that same time  
3 period. *Id.*

4 14. Fagel Law presently has no cases that involve Nevada clients or are actions  
5 pending in Nevada courts. *Id.* at ¶ 24. Although it handled approximately 8-10 cases in Nevada  
6 over the past 10 years, Fagel Law has not taken a new case involving a Nevada client nor has it  
7 been involved in the filing of any new action in Nevada courts since approximately 2018. *Id.*  
8 The approximate percentage of the firm's revenue attributable to Nevada matters formerly  
9 handled by the firm over the last 10 years, was not more than 2% to 4% of revenue. *Id.*

10 15. To the best of Dr. Fagel's knowledge, Dr. Fagel is the only lawyer from Fagel Law  
11 that sought to become admitted to practice law in Nevada on a *Pro Hac Vice* basis, but no such  
12 *Pro Hac Vice* order was ever issued in those cases. *Id.* at ¶ 25. No motion to approve Dr. Fagel  
13 *Pro Hac Vice* in Nevada has been made since at least 2018. *Id.*

14 16. Mr. Thomas S. Alch was employed by Fagel Law from March 17, 1997 to  
15 September 15, 2017. *Id.* at ¶ 26. Dr. Fagel understands that Mr. Alch's Nevada law license is  
16 still active, although Mr. Alch left Fagel law in 2017, and became affiliated with another law firm.  
17 *Id.* Since Mr. Alch left Fagel Law on September 17, 2017, Fagel Law has not been affiliated  
18 with any other Nevada law firms or lawyers as it was with Mr. Alch. *Id.* Likewise, from before  
19 Fagel Law's affiliation with Mr. Alch, Fagel Law never had been affiliated with any other Nevada  
20 law firm, like the arrangement it had with the Law Office of Thomas S. Alch, or in any other  
21 capacity. *Id.*

22 17. Fagel Law does not and never has owned any real property in the State of Nevada.  
23 *Id.* at ¶ 28. Fagel Law paid in the past, and to a bank located in San Francisco, California, for  
24 the rental of a "virtual office" suite location in Nevada so that The Law Office of Thomas S. Alch,  
25 an affiliate office prior to 2017, could comply with Nevada's Rules of Professional Conduct. *Id.*

26 18. For a few years prior to September 2017, one of Fagel Law's attorneys licensed in  
27 Nevada, Mr. Alch, had a fictitious firm name in Nevada that would be affiliated with Fagel Law.  
28

1 *Id.* at ¶ 29. That fictitious firm name was “The Law Offices of Thomas S. Alch, an affiliate of  
2 Bruce G. Fagel & Associates.” *Id.* The addresses listed for The Law Office of Thomas S. Alch  
3 were 2950 E. Flamingo Road, Las Vegas, Nevada, and 500 North Rainbow Blvd., Suite 300, Las  
4 Vegas, Nevada. *Id.* The lease for the “virtual” office on 500 North Rainbow Blvd. for The Law  
5 Office of Thomas S. Alch terminated on December 31, 2018. *Id.* Since that time, Fagel Law has  
6 not paid any amounts for virtual or actual office space in Nevada. *Id.* Both of the addresses listed  
7 above were simply “virtual offices” or “office suite” locations, meaning that any physical  
8 presence by Mr. Alch was infrequent. *Id.* at ¶ 30. Dr. Fagel understands that many other persons,  
9 companies, and entities also listed their address at the exact location and also used the same  
10 addresses as their “virtual office.” *Id.* Fagel Law paid a minimal monthly rent to a San Francisco  
11 bank for the occasional use of these virtual offices (around \$129 per month). *Id.* It is Dr. Fagel’s  
12 understanding that the “tenants” of these office suites would be allowed to occasionally use the  
13 common offices, share a common receptionist, and/or occasionally use common conference  
14 rooms. *Id.* It was also Dr. Fagel’s general understanding that in order to comply with the Nevada  
15 State Bar’s requirements for affiliated offices, there had to be a location open during business  
16 hours in Nevada to accept service of documents. *Id.* Nevertheless, Dr. Fagel knows that the actual  
17 extent of Mr. Alch’s use and physical presence in the Nevada virtual office suites was extremely  
18 limited, i.e., a few meetings with clients, occasional depositions, and occasional collection of mail  
19 that went to those addresses instead of to Fagel Law’s address in Beverly Hills, California. *Id.*

20 19. Except when engaged in business travel among various states, the overwhelming  
21 majority (98+%) of time where Dr. Fagel and/or Mr. Alch physically worked was in their office  
22 in Beverly Hills, California. *Id.* at ¶ 31. Both Dr. Fagel’s and Mr. Alch’s secretarial and other  
23 support staff were all located in the Beverly Hills, California, office. *Id.* Neither Dr. Fagel nor  
24 Mr. Alch had secretarial or support staff in Nevada, other than Mr. Alch’s ability to use a common  
25 receptionist available as well to the other “tenants” of the virtual office suite arrangement. *Id.*  
26 The mail sent and received in Nevada on cases where The Law Office of Thomas S. Alch was  
27 involved was also extremely limited, noting that on those few Nevada cases, Thomas S. Alch also  
28



1 listed the Beverly Hills, California, office address for Fagel Law for receipt of mail, faxes, etc.,  
2 and that is where the overwhelming majority of the correspondence was sent and received. *Id.*

3 20. The Law Office of Thomas S. Alch had a phone number with a Nevada area code,  
4 702.740.4140. *Id.* at ¶ 32. That number was used at the “virtual offices” identified above. *Id.* In  
5 other words, when the virtual receptionist answered phone calls made to that number, the  
6 receptionist would then transfer those calls to Fagel Law’s personnel in California. *Id.* That phone  
7 number is still in use, although when incoming calls are made to that number, the calls ring  
8 directly to Fagel Law in California and are answered by Fagel Law’s own receptionist there. *Id.*

9 21. Fagel Law has advertised over the internet since approximately 2010, but does not  
10 possess and has not possessed in the past, a physical internet “presence” in Nevada by way of a  
11 server or call center located there. *Id.* at ¶ 33. Fagel Law conducted some advertising by way of  
12 phone book advertisements that may have been placed in Nevada prior to approximately 2010,  
13 but not since then. *Id.* The firm has not placed advertisements in print media in Nevada. *Id.*

14 22. On November 9, 2020, Plaintiffs took the deposition of Mr. Silberberg. He  
15 testified that neither Fagel Law nor Mr. Alch had any involvement in the prosecution of Plaintiffs’  
16 case:

17 Q: So regardless of the motivation, would it be correct that Bruce Fagel agreed  
18 that Tom Alch, who was his employee, would be local counsel working in  
19 association with your firm in the Daria Harper case?

20 A: Well, no. There was no “agreement,” as you put it. What – what it was  
21 was that we were going to utilize Tom to help us with just the local rules  
22 initially, to make sure that we were compliant with the local rules. At that  
23 point, once that was all done – once that was done, there was really no  
24 agreement. **They weren’t going to participate, as you said, in the**  
25 **prosecution of the case at all.** They did not participate in the – **once we**  
26 **got the local rules established and the complaint filed and initial**  
27 **discovery, they had no involvement in the case.**

28 Q: When you say “they,” do you mean neither Alch nor Fagel?

A: That’s correct. **Once we started going and getting discovery done, that**  
**was the end. I didn’t consult with anybody at that office ever. Tom**  
**helped out initially** – his office, his secretary – making sure that things  
got filed and that they were complying with the local rules. **Once that was**  
**done and the real prosecution of the case started, they had no**  
**involvement at all.**

1 (Deposition Transcript of Kenneth Marshall Silberberg, attached hereto as Exhibit "C.")

2 (Emphasis added.)

3 **III. LEGAL ARGUMENT**

4 **A. This Court Should Dismiss This Case as Against The Non-Resident**  
5 **Defendants for Lack of Personal Jurisdiction.**

6 When a nonresident defendant challenges personal jurisdiction, the plaintiff bears the  
7 burden of showing that jurisdiction exists. *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*,  
8 342 P.3d 997, 1001 (Nev. 2015) (citing *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687,  
9 692 (1993)). The plaintiff must establish, by a preponderance of the evidence, that (1)  
10 Nevada's long-arm statute, NRS14.065, is satisfied; and (2) the exercise of jurisdiction does  
11 not offend due process. *Catholic Diocese, Green Bay v. John Doe 119*, 349 P.3d 518, 520  
12 (Nev. 2015), *reh'g denied* (July 23, 2015) (citing *Arbella Mut. Ins. Co. v. Eighth Judicial*  
13 *Dist. Court*, 122 Nev. 509, 512 (2006); *Trump*, 109 Nev. at 693). Under the Due Process  
14 Clause of the Fourteenth Amendment, a nonresident defendant must have sufficient  
15 "minimum contacts" with the forum state so that subjecting the defendant to the state's  
16 jurisdiction will not "offend traditional notions of fair play and substantial justice."  
17 *Fulbright & Jaworski*, 342 P.3d at 1001 (quoting *Arbella Mut. Ins. Co.*, 122 Nev. at 512).  
18 Because Nevada's long-arm statute is coterminous with the limits of constitutional due  
19 process, these two requirements are the same. *Catholic Diocese, Green Bay*, 349 P.3d at 520  
20 (citing *Arbella Mut. Ins.*, 122 Nev. at 512; NRS 14.065). Accordingly, the Court must look  
21 to whether the exercise of jurisdiction over Fagel Law comports with due process.

22 Due process requirements are satisfied if the nonresident defendant's contacts are  
23 sufficient to obtain either (1) general jurisdiction, or (2) specific personal jurisdiction,  
24 and it is reasonable to subject the nonresident defendants to suit in the forum state. *Viega*  
25 *GmbH v. Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 1156 (Nev. 2014) (citing *Arbella*, 122 Nev.  
26 at 512, 516; *Daimler AG v. Bauman*, 134 S.Ct. 746, 762 n. 20, (2014)). Courts may exercise  
27 general or "all-purpose" personal jurisdiction over a defendant "to hear any and all claims  
28 against it" only when defendant's affiliations with the forum state "are so constant and pervasive

1 as to render it essentially at home in the forum State.” *Bauman*, 134 S. Ct. at 751. By contrast,  
2 specific personal jurisdiction comports with due process only where “the defendant’s suit-  
3 related conduct” creates a “substantial connection with the forum state.” *Walden v. Fiore*, 134  
4 S. Ct. 115, 1121-21 (2014).

5 As set forth in detail below, Plaintiffs have not established, and indeed cannot establish,  
6 that Fagel Law’s contacts with Nevada are sufficient for the Court to obtain either general or  
7 specific jurisdiction over it. Therefore, the Amended Complaint must be dismissed with respect  
8 to Fagel Law because the exercise of jurisdiction over it would violate the requirements of due  
9 process.

10 **B. Fagel Law Is Not Subject To General Jurisdiction in Nevada.**

11 General jurisdiction over a defendant allows a plaintiff to assert claims against that  
12 defendant unrelated to the forum. *Viega GmbH v. Eighth Jud. Dist. Cr.*, 328 P.3d 1152, 1157  
13 (Nev. 2014). Such broad jurisdiction is available only in limited circumstances, when a  
14 non-resident defendant’s contacts with the forum state are so “‘continuous and systematic’  
15 as to render [it] essentially at home in the forum State.” *Id.* (quoting *Goodyear*, 564 U.S.  
16 915, 920, 131 S.Ct. 2846, 2851 (2011); *see also Arbella*, 122 Nev. at 513 (“[G]eneral  
17 personal jurisdiction exists when the defendant’s forum state activities are so substantial or  
18 continuous and systematic that it is considered present in that forum and thus subject to suit  
19 there, even though the suit’s claims are unrelated to that forum.”))

20 As recently clarified by the United States Supreme Court, “only a limited set of  
21 affiliations with a forum will render a defendant amenable to general jurisdiction there.”  
22 *Bauman*, 134 S. Ct. at 760. “For an individual, the paradigm forum for the exercise of general  
23 jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in  
24 which the corporation is fairly regarded as at home.” *Id.* (quoting *Goodyear*, 564 U.S., at  
25 924, 131 S.Ct., at 2853-2854). For a corporate entity, it is rare that general jurisdiction will  
26 exist anywhere other than its place of incorporation or principal place of business. *See id.*,  
27 134 S. Ct. 755-58, 760-61 (surveying its past jurisprudence and pointing out it had found  
28 general jurisdiction somewhere other than these two places only once, where a corporation

1 had essentially relocated its principal place of business to a different forum during  
2 wartime). Those affiliations have the virtue of being unique, i.e., each ordinarily indicates  
3 only one place and is easily ascertainable. 134 S. Ct. at 760. These bases afford plaintiff's  
4 recourse to at least one clear and certain forum in which a corporate defendant may be sued  
5 on any and all claims. *Id.*

6 The United States Supreme Court has reaffirmed the sharp due process limits on  
7 general jurisdiction even more recently on terms that leave no doubt that Fagel Law's limited  
8 contacts with Nevada come nowhere close to subjecting it to all-purpose jurisdiction in the  
9 courts of this state. In *BNSF Ry. Co. v. Tyrell, et al.*, 16-405, 2017 WL 2322834 (U.S. May  
10 30, 2017), two non-residents of Montana brought a Federal Employers' Liability Act  
11 ("FELA") suit against BNSF Railway Company ("BNSF") in Montana state court under  
12 FELA for claims relating to injuries sustained while working for BNSF outside of Montana.  
13 *Id.* at 4. BNSF is neither incorporated in Montana nor headquartered in Montana. *Id.* After  
14 consolidating the two cases, the Montana Supreme Court held that, though BNSF was neither  
15 incorporated nor headquartered in Montana, Montana courts could exercise general personal  
16 jurisdiction over BNSF because the railroad "d[id] business" in the State within the meaning  
17 of FELA and was "found within" the State within the meaning of Montana's procedural rule  
18 for the exercise of personal jurisdiction. *Id.* (citing the fact that BNSF employed more than  
19 2,000 individuals in Montana and operated more than 2,000 miles of railway in the state).

20 The United States Supreme Court rejected the Montana court's holding. *BNSF Ry. Co.*,  
21 2017 WL 2322834 at 10. Reaching this conclusion, the Court explained:

22 [T]he general jurisdiction inquiry does not focus solely on the magnitude of the  
23 defendant's in-state contacts. . . . Rather, the inquiry 'calls for an appraisal of  
24 corporation's activities in their entirety'; [a] corporation that operates in many  
25 places can scarcely be deemed at home in all of them.' . . . [T]he business BNSF  
26 does in Montana is sufficient to subject the railroad to specific personal  
27 jurisdiction of that State on claims related to the business it does in Montana.  
28 But in-state business . . . does not suffice to permit the assertion of general  
jurisdiction over claims like Nelson's and Tyrell's that are unrelated to any  
activity occurring in Montana.

1 *Id.* Accordingly, the Court reversed and remanded the decision of the Montana court. *Id.* In  
2 other words, BNSF's significant contacts, affiliations, and business in Montana (*i.e.*, operating  
3 2,000 miles of railroad tracks and employing more than 2,000 employees in Montana), still  
4 could not give rise to general jurisdiction in Montana. *Id.*

5 For a business entity like a corporation, the *BNSF Ry. Co.* decision clearly reserves  
6 general jurisdiction to the two places where a business entity may be called “home,” *i.e.*, its  
7 state of organization and its principal place of business. Nevada is not and has never been  
8 “home” for Fagel Law, who had extremely limited contacts or affiliations with Nevada, and  
9 certainly nothing approaching the BNSF contacts that were held to be insufficient to support  
10 general jurisdiction. *See e.g.*, Exhibit “A” (explaining that Fagel Law had a “virtual” office for  
11 its affiliate, the Law Office of Thomas S. Alch for some years, but after Thomas Alch left  
12 Fagel Law, Fagel Law has had no office in Nevada since December 2018, and only 2% of work  
13 time occurred there during this period, while 98% occurred in California). Fagel Law does not  
14 own any real property in Nevada, has no bank accounts here, has a single lawyer licensed in  
15 Nevada but who has been on inactive status for years, has no secretarial or support staff here,  
16 and although it has a Nevada number, the phone number routes calls directly into Fagel Law’s  
17 California office. *Id.* Moreover, Fagel Law’s representation of Nevada clients and involvement  
18 in Nevada matters is *de minimis*. (Exhibit “A” ¶ 24, revenue generated from Nevada matters  
19 amounted from between 2%-4% of its total revenue over the past 10 years). Moreover, the then  
20 actively licensed Nevada attorney that was associated with Fagel Law, Thomas S. Alch, ended  
21 his affiliation with Fagel Law in September 2017, thereby further distancing Fagel Law from  
22 any meaningful “home-like” activity in Nevada. *Id.* at ¶ 26. Accordingly, Fagel Law does not  
23 have the “substantial” or “continuous and systematic” contacts with Nevada that could warrant  
24 a finding that Nevada is its domicile or “home.” *BNSF Ry. Co.*, 2017 WL 2322834 at 9 (citing  
25  
26  
27  
28

1 *Bauman*, 134 S.Ct. at 749). Rather, “home,” as the Court has defined it for general jurisdiction  
2 purposes, is California for Fagel Law – the place of its incorporation and the principal place  
3 of its business. Thus, given the absence of systematic and continual contacts with Nevada,  
4 Fagel Law is not subject to general jurisdiction anywhere other than California, and certainly  
5 not in Nevada. Therefore, Fagel Law’s motion to dismiss pursuant to NRCP 12(b)(2) should  
6 be granted.

7  
8 **C. This Court Lacks Specific Jurisdiction Over Fagel Law.**

9 In deciding whether exercising specific personal jurisdiction is appropriate, the  
10 Court considers a three-prong test;

11 (1) [t]he defendant must purposefully avail himself of the privilege of acting in  
12 the forum state or of causing important consequences in that state. (2) The cause  
13 of action must arise from the consequences in the forum state of the defendant’s  
14 activities, and (3) those activities, or the consequences thereof, must have a  
substantial enough connection with the forum state to make the exercise of  
jurisdiction over the defendant reasonable.

15 *Consipio Holding, BV v. Carlberg*, 282 P.3d 751, 755 (Nev. 2012); *see also Viega GmbH*, 328  
16 P.3d at 1157 (recognizing specific personal jurisdiction arises when the foreign defendant  
17 “purposefully enters the forum’s market or establishes contacts in the forum and affirmatively  
18 directs conduct there, and the claims arise from that purposeful contact or conduct.”) (citing  
19 *Arbella*, 122 Nev. at 513).

20 As the United States Supreme Court recognized: “whether a forum State may assert  
21 specific jurisdiction over a nonresident defendant focuses on ‘the relationship among the  
22 defendant, the forum, and the litigation.’” *Walden*, 134 S.Ct. at 1122 (citing *Keeton v.*  
23 *Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984). For a state to exercise jurisdiction  
24 consistent with due process, the defendant’s **suit-related conduct** must create a substantial  
25 connection with the forum state. *Id.*

26 For an exercise of specific jurisdiction to comport with due process, the suit must  
27 arise “out of contacts that the defendant *himself* creates with the forum State.” *Walden*,  
28

1 134 S.Ct. at 1122 (quoting *Burger King Corp.*, 105 S.Ct. 2174). The Supreme Court has  
2 “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’  
3 inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum  
4 State.” *Id.* at 1122, 1125 (concluding that causing an “injury to a forum resident is not a  
5 sufficient connection to the forum,” and “the plaintiff cannot be the only link between the  
6 defendant and the forum”). In other words, the “minimum contacts” analysis looks to the  
7 defendant’s contacts with the forum state itself, not the defendant’s contacts with persons who  
8 reside there. *Id.* at 1122.

9 Notably, the above-referenced case-law *presumes* that the Plaintiffs are from the  
10 forum state. *Id.* In this case, even that critically important factor is absent, noting that the  
11 Plaintiffs herein are/were from Arizona, not Nevada. Thus, the primary basis for having  
12 personal jurisdiction in a particular forum where the plaintiff resides is absent here, thereby  
13 further undercutting any potential basis for specific jurisdiction. Moreover, Plaintiffs have  
14 not established, and cannot establish, that Fagel Law engaged in any specific “suit-related  
15 conduct” that would create a substantial connection between Fagel Law and Nevada. *See,*  
16 *generally*, Amended Complaint, attached hereto as Exhibit “B”). Plaintiffs’ central  
17 allegation is that they received inadequate/insufficient advice concerning the existence and  
18 ramifications regarding the Copperpoint subrogation/lien. As Dr. Fagel’s Declaration  
19 unequivocally confirms, no one associated with Fagel Law was involved in the settlement  
20 of the underlying case, the research and analysis of the potential ramifications of the  
21 Copperpoint subrogation/lien, whether Nevada law or Arizona law would apply to that  
22 determination, what the Plaintiffs knew about the existence of the lien, and/or provided  
23 legal advice to the Plaintiffs regarding those issues, etc. Exhibit “A” at ¶¶ 13-15. Rather,  
24 all of that critical “suit-related” activity was handled by Silberberg. *Id.* This is not only  
25 confirmed by Dr. Fagel’s Declaration, but also the sworn deposition testimony of Mr.  
26 Silberberg, himself. Exhibit “C.”

27 By the same token, Fagel Law was not involved in any of the other “suit related”  
28 activity that purportedly supports Plaintiffs’ claim for legal malpractice, either. As

1 established through Dr. Fagel's Declaration, Fagel Law: (1) had no involvement,  
2 whatsoever, with respect to the drafting, reviewing, negotiating or handling of a  
3 purportedly improper contingency fee agreement; (2) had no involvement, whatsoever,  
4 with respect to the alleged issue regarding the distribution or withholding of any  
5 settlement proceeds; (3) had no involvement, whatsoever, regarding the timing or manner  
6 in which settlement funds were disbursed. *Id.* at ¶¶ 17-19. Rather, all of that allegedly  
7 improper or insufficient conduct/activity was performed by Silberberg. *Id.* Indeed,  
8 Plaintiffs cannot allege that any of Fagel Law's allegedly tortious conduct took place in  
9 Nevada or has any connection to Nevada, let alone a Constitutional connection with this  
10 State. Exhibit "B". Absent such evidence there is no basis for the exercise of specific  
11 jurisdiction, and dismissal of Plaintiffs' Amended Complaint must follow as it relates to  
12 Fagel Law.

13 Nevada precedent also confirms that much more would be required to establish  
14 specific jurisdiction than is present here. For example, the mere fact that a lawyer or law firm  
15 performed legal services for a client in the client's home state, contacted the client in the  
16 client's home state, or had a meeting with the client in the client's home state would not  
17 constitute purposeful availment sufficient to make a *prima facie* showing of specific personal  
18 jurisdiction. *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 5, 342 P.3d  
19 997, 1005 (2015) (holding that Texas-based law firm did not purposefully avail itself of the  
20 benefit of acting in client's home state of Nevada simply by meeting with the client in  
21 Nevada); *see also Austad Co. v. Pennie & Edmonds*, 823 F.2d 223, 226 (8th Cir. 1987)  
22 (holding that lawyers who made calls to client's home state, mailed monthly billings to the  
23 client's home state, received payments from the client's home state bank, and reviewed  
24 documents in client's office did not purposefully avail themselves of the benefits and  
25 protections of the client's home state through such conduct).

26 Here, of course, Plaintiffs' "home state" is not even Nevada, but is Arizona.  
27 Moreover, specific jurisdiction is only based on allegations of the *defendant's* conduct  
28 related to the forum state, thereby making Plaintiffs' purported contacts with Nevada



1 irrelevant to the analysis. In contrast to *Fulbright & Jaworski*, here there are no allegations  
2 of any "suit related" activity being performed by Fagel Law in Nevada, and no allegations  
3 of any meeting or contact in Nevada that forms any part of Plaintiffs' claims. Even if all of  
4 Plaintiffs' allegations about Fagel Law's conduct are taken to be true for purposes of this  
5 jurisdictional analysis (although they are utterly lacking in merit and emphatically denied),  
6 nothing in those allegations provides a connection to Nevada that is sufficient to permit the  
7 Court to assert jurisdiction over Fagel Law. *Walden*, 134 S.Ct. at 1122 (holding that  
8 jurisdiction was not proper in Nevada where the defendant's only Nevada-related contact  
9 was his contact with plaintiffs who were Nevada citizens because the plaintiff cannot be the  
10 only link between the defendant and the forum state as it is "the defendant's conduct that  
11 must form the necessary connection with the forum State that is the basis for its jurisdiction  
12 over him").

13 Finally, the Amended Complaint also must be dismissed under the third prong of  
14 Nevada's specific jurisdiction test because requiring Fagel Law to appear and defend suit in  
15 Nevada would be unreasonable. Courts are required to consider the following five factors when  
16 assessing whether requiring a non-resident defendant to appear and defend suit in Nevada would  
17 be unreasonable:

18 (1) the burden that the defendant will face in defending claims in  
19 Nevada, (2) Nevada's interest in adjudicating those claims, (3) the  
20 plaintiffs' interests in obtaining expedited relief, (4) along with  
21 interstate considerations such as efficiency, and (5) social  
22 policy.")

23 *Arbella Mut. Ins. Co.*, 122 Nev. at 516 (holding that the burden of requiring a Massachusetts-  
24 based insurance carrier to appear and defend a suit in Nevada was reasonable when the insureds  
25 resided in Nevada, the accident occurred in Nevada, and the insureds' claim arose out of the  
26 accident in Nevada); *see also Consipio Holding, BV v. Carlberg*, 282 P.3d 751, 755 (Nev. 2012)  
(recognizing the same factors).

27 Here, requiring Fagel Law to appear and defend this suit in Nevada would be  
28 unreasonable. Fagel Law is a California corporation with no physical presence here. Fagel

1 Law's principal place of business is in the Los Angeles, California area. The Plaintiffs do  
2 not live in Nevada, nor does the principal of Fagel Law, Dr. Fagel, reside in Nevada.  
3 Requiring Fagel Law to travel to Nevada solely for the purpose of defending against  
4 Plaintiffs' action will be burdensome to a law firm that has effectively no lingering contact  
5 with Nevada.

6 Nevada has little interest in adjudicating Plaintiffs' claims, particularly since this  
7 Court has already determined that Arizona law would apply to the Copperpoint  
8 lien/subrogation issue, and the contingency fee agreement and disbursement of the proceeds  
9 all happened in California with the Silberberg firm. Again, none of the allegedly tortious  
10 "suit related" conduct took place in Nevada, and did not even involve Fagel Law since  
11 Silberberg handled the resolution of the case, the Copperpoint lien issue, the contingency  
12 fee agreements, and the disbursement of proceeds. *See, generally*, Exhibit "A." Fagel Law  
13 has not maintained even a virtual office in Nevada since December 2018 and has not taken  
14 any new Nevada matters since 2018 as well. Moreover, to Fagel Law's knowledge the only  
15 "expedited relief" that Plaintiffs have sought in this case had involved the purported ongoing  
16 workers compensation payment obligations owed by Copperpoint, an issue that has nothing  
17 to do with Fagel Law for the reasons stated above. Thus, even this factor does not help  
18 Plaintiffs here and bolster's Fagel Law's position that specific jurisdiction does not exist.

19 Interstate considerations, such as efficiency, would be furthered by dismissing Plaintiffs'  
20 Amended Complaint against Fagel Law. If the Arizona Plaintiffs desire to maintain an action  
21 against Fagel Law, even though Fagel Law had no involvement with the critical ("suit related")  
22 issues that form the basis of their legal malpractice claim, then Plaintiffs can file that lawsuit in  
23 California just as easily as they filed it in Nevada. In fact, Plaintiffs already are represented by  
24 a California lawyer in this case. Thus, there should be little difficulty in Plaintiffs bringing suit  
25 in California where Fagel Law is incorporated and has its principal place of business, where  
26 Silberberg resides and is incorporated, and where the allegedly tortious ("suit related") conduct  
27 occurred.  
28

1 Finally, public policy also supports dismissal of Plaintiffs' Amended Complaint  
2 against Fagel Law. Failing to do so would encourage litigants such as Plaintiffs to bring  
3 similar actions against nonresident defendants on the sole basis that a plaintiff from some  
4 foreign jurisdiction filed a suit in Nevada that, allegedly, went poorly due to the alleged  
5 errors and omissions of an out-of-state lawyer. That result could not stand, and any further  
6 Nevada proceedings against Fagel Law in this case will ultimately be a nullity and a waste  
7 of the Nevada court's resources, because any attempted exercise of jurisdiction here will  
8 so plainly violate due process. Failure to dismiss this case for lack of personal jurisdiction  
9 now would unnecessarily burden Nevada courts and nonresident defendants who will be  
10 forced to appear and seek dismissal of actions that "attempt[] to satisfy the defendant-  
11 focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff . . .  
12 and the forum State." *Walden*, 134 S. Ct. at 1122 (citing *Helicopteros Nacionales de*  
13 *Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984)). The Nevada Supreme Court has  
14 consistently and properly rejected such attempts to establish jurisdiction because doing so  
15 would violate a nonresident defendant's due process rights. *See id.*

16 In sum, Plaintiffs have not and cannot allege facts that could support a finding that Fagel  
17 Law purposefully availed itself of the privilege of acting in Nevada or that Fagel Law's alleged  
18 "suit related" conduct had any Constitutionally sufficient connection to Nevada. Respectfully,  
19 requiring Fagel Law to appear and defend suit in Nevada would be unreasonable and  
20 unconstitutional, particularly when even Silberberg admits that Fagel Law had no involvement  
21 in the handling or decision-making of the underlying medical malpractice case at the relevant  
22 time period. Under controlling United States Supreme Court and Nevada Supreme Court  
23 precedent, the Court therefore must dismiss Plaintiffs' Amended Complaint as it relates to Fagel  
24 Law.

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IV. CONCLUSION

Based on the foregoing, non-resident defendant, Fagel Law, respectfully requests that this Court dismiss it from Plaintiff's Amended Complaint for lack of personal jurisdiction pursuant to NRCP 12(b)(2).

Dated this 21<sup>st</sup> day of May 2021.

HALL JAFFE & CLAYTON, LLP

/s/ Riley A. Clayton

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Nevada Bar No. 005260  
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Las Vegas, Nevada 89128  
Attorneys for Defendant, *Bruce G. Fagel, A Law  
Corporation aka Law Offices of Bruce G. Fagel &  
Associates*

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6 *Shoop A. Professional Law Corporation*  
7 *and Thomas A. Alch*

8 */s/ Joann deJonge*

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An Employee of  
HALL JAFFE & CLAYTON, LLP

# EXHIBIT “A”

1 **DECL**

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10 Attorneys for Defendant, *Bruce G. Fagel, A Law Corporation*

11 *aka Law Offices of Bruce G. Fagel & Associates*

12  
13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**  
15

16 DARIA HARPER, an individual; and DANIEL  
17 WININGER, an individual,

18 Plaintiff,

19 vs.

20 COPPERPOINT MUTUAL INSURANCE  
21 HOLDING COMPANY, an Arizona  
22 corporation; COPPERPOINT GENERAL  
23 INSURANCE COMPANY, an Arizona  
24 corporation; LAW OFFICES OF MARSHALL  
25 SILBERBERG, P.C., a California corporation;  
26 KENNETH MARSHALL SILBERBERG aka  
27 MARSHALL SILBERGER, aka K.  
28 MARSHALL SILBERBERG, an individual;  
THOMAS S. ALCH aka THOMAS STEVEN  
ALCH, an individual; BRUCE G. FAGEL, A  
LAW CORPORATION aka LAW OFFICES OF  
BRUCE G. FAGEL & ASSOCIATES, a  
California corporation DOES 1-50, inclusive,

Defendants.

CASE NO.: A-20-814541-C

DEPT NO.: 30

**DECLARATION OF BRUCE G.  
FAGEL IN SUPPORT OF  
MOTION TO DISMISS FOR  
LACK OF PERSONAL  
JURISDICTION**

24 I, Bruce G. Fagel, pursuant to NRS 53.045, declare as follows:

25 1. I am over the age of 18 and am competent to make this declaration. I am  
26 licensed to practice law in the state of California, and have been the President of Bruce G.  
27 Fagel, a Law Corporation aka the Law Offices of Dr. Bruce G. Fagel & Associates, a  
28 California corporation ("Fagel Law") since approximately 1984. All statements herein are



1 true and correct and within my personal knowledge, except as specifically indicated, or  
2 are based on my review of certain records. I am authorized to make this declaration on  
3 behalf of myself and Fagel Law. I make this declaration on behalf of Fagel Law as a  
4 special appearance only and in support of the Motion to Dismiss for Lack of Personal  
5 Jurisdiction.

6         2.       The Fagel Law firm ("Fagel Law") has not consented to jurisdiction in the  
7 State of Nevada, nor appeared in the above-styled and numbered case.

8         3.       Fagel Law has never held any licenses in or issued by the state of Nevada.

9         4.       Fagel Law has not maintained and does not maintain, any bank accounts in  
10 Nevada.

11        5.       Fagel Law has not owned and does not own, any interest in any Nevada  
12 companies, partnerships, limited liability entities, or corporations.

13        6.       Fagel Law has not held and does not hold, any managerial or employment  
14 positions with any such companies, entities, or corporations, either.

15        7.       The Plaintiffs were not Nevada residents when this case arose. They were  
16 not solicited by Fagel Law Office or any of its attorneys. In fact, Plaintiffs contacted  
17 Marshal Silberberg, Esq., another California medical malpractice attorney, and entered  
18 into an attorney-client contingency fee agreement with him and his California firm.

19        8.       Neither I nor anyone affiliated with Fagel Law participated in the settlement  
20 of the case for the Plaintiffs. We did not assist in the preparation of the mediation brief,  
21 consult with the Plaintiffs concerning the mediation, participate in the mediation, give any  
22 advice concerning the settlement offers made at the mediation, or otherwise have any  
23 involvement in any aspect with the mediation and ultimate settlement of the underlying  
24 medical malpractice case.

25        9.       Fagel Law's only involvement in the underlying medical malpractice case  
26 occurred in 2016, years before Plaintiff's case settled and the alleged negligence occurred.  
27 After the Plaintiffs had retained Mr. Silberberg, he telephoned me in California, requesting  
28 that he be permitted to rely on some assistance from our then affiliate law office in Nevada,

1 the Law Offices of Thomas Alch. He knew that Fagel Law had an affiliate office in  
2 Nevada, and said that he needed Nevada co-counsel so he could pursue the Nevada portion  
3 of the case. Mr. Silberberg discussed the general nature of the case with me, and I agreed  
4 that Mr. Silberberg could associate with my affiliate office, The Law Office of Thomas S.  
5 Alch. Mr. Silberberg promised that in return for some nominal assistance by Mr. Alch, a  
6 share of any recovery would be paid to Fagel Law in California. I agreed. Mr. Alch then  
7 nominally assisted Mr. Silberberg by providing him with "form" examples of expert  
8 declarations that were required to be filed with any complaint in Nevada.

9       10. Mr. Alch would then assist with the preparation and filing of the Nevada  
10 complaint, and assist on a very limited basis once Mr. Silberberg and his attorneys  
11 completed the Pro Hac Vice application process in Nevada. Alch would assist with any  
12 appearances that had to be made in routine and uncontested Master Calendar matters, but  
13 Silberberg would handle the depositions, expert retention, and discovery.

14       11. Fagel Law was not to be involved with the prosecution of the lawsuit in any  
15 way. Once Mr. Silberberg and his associate were admitted Pro Hac Vice, I understood  
16 that Mr. Silberberg and his lawyers would be conducting all the depositions, moving the  
17 case through discovery, advising the Plaintiffs, and otherwise managing the case from that  
18 point forward.

19       12. Mr. Alch left Fagel Law on September 15, 2017, and it was my  
20 understanding that thereafter, he would remain on the Harper case to serve as local counsel  
21 to Mr. Silberberg in his independent capacity, but not as an employee or affiliate of Fagel  
22 Law. I do not believe that I had any further contact with Mr. Silberberg or his staff or Mr.  
23 Alch and his staff regarding the Plaintiffs' underlying medical malpractice case from  
24 September 2017, until after it settled at mediation.

25       13. The complaint alleges various theories of purported malpractice and/or  
26 professional wrongdoing by Fagel Law. As set forth below, none of allegations of  
27 improper or actionable conduct occurred with my or Fagel Law's involvement or  
28

1 knowledge, nor is the outcome of such alleged conduct, in any way, connected with Fagel  
2 Law's actions, in actions, statements, representations, or conduct.

3 14. The complaint alleges malpractice concerning the purported handling of and  
4 decision-making with respect to an alleged workers compensation lien/subrogation right  
5 asserted by Copperpoint Insurance, against any potential recovery obtained by the  
6 Plaintiffs in the underlying medical malpractice case. The handling of and decisions as to  
7 the workers compensation lien were all performed by Mr. Silberberg or persons reporting  
8 to him. No one at Fagel Law was asked to consult, research, advise, evaluate, or analyze  
9 that issue and/or how that issue may impact the Plaintiffs' underlying medical malpractice  
10 case, and no such advice was given. My understanding is that the issues relating to  
11 Copperpoint were exclusively handled, evaluated, and discussed with the Plaintiffs by Mr.  
12 Silberberg and his office, and any/all interaction with Copperpoint and any advice given  
13 to the Plaintiffs on that issue came from Mr. Silberberg and his lawyers. Mr. Silberberg's  
14 office may have copied Mr. Alch, with a memo relating to Copperpoint, when Mr. Alch  
15 was functioning as a Nevada office for Mr. Silberberg, and was an affiliate office of Fagel  
16 Law. But Fagel Law had no discussion with Mr. Silberberg about the ability of  
17 Copperpoint to lien the Settlement proceeds in Nevada.

18 15. Moreover, when the Copperpoint lien/subrogation issue came to a head at  
19 the mediation in 2018, Mr. Alch had been gone from Fagel law for many months, and  
20 had affiliated with another California law office.

21 16. The complaint also alleges alleged malpractice regarding the purported  
22 improprieties surrounding and/or non-existence of contingency fee agreements. But no  
23 one at Fagel Law was asked to prepare, review, evaluate, advise, negotiate, and/or  
24 otherwise become involved in the determination of the fees to be paid from the settlement  
25 sums. Mr. Silberberg and his office handled the contingency fee agreement, identified  
26 what amounts would be charged, how the fees were calculated, etc. In fact, I never saw a  
27 copy of the contingency fee agreement until after the settlement had been funded fee  
28

1 amounts had been paid. Thus, in terms of drafting, negotiating, discussing, and executing  
2 the contingency fee agreement, Fagel Law was not involved.

3 17. With respect to the alleged issue of untimely or insufficient distributions of  
4 settlement funds, once again, no one associated with Fagel Law was involved in that  
5 process. Instead, the distribution of potential proceeds was, to my understanding, handled  
6 exclusively by Mr. Silberberg and his personnel as it related to the Plaintiffs' funds, long  
7 after Mr. Alch was no longer employed by Fagel Law.

8 18. The complaint also alleges the purported improper and/or untimely  
9 distribution of settlement funds. But assuming any such thing occurred, neither I nor  
10 anyone associated with Fagel Law were aware that Mr. Silberberg was allegedly  
11 withholding a portion of the Plaintiffs funds for any purpose, or withholding a portion of  
12 the funds as a potential source of money to litigate the enforceability of Copperpoint's  
13 lien/subrogation rights.

14 19. No one from Fagel law had any involvement in how distributions to the  
15 Plaintiffs were made, how they were calculated, whether any funds were being withheld,  
16 the reason for withholding any funds, etc. Mr. Silberberg's office provided me in  
17 California, with an after the fact copy of a disbursement sheet, after the case resolved,  
18 along with a check for a portion of the settlement proceeds.

19 20. The complaint finally alleges that the purported distribution of proceeds to  
20 Fagel Law was somehow improper, but Fagel Law never had a fee agreement with the  
21 Plaintiffs. I am aware that Mr. Silberberg's office entered into a contingency fee  
22 agreement, and that he provided a document along with the contingency fee agreement  
23 mentioning the involvement of outside lawyers in the case. However, neither I nor anyone  
24 affiliated with Fagel Law was involved in drafting, negotiating, or executing those  
25 documents, or was aware of any concerns that the Plaintiffs had with the contingency fee  
26 agreement until this suit was filed.

27 21. Nothing in Fagel Law's limited and pre-2017 connection with the Plaintiffs'  
28 underlying medical malpractice case has any connection to the Plaintiffs current cause of

1 action for legal malpractice against Fagel Law. Rather, Fagel Law was not involved, in  
2 any way whatsoever, with respect to the alleged actions, representations, improper advice,  
3 etc. allegedly supporting Plaintiffs' professional negligence or misconduct claims.

4 22. After Mr. Alch left his employment with Fagel Law in 2017, he was no  
5 longer in any sort of an agency or employment relationship with Fagel Law. Because of  
6 Mr. Alch's ongoing involvement after 2017, I agreed that if the case resolved favorably,  
7 Mr. Alch would be compensated by receiving 10 percent of the fee otherwise payable to  
8 Fagel Law, although such payment would be made to him pursuant to Form 1099 –  
9 Miscellaneous Income as an independent contractor -- as opposed to a W-2 employee.  
10 There was no written contract between Fagel Law and Mr. Alch once he left his  
11 employment with the firm in 2017. There was only an oral agreement with him that for  
12 any cases that Mr. Alch continued to work on, which were somehow affiliated with Fagel  
13 Law, he would be compensated as an independent contractor for that work.

14 23. Fagel Law's attorneys are licensed in California. One lawyer named Devon  
15 Fagel is licensed in Nevada, but his license in Nevada has been on inactive status for  
16 approximately 20 years. Devon Fagel only became employed with Fagel Law in 2019,  
17 after the underlying case settled, and he never handled a matter in Nevada. The number  
18 of Fagel Law lawyers and staff members has remained relatively consistent over the past  
19 20 years. Moreover, the number of lawyers also licensed in Nevada has only been either  
20 one or two during that same time period.

21 24. Fagel Law presently has no cases that involve Nevada clients or are actions  
22 pending in Nevada courts. Although it handled approximately 8-10 cases in Nevada over  
23 the past 10 years, Fagel Law has not taken a new case involving a Nevada client nor has  
24 been involved in the filing of any new action in Nevada courts since approximately 2018.  
25 The approximate percentage of the firm's revenue attributable to Nevada matters formerly  
26 handled by the firm over the last 10 years, was not more than 2% to 4% of revenue.

27 25. To the best of my knowledge, I am the only lawyer Fagel Law had sought  
28 to have admitted to practice law in Nevada on a Pro Hac Vice basis, but no such pro hac

1 vice order was ever issued in those cases. No motion to approve me pro hac vice in  
2 Nevada has been made since at least 2018.

3 26. Mr. Thomas S. Alch was employed by Fagel Law from March 17, 1997 to  
4 September 15, 2017. I understand that his Nevada law license is still active, although he  
5 left Fagel law in 2017, and became affiliated with another law firm. Since Mr. Alch left  
6 Fagel Law on September 17, 2017, Fagel Law has not been affiliated with any other  
7 Nevada law firms or lawyers as it was with Mr. Alch. Likewise, from before Fagel Law's  
8 affiliation with Mr. Alch, Fagel Law never had been affiliated with any other Nevada law  
9 firm, like the arrangement it had with the Law Office of Thomas S. Alch, or in any other  
10 capacity.

11 27. Fagel Law is incorporated in the state of California, and its principal place  
12 of business and was for approximately 20 years, located in Beverly Hills, California. Fagel  
13 Law has recently effected the relocation of its offices to the city of Los Angeles. Fagel  
14 Law maintains other offices located in California, but does not presently maintain  
15 physical offices outside the state of California.

16 28. Fagel Law does not and never has owned any real property in the State of  
17 Nevada. Fagel Law paid in the past, and to a bank located in San Francisco, California,  
18 for the rental of a "virtual office" suite location in Nevada, so that The Law Office of  
19 Thomas S. Alch, an affiliate office prior to 2017, could comply with Nevada's Rules of  
20 Professional Conduct.

21 29. For a few years prior to September 2017, one of Fagel Law's attorneys  
22 licensed in Nevada, Mr. Alch, had a fictitious firm name in Nevada that would be affiliated  
23 with Fagel Law. That fictitious firm name was "The Law Offices of Thomas S. Alch, an  
24 affiliate of Bruce G. Fagel & Associates." The addresses listed for The Law Office of  
25 Thomas S. Alch were 2950 E. Flamingo Road, Las Vegas, Nevada, and 500 North  
26 Rainbow Blvd., Suite 300, Las Vegas, Nevada. The lease for the "virtual" office on 500  
27 North Rainbow Blvd. for The Law Office of Thomas S. Alch terminated on December 31,  
28

1 2018. Since that time, Fagel Law has not paid any amounts for virtual or actual office  
2 space in Nevada.

3 30. Both of the addresses listed above were simply "virtual offices" or "office  
4 suite" locations, meaning that any physical presence by Mr. Alch was infrequent. I  
5 understand that many other persons, companies, and entities also listed their address at the  
6 exact location and also used the same addresses as their "virtual office." Fagel Law paid  
7 a minimal monthly rent to a San Francisco bank for the occasional use of these virtual  
8 offices (around \$129 per month). It is my understanding that the "tenants" of these office  
9 suites would be allowed to occasionally use the common offices, share a common  
10 receptionist, and/or occasionally use common conference rooms. It was also my general  
11 understanding that in order to comply with the Nevada State Bar's requirements for  
12 affiliated offices, there had to be a location open during business hours in Nevada to accept  
13 service of documents. Nevertheless, I know that the actual extent of Mr. Alch's use and  
14 physical presence in the Nevada virtual office suites was extremely limited, i.e., a few  
15 meetings with clients, occasional depositions, and occasional collection of mail that went  
16 to those addresses instead of to Fagel Law's address in Beverly Hills, California.

17 31. Except when engaged in business travel among various states, the  
18 overwhelming majority (98+%) of time where I and/or Mr. Alch physically worked was  
19 in our office in Beverly Hills, California. Both my and Mr. Alch's secretarial and other  
20 support staff were all located in the Beverly Hills, California, office. Neither I nor Mr.  
21 Alch had secretarial or support staff in Nevada, other than Mr. Alch's ability to use a  
22 common receptionist available as well to the other "tenants" of the virtual office suite  
23 arrangement. The mail sent and received in Nevada on cases where The Law Office of  
24 Thomas S. Alch was involved was also extremely limited, noting that the on those few  
25 Nevada cases, Thomas S. Alch also listed the Beverly Hills, California, office address for  
26 Fagel Law for receipt of mail, faxes, etc., and that is where the overwhelming majority of  
27 the correspondence was sent and received.  
28

1        32.    The Law Office of Thomas S. Alch had a phone number with a Nevada area  
2 code, 702.740.4140. That number was used at the "virtual offices" identified above. In  
3 other words, when the virtual receptionist answered phone calls made to that number, the  
4 receptionist would then transfer those calls to Fagel Law's personnel in California. That  
5 phone number is still in use, although when incoming calls are made to that number, the  
6 calls ring directly to Fagel Law in California and are answered by Fagel Law's own  
7 receptionist there.

8        33.    Fagel Law has advertised over the internet since approximately 2010, but  
9 does not possess and has not possessed in the past, a physical internet "presence" in  
10 Nevada by way of a server or call center located there. Fagel Law conducted some  
11 advertising by way of phone book advertisements that may have been placed in Nevada  
12 prior to approximately 2010, but not since then. The firm has not placed advertisements  
13 in print media in Nevada.

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

16        DATED this 19 day of May 2021 at Beverly Hills, ~~California~~.

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18 BRUCE G. FAGEL  
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# EXHIBIT “B”



**ACOM**

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(admitted pro hac vice)

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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DARIA HARPER, an individual; and DANIEL  
WININGER, an individual,

Plaintiffs,

vs.

COPPERPOINT MUTUAL INSURANCE  
HOLDING COMPANY, an Arizona  
corporation; COPPERPOINT GENERAL  
INSURANCE COMPANY, an Arizona  
corporation; LAW OFFICES OF MARSHALL  
SILBERBERG, P.C., a California corporation;  
KENNETH MARSHALL SILBERBERG aka  
MARSHALL SILBERBERG aka K.  
MARSHALL SILBERBERG, an individual;  
THOMAS S. ALCH aka THOMAS STEVEN  
ALCH, an individual; BRUCE G. FAGEL, A  
LAW CORPORATION aka LAW OFFICES  
OF BRUCE G. FAGEL & ASSOCIATES, a  
California corporation; DOES 1-50, inclusive,

Defendants.

Case No.: A-20-814541-C

Dept. No.: 30

**AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

**Arbitration Exemptions:**

1. Action for Declaratory Relief
2. Action for Injunctive Relief
3. Damages in Excess of \$50,000

Plaintiffs hereby demand a trial by jury and complain and allege against defendants as follows:

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1 Associates ("FAGEL"). From September 16, 2017, to the present, ALCH was an agent and/or  
2 employee of SHOOP, A PROFESSIONAL LAW CORPORATION ("SHOOP"). SHOOP was and is  
3 a corporation duly incorporated under the laws of California and located in Los Angeles County,  
4 California, and procured professional liability insurance that covers the negligent acts and omissions  
5 of its agent and/or employee defendant ALCH. From September 16, 2017, to the present, ALCH was  
6 the agent of FAGEL, acting on FAGEL's behalf for the purpose of prosecuting lawsuits in the state  
7 of Nevada. At all times after September 15, 2017, ALCH and FAGEL were engaged in a joint venture,  
8 pursuant to which FAGEL paid for an office in Las Vegas, Nevada, and paid the expenses of ALCH,  
9 so that ALCH would be able to practice law in Nevada and represent the clients of FAGEL in Nevada,  
10 for the goal of earning attorney fees for themselves. FAGEL was and is a corporation duly  
11 incorporated under the laws of California and located in Los Angeles County, California, and is liable  
12 for the negligent acts and omissions of its joint venturer, agent and/or employee, defendant ALCH.

13 6. The true names and capacities, whether individual, corporate, associate, partnership or  
14 otherwise, of the defendants herein designated as DOES 1-50, inclusive, are unknown to plaintiffs,  
15 who therefore sue said defendants by such fictitious names. Plaintiffs will seek leave of the Court to  
16 insert the true names and capacities of such defendants when the same have been ascertained and will  
17 further seek leave to join said defendants in these proceedings.

18 7. This court has jurisdiction because the complaint arises out of events, claims, actions  
19 and omissions relating to a lawsuit prosecuted in the District Court of Clark County, Nevada,  
20 specifically but without limitation: (a) defendant THOMAS STEVEN ALCH is licensed to practice  
21 law in Nevada and was attorney of record for plaintiffs in Nevada; (b) defendant KENNETH  
22 MARSHALL SILBERBERG was admitted to practice in District Court of Clark County, pro hac vice  
23 and was counsel of record for plaintiffs in Nevada; (c) defendants COPPERPOINT GENERAL  
24 INSURANCE COMPANY, and/or COPPERPOINT MUTUAL INSURANCE HOLDING  
25 COMPANY, aka COPPERPOINT MUTUAL INSURANCE COMPANY, aka COPPERPOINT  
26 INSURANCE COMPANIES, and DOES 1-10 conduct business in Nevada, paid medical bills of  
27 plaintiff DARIA HARPER to Nevada health care providers, and claims entitlement to reimbursement  
28 of those paid medical bills from money received by plaintiffs pursuant to the laws of and litigation in

1 Clark County, Nevada.

2 8. On or about March 10, 2016, defendant SILBERBERG (a) agreed to represent  
3 plaintiffs in a medical malpractice lawsuit to be filed and prosecuted in Nevada and (b) entered into  
4 an agreement with ALCH to jointly represent plaintiffs, DARIA HARPER and DANIEL  
5 WININGER. In or about June, 2016, defendant SILBERBERG entered into a joint venture with  
6 defendants ALCH and FAGEL, the purpose of which was so that defendant SILBERBERG would be  
7 able to prosecute the lawsuit on behalf of plaintiffs in Nevada with the assistance of defendants ALCH  
8 AND FAGEL and, in the event of a monetary recovery from such lawsuit, share the attorney fees  
9 from the recovery. Pursuant to the joint venture agreement, (a) on or about June 7, 2016, defendant  
10 ALCH filed a complaint in the District Court of Nevada, Clark County, as Case Number  
11 A-16-738004-C (“the underlying medical malpractice action”), alleging that plaintiffs sustained  
12 damages as a result of the medical negligence of the named health care providers (“health care  
13 providers”); (b) thereafter, defendant ALCH sponsored defendant KENNETH MARSHALL  
14 SILBERBERG to be admitted, pro hac vice, to practice law in Nevada for the purpose of jointly  
15 representing plaintiffs; (c) defendant KENNETH MARSHALL SILBERBERG was admitted, pro hac  
16 vice, to practice law in Nevada; (d) defendant KENNETH MARSHALL SILBERBERG associated  
17 with defendant ALCH as attorney for plaintiffs in the underlying medical malpractice action; and (e)  
18 defendant FAGEL used the resources of its law firm to assist defendants ALCH and SILBERBERG  
19 in the prosecution of the underlying medical malpractice action.

20 9. At all relevant times, defendants, ALCH, FAGEL, and SILBERBERG, acted in  
21 concert with one another, were joint venturers with each other, were agents for each other, and are  
22 vicariously liable for the negligent acts and omissions of each other, whether acting jointly or  
23 severally.

24 10. When defendant COPPERPOINT became aware of the above-described underlying  
25 medical malpractice action, it (a) asserted, in writing, its right to participate in any settlement thereof  
26 and (b) claimed, in writing, its entitlement to a lien for repayment of financial benefits paid to or on  
27 behalf of plaintiff DARIA HARPER pursuant to Arizona statute A.R.S. § 23-1023. At all times  
28 mentioned herein, defendants ALCH, FAGEL and SILBERBERG, were aware of these assertions and

1 claims made by defendant COPPERPOINT and, as of March, 2018, they were aware that  
2 COPPERPOINT's lien claim was \$2,768,656.65. Nevertheless, defendant, SILBERBERG, advised  
3 plaintiffs that COPPERPOINT had no legal right to claim a lien on the proceeds from any judgment  
4 against or settlement with the health care providers and, therefore, could not claim a portion of any  
5 such settlement or judgment and that COPPERPOINT would continue to be legally obligated to pay  
6 for her care costs and disability.

7 11. In the underlying medical malpractice action, (a) the medical experts for both plaintiff  
8 DARIA HARPER and the health care providers agreed that she would require 24-hour per day care  
9 for the remainder of her life, (b) the economic expert retained by defendants, ALCH and  
10 SILBERBERG, determined that the present value of the cost of DARIA HARPER's required future  
11 care was \$14,291,374 and that she incurred past and future earnings losses of \$322,579, and (c) the  
12 economic expert retained by the health care providers determined that the present value of the cost of  
13 DARIA HARPER's future care would be \$12,057,480.

14 12. Based on the advice from defendant SILBERBERG, plaintiffs settled with the health  
15 care providers for the total sum of \$6,250,000.00. Thereafter, in or about July 2018, the lawsuit was  
16 dismissed and the settlement monies were paid by the settling health care providers, from which  
17 defendants, ALCH, FAGEL and SILBERBERG, distributed to themselves attorney's fees of  
18 \$1,130,737 and reimbursement of costs of \$125,070. On or about September 18, 2018, defendant  
19 SILBERBERG told plaintiffs, for the first time, (a) that COPPERPOINT was still claiming a lien on  
20 the settlement proceeds, (b) that COPPERPOINT might pursue its lien claim in a legal action, and (c)  
21 that plaintiffs should be prepared to defend such legal action and pay COPPERPOINT the amount of  
22 its lien if it was successful in prosecuting its lien claim.

23 13. On or about October 30, 2019, defendant COPPERPOINT served the "Notice of Claim  
24 Status", attached hereto as **Exhibit "1"** and made a part hereof by reference, on plaintiff DARIA  
25 HARPER, that stated in part:

- 26 • Pursuant to A.R.S. § 23-1023, CopperPoint has a lien against Claimant's third-party  
27 recovery from a medical malpractice action (Case No. A-16-738004-C) brought in  
28 the District Court of Clark County, Nevada, in an amount equal to compensation

1 and medical, surgical, and hospital benefits paid by CopperPoint.

- 2 • CopperPoint is entitled to accrued interest on the lien from the date settlement
- 3 proceeds were disbursed.
- 4 • CopperPoint is entitled to a future credit against Claimant's recovery equal to the
- 5 amount of money received by the Claimant in the malpractice action after
- 6 subtracting expenses and attorney fees.
- 7 • CopperPoint is not required to pay claimant compensation or medical, surgical, or
- 8 hospital benefits until the claimant's post-settlement accrued entitlement to
- 9 compensation and medical benefits exceeds the credit amount.
- 10 • To the extent the settlement in the malpractice action was less than the workers'
- 11 compensation benefits provided by CopperPoint, Claimant's failure to obtain
- 12 CopperPoint's prior approval before settling results in forfeiture of her workers'
- 13 compensation claim.

14 14. The lien amount claimed by defendant COPPERPOINT is \$3,171,095.

15 15. After defendant COPPERPOINT served the above-described Notice of Claim Status,

16 it terminated payments being made for the services of plaintiff DANIEL WININGER who was being

17 compensated to provide 24-hour per day care to plaintiff DARIA HARPER; and on April 2, 2020,

18 sent plaintiff DARIA HARPER the letter, attached as **Exhibit "2"** and made a part hereof by

19 reference, notifying her that it would terminate all benefits, in thirty days.

20 16. At all pertinent times, Nevada law, specifically, Nev. Rev. Stat. § 42.021, provided as

21 follows:

22 1. In an action for injury or death against a provider of health care based

23 upon professional negligence, if the defendant so elects, the defendant may

24 introduce evidence of any amount payable as a benefit to the plaintiff as a

25 result of the injury or death pursuant to the United States Social Security

26 Act, any state or federal income disability or worker's compensation act,

27 any health, sickness or income-disability insurance, accident insurance that

28 provides health benefits or income-disability coverage, and any contract or

1 agreement of any group, organization, partnership or corporation to  
2 provide, pay for or reimburse the cost of medical, hospital, dental or other  
3 health care services. If the defendant elects to introduce such evidence, the  
4 plaintiff may introduce evidence of any amount that the plaintiff has paid  
5 or contributed to secure the plaintiff's right to any insurance benefits  
6 concerning which the defendant has introduced evidence.

7 2. A source of collateral benefits introduced pursuant to subsection 1 may  
8 not: (a) Recover any amount against the plaintiff; or (b) Be subrogated to  
9 the rights of the plaintiff against a defendant.

10 17. At all pertinent times, Arizona law, specifically Ariz. Rev. Stat. Ann. § 23-1023D,  
11 provided as follows:

12 If the employee proceeds against the other person, compensation and  
13 medical, surgical and hospital benefits shall be paid as provided in this  
14 chapter and the insurance carrier or other person liable to pay the claim shall  
15 have a lien on the amount actually collectable from the other person to the  
16 extent of such compensation and medical, surgical and hospital benefits  
17 paid. This lien shall not be subject to a collection fee. The amount actually  
18 collectable shall be the total recovery less the reasonable and necessary  
19 expenses, including attorney fees, actually expended in securing the  
20 recovery. In any action arising out of an aggravation of a previously  
21 accepted industrial injury, the lien shall only apply to amounts expended for  
22 compensation and treatment of the aggravation. The insurance carrier or  
23 person shall contribute only the deficiency between the amount actually  
24 collected and the compensation and medical, surgical and hospital benefits  
25 provided or estimated by this chapter for the case. Compromise of any claim  
26 by the employee or the employee's dependents at an amount less than the  
27 compensation and medical, surgical and hospital benefits provided for shall  
28 be made only with written approval of the insurance carrier or self-insured



1 employer liable to pay the claim.

2 18. At all pertinent times, Arizona law, specifically Ariz. Rev. Stat. Ann. § 12-565,  
3 provided as follows:

4 A. In any medical malpractice action against a licensed health care provider,  
5 the defendant may introduce evidence of any amount or other benefit which  
6 is or will be payable as a benefit to the plaintiff as a result of the injury or  
7 death pursuant to the United States social security act, any state or federal  
8 workers' compensation act, any disability, health, sickness, life, income-  
9 disability or accident insurance that provides health benefits or income-  
10 disability coverage and any other contract or agreement of any group,  
11 organization, partnership, or corporation to provide, pay for, or reimburse  
12 the cost of income-disability or medical, hospital, dental or other health care  
13 services to establish that any cost, expense, or loss claimed by the plaintiff  
14 as a result of the injury or death is subject to reimbursement or  
15 indemnification from such collateral sources. Where the defendant elects to  
16 introduce such evidence, the plaintiff may introduce evidence of any  
17 amount which the plaintiff has paid or contributed to secure his right to any  
18 such benefits or that recovery from the defendant is subject to a lien or that  
19 a provider of such collateral benefits has a statutory right of recovery against  
20 the plaintiff as reimbursement for such benefits or that the provider of such  
21 benefits has a right of subrogation to the rights of the plaintiff in the medical  
22 malpractice action.

23 B. Evidence introduced pursuant to this section shall be admissible for the  
24 purpose of considering the damages claimed by the plaintiff and shall be  
25 accorded such weight as the trier of the facts chooses to give it.

26 C. Unless otherwise expressly permitted to do so by statute, no provider of  
27 collateral benefits, as described in subsection A, shall recover any amount  
28 against the plaintiff as reimbursement for such benefits nor shall such

1 provider be subrogated to the rights of the plaintiff.

2 19. Nev. Rev. Stat. Ann. § 42.021 is verbatim of California Civil Code section 3333.1,  
3 which provides as follows:

4 (a) In the event the defendant so elects, in an action for personal injury  
5 against a health care provider based upon professional negligence, he may  
6 introduce evidence of any amount payable as a benefit to the plaintiff as a  
7 result of the personal injury pursuant to the United States Social Security  
8 Act, any state or federal income disability or worker's compensation act,  
9 any health, sickness or income-disability insurance, accident insurance that  
10 provides health benefits or income-disability coverage, and any contract or  
11 agreement of any group, organization, partnership, or corporation to  
12 provide, pay for, or reimburse the cost of medical, hospital, dental, or other  
13 health care services. Where the defendant elects to introduce such evidence,  
14 the plaintiff may introduce evidence of any amount which the plaintiff has  
15 paid or contributed to secure his right to any insurance benefits concerning  
16 which the defendant has introduced evidence.

17 (b) No source of collateral benefits introduced pursuant to subdivision (a)  
18 shall recover any amount against the plaintiff nor shall it be subrogated to  
19 the rights of the plaintiff against a defendant.

20 20. In *Barme v. Wood*, 37 Cal.3d 174, 207 Cal. Rptr. 816, 689 P.2d 446 (Cal. 1984), an  
21 injured worker who had received worker's compensation benefits sued the health care providers for  
22 medical malpractice, claiming that they had caused him additional injury. The worker's compensation  
23 insurance company filed a complaint in intervention, seeking reimbursement of the compensation it  
24 had paid to the plaintiff. The California Supreme Court held that the right of a worker's compensation  
25 insurance company to seek recovery of its statutory lien – even when there had not yet been a trial,  
26 precluded recovery and dismissed the complaint in intervention.

27 21. In *Graham v. Workers' Comp. Appeals Bd.*, 210 Cal. App. 3d 499, 258 Cal. Rptr. 376,  
28 (Cal. Ct. App. 1989), the California Court of Appeal addressed the issue of whether a worker's

1 compensation insurance company that had paid compensation to the plaintiff could claim credit for  
2 future compensation based on money the plaintiff had received in a medical malpractice settlement.  
3 The California Court of Appeal held that the lien preclusion provisions of Civil Code section 3333.1,  
4 subdivision (b) applied, to settlements of medical malpractice lawsuits as well as to trials where  
5 collateral source evidence was introduced.

6 22. In 2004, NRS 42.021 was enacted after being presented to Nevada voters by ballot  
7 initiative. (Secretary of State, Statewide Ballot Questions 16 (2004),  
8 <https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2004.pdf>.) (*McCrosky v.*  
9 *Carson Tahoe Regional Medical Center*, 133 Nev. 930, 408 P.3d 149 (2017)). The ballot question put  
10 to Nevada voters stated, in part, that the initiative would “prohibit third parties who provided benefits  
11 as a result of medical malpractice from recovering such benefits from a negligent provider of health  
12 care . . . .” The Secretary of State’s explanation stated, in part: “If passed, the proposal would not  
13 change the reduction of the injured person’s damages, but the third parties would no longer be  
14 permitted to recover from the wrongdoer the expenses they have paid on behalf of a medical  
15 malpractice victim.”

16 23. Although California Civil Code section 3333.1 and Nevada NRS 42.021 are identical,  
17 and although the California Supreme Court and California Court of Appeal have found that insurance  
18 companies providing benefits to a medical malpractice plaintiff have no lien against, or may take  
19 credit for, money received by a medical malpractice plaintiff in a settlement before trial, no Nevada  
20 appellate court has ever addressed the issue.

## 21 **FIRST CAUSE OF ACTION**

### 22 **(Declaratory Relief)**

#### 23 **(Alleged by Both Plaintiffs Against All Defendants)**

24 24. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the  
25 complaint as though fully set forth herein, and incorporate the same herein by reference.

26 25. An actual controversy has arisen and now exists between plaintiffs and defendants  
27 concerning the respective rights and duties of plaintiffs on the one hand and defendant  
28 COPPERPOINT on the other hand. Defendant COPPERPOINT contends that it is entitled to a lien

1 and/or credit for money received by plaintiff DARIA HARPER pursuant to Ariz. Rev. Stat. Ann. §  
2 23-1023D and that it is entitled to terminate the benefits that it has/had been making for plaintiff  
3 DARIA HARPER's benefit. Plaintiffs contend – and plaintiffs are informed and believe and thereon  
4 allege that all defendants other than COPPERPOINT contend – that defendant COPPERPOINT is not  
5 entitled to any lien or credit because Nevada NRS 42.021 should be interpreted as precluding such  
6 lien if a medical malpractice claim is settled and is and/or was not entitled to terminate the benefits  
7 that it has/had been making for plaintiff DARIA HARPER's benefit and must forthwith pay those  
8 benefits it has withheld with interest at the legal rate.

9 26. Plaintiffs desire a judicial determination of their rights and duties, and a declaration as  
10 to whether defendant COPPERPOINT is entitled to any lien or credit and/or credit for money received  
11 by plaintiffs from the above-described settlement and whether defendant COPPERPOINT remains  
12 and has always remained obligated to making the above-described benefits and must forthwith pay  
13 those benefits it has withheld with interest at the legal rate.

14 27. A judicial declaration is necessary and appropriate at this time under the circumstances  
15 in order that plaintiffs may ascertain their rights and duties.

16 28. As a direct and proximate result of the aforementioned actions of defendants, and each  
17 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees  
18 and costs to bring this action.

## 19 **SECOND CAUSE OF ACTION**

### 20 **(Injunctive Relief)**

#### 21 **(Alleged by Both Plaintiffs Against Defendants COPPERPOINT MUTUAL INSURANCE** 22 **HOLDING COMPANY, COPPERPOINT GENERAL INSURANCE COMPANY)**

23 29. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the  
24 complaint as though fully set forth herein, and incorporate the same herein by reference.

25 30. Plaintiffs rely on the workers' compensation benefits paid by defendant  
26 COPPERPOINT for the necessary and essential living and medical needs of plaintiff DARIA  
27 HARPER. Based on its claim that it has no further obligation to pay worker's compensation benefits,  
28 defendant COPPERPOINT will cease making any payments to or on behalf of plaintiffs on May 2,

1 2020.

2 31. The threatened conduct of defendant COPPERPOINT, unless and until enjoined and  
3 restrained by order of this Court, will cause great and irreparable injury to plaintiffs. The \$14,291,374  
4 life care plan itemized the medical and care needs of plaintiff DARIA HARPER. The net proceeds  
5 that were not invested in annuities have been largely expended for goods and services that are  
6 necessary for the survival of plaintiff DARIA HARPER. Because COPPERPOINT terminated  
7 payments for the services of plaintiff DANIEL WININGER, plaintiffs' sole monthly income from  
8 annuities is \$8,333, which is greatly exceeded by the monthly expenses for medical supplies  
9 (including bladder supplies, bowel program, personal care and respiratory); medical equipment  
10 (including vent, oxygenator condenser and oxygen canisters), appointments with four doctors,  
11 therapists and nurses, and prescription medications. Additionally, because plaintiff DARIA HARPER  
12 requires 24-hour per day care, plaintiff DANIEL WININGER must provide such services, but without  
13 compensation therefor.

14 32. Plaintiffs have no adequate remedy at law for the above-described injuries in that they  
15 do not have the financial means to provide for plaintiff DARIA HARPER's above-described needs.

16 33. As a proximate result of the wrongful conduct of defendant COPPERPOINT, plaintiff  
17 DANIEL WININGER has been damaged in the sum of \$2,950 per month and will continue to be  
18 damaged so long as the wrongful conduct of COPPERPOINT continues. As a proximate result of the  
19 threatened conduct of defendant COPPERPOINT, if not restrained, plaintiff DARIA HARPER will  
20 be damaged. The full amount of the damages respectively incurred by plaintiffs, DARIA HARPER  
21 and DANIEL WININGER, will be proven at trial.

22 34. As a direct and proximate result of the actions of defendants, and each of them,  
23 plaintiffs sustained damages in a sum in excess of \$15,000.

24 35. As a direct and proximate result of the aforementioned actions of defendants, and each  
25 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees  
26 and costs to bring this action.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **(Legal Malpractice)**

3 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**  
4 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**  
5 **SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS**  
6 **STEVEN ALCH, BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF**  
7 **BRUCE G. FAGEL & ASSOCIATES)**

8 36. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the  
9 complaint as though fully set forth herein, and incorporate the same herein by reference.

10 37. Defendants were negligent in their advice to plaintiffs that defendant CopperPoint had  
11 no lien on a settlement because (a) the issue had never been determined by a Nevada appellate court  
12 and (b) Nevada attorneys representing plaintiffs in medical malpractice cases do not ignore workers'  
13 compensation lien claims or advise their clients that such lien claims should be ignored. But for the  
14 negligent legal advice, plaintiffs would not have settled their case for \$6,250,000 and, instead, would  
15 have (a) required that defendants seek a judicial determination whether there would be a worker's  
16 compensation lien, and (b) if such judicial determination held that there would be a worker's  
17 compensation lien, reject the settlement and insisted that defendants, ALCH and SILBERBERG try  
18 the case to verdict or judgment. If the case had been tried, a collectible judgment in the amount no  
19 less than \$15,313,953 would have been obtained, thus damaging plaintiffs in the sum of not less than  
20 \$9,063,953.

21 38. As a legal and proximate result of the wrongful withholding by defendant  
22 SILBERBERG of money to which plaintiffs were entitled, charging excessive attorney's fees,  
23 reimbursing himself for costs to which he was not entitled, and failure to obtain refunds of money  
24 deposited with the Clark County District Court, plaintiffs are entitled to further damages from  
25 defendant SILBERBERG in amounts to be proven at trial. Defendants ALCH and FAGEL are jointly  
26 and severally liable with defendant SILBERBERG for their failure to obtain refunds of money  
27 deposited with the Clark County District Court which were charged as a cost to plaintiffs. If, after the  
28 settlement money was deposited into the client trust account of defendant SILBERBERG, defendants

1 ALCH AND FAGEL were aware that defendant SILBERBERG was charging excessive attorney's  
2 fees, or reimbursing himself for costs to which he was not entitled, then defendants ALCH and  
3 FAGEL are jointly and severally liable to plaintiffs in amounts to be proven at trial.

4 39. If there is a judicial determination that defendant COPPERPOINT has a lien and is  
5 entitled to credit for payments made to plaintiffs, then as a legal and proximate result of the negligence  
6 of defendants SILBERBERG, ALCH and FAGEL, plaintiffs have sustained damages which include,  
7 but are not limited to, lost future workers' compensation benefits, an amount necessary to satisfy the  
8 lien of defendant COPPERPOINT in amounts to be proven at trial, and the damages that would have  
9 been awarded if the lawsuit had been tried. Alternatively, if there is a judicial determination that  
10 defendant COPPERPOINT has no lien and is not entitled to credit for plaintiffs' medical malpractice  
11 settlement, plaintiffs will have sustained damages for the cost of retaining attorneys to represent her  
12 in connection with (a) Arizona workers' compensation proceedings, (b) Nevada declaratory and  
13 injunctive relief claims, and (c) incurring costs to achieve such declaration, the total amount of which  
14 will be proven at trial.

15 40. As a direct and proximate result of the actions of defendants, and each of them,  
16 plaintiffs sustained damages in a sum in excess of \$15,000.

17 41. As a direct and proximate result of the aforementioned actions of defendants, and each  
18 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees  
19 and costs to bring this action.

#### 20 FOURTH CAUSE OF ACTION

21 (Fraud)

22 (Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL  
23 SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL  
24 SILBERBERG aka K. MARSHALL SILBERBERG)

25 42. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 of the  
26 complaint as though fully set forth herein, and incorporate the same herein by reference.

27 43. On or about December 26, 2015, defendants SILBERBERG entered into a "Contingent  
28 Fee Agreement" with plaintiffs that provided, in pertinent part:

1 This Agreement is made this 26 day of December, 2015, by and between  
2 Daria Harper and Daniel Wininger (hereinafter designated as 'Client') and  
3 the LAW OFFICES OF MARSHALL SILBERBERG (hereinafter  
4 designated as 'Attorney'). . . . If, and to the extent that, Client's claims are  
5 for medical malpractice subject to Section 6146 of the California Business  
6 & Professions Code (MICRA), Client agrees to pay for the services herein  
7 described and prosecution of such claims, the fee of 40% of the first  
8 \$50,000.00 recovered; 33.33% of the next \$50,000.00; 25% of the next  
9 \$500,000.00; and 15% of all sums recovered in excess of \$600,000.00.

10 44. At all times herein mentioned, Nev. Rev. Stat. Ann. § 7.095 provided in pertinent part:

11 An attorney shall not contract for or collect a fee contingent on the amount  
12 of recovery for representing a person seeking damages in connection with  
13 an action for injury or death against a provider of health care based upon  
14 professional negligence in excess of: (a) Forty percent of the first \$50,000  
15 recovered; (b) Thirty-three and one-third percent of the next \$50,000  
16 recovered; (c) Twenty-five percent of the next \$500,000 recovered; and (d)  
17 Fifteen percent of the amount of recovery that exceeds \$600,000.

18 45. At all times herein mentioned, California Business and Professions Code § 6146 (a)  
19 provided in pertinent part:

20 An attorney shall not contract for or collect a contingency fee for  
21 representing any person seeking damages in connection with an action for  
22 injury or damage against a health care such person's alleged professional  
23 negligence in excess of the following limits: (1) Forty percent of the first  
24 fifty thousand dollars (\$50,000) recovered. (2) Thirty-three and one-third  
25 percent of the next fifty thousand dollars (\$50,000) recovered. (3) Twenty-  
26 five percent of the next five hundred thousand dollars (\$500,000) recovered.  
27 (4) Fifteen percent of any amount on which the recovery exceeds six  
28 hundred thousand dollars (\$600,000).



1           46.     California Rules of Professional Conduct Rule 4-200 (A), in effect until October 31,  
2 2018, provided that “A member shall not enter into an agreement for, charge, or collect an illegal or  
3 unconscionable fee.”

4           47.     Pursuant to Nevada law, (a) plaintiff DARIA HARPER had claims for economic  
5 damages and for non-economic damages of \$350,000, the maximum recovery permitted for non-  
6 economic damages in medical malpractice cases, and (b) plaintiff DANIEL WININGER had a claim  
7 for loss of consortium, for which he would be entitled to a maximum recovery of \$350,000. In July  
8 2018, after settlement agreements for a total of \$6,250,000 had been executed by the parties,  
9 defendants SILBERBERG allocated \$1,050,000 as plaintiff DANIEL WININGER’s share of the  
10 settlement monies and then charged plaintiffs \$297,498.00 for his attorney’s fees on plaintiff DANIEL  
11 WININGER’s allocated amount.

12           48.     Defendants SILBERBERG knew (a) that his “Contingent Fee Agreement” provided  
13 that plaintiffs, collectively, and not severally, would be charged the statutory attorney’s fees (b) that  
14 even if plaintiff DANIEL WININGER was obligated to pay his attorney’s fees based on a separate  
15 calculation, the maximum allocation would not be \$1,050,000, but, rather, only \$350,000, and (c) that  
16 plaintiffs were not legally sophisticated and relied on him to act honestly and according to his fiduciary  
17 duty owed to them. Defendants SILBERBERG concealed from plaintiffs the above-referenced facts  
18 for the purpose of misleading them into believing that the attorney fee allocation was in accordance  
19 with the “Contingent Fee Agreement” and the law governing the limitations pertaining to attorney’s  
20 fees. Moreover, defendants SILBERBERG affirmatively represented to plaintiffs that the allocation  
21 to plaintiff DANIEL WININGER was proper, as were the attorney’s fees charged separately and  
22 based on said allocation. Defendants SILBERBERG concealed and misrepresented the above-  
23 mentioned facts for the purpose of obtaining an illegal fee from plaintiffs to which he was not entitled,  
24 and being their attorney, plaintiffs reasonably relied on defendants SILBERBERG’s representations.  
25 As a legal and proximate result of defendants SILBERBERG’s fraud, plaintiffs were damaged in a  
26 sum of approximately \$140,330.03 which is the difference between the attorney’s fees to which  
27 defendants SILBERBERG was entitled, and the amount he took.

28           49.     Plaintiffs’ damages, including emotional distress were a foreseeable consequence of

1 defendants SILBERBERG's fraud which was despicable and undertaken with a conscious disregard  
2 of the rights of plaintiffs, thereby entitling plaintiffs to an award of punitive damages therefor.

3 50. If defendants ALCH and FAGEL were aware of the illegal fee charged by defendants  
4 SILBERBERG, and accepted a portion of those fees for themselves, then defendants ALCH and  
5 FAGEL are similarly liable to plaintiffs for fraud, and the legal and proximate cause of plaintiffs'  
6 damages alleged in this cause of action.

7 51. As a direct and proximate result of the actions of defendants, and each of them,  
8 plaintiffs sustained damages in a sum in excess of \$15,000.

9 52. As a direct and proximate result of the aforementioned actions of defendants, and each  
10 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees  
11 and costs to bring this action.

12 **FIFTH CAUSE OF ACTION**

13 **(Breach of Fiduciary Duty)**

14 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**  
15 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**  
16 **SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS**  
17 **STEVEN ALCH, BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF**  
18 **BRUCE G. FAGEL & ASSOCIATES)**

19 53. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 and 42-  
20 52 of the complaint as though fully set forth herein, and incorporate the same herein by reference.

21 54. California Rules of Professional Conduct 4-100(B)(4), in effect until October 31, 2018,  
22 California Rules of Professional Conduct 1.15(7), in effect beginning November 1, 2018, and Nevada  
23 Rules of Professional Conduct, Rule 1.15(d), all required that attorneys promptly distribute to their  
24 client money belonging to their client. At all times herein mentioned, defendant SILBERBERG was  
25 obligated, as a California attorney and attorney permitted to practice, pro hac vice in Nevada, to  
26 comply with the California and Nevada Rules of Professional Conduct.

27 55. From approximately July 19, 2018 to approximately April 30, 2010, and in violation  
28 of the California Rules of Professional Conduct 4-100(B)(4), in effect until October 31, 2018,

1 California Rules of Professional Conduct 1.15(7), in effect beginning November 1, 2018, and Nevada  
2 Rules of Professional Conduct, Rule 1.15(d), defendants SILBERBERG kept, and did not distribute,  
3 money belonging to plaintiffs from the settlement proceeds. Plaintiffs were damaged in a sum to be  
4 proven at trial by the loss of interest on said sums.

5 56. California Rules of Professional Conduct, Rule 2-200 (A)(1), in effect until October  
6 31, 2018, provided that, "A member shall not divide a fee for legal services with a lawyer who is not  
7 a partner of, associate of, or shareholder with the member unless: The client has consented in writing  
8 thereto after a full disclosure has been made in writing that a division of fees will be made and the  
9 terms of such division." At all times herein mentioned, defendants ALCH, FAGEL and  
10 SILBERBERG were obligated, as California attorneys, to comply with the California Rules of  
11 Professional Conduct.

12 57. At no time did plaintiffs enter into an attorney-client contract with defendants ALCH  
13 or FAGEL, and at no time did plaintiffs consent in writing to any division of fees by which defendants  
14 SILBERBERG would pay money to defendants ALCH and/or FAGEL. Defendant SILBERBERG  
15 shared the fees deducted from plaintiffs' share of the settlement money with defendants ALCH and  
16 FAGEL.

17 58. Defendants SILBERBERG took money belonging to plaintiffs as a result of charging  
18 and receiving attorney fees in excess of the amount allowed by law, and charging costs to plaintiffs  
19 that should have been paid by defendants SILBERBERG.

20 59. At all times, defendants SILBERBERG owed a fiduciary duty of loyalty and fidelity  
21 to plaintiffs, pursuant to which he was required, among other things, not to put his interests ahead of  
22 those of plaintiffs, to promptly deliver to plaintiffs all money in his possession that belonged to  
23 plaintiffs, not to charge plaintiffs for costs that he should personally bear, and not to subtract money  
24 from plaintiffs' financial recovery for attorney fees to which he was not entitled, either pursuant to  
25 contract or the statutory requirements of California Business and Professions Code section 6146 and  
26 Nevada NRS 7.095.

27 60. Defendants SILBERBERG put his financial interests ahead of the interests of plaintiffs  
28 and violated his fiduciary duties to plaintiffs as follows: (a) by failing, for approximately twenty

1 months, to deliver all money in his possession that belonged to plaintiffs, (b) charging plaintiffs for  
2 costs for which he should have personally borne, including fees for membership in the Nevada State  
3 Bar, and (c) charging illegal attorney's fees in excess of those agreed upon in his contract with  
4 plaintiffs and those permitted by California Business and Professions Code section 6146 and Nevada  
5 NRS 7.095. Additionally, in 2020, after defendants SILBERBERG entered into a contract to retain a  
6 Nevada lawyer for the benefit of plaintiffs which required that he be personally responsible for  
7 payment of attorney's fees and costs, he used money belonging to plaintiffs to pay said fees and costs.

8 61. As a result of the breach of fiduciary duties by defendants SILBERBERG, plaintiffs  
9 have suffered pecuniary damages and emotional distress damages in sums to be proven at trial.

10 62. Plaintiffs' emotional distress was a foreseeable consequence of defendants  
11 SILBERBERG's breach of fiduciary duties which was despicable and undertaken with a conscious  
12 disregard of the rights of plaintiff, thereby entitling plaintiffs to an award of punitive damages therefor.

13 63. Plaintiffs are currently unaware whether defendants ALCH or FAGEL knew that  
14 defendants SILBERBERG was charging plaintiffs illegal attorney's fees in excess of those agreed  
15 upon in his contract with plaintiffs and those permitted by California Business and Professions Code  
16 section 6146. If said defendants did know, then they are similarly liable to plaintiffs for fraud, and  
17 the legal and proximate cause of plaintiffs' damages alleged in this cause of action.

18 64. As a direct and proximate result of the actions of defendants, and each of them,  
19 plaintiffs sustained damages in a sum in excess of \$15,000.

20 65. As a direct and proximate result of the aforementioned actions of defendants, and each  
21 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees  
22 and costs to bring this action.

### 23 **SIXTH CAUSE OF ACTION**

#### 24 **(Breach of Contract)**

25 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**  
26 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**  
27 **SILBERBERG aka K. MARSHALL SILBERBERG)**

28 66. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 and 42-

65 of the complaint as though fully set forth herein, and incorporate the same herein by reference.

67. The "Contingency Fee Contract" between plaintiffs and defendants SILBERBERG required that attorney fees be based on the net recovery after deduction of the cost of prosecution. Said defendant calculated that his prosecution costs were \$125,070, leaving a net recovery of \$6,124,930, entitling said defendant to the sum of \$990,406.16 as his attorney fees. The deduction by defendants SILBERBERG of \$1,130,737.00 exceeded the contractual agreement, amounting to a breach of contract. Plaintiffs have been damaged by the breach of contract in the amount of \$140,330.84.

68. As a direct and proximate result of the actions of defendants, and each of them, plaintiffs sustained damages in a sum in excess of \$15,000.

69. As a direct and proximate result of the aforementioned actions of defendants, and each of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

#### **PUNITIVE DAMAGES**

70. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 and 42-65 of the complaint as though fully set forth herein, and incorporate the same herein by reference.

71. As a direct and proximate result of the aforementioned wrongful conduct of defendants, and each of them, the actions of defendants were intended to cause injury to plaintiffs and/or was despicable conduct carried on by defendants with a willful and conscious disregard of the rights of plaintiffs and/or was an intentional misrepresentation, deceit or concealment of material facts known to defendants with the intention, implied or in fact, to deprive plaintiffs of property, legal rights, or fraud within NRS 42.005, entitling an award of punitive and/or exemplary damages in an amount appropriate to punish and/or set an example of defendants.

#### **PRAYER FOR RELIEF**

Wherefore, plaintiffs pray for judgment against defendants, and each of them, as follows:

1. On the first cause of action for declaratory relief against all defendants:

a. For a declaration that defendant COPPERPOINT GENERAL INSURANCE COMPANY aka COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY aka

1 COPPERPOINT MUTUAL INSURANCE COMPANY aka COPPERPOINT INSURANCE  
2 COMPANIES is not entitled to any lien and/or credit for money received by plaintiffs as a result of  
3 the settlements they entered into regarding District Court, Clark County, Nevada Case No. A-16-  
4 738004-C and that defendants are obligated (a) to continue all benefits it previously provided and is  
5 required to provide in the future for plaintiff DARIA HARPER, (b) to forthwith reinstate all benefits  
6 it previously provided for plaintiff DARIA HARPER that were terminated and (c) to forthwith pay  
7 for the services of plaintiff DANIEL WININGER that it previously paid but were terminated, with  
8 interest thereon at the legal rate;

9 b. For reasonable attorney's fees and costs incurred in this action; and

10 c. For such other and further relief as the Court may deem just and proper.

11 2. On the second cause of action for injunctive relief against defendants COPPERPOINT  
12 GENERAL INSURANCE COMPANY aka COPPERPOINT MUTUAL INSURANCE HOLDING  
13 COMPANY aka COPPERPOINT MUTUAL INSURANCE COMPANY aka COPPERPOINT  
14 INSURANCE COMPANIES:

15 a. For issuance of a temporary restraining order, preliminary injunction and  
16 permanent injunction restraining and enjoining defendants COPPERPOINT GENERAL  
17 INSURANCE COMPANY and COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY  
18 and COPPERPOINT MUTUAL INSURANCE COMPANY and COPPERPOINT INSURANCE  
19 COMPANIES (a) from terminating any of the benefits it is providing for plaintiff DARIA HARPER  
20 and (b) to forthwith reinstate all benefits it previously provided for plaintiff DARIA HARPER that  
21 were terminated, and forthwith pay for the services it previously paid for the services of plaintiff  
22 DANIEL WININGER that were terminated, with interest thereon at the legal rate;

23 b. For damages in an amount in excess of \$15,000, to be proven at trial;

24 c. For reasonable attorney's fees and costs incurred in this action; and

25 d. For such other and further relief as the Court may deem just and proper.

26 3. On the third cause of action for legal malpractice against defendants LAW OFFICES  
27 OF MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL  
28 SILBERBERG, aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS STEVEN

1 ALCH, BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF BRUCE G. FAGEL  
2 & ASSOCIATES:

- 3 a. For damages in an amount in excess of \$15,000, to be proven at trial;
- 4 b. For an award of reasonable attorney's fees and costs incurred in this action; and
- 5 c. For such other and further relief as the Court may deem just and proper.

6 4. On the fourth cause of action for fraud against defendants LAW OFFICES OF  
7 MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL  
8 SILBERBERG aka K. MARSHALL SILBERBERG:

- 9 a. For damages in an amount in excess of \$15,000, to be proven at trial;
- 10 b. For pecuniary damages and emotional distress damages in an amount in excess  
11 of \$15,000, to be proven at trial;
- 12 c. For punitive and/or exemplary damages pursuant to NRS 42.005 in an amount  
13 appropriate to punish and/or set an example of defendants;
- 14 d. For an award of reasonable attorney's fees and costs incurred in this action; and
- 15 e. For such other and further relief as the Court may deem just and proper.

16 5. On the fifth cause of action for breach of fiduciary duty against defendants LAW  
17 OFFICES OF MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka  
18 MARSHALL SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka  
19 THOMAS STEVEN ALCH, BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF  
20 BRUCE G. FAGEL & ASSOCIATES:

- 21 a. For damages in an amount in excess of \$15,000, to be proven at trial;
- 22 b. For pecuniary damages and emotional distress damages in an amount in excess  
23 of \$15,000, to be proven at trial;
- 24 c. For punitive and/or exemplary damages pursuant to NRS 42.005 in an amount  
25 appropriate to punish and/or set an example of defendants;
- 26 d. For an award of reasonable attorney's fees and costs incurred in this action; and
- 27 e. For such other and further relief as the Court may deem just and proper.

28 6. On the sixth cause of action for breach of contract against defendants LAW OFFICES

1 OF MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL  
2 SILBERBERG aka K. MARSHALL SILBERBERG:

- 3 a. For damages in an amount in excess of \$15,000, to be proven at trial;  
4 b. For an award of reasonable attorney's fees and costs incurred in this action; and  
5 c. For such other and further relief as the Court may deem just and proper.

6 DATED this 9th day of March, 2021.

7 Respectfully submitted,

8 **MAIER GUTIERREZ & ASSOCIATES**

9 /s/ Jason R. Maier

10 JASON R. MAIER, ESQ.  
11 Nevada Bar No. 8557  
12 8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148

13 JOHN P. BLUMBERG, ESQ.  
14 California Bar No. 70200  
15 (to be admitted pro hac vice)  
16 **BLUMBERG LAW CORPORATION**  
444 West Ocean Blvd., Suite 1500  
Long Beach, California 90802-4330

17 *Attorneys for Plaintiffs*  
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Dalton L. Hooks, Jr., Esq.  
HOOKS MENG & CLEMENT  
2820 West Charleston Blvd., Suite C-23  
Las Vegas, Nevada 89102  
*Attorneys for Defendants Copperpoint Mutual Insurance Holding Company  
and Copperpoint General Insurance Company*

and

David A. Clark, Esq.  
LIPSON NEILSON P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
*Attorneys for Defendants Shoop A Professional Law Corporation  
and Thomas S. Alch*

**PA 00097**

# EXHIBIT 1

# EXHIBIT 1

## NOTICE OF CLAIM STATUS

Carrier or Self-Insured Name and Address CopperPoint General Insurance Company / CLAIMS DEPT. P.O. Box 33069 Phoenix, AZ 85067-3069
Authorized Third Party Administrator (TPA) Name and Address
Claimant's Name and Address DARIA HARPER 3336 DATE PALM DR. LAKE HAVASU CITY, AZ 86404

ICA Claim No.	20142520533
Soc. Sec. No.	###/###/####
SSN not required if correct ICA claim number is provided	
Carrier Claim No.	14G01532
Employer	ISLANDER RV RESORT LLC
Address	LAKE HAVASU CITY, AZ 86403 LAKE HAVASU CITY, AZ 86403
Date of Injury	08/11/2014

- ☐ 1. Claim is accepted.
- ☐ 2. Claim is denied.
- ☐ 3. No temporary compensation paid because the claimant has not currently sustained a temporary disability entitlement attributable to this injury beyond seven consecutive days.
- ☐ 4. Enclosed check for \_\_\_\_\_ for period of \_\_\_\_\_ through \_\_\_\_\_. Seven days deducted if disability is less than 14 calendar days. Payment has been made based on 66 2/3 percent of the wage of \_\_\_\_\_ based on the following:
- ☐ A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days.
- ☐ B. Average monthly wage at time of injury (see attached calculation), subject to final determination by the Industrial Commission of Arizona within 30 days.
- ☐ 5. Return to light duty effective \_\_\_\_\_. Per A.R.S. §23-1044(A) and A.R.S. §23-1062(D) benefits are payable at least monthly. Return to regular duty effective \_\_\_\_\_.
- ☐ 6. Temporary compensation and active medical treatment terminated on \_\_\_\_\_ because claimant was discharged.
- ☐ 7. Injury resulted in no permanent disability.
- ☐ 8. Injury resulted in permanent disability. Amount of permanent benefits, if any, and supportive medical maintenance benefits, if any, will be authorized by separate Notice.
- ☐ 9. Petition to Reopen accepted.
- ☐ 10. Petition to Reopen denied.
- ☒ 11. Other: 

- Pursuant to A.R.S. § 23-1023, CopperPoint has a lien against Claimant's third-party recovery from a medical malpractice action (case No. A-16-738004-C) brought in the District Court of Clark County, Nevada, in an amount equal to compensation

Mailed on: 10/30/2019

By: Jeff de Veuve

Copy to: Industrial Commission of Arizona

(Authorized Representative) Tel. #: (602) 631-2966

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support Findings 5, 6, 7 or 8.

**NOTICE TO CLAIMANT:** If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this Notice, pursuant to A.R.S. 23-941 and 23-947. IF NO SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS NOTICE IS FINAL.

**AVISO AL RECLAMANTE:** Si usted no esta de acuerdo con este AVISO, y desea una audiencia en este caso, su peticion por escrito pidiendo una audiencia debera ser recibida en cualquiera de las oficinas de la Comision Industrial a las direcciones abajo indicadas dentro de NOVENTA (90) DIAS despues de la fecha de este AVISO, de acuerdo con las leyes A.R.S. 23-941 y 23-947. SI DICHA PETICION NO ESTA RECIBIDA DENTRO DEL PERIODO DE NOVENTA (90) DIAS, ESTE AVISO SERA CONSIDERADO FINAL.

Phoenix  
Office: Industrial Commission of Arizona  
800 W Washington Street  
Phoenix, Arizona 85007-2922

Tucson  
Office: Industrial Commission of Arizona  
2675 E Broadway  
Tucson, Arizona 85716-5342

PO Box 19070  
Phoenix, AZ 85005-9070

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

Date: 10/30/19  
Claimant Name: Daria Harper  
Claim Number: 14G01532

11. Continued from page 1

- and medical, surgical, and hospital benefits paid by CopperPoint.
- CopperPoint is entitled to accrued interest on the lien from the date settlement proceeds were disbursed.
- CopperPoint is entitled to a future credit against Claimant's recovery equal to the amount of money received by the Claimant in the malpractice action after subtracting expenses and attorney fees.
- CopperPoint is not required to pay claimant compensation or medical, surgical, or hospital benefits until the claimant's post-settlement accrued entitlement to compensation and medical benefits exceeds the credit amount.
- To the extent the settlement in the malpractice action was less than the workers' compensation benefits provided by CopperPoint, Claimant's failure to obtain CopperPoint's prior approval before settling results in forfeiture of her workers' compensation claim.

CC: Marshall Silberberg  
William Stephens Collins  
LAW OFFICES OF MARSHALL  
SILBERBERG  
3333 Michelson Drive, Suite 710  
Irvine, CA 92612

# **EXHIBIT 2**

# **EXHIBIT 2**



April 2, 2020

**VIA CERTIFIED AND U.S. MAIL**

Ms. Daria Harper  
3336 Date Palm Drive  
Lake Havasu, AZ 86404

Re: Daria Harper  
Claim No.: 14G01532  
DOI: 08/11/2014  
Employer: Islander RV Resort LLC

Dear Ms. Harper:

We are writing to you with regard to the status of your workers' compensation claim and CopperPoint Mutual Insurance Company's ("CopperPoint") lien rights. As you already know, you settled your medical malpractice action (Case No. A-16-738004-C in the District Court of Clark County, Nevada) without CopperPoint's consent, as is required by Arizona law. You also have not resolved CopperPoint's lien for the worker's compensation benefits paid to you. As you are also well aware, CopperPoint has tried to work toward a resolution of these matters for over a year through your counsel but to no avail. As a result, there are presently pending proceedings before the Arizona Industrial Commission pertaining to CopperPoint's lien.

Throughout the last several years, and despite the lack of cooperation on your behalf in seeking resolution of the lien, CopperPoint has continued to pay to you a full range of workers compensation benefits which to date amounts to millions of dollars. CopperPoint has tried repeatedly to work with you on resolving the lien, even though you did: a) not bother to inform CopperPoint of the settlements when they were reached, b) failed to obtain CopperPoint's consent to the settlements as required by law, and c) continually refused to provide the amounts of the settlements. In fact, the amounts paid appear to exceed the amount of funds received by you personally in the settlement of your litigation.

CopperPoint is entitled to interest on the lien amount since the date of your medical malpractice settlements in 2018. Further, CopperPoint is entitled to a credit against future workers compensation payments to you equal to the amount of money you received in the medical malpractice settlements less appropriate expenses and attorneys' fees.

CopperPoint has been very accommodating in seeking a resolution of the lien issue for so long. This is especially true given the medical malpractice settlements were effectively and intentionally kept secret from CopperPoint. Moreover, when CopperPoint learned on its own of the settlements, information concerning the amount and terms of the settlements were still withheld and no attempt to resolve the lien was made on your behalf. As of this letter, we are approximately five months since the filing of CopperPoint's Notice of Claim Status and there still has been no

action by you to address CopperPoint's outstanding lien. Nevertheless, CopperPoint continued to pay full workers compensation payments to you even though it was not legally required. However, this benevolent conduct by CopperPoint cannot continue indefinitely.

Therefore, please be informed:


**COPPERPOINT WILL TERMINATE PAYMENT OF YOUR  
WORKERS' COMPENSATION BENEFITS EFFECTIVE THIRTY DAYS  
FROM THE DATE OF THIS LETTER.**

No further benefits will be paid until your post-settlement accrued entitlement to compensation and medical benefits exceeds CopperPoint's credit for its lien. It is anticipated this may result in no further benefits becoming payable in the future.<sup>1</sup>

If you have any questions, please feel free to contact us.

Very truly yours,

COPPERPOINT MUTUAL INSURANCE COMPANY

By   
Ginny Arnett Caro

cc: Adam Palmer, Esq.

---

<sup>1</sup> Moreover, to the extent the settlement in your malpractice action was less than the workers' compensation benefits provided by CopperPoint, your failure to obtain CopperPoint's prior approval before settling the malpractice claim results in a forfeiture of your workers' compensation claim.

# **EXHIBIT “C”**



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DISTRICT COURT  
CLARK COUNTY, NEVADA  
DARIA HARPER, an )  
individual; and DANIEL )  
WININGER, an individual, ) CASE NO.:  
 ) A-20-814541-C  
Plaintiffs, )  
 )  
vs. )  
 )  
COPPERPOINT MUTUAL )  
INSURANCE HOLDING )  
COMPANY, an Arizona )  
corporation; COPPERPOINT )  
GENERAL INSURANCE )  
COMPANY, an Arizona )  
corporation; LAW OFFICES )  
OF MARSHALL SILBERBERG, )  
P.C., a California )  
corporation; KENNETH )  
MARSHALL SILBERBERG aka )  
MARSHALL SILBERBERG aka K. )  
MARSHALL SILBERBERG an )  
individual; THOMAS S. ALCH )  
aka THOMAS STEVEN ALCH, )  
an individual; SHOOP, A )  
PROFESSIONAL LAW CORPORATION )  
A California corporation; )  
DOES 1-50, inclusive, )  
 )  
Defendants. )

VIDEOTAPED AND VIDEOCONFERENCED  
DEPOSITION OF KENNETH MARSHALL SILBERBERG  
Taken on Monday, November 9, 2020  
At 10:44 a.m.  
By a Certified Court Reporter  
Remotely in Las Vegas, Nevada  
Reported By: Karen L. Jones, CCR NO. 694

Job No.: 41837

1                   So when this case came in and I was  
2     going to get involved, obviously I needed local  
3     counsel, and I knew that Tom Alch had a license in  
4     Nevada. So basically as a thank you to Bruce for  
5     sending me cases, I asked Bruce if I could utilize  
6     Tom's license, have him be our local counsel, and  
7     then as my sense of gratitude to Bruce for referring  
8     cases to me, I would then share my fee with Bruce,  
9     basically, you know as a thank you to him for  
10    referring cases to me.

11                  So that's how it all worked out.

12           Q.       So regardless of the motivation, would  
13    it be correct that Bruce Fagel agreed that Tom Alch,  
14    who was his employee, would be local counsel working  
15    in association with your firm in the Daria Harper  
16    case?

17           A.       Well, no. There was no "agreement," as  
18    you put it. What -- what it was was that we were  
19    going to utilize Tom to help us with just the local  
20    rules initially, to make sure that we were compliant  
21    with the local rules. At that point, once that was  
22    all done -- once that was done, there was really no  
23    agreement. They weren't going to participate, as  
24    you said, in the prosecution of the case at all.  
25    They did not participate in the -- once we got the

1 local rules established and the complaint filed  
2 and initial discovery, they had no involvement in  
3 the case.

4 Q. When you say "they," do you mean neither  
5 Alch nor Fagel?

6 A. That's correct. Once we started going  
7 and getting discovery done, that was the end. I  
8 didn't consult with anybody at that office ever.

9 Tom helped out initially -- his office,  
10 his secretary -- making sure that things got filed  
11 and that they were complying with the local rules.

12 Once that was done and the real  
13 prosecution of the case started, they had no  
14 involvement at all.

15 Q. Would it be a correct statement that --  
16 or, strike that.

17 Was it your understanding that in order  
18 for you to use Tom Alch as local counsel, you needed  
19 the permission of Bruce Fagel?

20 A. No, I didn't think so. I mean, I talked  
21 to Tom directly. I mean, no, I didn't. I didn't --  
22 I didn't seek nor did I receive Bruce Fagel's  
23 consent or permission. It was Tom's license in  
24 Nevada, not Bruce's.

25 Q. To your knowledge, was Tom an employee

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA )  
3 ) SS:  
4 COUNTY OF CLARK )

5 I, Karen L. Jones, a duly commissioned and  
6 licensed Court Reporter, Clark County, State of  
7 Nevada, do hereby certify: That I reported the  
8 taking of the deposition of the witness, KENNETH  
9 MARSHALL SILBERBERG, commencing on Monday, November  
10 9, 2020 at 10:44 a.m.

11 That prior to being examined, the witness was,  
12 by me, duly sworn to testify to the truth. That I  
13 thereafter transcribed my said shorthand notes into  
14 typewriting and that the typewritten transcript of  
15 said deposition is a complete, true and accurate  
16 transcription of said shorthand notes.

17 I further certify that (1) I am not a relative  
18 or employee of an attorney or counsel of any of the  
19 parties, nor a relative or employee of an attorney  
20 or counsel involved in said action, nor a person  
21 financially interested in the action; nor do I have  
22 any other relationship with any of the parties or  
23 with counsel of any of the parties involved in the  
24 action that may reasonably cause my impartiality to  
25 be questioned; and (2) that transcript review  
pursuant to NRCP 30(e) was requested.

26 IN WITNESS HEREOF, I have hereunto set my  
27 hand, in my office, in the County of Clark, State of  
28 Nevada, this 22nd day of November, 2020.

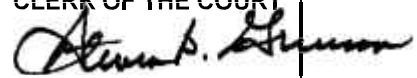
*Karen L. Jones*

KAREN L. JONES, CCR NO. 694

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*

Electronically Filed  
5/24/2021 8:42 AM  
Steven D. Grierson  
CLERK OF THE COURT



Daria Harper, Plaintiff(s)

vs.

Copperpoint Mutual Insurance Holding  
Company, Defendant(s)

Case No.: A-20-814541-C

Department 30

**NOTICE OF HEARING**

Please be advised that the Defendant Bruce G. Fagel, a Law Corporation aka Law Offices of Bruce G. Fagel & Associates Motion to Dismiss Based Upon Lack of Personal Jurisdiction in the above-entitled matter is set for hearing as follows:

**Date:** June 30, 2021

**Time:** 9:00 AM

**Location:** RJC Courtroom 14A  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court


By: /s/ Kadir Beckom  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Kadir Beckom  
Deputy Clerk of the Court

PA 00109



**OPPS**

JOHN P. BLUMBERG, ESQ.  
California Bar No. 70200  
(admitted pro hac vice)

**BLUMBERG LAW CORPORATION**

444 West Ocean Blvd., Suite 1500  
Long Beach, California 90802-4330  
Telephone: 562.437.0403  
Facsimile: 562.432.0107  
E-mail: [advocates@blumberglaw.com](mailto:advocates@blumberglaw.com)

JASON R. MAIER, ESQ.  
Nevada Bar No. 8557

**MAIER GUTIERREZ & ASSOCIATES**

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Las Vegas, Nevada 89148  
Telephone: 702.629.7900  
Facsimile: 702.629.7925  
E-mail: [jrm@mgalaw.com](mailto:jrm@mgalaw.com)  
*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DARIA HARPER, an individual; and DANIEL  
WININGER, an individual,

Plaintiffs,

vs.

COPPERPOINT MUTUAL INSURANCE  
HOLDING COMPANY, an Arizona  
corporation; COPPERPOINT GENERAL  
INSURANCE COMPANY, an Arizona  
corporation; LAW OFFICES OF MARSHALL  
SILBERBERG, P.C., a California corporation;  
KENNETH MARSHALL SILBERBERG aka  
MARSHALL SILBERBERG aka K.  
MARSHALL SILBERBERG, an individual;  
THOMAS S. ALCH aka THOMAS STEVEN  
ALCH, an individual; BRUCE G. FAGEL, A  
LAW CORPORATION aka LAW OFFICES  
OF BRUCE G. FAGEL & ASSOCIATES, a  
California corporation; DOES 1-50, inclusive,

Defendants.

Case No.: A-20-814541-C  
Dept. No.: XXX

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT BRUCE G. FAGEL, A LAW  
CORPORATION'S MOTION TO DISMISS  
BASED UPON LACK OF PERSONAL  
JURISDICTION**

Hearing Date: June 30, 2021  
Hearing Time: 9:00 a.m.

Plaintiffs, DARIA HARPER and DANIEL WININGER, by and through their attorneys,  
BLUMBERG LAW CORPORATION by John P. Blumberg, Esq., and MAIER GUTIERREZ & ASSOCIATES

1 by Jason R. Maier, Esq., file their opposition to the motion of defendant BRUCE G. FAGEL, Av  
2 LAW CORPORATION aka LAW OFFICES OF BRUCE G. FAGEL & ASSOCIATES to dismiss  
3 based upon lack of personal jurisdiction.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. SUMMARY OF OPPOSITION**

6 Defendant Bruce G. Fagel, A Law Corporation (“Fagel”) purposefully availed itself of the  
7 benefits of serving the market in Nevada on ten separate occasions by paying for the cost of a Nevada  
8 office and directing its agent/employee, who was licensed to practice in Nevada, to file lawsuits in  
9 Nevada. In the instant case, Fagel entered into a joint venture whose purpose was to prosecute a  
10 medical malpractice lawsuit in Nevada and to reap the financial benefit of attorney fees. As its part  
11 of the joint venture, Fagel paid for the rental of office space in Nevada and directed its employee,  
12 defendant Thomas S. Alch (“Alch”), who was admitted to practice in Nevada, to file the lawsuit.  
13 Fagel provided support for Alch during the litigation by using its employees to assist with discovery.  
14 Fagel’s employee, Alch, reviewed discovery responses, gave advice to his co-counsel regarding  
15 Nevada law, and reviewed expert witness declarations. After Alch left Fagel’s employ, Fagel entered  
16 into an agreement with Alch that in return for Alch remaining as attorney of record, Alch would  
17 receive a share of the attorney’s fees. Thereafter, Alch was involved in approving the settlement  
18 documents. At the conclusion of the litigation, Fagel received \$565,368 of attorney’s fees for its  
19 participation in the joint venture from which he paid Alch \$55,536. Therefore, the motion to dismiss  
20 must fail because there is specific personal jurisdiction based on Fagel’s actions in (1) tasking its agent  
21 to act as “local counsel” who participated in the litigation in Nevada, (2) paying for the office that  
22 allowed its agent to act as local counsel, (3) using its employees to assist its agent in prosecuting the  
23 case in Nevada, and (4) reaping the financial reward of over a half-million dollars from its involvement  
24 in the Nevada litigation. These contacts are more than the “minimum” required to satisfy due process  
25 requirements.

26 **II. STATEMENT OF PERTINENT FACTS**

27 In March 1997, Thomas S. Alch (“Alch”) became an employee of The Law Offices of Bruce  
28 G. Fagel & Associates (aka Bruce G. Fagel, A Law Corporation) (“Fagel”). (**Exhibit “1”**: Declaration

1 of Thomas S. Alch, ¶3.) In 1999, as a condition of Alch's employment by Fagel, he was required to  
2 take and pass the Nevada Bar examination in 1999 for the purpose of Fagel being able to advertise  
3 for, obtain, and handle Nevada medical malpractice cases. (Id. ¶4.) Because the Nevada rules of  
4 professional conduct required that "local counsel" in Nevada must have a physical office in order to  
5 associate with out-of-state attorneys, Fagel established and paid for an office in Las Vegas and, as  
6 required by his employment, Alch established the fictitious business name of the Law Offices of  
7 Thomas S. Alch. (Id. ¶¶6, 7, 8.) Fagel paid for and rented Alch's office space and performed all of  
8 the advertising for Las Vegas medical malpractice cases. (Id. ¶¶6, 7, 8.) Fagel's clients signed  
9 retainers for The Law Offices of Thomas S. Alch in Association with The Law Offices of Bruce G.  
10 Fagel & Associates, and when the cases were filed, they were filed with The Law Offices of Thomas  
11 S. Alch on the pleadings, showing both the Las Vegas address that was rented by the Fagel Firm as  
12 well as the address for the Fagel Firm's Beverly Hills address. (Id. ¶¶10, 11.) During his employment  
13 with Fagel, Alch filed approximately ten cases in Nevada. (**Exhibit "2"**: Deposition of Thomas S.  
14 Alch, 23:4-9, 28:14-29:3.)

15 In 2016, sometime prior to June 7, attorney Kenneth Marshall Silberberg ("Silberberg")  
16 contacted Fagel, and requested that the Fagel Firm co-counsel a medical malpractice case for Daria  
17 Harper and Daniel Wininger because Alch was licensed to practice in Nevada. (Ex. "1": Declaration  
18 of Thomas S. Alch, ¶13.) Silberberg and Fagel agreed that Fagel would receive 50% of the attorney's  
19 fees. (**Exhibit "3"**: Deposition of Kenneth Marshall Silberberg, 23:24-24:5; **Exhibit "4"**: Declaration  
20 of John P. Blumberg, ¶5.) On June 17, 2016, Silberberg notified Harper and Wininger that because  
21 Nevada court require an attorney with a Nevada bar license file a complaint and be part of the case,  
22 he associated with Bruce Fagel and Thomas Alch of the Law Offices of Bruce Fagel to be part of the  
23 legal team. (Ex. "3": Deposition of Kenneth Marshall Silberberg; **Exhibit "3A"**: exhibit "5" to  
24 Silberberg deposition; Ex. "4": Declaration of John P. Blumberg, ¶5.) Thereafter, as part of Alch's  
25 employment, he filed the case with the pleadings reading The Law Offices of Thomas S. Alch and  
26 using the Fagel Firm's addresses and phone numbers. (Exhibit "1": Declaration of Thomas S. Alch,  
27 ¶15.)

28 After he filed the complaint, Alch associated Kenneth Marshall Silberberg and his associate,



1 William S. Collins, which was done in October, 2016 and approved by the court. (Id. ¶16.) Alch  
2 assisted in the prosecution of the Harper case, including reviewing and signing discovery responses  
3 in May, 2017. (Ex. “2”: Deposition of Thomas S. Alch, 34:14- 37:16; Ex. “4”: Declaration of John P.  
4 Blumberg, ¶4.) Alch gave advice to the Silberberg office regarding the Nevada law pertaining to loss  
5 of consortium damages and whether tax returns were discoverable. (Ex. “2”: Deposition of Thomas  
6 S. Alch, 39:20-44:14; Ex. “4”: Declaration of John P. Blumberg, ¶4.)

7 When Alch left Fagel’s employ, he and Fagel entered into an agreement that he would remain  
8 as local counsel in the Harper case and be entitled to receive 10% of the attorney’s fees. (Ex. “1”:  
9 Declaration of Thomas S. Alch, ¶¶20, 26.) In January, February and March, 2018, Alch was involved  
10 in reviewing expert witness reports, and in March, 2018, Fagel had email exchanges with Alch  
11 inquiring about when jury fees had to be paid for the Harper trial. (**Exhibit “5”**: 1st Supplemental  
12 Disclosure of Witnesses and Documents by Thomas S. Alch; **Exhibit “5A”**: pages ALCH000891-  
13 000906 of Alch Supplemental Disclosure; Declaration of John P. Blumberg, ¶6.) After the Harper  
14 case was settled, in June 2018, Alch reviewed and approved the settlement agreement with one of the  
15 defendants. (**Exhibit “6”**: Deposition of William S. Collins; **Exhibit “6A”**: exhibit “14” to Collins  
16 deposition; Ex. “4”: Declaration of John P. Blumberg, ¶7.) Silberberg sent Fagel a check for his share  
17 of the attorney’s fees that included reimbursement of \$2,926 costs advanced by Fagel for a total of  
18 \$540,026. (Ex. “3”: Deposition of Kenneth Marshall Silberberg:109:5-111:1; **Exhibit “3B”**: exhibit  
19 “33” to Silberberg deposition; Ex. “4”: Declaration of John P. Blumberg, ¶5.) Silberberg gave a check  
20 to Alch for \$28,268 (Id.) and Fagel gave Alch a check for \$28,268. (Ex. “2”: Deposition of Thomas  
21 S. Alch, 75:19-76:23; Ex. “4”: Declaration of John P. Blumberg, ¶2.)

### 22 **III. THE COURT HAS JURISDICTION OVER FAGEL**

23 Fagel argues that its connection with Nevada was practically non-existent, that its involvement  
24 in the Harper medical malpractice litigation was nominal at best, and that it had nothing to do with  
25 the prosecution or settlement of the case. The facts are otherwise. Between 1999 and 2017, Fagel  
26 had paid for and rented an office in Nevada, advertised for Nevada medical malpractice cases, and  
27 had handled approximately ten Nevada cases. “It is well settled that a corporation can act only through  
28 its agents.” *Smith’s Food & Drug Ctrs., Inc. v. Bellegarde*, 114 Nev. 602, 608, 958 P.2d 1208, 1212

1 (1998), overruled on other grounds by *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725,  
2 745–46, 192 P.3d 243, 256–57 (2008). Alch was Fagel’s employee and agent in Nevada. Fagel paid  
3 for Alch’s Nevada office. While employed by Fagel, Alch filed the complaint, assisted in discovery,  
4 and gave advice on Nevada law. After Alch ceased being Fagel’s employee, he continued as Fagel’s  
5 agent in Nevada, Fagel continued to pay for Alch’s Nevada office, Alch reviewed expert witness  
6 reports, gave advice on Nevada law, and approved settlement agreements. In other words, Fagel  
7 (through its agent, Alch) was involved in every aspect of the Harper medical malpractice case: filing  
8 the complaint, participating in discovery, providing legal advice on Nevada law, reviewing expert  
9 witness reports, and approving settlement agreements. And Fagel received attorney fees of over a half-  
10 million dollars paid by Nevada health care providers.

11 Nevada courts have jurisdiction over an out of state defendant who does business in Nevada.  
12 In *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 699, 857 P.2d 740, 748 (1993), the Nevada  
13 Supreme Court explained when Nevada would have specific personal jurisdiction over an out-of state  
14 defendant:

15 “Absent general jurisdiction, specific personal jurisdiction over a defendant  
16 may be established only where the cause of action arises from the defendant’s  
17 contacts with the forum. (Citations omitted.) A state may exercise specific  
18 personal jurisdiction only where: (1) the defendant purposefully avails  
19 himself of the privilege of serving the market in the forum or of enjoying the  
20 protection of the laws of the forum, or where the defendant purposefully  
21 establishes contacts with the forum state and affirmatively directs conduct  
22 toward the forum state, and (2) the cause of action arises from that purposeful  
23 contact with the forum or conduct targeting the forum.”

24 In *Schwarzenegger v. Fred Martin Motor Co.* (9th Cir. 2004) 374 F.3d 797, 802, the Court  
25 explained:

26 “A showing that a defendant purposefully availed himself of the privilege  
27 of doing business in a forum state typically consists of evidence of the  
28 defendant’s actions in the forum, such as executing or performing a contract

1           there. By taking such actions, a defendant ‘purposefully avails itself of the  
2           privilege of conducting activities within the forum State, thus invoking the  
3           benefits and protections of its laws.’ (Citation omitted.) In return for these  
4           ‘benefits and protections,’ a defendant must—as a quid pro quo—‘submit to  
5           the burdens of litigation in that forum.’”

6           Here, specific personal jurisdiction exists. Fagel’s contacts with Nevada cannot be  
7           characterized as “random, fortuitous, or attenuated.” *Trump, supra* 109 Nev. 687, 700. It was  
8           intentional and purposeful. Fagel advertised to Nevada residents and paid for office space for its agent  
9           so it could represent clients in Nevada courts and receive monetary rewards.

10          In *Trump, supra*, 109 Nev. 687, 699, a New York resident conducted business in Nevada  
11          through his attorney, acting as his agent. The Nevada Supreme Court discussed the requirement that  
12          “The defendant must have sufficient contacts with the forum such that he or she could reasonably  
13          anticipate being haled into court there” and affirmed the district court’s determination that the contacts  
14          of the agent were sufficient and attributable to Trump for the purpose of determining that personal  
15          jurisdiction existed. In the instant case, Fagel’s contacts prior to the Harper medical malpractice case  
16          provide the basis for general personal jurisdiction, and Fagel’s contacts in connection with the Harper  
17          medical malpractice case provide the basis for specific personal jurisdiction.

#### 18   **IV.    FAGEL’S ARGUMENTS REGARDING LACK OF PERSONAL JURISDICTION** 19    **ARE NOT SUPPORTED BY THE FACTS**

20          As demonstrated by the evidence cited in Point II, above, plaintiffs have satisfied their burden  
21          of proving a prima facie as that Fagel is subject to the Court’s jurisdiction. Plaintiffs’ evidence also  
22          demonstrates the lack of factual support for Fagel’s claims, such as: “Fagel Law’s only involvement  
23          in the underlying medical malpractice case occurred in 2016 . . .” (Declaration of Bruce G. Fagel, ¶9),  
24          “Fagel Law was not to be involved with the prosecution of the lawsuit in any way” (Id., ¶11), “Mr.  
25          Alch left Fagel Law on September 15, 2017, and it was my understanding that thereafter, he would  
26          remain on the Harper case to serve as local counsel to Mr. Silberberg in his independent capacity, but  
27          not as an employee or affiliate of Fagel Law.” (Id., ¶12), “I do not believe that I had any further contact  
28          with Mr. Silberberg or his staff or Mr. Alch and his staff regarding the Plaintiffs’ underlying medical

malpractice case from September 2017, until after it settled at mediation.” (Id), and “After Mr. Alch left his employment with Fagel Law in 2017, he was no longer in any sort of an agency or employment relationship with Fagel Law.” (Id. ¶22).

**V. THE CAUSE OF ACTION ARISES FROM THE CONSEQUENCES IN THE FORUM STATE OF THE DEFENDANT’S ACTIVITIES**

Fagel argues that nothing that his corporation did was the cause of the harm plaintiffs suffered as a result of the settlement. This argument ignores the allegations of the complaint that Alch was negligent in causing injury to plaintiffs and that he was acting as the agent of Fagel. (See, e.g., ¶¶ 5, 9, 37.) But even if neither Fagel nor Alch were personally negligent, they would be liable as joint venturers, as alleged in paragraph 9 of the amended complaint. Silberberg, Fagel and Alch entered into a joint venture, the purpose of which was to combine their efforts to pursue a medical malpractice lawsuit in Nevada, and that attorney’s fees would be shared equally between Fagel and Silberberg, with Alch receiving 10% of Fagel’s share. (Ex. “1”: Declaration of Thomas S. Alch, ¶13; Ex. “3”: Deposition of Marshall Silberberg, 23:24-24:5; Ex. “4”: Declaration of John P. Blumberg.) Silberberg confirmed the arrangement on June 17, 2016, when he notified Harper and Wininger that he associated with Bruce Fagel and Thomas Alch of the Law Offices of Bruce Fagel to be part of the legal team. (Ex. “3”: Deposition of Marshall Silberberg; Ex. “3A” to Silberberg deposition; Ex. “4”: Declaration of John P. Blumberg.)

In *Radaker v. Scott* (1993) 109 Nev. 653, 658, 855 P.2d 1037, 1040, the Nevada Supreme Court explained the vicarious liability of partners in a joint venture:

“A joint venture is a contractual relationship in the nature of an informal partnership wherein two or more persons conduct some business enterprise, agreeing to share jointly, or in proportion to capital contributed, in profits and losses. (Citation omitted.) *Bruttomesso v. Las Vegas Met. Police Dept.*, 95 Nev. 151, 154, 591 P.2d 254, 256 (1979). Furthermore, the principles of law regarding general partnerships encompass joint ventures. *Haertel v. Sonshine Carpet Co.*, 102 Nev. 614, 616, 730 P.2d 428, 429 (1986). This being the case, an examination of the Uniform Partnership Act, NRS Chapter 87, provides

1 insight. NRS 87.060 defines a partnership as an association of two or more  
2 persons to carry on as co-owners a business for profit. NRS 87.130 indicates  
3 that the partnership will be bound where loss or injury is inflicted upon a third  
4 party by a partner acting in the ordinary course of the business of the  
5 partnership. Moreover, all partners are to be held liable jointly and severally  
6 for everything chargeable to the partnership under NRS 87.130. See NRS  
7 87.150.”

8 Fagel, Silberberg and Alch were all California residents, and if their joint venture was to be  
9 subject to California law, in California (as in Nevada) “all members of a joint venture are jointly liable  
10 for injuries resulting from the negligent conduct of one of the parties thereto because the negligence  
11 of one joint venturer or his employee acting in connection with the joint venture is imputed to the  
12 other joint venturers.” *Cahill Bros., Inc. v. Clementina Co.* 208 Cal.App.2d 367, 387; 25 Cal.Rptr.  
13 301, 313 (1962).

14 Accordingly, based on the allegations of the complaint and the evidence proving the existence  
15 of a joint venture, Fagel is liable for the consequences of Silberberg’s negligence in Nevada.

## 16 **VI. CONCLUSION**

17 In its motion to dismiss, Fagel argued (at page 15, lines 9-20):

18 “In deciding whether exercising specific personal jurisdiction is  
19 appropriate, the Court considers a three-prong test; (1) [t]he defendant must  
20 purposefully avail himself of the privilege of acting in the forum state or of  
21 causing important consequences in that state. (2) The cause of action must  
22 arise from the consequences in the forum state of the defendant’s activities,  
23 and (3) those activities, or the consequences thereof, must have a substantial  
24 enough connection with the forum state to make the exercise of jurisdiction  
25 over the defendant reasonable. *Consipio Holding, BV v. Carlberg*, 282 P.3d  
26 751,755 (Nev. 2012); see also *Viega GmbH*, 328 P.3d at 1157 (recognizing  
27 specific personal jurisdiction arises when the foreign defendant “purposefully  
28 enters the forum’s market or establishes contacts in the forum and

affirmatively directs conduct there, and the claims arise from that purposeful contact or conduct.”) (citing *Arbella*, 122 Nev. at 513).”

Plaintiffs agree. The evidence submitted by plaintiffs satisfies all three prongs of the requirements for specific personal jurisdiction. Accordingly, it is respectfully requested that Fagel's motion to dismiss be denied.

DATED this 4th day of June, 2021.

Respectfully submitted,

**MAIER GUTIERREZ & ASSOCIATES**

/s/ Jason R. Maier

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# **EXHIBIT 1**

# **EXHIBIT 1**



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*Attorneys for SHOOP A Professional Law Corporation/Thomas S. Alch  
aka Thomas Steven Alch*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DARIA HARPER, an individual; and  
DANIEL WININGER, an individual,

Plaintiffs,

v.

COPPERPOINT MUTUAL INSURANCE  
HOLDING COMPANY, an Arizona  
corporation; COPPERPOINT GENERAL  
INSURANCE COMPANY, an Arizona  
corporation; LAW OFFICES OF  
MARSHALL SILBERBERG, P.C., a  
California corporation; KENNETH  
MARSHALL SILBERBERG aka  
MARSHALL SILBERBERG aka K.  
MARSHALL SILBERBERG, an individual;  
THOMAS S. ALCH aka THOMAS STEVEN  
ALCH, an individual; SHOOP, A  
PROFESSIONAL LAW CORPORATION, a  
California corporation; DOES 1-50, inclusive,

Defendants.

Case No. A-20-814541-C  
Dept. 30

**DECLARATION OF THOMAS S. ALCH**

THOMAS S. ALCH, declares and states as follows:

1. I am an attorney, duly licensed and in good standing to practice law in Nevada and California.

2. I make this Declaration in support of Defendant, Shoop, A Professional Law Corporation's, Motion to Dismiss for Lack of Jurisdiction pursuant to NRCP 12(b)(2) as well as

1 Defendant's Motion to Dismiss claims for Punitive Damages. All of the information set forth in  
2 this Declaration is based upon my personal knowledge. If called as a witness, I would and could  
3 testify competently to the following information:

4  
5 3. In March 1997, I became an employee of The Law Offices of Bruce G. Fagel &  
6 Associates ("Fagel Firm") as an associate attorney. I was an employee of The Law Offices of  
7 Bruce G. Fagel & Associates for more than 20 years, from approximately March 17, 1997 to  
8 September 15, 2017.

9  
10 4. As part of my employment with, and at the request of, the Fagel Firm, I took the  
11 Nevada Bar exam for the purpose of becoming licensed in Nevada, so that the Fagel Firm could  
12 advertise for, obtain and handle Nevada medical malpractice cases. I passed the bar exam and  
13 became licensed to practice law in Nevada on October 12, 1999.

14  
15 5. Pursuant to the Nevada Rules of Professional Conduct that existed at the time, if an  
16 office did not have local counsel, the name of the law office for marketing purposes had to be  
17 named after the Nevada licensed attorney, but could be "in association with" the non-Nevada firm.  
18 Additionally, there had to be a local office open during business hours to accept service of  
19 documents.

20  
21 6. The Fagel Firm established and paid for a local office, first at 2950 E. Flamingo in  
22 Las Vegas, Nevada, and later at 500 N. Rainbow, Suite 300 in Las Vegas, Nevada.

23  
24 7. Under the course and scope of my employment with the Fagel Firm, I established the  
25 fictitious firm name of the Law Offices of Thomas S. Alch.

26  
27 8. I never established a separate corporation, partnership or law firm. I filed a fictitious  
28 name permit in Clark County for the Law Offices of Thomas S. Alch.

9 The Fagel Firm paid for and performed all of the advertising for Las Vegas medical  
malpractice cases and paid for and rented the office space.

1           10.     The clients signed retainers for The Law Offices of Thomas S. Alch in Association  
2 with The Law Offices of Bruce G. Fagel & Associates.

3           11.     When cases were filed, they were filed with The Law Offices of Thomas S. Alch on  
4 the pleadings, showing both the Las Vegas address that was rented by the Fagel Firm as well as the  
5 address for the Fagel Firm's Beverly Hills address.  
6

7           12.     As an employee of the Fagel Firm I worked on the cases that were assigned to me.

8           13.     In 2016, sometime prior to June 7, Marshall Silberberg, Esq., contacted my  
9 employer, Dr. Bruce G. Fagel, requesting that the Fagel Firm co-counsel a medical malpractice case  
10 for Daria Harper and Daniel Winger because I was licensed to practice in Nevada.

11           14.     My understanding was that Mr. Silberberg and the Fagel Firm would be sharing the  
12 fees equally.  
13

14           15.     I was assigned the Harper case while I was an employee at the Fagel Firm and  
15 proceeded to file the case with the pleadings reading The Law Offices of Thomas S. Alch and using  
16 the Fagel Firm's addresses and phone numbers.

17           16.     My understanding was that once the complaint was filed, we would move to  
18 associate in Marshall Silberberg and his associate, Will Collins, Esq., which was done in October  
19 2016 and approved by the court.  
20

21           17.     While an employee of the Fagel Firm, I attended the Medical Malpractice Status  
22 Checks on the case.

23           18.     After the Motions to Associate were granted in October, 2016, Mr. Silberberg and  
24 Mr. Collins conducted the case work up including discovery and depositions.

25           19.     I left the Fagel Firm on approximately September 15, 2017. I agreed to keep my  
26 name on the *Harper* case as local counsel as Mr. Silberberg and Mr. Collins' Motions to Associate  
27 were based on myself as local counsel.  
28

1           20.     I agreed with the Fagel Firm to keep my name on the case.

2           21.     On September 18, 2017, I became an employee of Shoop, A Professional Law  
3 Corporation.

4           22.     I do not have, nor have I ever had, an equity or ownership interest in Shoop, A  
5 Professional Law Corporation.  
6

7           23.     David R. Shoop, the firm's owner, never worked on the case and was never  
8 associated into the case. Shoop, A Professional Law Corporation was never associated into the  
9 case.

10          24.     Shoop, A Professional Law Corporation never entered into a retainer agreement with  
11 Ms. Harper or Mr. Wininger.

12          25.     Mr. Silberberg's office continued to prosecute the case as they had been doing.

13          26.     I had an existing oral agreement with the Fagel Firm that I would receive a bonus of  
14 10% of the attorney fees recovered by the Fagel Firm on Nevada cases.  
15

16          27.     Mr. Silberberg attended a mediation on this matter before retired Judge Stuart Bell. I  
17 was not at the mediation.

18          28.     Mr. Silberberg informed me that the case settled for a total of \$6,250,000.

19          29.     The up-front cash portion was received and distributed by Mr. Silberberg.

20          30.     I was not involved the distribution of the up-front cash portions of the settlement,  
21 and was not involved in discussions or communications with Ms. Harper or Mr. Wininger regarding  
22 fees and costs.  
23

24     ///

25     ///

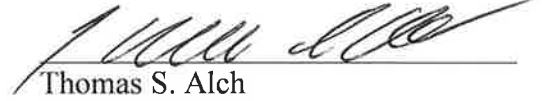
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27     ///  
28

1           31. I was never asked to, nor did I, share any of the attorney fees with Shoop, A  
2 Professional Law Corporation or with David Shoop personally.

3           I declare under penalty of perjury under the laws of the State of California that the foregoing  
4 is true and correct.

5           Executed this 29th day of July, 2020 in Beverly Hills, California.

7  
8   
Thomas S. Alch

# **EXHIBIT 2**

# **EXHIBIT 2**

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

3 \* \* \* \* \*

4

5 DARIA HARPER, an individual;  
6 and DANIEL WININGER, an  
7 individual,

8 Plaintiffs, Case No. A-20-814541-C  
9 vs. Dept. No. 30

10 COPPERPOINT MUTUAL INSURANCE  
11 HOLDING COMPANY, an Arizona  
12 corporation; COPPERPOINT  
13 GENERAL INSURANCE COMPANY, an  
14 Arizona corporation, et al.,

15 Defendants.

16

17

18 VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF

19 THOMAS STEVEN ALCH

20 Taken on December 29, 2020

21 at 10:06 a.m.

22 By a Certified Court Reporter

23 Las Vegas, Nevada

24

25 Stenographically reported by:  
Heidi K. Konsten, RPR, CCR  
Nevada CCR No. 845 - NCRA RPR No. 816435  
OASIS JOB NO. 41838

1           Videotaped videoconference deposition of  
2   THOMAS STEVEN ALCH, Volume 1, stenographically  
3   remotely taken in Las Vegas, Nevada, on Tuesday,  
4   December 29, 2020, at 10:06 a.m., before Heidi K.  
5   Konsten, Certified Court Reporter in and for the  
6   State of Nevada.

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Also present:   Johnny Randall, Videographer

\* \* \* \* \*



1	EXHIBITS (continued)		
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\* \* \* \* \*

1                    LAS VEGAS, NEVADA

2                    Tuesday, December 29, 2020

3                    10:06 a.m.

4                    DEPOSITION OF THOMAS STEVEN ALCH

5                    \* \* \* \* \*

6

7                    THE VIDEOGRAPHER: Good morning. Today  
8 is Tuesday, December 29th, 2020. The time is  
9 approximately 10:06 a.m. This is the remote  
10 deposition of Steven Thomas Alch [sic] in the case  
11 of Daria Harper, et al., versus CopperPoint Mutual  
12 Insurance Holding Company, et al.

13                  I am Johnny Randall with Oasis Reporting  
14 Services. I will be monitoring the proceeding and  
15 recording both video and audio today.

16                  At this time, I will ask counsel to  
17 identify themselves, state whom they represent,  
18 and agree on the record that there is no objection  
19 to the court reporter administering a binding oath  
20 to the witness through remote videoconferencing.  
21 If no objection is stated, we will proceed forward  
22 with the agreement of all counsel.

23                  Let's begin the appearances with the  
24 noticing attorney.

25                  MR. BLUMBERG: John Blumberg for

1    plaintiffs.

2            MR. MAIER: Jason Maier, local counsel  
3    for plaintiffs.

4            MR. CLARK: David Clark on behalf of  
5    Thomas Alch, the deponent, and Shoop Corporation,  
6    also a defendant.

7            MS. RANDOLPH: Sami Randolph on behalf  
8    of CopperPoint Mutual Insurance Holding Company  
9    and CopperPoint General Insurance Company,  
10   defendants.

11           MR. SCHWALBACH: Jon Schwalbach for  
12   Marshall Silberberg and the Law Offices of  
13   Marshall Silberberg.

14           MR. McBRIDE: Robert McBride, local  
15   Nevada counsel for Marshall Silberberg and the Law  
16   Offices of Marshall Silberberg.

17           THE VIDEOGRAPHER: The court reporter  
18   today is Heidi Konsten with Oasis Reporting  
19   Services. The reporter may now swear in the  
20   witness.

21

22   Whereupon,

23           THOMAS STEVEN ALCH,  
24   was called as a witness, and having been first duly  
25   sworn to testify to the truth, was examined and

1    testified as follows:

2

3                                    EXAMINATION

4    BY MR. BLUMBERG:

5            Q    Would you state your full name, please.

6            A    Sure. Thomas Steven Alch.

7            Q    Mr. Alch, you are an attorney at law?

8            A    I am.

9                    Are you -- I'm trying to just get --

10    yes, I am, John. I'm just trying to find you.

11    It's easier to kind of follow to see -- okay.

12    Thank you.

13            Q    I'm the good-looking one in the blue  
14    shirt.

15            A    That's how I found you.

16            Q    All right. Let's start over again.

17                    You're an attorney licensed to practice  
18    law in California?

19            A    Yes.

20            Q    Also you're licensed to practice law in  
21    Nevada and Arizona; is that correct?

22            A    Yes, sir.

23            Q    Before we get started with testimony  
24    today, I assume you are familiar with -- with the  
25    procedures in giving deposition testimony?

1        A    I am, yes.

2        Q    Is there anything that would prevent you  
3 from being able to understand questions that are  
4 put to you and be able to give responses to  
5 questions? Anything that would interfere with  
6 that ability such as illness, fatigue, medication,  
7 anything?

8        A    No, sir.

9        Q    Do you feel that today you are able to  
10 give testimony in this matter?

11       A    Yes.

12       Q    Just by way of some biographical  
13 background, as of 2016, how many jury cases had  
14 you tried to verdict as first chair?

15       A    Probably less than five.

16       Q    Can you give me an idea of how many less  
17 than five?

18       A    I would say three, I believe.

19       Q    As of 2016, how many binding medical  
20 malpractice arbitrations had you handled as first  
21 chair?

22       A    I think I did one when I was defense  
23 attorney for Kaiser.

24       Q    Are you a certified specialist in any  
25 fields -- any fields of law?

1           A   No.

2           MR. BLUMBERG: I'm going to mark as

3 Exhibit A -- let me put it on the screen here.

4                   (Exhibit A was marked for

5                   identification.)

6 BY MR. BLUMBERG:

7           Q   I'm going to mark as Exhibit A the

8 notice of today's deposition.

9           Do you see it on the screen?

10          A   I do.

11          Q   And the notice requires the production

12 of numerous documents.

13           Have you brought any documents with you

14 today that are responsive to the document request

15 in the notice of taking deposition?

16          A   Today, I've produced to my counsel one

17 additional document, I think the same as a

18 production demand. But there was an additional

19 document or two that I produced. It was a 1099

20 for 2018 from the Law Offices of Bruce Fagel to

21 me. And then attached to it -- I did the math to

22 figure out the Harper fees that Bruce Fagel paid

23 me. And so there was another case also they had

24 paid me on, so I think I sent that document as

25 well.



1           Q   We'll get to that later.

2            Aside from those documents, have you  
3 brought any other documents?

4           A   No, sir.

5           Q   Now, you were previously employed by  
6 Bruce Fagel. And when I say "Bruce Fagel," I mean  
7 the Fagel firm, the Fagel law corporation.  
8 Whenever I use that term, it's going to be in  
9 general. And so when I say "the Fagel firm," that  
10 would refer to Bruce Fagel and his law firm.

11           Do you understand that?

12          A   Yes.

13          Q   So you were previously employed by Bruce  
14 Fagel, weren't you?

15          A   Yes, I was.

16          Q   And while you were employed by Bruce  
17 Fagel, he paid for an office in Las Vegas, didn't  
18 he?

19          A   Correct.

20          Q   And that would be an office so that you  
21 could have a physical presence in Nevada?

22          A   That's correct. But when they -- when  
23 the Fagels wanted to open up a Nevada office or  
24 specifically Las Vegas, then they got a location  
25 so we could have a physical address.

1        Q    While you were at the Fagel firm, how  
2 often were you physically at the Las Vegas office?

3        A    Physically there, I would say very  
4 infrequently. I think I did a few depositions at  
5 that location over the -- over all of the years,  
6 and then depositions in other locations.

7        Q    So were you there -- for example, did  
8 you ever conduct business there, other than using  
9 it to take a deposition or to have a client's  
10 deposition taken?

11       A    I'm not sure I understand the question.  
12 I would think that's business. I think there were  
13 times when I was working for Dr. Fagel's office  
14 where I might have picked up some mail there.

15       Q    All right. But other than picking up  
16 mail and being there for a deposition  
17 occasionally, were you there for any other  
18 purpose?

19       A    Probably client meetings. I think we  
20 met with some clients using that -- using that  
21 address.

22       Q    Do you recall when the Fagel office  
23 first started renting a physical space for your  
24 use in Las Vegas?

25       A    Yeah. Right when I took and passed the

1    bar. They always wanted to open up an office  
2    there, so they asked me to take and pass the bar  
3    there. And then they opened up an office right  
4    after I became an attorney in Las Vegas, which was  
5    1999. I think first we started at Flamingo, and  
6    then they got the Rainbow -- or the Rainbow  
7    office.

8            Q    You've used the word "they" a couple of  
9    times when you're talking about the Fagel firm.

10           When you refer to "they," who are you  
11    referring to?

12           A    The Law Office of Bruce Fagel.

13           Q    So could you describe for me, is that  
14    an -- an office by itself? Is it an office  
15    contained in an executive suite kind of  
16    arrangement? Could you describe what the office  
17    was?

18           A    Sure. The last office, the one on -- I  
19    think it's the Rainbow office, that was kind of  
20    like we have here, like a Fegen Suite where there  
21    was a full-time secretarial station and somebody,  
22    you know, operating the secretary/receptionist  
23    station 8:30 to 5:30, I think is what was required  
24    when I first became licensed there. You needed  
25    some kind of physical address for things to be

1    delivered.

2            And so then I -- there were a number of  
3    offices in that suite, and I think we had access  
4    to one and the conference rooms.

5            Q    There are very few people who use the  
6    word "Fegen Suite" anymore, but I know what you're  
7    referring to.

8            A    It's a little old. It might be called  
9    HQ or Regency now. Sorry.

10          Q    That's okay.

11            So if mail were delivered for you at  
12    that office, how would you end up receiving it?  
13    Would it -- I mean, for example, did it get  
14    forwarded? Did it get faxed to you? Could you  
15    explain that process?

16          A    It was very rare. So for the Las Vegas  
17    cases, we got mail -- or everything got delivered  
18    to actually Fagel Beverly Hills office. And so  
19    that was always on the -- proofs of service and so  
20    forth -- I don't know exactly. I know there were  
21    a couple of times, I think over the years, where  
22    that Fegen Suite -- or whatever you want to call  
23    it -- sent us things that got delivered there.

24            They were usually nothing related to  
25    cases. It was more advertising mail. I might

1    have, when I was in town, maybe popped in to pick  
2    something up. But everything case-related went  
3    right to the Beverly Hills office.

4        Q    How was that arranged? Because on  
5    pleadings, you would use both the Las Vegas  
6    address and the Beverly Hills address.

7            How did either your opponents or the  
8    court know not to send things to the Las Vegas  
9    office, if they -- if they actually knew that?

10        Q    Sure. I think it was just by  
11    cooperation. When I first started there -- and I  
12    don't remember the exact ethics rule, but we did  
13    whatever was required. I think you couldn't  
14    name -- there were all sorts of naming rules for  
15    how a firm got named.

16            And I remember my very first case, I  
17    think I had it listed as Law Offices of Thomas S.  
18    Alch, in association with Law Offices of Bruce G.  
19    Fagel. And we had, I think, the Beverly Hills  
20    address first and then the Las Vegas address.  
21    This is just out of memory.

22            And I remember, I think Commissioner  
23    Biggar -- or Judge Biggar now, he made a comment  
24    that he wanted the Las Vegas address listed first.  
25    And then it was either he or Judge Bulla -- or

1    Commissioner Bulla, when she became commissioner,  
2    who made some comment about how it should just say  
3    my name on it, on a pleading.

4            And so I -- rather than fight or do  
5    anything, that's how we did it. And then we would  
6    use, you know, the Fagel letterhead. But I think  
7    that's how it happened. And then everyone pretty  
8    much cooperated. And I think there used to be a  
9    stipulation or something where we all agreed --  
10   that was before e-mails, I think, or before  
11   electronic service -- where we all agreed where we  
12   would just -- things would get mailed and served  
13   on me at the Fagel Beverly Hills office, and  
14   everybody was pretty cooperative.

15        Q    Going to 2016, did you know Marshall  
16   Silberberg?

17        A    Yes.

18        Q    How had you first met Marshall  
19   Silberberg? How did you know him?

20        A    I had known him, I think, most of my  
21   career. He was a defense lawyer with Baker  
22   Silberberg & Kenner. I didn't have a relationship  
23   with him, but of course I knew of his name. He's  
24   one of the biggest and best.

25            And then over the years, I know he was

1    good friends with the Fagels. I think when I was  
2    at Bruce's, he was -- Marshall was still a defense  
3    attorney at one point. I might have had a case  
4    with Bruce against Marshall, that was Marshall as  
5    a defendant.

6        Q    Had you ever acted as cocounsel with  
7    Marshall Silberberg before the Harper case?

8        A    No, sir.

9                    (Exhibit No. 1 was marked for  
10                    identification.)

11    BY MR. BLUMBERG:

12        Q    All right. I'm going to bring up, as  
13    Exhibit 1, a declaration that you signed in this  
14    case.

15            All right. And you see the declaration  
16    on the screen?

17        A    I do. It's not complete. It might need  
18    to be made smaller a little or -- or blown up, but  
19    I see about two-thirds of it.

20        Q    Well, I'll tell you what. Let me do it  
21    this way. There's the whole page.

22            Is that better?

23        A    Oh, that is. I -- I'll get a little  
24    closer. But, yeah, I can see all -- all 28 lines.

25        Q    All right. And then on the last page is

1    a signature.

2            Is that your signature?

3        A    Yes, it is.

4        Q    Now, going to paragraph 13 -- and let me  
5    enlarge it a little bit. It says "In 2016,  
6    sometime prior to June 7, Marshall Silberberg,  
7    Esq., contacted my employer, Dr. Bruce G. Fagel,  
8    requesting that the Fagel firm cocounsel a medical  
9    malpractice case for Daria Harper and Daniel  
10    Wininger because I was licensed to practice in  
11    Nevada."

12           How did you become aware of that?

13        A    Bruce told me.

14        Q    What is it that he told you?

15        A    In general that Marshall had a medical  
16    malpractice case that involved Nevada and wanted  
17    to file in Nevada, and I think there was a  
18    potential Arizona component also. And since I was  
19    licensed in both those states, that would be a  
20    case that I would be working on.

21        Q    At some point, did you have a  
22    conversation with Mr. Silberberg about what the  
23    case was?

24        A    We did. I know before it got filed, it  
25    wasn't -- yeah, we did. Bruce, Marshall, and I



1    did.

2            Q    All right. Was that an in-person  
3 meeting between you and Bruce Fagel and Marshall  
4 Silberberg?

5            A    On the phone.

6            Q    I'm going to go to paragraph ten of  
7 Exhibit 1, your declaration. And it says "The  
8 clients signed retainers for the Law Offices of  
9 Thomas S. Alch, that in association with the Law  
10 Offices of Bruce G. Fagel & Associates."

11                  How do you know that's a true statement?

12            A    Because the Nevada cases that I handled  
13 with Bruce where they -- Bruce advertised in  
14 Nevada -- in the phone book in Las Vegas for  
15 Nevada cases. So over the years, starting in  
16 1999, when Bruce signed up cases, I think the way  
17 the law required it, the retainer had to say the  
18 Law Offices of Thomas S. Alch in association with  
19 the Law Offices of Bruce G. Fagel & Associates.

20                  And that, John, is referencing the cases  
21 that Bruce brought in. So if you're -- I see what  
22 you're saying. It's not Harper, but that's how  
23 Bruce handled the Nevada cases he brought in.

24            Q    My question is specific with regard to  
25 what is stated in paragraph ten, where it says

1    "The clients signed retainers for the Law Offices  
2    of Thomas S. Alch, that in association with the  
3    Law Offices of Bruce G. Fagel & Associates."

4            How do you know that it is a true  
5    statement that the clients signed retainers?

6            A    Which clients are you referring to?

7    What I'm referring to in that declaration is the  
8    clients in the cases Bruce brought in. And so  
9    those cases that I handled with Bruce's office,  
10   other than Harper, the ones that just came in  
11   through Dr. Fagel, that's how it was always done.

12           And I think I had about -- in the  
13   ballpark, Las Vegas, Nevada, cases with the Fagel  
14   firm when I worked there.

15           Q    Okay. Thank you for clarifying that.

16           Do you have any knowledge that Daria  
17   Harper and her husband actually signed a retainer  
18   for the Law Offices of Thomas S. Alch in  
19   association with the Law Offices of Bruce G.  
20   Fagel & Associates?

21           A    No, I don't. I didn't see one.

22           Q    Would it be correct that you never had  
23   an attorney-client contract with Daria Harper or  
24   her husband?

25           A    I think that's -- I think that's true.

1    I think, in what we produced, Marshall Silberberg  
2    had written a letter saying Bruce Fagel and me  
3    working in Bruce's office would be on the case,  
4    but I -- in terms of like a formal retainer, I  
5    have not seen one. That's true.

6        Q    You referred to a letter that Marshall  
7    Silberberg sent to his clients.

8            Prior to this lawsuit, had you ever seen  
9    that letter?

10        A    No, I hadn't.

11        Q    Have you reviewed documents in this  
12    case, such as documents produced by Marshall  
13    Silberberg's office?

14        A    Not in any detail. I skimmed his  
15    deposition transcript.

16        Q    All right. Other than his deposition  
17    transcript, have you reviewed his document  
18    production, for example, or any part of it?

19        A    No, other than what would be in the  
20    transcript. But nothing beyond that.

21        Q    Did you examine the exhibits in Marshall  
22    Silberberg's transcript?

23        A    I think some I was able to pop up or  
24    look at or I could see what they were talking  
25    about.

1        Q    Did you read the transcript of Will  
2 Collins?

3        A    I did. I skimmed that, as well.

4        Q    Now, you filed a complaint in Clark  
5 County in the Harper case; correct?

6        A    We -- or the Law Office of Bruce Fagel  
7 did with Marshall Silberberg, but I was the Nevada  
8 attorney.

9        Q    Well, let me ask it this way. Was your  
10 name on the complaint as attorney of record for  
11 Daria Harper and Daniel Wininger?

12       A    Yes.

13       Q    Now, before the complaint was filed, did  
14 you review it to make sure that it complied in all  
15 aspects with Nevada procedural requirements?

16       A    I did.

17       Q    How did you do that?

18       A    I -- I frankly can't remember if Bruce  
19 asked me to send Marshall's office a draft of a  
20 Nevada complaint and they worked on it. But I  
21 remember reading it all, and I know they had some  
22 of the required affidavits, declarations that  
23 Bruce and Marshall had talked about and just went  
24 through them.

25           I'm assuming, frankly -- and I'm not

1    sure, but I'm assuming we probably started with  
2    a -- with a form that we had used in a previous  
3    Las Vegas case with the Fagel office.

4        Q    As of 2016, how many cases had you filed  
5    as attorney of record in -- in Las Vegas or in --  
6    in Nevada?

7        A    I would say about ten. I don't -- right  
8    in that range. It could be a little bit less,  
9    probably really nothing significantly more.

10       Q    Had you been involved in the trials of  
11    any of those ten cases? Let me ask it a different  
12    way.

13            Did any of those ten cases go to trial?

14        A    No.

15        Q    You knew in 2016 that in a Nevada  
16    medical malpractice case, expert affidavits had to  
17    be filed when the complaint was filed?

18        A    Correct.

19        Q    And in the Harper case, did you make  
20    sure that the expert affidavits were all in proper  
21    form?

22        A    If I understand your question right, we  
23    had expert affidavits. Yes, I know I reviewed  
24    them, because they -- because they were attached  
25    to the complaint and, you know, they had to talk

1    about standard of care. And I can't remember if  
2    they had to talk about causation or not. But I  
3    would have gone over them before we filed it.

4        Q    You actually made changes to the -- at  
5    least one of the affidavits, that of Dr. Neer,  
6    before it was finalized and -- and signed and  
7    filed, didn't you?

8        A    I don't remember.

9            MR. CLARK: Object to form.

10          THE WITNESS: I -- I wouldn't deny it.  
11    I'm sure I would have reviewed them all and made  
12    sure they were appropriate.

13    BY MR. BLUMBERG:

14        Q    Before you filed the complaint, what  
15    were the discussions you had with Marshall  
16    Silberberg about what he expected your role to be  
17    in the case?

18        A    Sure. When we had the conversation with  
19    Bruce and Marshall, Marshall really just needed  
20    somebody with -- number one, with a license who  
21    could practice in Nevada; and, two, just make sure  
22    that the procedural requirements were -- were  
23    followed. Deadlines, like you said, getting the  
24    complaint ready for filing, and making sure that  
25    that complied with the Nevada requirements. And

1    that was essentially it in terms of, like, what my  
2    involvement would be.

3        Q    Would it be correct that the plan was  
4    for you to file the complaint in Clark County and  
5    then make a motion to permit Marshall Silberberg  
6    and Will Collins to be admitted pro hac vice in  
7    Nevada?

8        A    Yes.

9        Q    And that they then associate in as  
10   counsel in the case?

11       A    Correct.

12           MR. BLUMBERG: I'm going to bring up  
13   Exhibit 2.

14                    (Exhibit No. 2 was marked for  
15                    identification.)

16   BY MR. BLUMBERG:

17        Q    Exhibit 2 is a copy of Rule 42 of the  
18   Nevada rules of practice.

19           As of 2016, were you aware of Rule 42?

20        A    I was.

21        Q    And this pertains to the practice of  
22   attorneys who aren't admitted in Nevada; correct?

23        A    I believe so, yes.

24        Q    And you knew that the rule applied to  
25   all actions or proceedings that were pending

1    before any Nevada state court; would that be  
2    correct?

3        A    Correct. I see you highlighted it  
4    there, but, yes. I mean, I don't remember the  
5    rule, but I believe that's the accurate rule.

6        Q    Now, going down to another area that I  
7    have highlighted -- and let me just reduce this  
8    one. Okay. That may be a little too small to  
9    see, so let me bring it up a little bit more.

10        You understood that the rule applied to  
11    all legal services in a case that included  
12    discovery and settlement negotiations, didn't you?

13        A    I -- I guess. And I'm familiar with the  
14    rule. I don't remember all of the detail or the  
15    subparts that you're showing to me now.

16        Q    Going down to Number 14 of Rule 42, it  
17    talks about the responsibilities of the Nevada  
18    attorney of record and says "The Nevada attorney  
19    of record shall be responsible for and actively  
20    participate in the representation of a client in  
21    any proceeding that is the subject of this rule."

22        You were familiar with that, weren't  
23    you?

24        A    I assume so. I'm sure I would have read  
25    it at that time.



1        Q    Would it have been your intention in  
2    acting as local counsel in the Harper case that  
3    you would abide with the requirements of Rule 42?

4        A    I would abide with all -- by all  
5    requirements.

6        Q    Including the --

7        A    I had -- you know, obviously I had  
8    Marshall and Bruce, who were the two biggest and  
9    best -- some of the two biggest and best  
10   malpractice attorneys in the country, so they're  
11   obviously even more experienced and better than I  
12   am. But whatever help was needed, if they had  
13   asked for it, of course.

14       Q    Well, what was your understanding of  
15   Rule 14(a) -- or subpart 14(a) where it says the  
16   Nevada attorney of record shall be responsible for  
17   and actively participate in the representation of  
18   a client?

19       A    I don't know if I ever gave it any deep  
20   analysis. It was make sure that things got filed  
21   timely and the local rules got followed, pleadings  
22   and such were appropriate and formatted and so  
23   forth.

24       Q    While you were employed by Bruce Fagel,  
25   did you have a financial arrangement with him

1    where you would receive a percentage of total  
2    attorney fees that might be earned in a case that  
3    you were handling in Las Vegas?

4        A    Yes.

5        Q    What was that arrangement?

6        A    It was 10 percent of the attorney fee.

7        Q    Was that with regard only to cases that  
8    you were handling for the firm in Las Vegas, or  
9    was -- did that apply to all cases you were  
10   handling?

11       A    That was for Las Vegas -- or Nevada. I  
12   think all of our cases were for Las Vegas, but  
13   that was for Las Vegas.

14       Q    On how many occasions, of those ten  
15   cases that you had handled -- let me -- let me  
16   back up a little bit.

17            When you previously answered about  
18   having handled ten cases in Nevada, I'm not sure  
19   that I recall the time parameter on that.

20            Is that --

21        A    It was about -- sure. It was about ten.  
22   I got licensed in 1999, so starting then up until  
23   the time I left in 2017.

24        Q    How many of those ten cases were -- were  
25   cases where you were associated with an attorney

1    or law firm other than Bruce Fagel's firm?

2        A    None, other than ultimately this Harper  
3    case.

4        Q    Did you have an understanding that one  
5    of your responsibilities in the Harper case was  
6    that you would give advice to Marshall Silberberg  
7    about Nevada law as it pertained to the case?

8            MR. CLARK:  Objection to form.

9            THE WITNESS:  Not really, unless asked.

10    And that really all just occurred during the  
11    start-up of the case, that first few months in  
12    2016 where we had conversations with Marshall and  
13    Bruce.

14    BY MR. BLUMBERG:

15        Q    How many conversations did you have with  
16    Bruce Fagel about this case while you were at the  
17    Fagel firm?  Was it just a few, or were there  
18    countless conversations?

19        A    I don't know how to answer it that way.  
20    I'm sure -- I know we had a few times -- and all I  
21    can say is "a few."  I can't give you an exact  
22    number -- where we spoke with Bruce and Marshall  
23    on the phone in that first few months, and then  
24    probably a few other times with just Bruce.

25            But I couldn't even give you an -- an

1    exact number like that, but a number of times that  
2    first three months.

3            Q    And what about after that?

4            A    After that, very little. Because I  
5    think the case had gotten off the ground and  
6    Marshall was litigating it, so I would say very  
7    few. It was all kind of at the beginning about  
8    venue and where they wanted to file.

9            Q    When did you meet Will Collins?

10          A    I spoke with him over the phone a number  
11    of times when I was at Bruce's, so it would be in  
12    that 2016 - '17 time period. I'm not sure I've  
13    met Will personally, you know, physically.

14          Q    Do you know -- strike that.

15                I know that when you filed the -- the  
16    motion for them to be admitted, I think that was  
17    in October of 2017, so --

18          A    Probably 2016. I didn't mean to  
19    interrupt, but --

20          Q    No, that's good. Every once in a while,  
21    I need to be interrupted and corrected, so thank  
22    you. Let me start over again.

23                Do you recall the first conversation or  
24    when the first conversation was with Will Collins?

25          A    No.

1           Q    Do you know whether Marshall Silberberg  
2    had ever handled a case in Nevada before?

3           A    I don't know.

4           Q    Were you assuming that he would be  
5    familiar with Nevada medical malpractice law?

6           A    Sure. I'm sure -- Marshall, as you  
7    know, John, is -- is one of the big names in  
8    medical malpractice for decades, and I think an  
9    ABOTA member also. So I was sure -- obviously  
10   when I was working at Bruce's, if they had  
11   questions. But I was also sure they would do  
12   their workup also and do their evaluations,  
13   research, and would be running the case.

14          Q    Would it be a correct statement that you  
15   were assuming that Marshall Silberberg would do  
16   whatever research was necessary so that he knew  
17   about the Nevada laws that applied to medical  
18   malpractice cases?

19          A    Yeah. I was confident Marshall would --  
20   would handle everything appropriately.

21               MR. BLUMBERG: I'm going to bring up, as  
22   the next exhibit, Number 3.

23                       (Exhibit No. 3 was marked for  
24                       identification.)

25

1    BY MR. BLUMBERG:

2            Q    Exhibit 3 is an e-mail of yours that was  
3    forwarded to Will Collins, but we see the original  
4    e-mail from you on September 30, 2016, to Marshall  
5    Silberberg and Will Collins and Janette Dockstader  
6    in the Silberberg office.

7            Do you recall sending this e-mail?

8            A    I have some recollection now that I've  
9    seen it, yes.

10          Q    Why did you send it?

11          A    It was discussions that we had -- or I  
12    had participated in that Marshall and Bruce had  
13    had, starting even at the beginning prefiling,  
14    about -- this case had, I think, an Arizona  
15    component also and a Las Vegas component. So  
16    Marshall and Bruce were talking about kind of the  
17    pros and cons of do they prosecute the case  
18    against the Nevada defendants and/or the Arizona  
19    defendants and the pros and cons of that.

20            It was a tough -- super tough causation  
21    case, as I recall, from their analysis regardless.  
22    But they were talking about various laws in both  
23    states and collateral sources and -- and that  
24    Nevada's MICRA -- or, you know, medical  
25    malpractice laws, as I recall, were very similar

1    to California's in that regard. And I think Bruce  
2    and I had just been working on a case or we had  
3    done -- not relative to workers' comp, but some  
4    collateral source motions in limine for a Nevada  
5    case.

6            And so when we were talking, I said I  
7    would send what we had. And then so that was NRS  
8    42.021. And I think there were a couple of  
9    motions in limine also that dealt with those  
10   issues.

11        Q    But my question is, why did you send a  
12   copy of NRS 42.021 to Marshall Silberberg and Will  
13   Collins?

14            MR. CLARK: Objection. Asked and  
15   answered.

16   BY MR. BLUMBERG:

17        Q    Let me ask -- let me ask it this way.

18            You previously stated that you assumed  
19   that Marshall Silberberg would do all of the  
20   research necessary to become and be familiar with  
21   Nevada law. Is that a correct statement?

22        A    I don't think I said "assumed." I was  
23   confident Marshall would handle everything  
24   appropriately. But this was from a discussion  
25   that the three of us had, and I was asked to send

1    what I had and what the Fagel office had on MICRA  
2    or the -- the Nevada version of that.

3            Q    And that was NRS 42.021; correct?

4            A    And I think there was attached motions  
5    in limine.

6            Q    Would it be correct that you were  
7    involved in the responses to written discovery in  
8    the case --

9            MR. CLARK: Objection to form.

10           THE COURT REPORTER: Wait a minute. I  
11    got the objection to form, but I didn't hear the  
12    remainder of the question. There was overtalk.

13    BY MR. BLUMBERG:

14           Q    Would it be correct that you were  
15    involved in responding to written discovery that  
16    was propounded by the defendants in the underlying  
17    Harper case?

18           A    I don't have a memory, but I'm sure at  
19    the beginning there probably was initial  
20    discovery. And we would have sent it out through  
21    the Fagel office or with Marshall or they would  
22    have sent it to me to review.

23           Q    Well, why wouldn't you -- do you have a  
24    recollection of why it would have been sent to you  
25    to review?



1           A   Not other than just it's the start of  
2 the case. And it was a Nevada case, and I need to  
3 make sure it was formatted appropriately and so  
4 forth.

5           MR. BLUMBERG: I'm going to bring up the  
6 next exhibit, which is Exhibit 4.

7                   (Exhibit No. 4 was marked for  
8                   identification.)

9 BY MR. BLUMBERG:

10       Q   Exhibit 4 is a response by Plaintiff  
11 Daria Harper to Interrogatories Propounded by  
12 Defendant Jeffrey Davidson, M.D. And if we go to  
13 the last page of the document, there is a  
14 signature under Law Offices of Thomas S. Alch.

15           Is that your signature?

16       A   Yes, it is.

17       Q   Do you know why you would have signed  
18 the responses on Exhibit 4?

19       A   Because we were working on the case at  
20 the Fagel office. So I see that Bruce's address,  
21 the Crescent, and then that was our Vegas address,  
22 the Rainbow, yeah.

23       Q   My question is, why would you have  
24 signed the responses to the interrogatories?

25       A   Offhand, I don't know. Just for

1    efficiency's sake. Maybe they went back and  
2    forth. I think Marshall and Will were -- were pro  
3    hac vice or were associated in by then, but I  
4    was -- when I was at Bruce's, I was clearly  
5    working on that.

6        Q    I'm sorry. I didn't get the last few  
7    words. When you were at Bruce's --

8        A    Oh, when I was at Bruce's, I was working  
9    on that. And I see it was -- it says five, but I  
10   thought it was served by my former assistant,  
11   Silvana.

12        Q    Well, the proof of service, which I'm  
13   going to right now, where it says "An employee of  
14   Law Offices of Thomas S. Alch," do you recognize  
15   the signature? Do I need to make it bigger?

16        A    I see it, yes.

17        Q    And was that your assistant?

18        A    I think that's Silvana's, yes.

19            MR. BLUMBERG: I'm going to bring up as  
20   Exhibit 5 another response to discovery.

21                    (Exhibit No. 5 was marked for  
22                    identification.)

23    BY MR. BLUMBERG:

24        Q    And this is a response to discovery --  
25   Daria Harper's Response to Interrogatories from

1    Defendant Murad Jussa, M.D. This was -- shows an  
2    electronic filing on -- an electronic filing on  
3    May 12, 2017.

4            So let me go to the last page again --  
5    the last pages. And there is a signature on the  
6    last page.

7            Is that your signature there?

8        A    Yes, it is.

9        Q    So wouldn't it be a correct statement  
10   that all of the plaintiffs' discovery responses  
11   were sent to the Fagel office for your review?

12        A    That's what it looks like. Certainly  
13   what you showed me, yes, and -- you know, the  
14   initial discovery that the defendants sent out  
15   around that time while I was still at Bruce's,  
16   yes.

17            MR. BLUMBERG: I'm going to bring up the  
18   next exhibit, Number 6.

19            (Exhibit No. 6 was marked for  
20   identification.)

21    BY MR. BLUMBERG:

22        Q    And Exhibit 6 is a collection of  
23   e-mails. And I'm going to just scroll through  
24   them so you can see what I'm talking about. And  
25   these were produced by Marshall Silberberg in this

1    case.

2            So, for example, it talks about  
3    discovery from Defendant Davidson. And the next  
4    talks about -- let me just get through here a  
5    little bit.

6            And this was in December of 2016,  
7    correct --

8            A    That's correct.

9            Q    -- the Davidson discovery that you were  
10   looking at?

11          A    Yes.

12          Q    And then here are the -- apparently  
13   draft responses that were received by you from the  
14   Silberberg office; correct?

15          A    It looks like it, yes.

16          Q    And here you have April 26, 2017, an  
17   e-mail that you are copied on, and it's addressed  
18   to someone whose name is Silvana.

19                  Who is that?

20          A    Silvana was my secretary at the Fagel  
21   office.

22          Q    And it says "Attached please find our  
23   draft responses to Valley Hospital's initial  
24   discovery."

25                  Do you see that?

1        A    Yes.

2        Q    So here is a letter that's sent to  
3    Silvana from Ellie Tucker, who is the legal  
4    assistant for Marshall Silberberg. And this  
5    letter says "Please find enclosed two disks  
6    containing the exhibits to Daria Harper's response  
7    to Valley Hospital's request to produce," et  
8    cetera.

9            Do you know why that was sent to your  
10   office?

11       A    Sure. We were working on the case, so  
12   it looks like that would have been our job to  
13   finalize them at Bruce's office and get them  
14   served. And it looks like I signed -- I haven't  
15   seen every one, but the ones you've shown me, I've  
16   signed. And when you went back to that last  
17   document, it looks like I was included on that  
18   April 2017 e-mail with a number of drafts are  
19   made -- revised/finalized, discovery responses.

20       Q    Do you recall giving advice to the  
21   Silberberg office regarding Nevada law as it  
22   pertained to loss of consortium claims?

23       A    No.

24            MR. BLUMBERG: Let me bring up  
25   Exhibit 7.

1                    (Exhibit No. 7 was marked for  
2                    identification.)

3 BY MR. BLUMBERG:

4        Q    Now, this is -- this was produced the  
5 Silberberg office. It has writing all over it.  
6 But if we go up to the top of this e-mail -- I'll  
7 enlarge it.

8        A    Can you blow it up a little? Is this  
9 March 22nd, 2017?

10       Q    Yes.

11       A    Okay.

12       Q    So do you see it on the screen?

13       A    I do, yeah. From me at Fagel Law, yes.

14       Q    So do you recall sending this e-mail or  
15 writing this e-mail?

16       A    I don't recall it. I certainly don't  
17 deny it. It looks like I typed it.

18       Q    And this -- it says, "Hi, Ellie. Lost  
19 earnings are not part of Mr. Wininger's loss of  
20 consortium claim," and then you -- you go on.

21       A    Yes.

22       Q    How was it that you were giving advice  
23 about what Mr. Wininger's loss of consortium claim  
24 was?

25       A    I don't recall, and it's been a while

1    since I had one of those. But my recollection was  
2    that you don't get lost earnings as part of it.  
3    It's more loss of love and affection and then what  
4    services you lose from the spouse and what  
5    services you provide to the spouse. But that's --  
6    you know, it's been a good -- it looks like two or  
7    three years, so that's kind of my recollection. I  
8    don't remember actually doing this e-mail.

9        Q    Would this have -- would this e-mail  
10    have been sent after you reviewed the draft  
11    responses that included lost earnings as a part of  
12    Mr. Wininger's claim?

13        A    Probably. If that's -- I can't see the  
14    whole e-mail, John. But if that's what the rest  
15    of the e-mail is or if there -- it looks like I am  
16    responding or analyzing something there back in  
17    March of 2017.

18        Q    And, in fact, the last -- the last  
19    couple of lines say "My gut instinct is to say,  
20    quote, 'At the present time, Mr. Wininger is not  
21    making a claim for his own lost earnings. If that  
22    changes, we will notify counsel,'" unquote.

23            Do you know if that was incorporated  
24    into the response to the discovery that you had  
25    been sent?

1       A   Without seeing them, I don't know what  
2 we ended up putting in. I -- I would have to see  
3 them.

4       Q   Do you recall giving advice to the  
5 Silberberg office regarding Nevada discovery rules  
6 pertaining to production of tax returns?

7       A   No. Again, I'm not denying it. I just  
8 don't have a recollection.

9           MR. BLUMBERG: All right. Let me bring  
10 up Exhibit 8.

11                   (Exhibit No. 8 was marked for  
12                   identification.)

13 BY MR. BLUMBERG:

14       Q   Exhibit 8 is a one-page document  
15 produced by Silberberg's office. It's dated  
16 March 21, 2017.

17           Now, this is an e-mail. It's from  
18 Janette Dockstader at the Silberberg office. And  
19 if you could just take a second to read it, and  
20 then I'll ask you a question.

21       A   All right. I'm going to just get a  
22 little closer to the screen.

23       Q   I can make it a little bit bigger.  
24           How's that?

25       A   Thanks. Let me --



1            MR. CLARK: Let me object that it  
2 misstates the evidence. I think you referred to  
3 it as an e-mail.

4 BY MR. BLUMBERG:

5        Q    This is -- if I said "e-mail," I was  
6 mistaken. This is a file memorandum.

7        A    All right. It's March 21st, 2017, we're  
8 looking at?

9        Q    Yes.

10       A    Okay. I reviewed it.

11       Q    -- a conversation that she had with you  
12 about the necessity of producing tax returns?

13       A    I missed the first word or two. I'm  
14 sorry, John.

15       Q    And I just got a sign that said my  
16 Internet connection was unstable. That's probably  
17 why. So let me start over again.

18            Janette Dockstader writes in this memo  
19 that she spoke with you regarding --

20       A    If you can hear me, I think we lost you  
21 again.

22       Q    And we're back. All right. One of the  
23 frustrating things.

24       A    Sure. I missed that question. Sorry.

25       Q    I'll back up again and ask again.

1            In this file memo from Janette  
2 Dockstader, it refers to having a conversation  
3 with you regarding the rules in Nevada regarding  
4 producing tax returns.

5            Does this refresh your recollection that  
6 you had a conversation with her about that  
7 subject?

8        A    It doesn't refresh my recollection, but  
9 I -- I don't deny it at all, that we had some  
10 conversation like that in March 2017 that does --  
11 that memo reflected my understanding of tax  
12 returns, kind of discoverability in Nevada versus  
13 California, being kind of a PI case where, you  
14 know, physical injury and earnings were at issue.

15        Q    Were the ten cases that you handled in  
16 Nevada while you were at the Fagel firm all  
17 medical malpractice cases?

18        A    Yes.

19        Q    Did all ten of those cases settle?

20        A    We might have dismissed one or two that  
21 we couldn't successfully prosecute. But the rest  
22 settled, yes.

23        Q    Did you ever meet Daria Harper or Daniel  
24 Wininger?

25        A    No, I didn't.

1        Q    Did you -- you never attended their  
2 depositions?

3        A    Correct.

4        Q    Did you attend any depositions?

5        A    No, sir.

6        Q    At some point, I think September 15,  
7 2017, you ceased being an employee of the Fagel  
8 office?

9        A    Correct.

10       Q    When that -- strike that.

11           Was the relationship that you had an  
12 employer/employee relationship, as opposed to of  
13 counsel or independent contractor, that is before  
14 September 15, 2017?

15       A    Yes, it was an employer/employee W-2,  
16 yes.

17       Q    When that relationship ended, is it  
18 correct that you and Bruce Fagel had an agreement  
19 that you would keep working on the Harper case?

20       A    Yes, he asked me if I would stay on --  
21 keep my name on the Harper case. And then he  
22 would compensate me that 10 percent at the end of  
23 that case if the results were made, yes.

24       Q    Was that ever reduced to writing?

25       A    You know, I don't honestly remember. I

1    thought -- and I looked, and I couldn't find it.  
2    I thought that it was. I thought Bruce had  
3    prepared something for me to stay on a few cases  
4    that I had been working on. But I just don't  
5    have -- I don't have it, so I can't tell you for  
6    sure if it was in writing.

7        Q    Now, after you left and it was agreed  
8    that you would keep working on the Harper case,  
9    was it your understanding that you were of counsel  
10   in that case to the Fagel firm?

11        A    I don't know if I had an understanding  
12   as to what word or phrase you would -- you would  
13   put to that. And I was still going to stay on  
14   Harper. It didn't really need my work  
15   involvement, but my name was still on as the  
16   motion to associate. And so at Bruce's request  
17   and, you know, for the benefit of the Fagel firm,  
18   I agreed to stay on that, in Marshall's benefit  
19   also and in the Harpers'.

20        Q    As an attorney, are you aware of what an  
21   independent contractor is?

22        A    Not -- you know, not in any super clear  
23   way. It's not a direct employee, but it's one  
24   who's doing work for someone and getting paid for  
25   it or potentially paid for it.

1        Q    Did you have an understanding that you  
2    were an independent contractor with Bruce Fagel  
3    for the handling of the --

4        A    Yeah, I would say that --

5        Q    Let me finish. Let me finish.

6        A    Go ahead.

7        Q    That's the only time you've interrupted  
8    me, but let me start over again.

9            Was it your understanding that you had  
10   an independent contractor relationship with Bruce  
11   Fagel for the handling of Nevada cases after you  
12   left the Fagel firm?

13        A    I would say it would be something like  
14   that. I don't know legally how you define it. I  
15   was working for him on that case, certainly was no  
16   longer a W-2 employee. That would be a fair  
17   characterization.

18        Q    Was it agreed that Bruce Fagel would  
19   keep paying for the Las Vegas office?

20        A    I don't know if it was discussed, but  
21   I'm sure that he did. I never paid for it, but it  
22   was my understanding that we would still have that  
23   address. Because I think you still, even under  
24   the Nevada rules, needed a local address, so I --  
25   I'm sure he did. I just assumed he would. And I

1    know he did, because we kept that address.

2        Q    Okay. By the way, have you had any  
3    conversations with Bruce Fagel about this legal  
4    malpractice case?

5        A    No.

6        Q    Getting back to your relationship with  
7    Bruce Fagel's office after --

8        A    And we -- I will say, we did do a -- as  
9    you know, we did a tender, and I think I did call  
10   him to tell him I was going to be sending a tender  
11   that I had known him for 20 years.

12       Q    You're talking about asking his  
13   insurance company to cover you in this case?

14       A    Yes.

15       Q    And you recall that was a conversation  
16   that you had with him?

17       A    I think so. I think I called him to  
18   tell him it was coming.

19       Q    Now, getting back to your relationship  
20   with this -- with Bruce Fagel after you left his  
21   firm as an employee, was it your understanding  
22   that if contingent fees were paid as a result of  
23   the successful resolution of the Harper case, that  
24   his firm would receive some or all of the fees?

25       A    Yes. Yes.

1        Q    Now, after you left his firm, the Harper  
2 case wasn't the only case where you continued  
3 acting as Nevada local counsel for the Fagel firm,  
4 was it?

5        A    It was not. There was one other, I  
6 believe.

7        Q    Are you still acting as local counsel  
8 for the Fagel firm on some cases in Nevada?

9        A    No.

10       Q    When was the last time you did that?

11       A    I think that would either be this case  
12 or the Gaea case.

13       Q    Would you spell that?

14       A    G-A-E-A.

15       Q    After you left the Fagel firm, was there  
16 an arrangement where the mail from the case from  
17 opposing counsel would be sent to you at a  
18 different address?

19       A    I don't think so. I remember getting  
20 physical mail. I don't know the answer to that,  
21 but I don't think I had any special arrangement.  
22 I think that it was still, for the most part, the  
23 Crescent address, which was Bruce Fagel's address.

24       Q    Did you receive e-mails when you were  
25 now employed by the Shoop firm?

1        A    I did.

2        Q    That's a bad -- that's a bad question.

3    Let me withdraw it and ask it again.

4            Did you receive e-mails pertaining to  
5    the Harper case when you were now an employee of  
6    the Shoop firm?

7        A    I'm sure I did, yes.

8        Q    Now, one of the production requests  
9    required production of documents and e-mails. And  
10   what your response was to the document production  
11   related only to the Fagel -- when you were with  
12   the Fagel firm.

13           My question is whether you have done a  
14   search of your Shoop e-mails to be able to see  
15   whether you have e-mails and other documents that  
16   you have stored from the Harper case after you  
17   left the Fagel firm?

18           MR. CLARK: Object as to form. Assumes  
19   facts not in evidence.

20   BY MR. BLUMBERG:

21        Q    Do you understand the question?

22        A    I don't know the actual -- I apologize.  
23   I didn't hear the actual question part. I'm  
24   sorry.

25        Q    Let me start over.



1            Have you searched your computer at the  
2    Shoop firm for e-mails that you received at -- at  
3    your new e-mail address after you left the Fagel  
4    firm for e-mails and documents relating to the  
5    Harper case?

6        A    I did.

7        Q    And did you find any?

8        A    I didn't find any responsive to your  
9    production demand. It's been a while, but nothing  
10   that I thought responsive.

11       Q    Do you recall receiving any documents  
12   relating to the Harper case after you left the  
13   Fagel firm?

14       A    I don't have a recollection of it, but  
15   it's been a -- a good couple years.

16       Q    Would it be correct that your agreement  
17   with Bruce Fagel was that if you spent any of your  
18   own money on the Harper case, you would be  
19   reimbursed?

20       A    I'm -- I'm sure. I don't know if we got  
21   into that kind of detail, because there was -- by  
22   the time I left Bruce's, there was essentially  
23   nothing I would be doing in Harper that would  
24   require some type of an expense or a filing or  
25   traveling. I think Bruce's office and Marshall

1    was already doing all of the filings of things.

2    But I assume if I had some type of reimbursable  
3    expense, I -- Bruce or Marshall would pay me back.

4        Q    When you left Bruce Fagel's employment,  
5    did you have an agreement with Marshall Silberberg  
6    that you would keep working on the Harper case?

7        A    I guess in essence, since I agreed with  
8    Bruce that I would stay on. I don't think I ever  
9    had a real direct conversation with Marshall that  
10   I, you know, was staying on it with Bruce or  
11   anything. So we didn't have, like, an agreement  
12   like that. Like, if Bruce asked me, of course I  
13   did.

14        Q    When you went to work for the Shoop  
15   firm, did you have an agreement with that firm  
16   that you could stay on as attorney of record in  
17   the Harper case?

18        A    Nothing specific by case name. But when  
19   I -- when I started at this firm or when I got the  
20   offer, I did tell them that Bruce asked me if I  
21   would stay on and -- in -- I think it was three or  
22   four cases, a couple which were in kind of the  
23   wrap-up stage, and I was told it was okay.

24        Q    Did you have an agreement with the Shoop  
25   firm that -- that the Shoop firm would receive any

1    monetary compensation from the settlement of the  
2    Harper case?

3        A    No. No, we were no -- there was no  
4    compensation that went to the Shoop firm for any  
5    case I stayed on with Bruce, nor was there an  
6    agreement, nor was it ever asked or intended to.  
7    Never paid or had any expectations to be paid.

8        Q    Would it be a correct statement that if  
9    you had to spend time on the Harper case, that  
10   whatever time you spent you would get compensated  
11   for separately from the Fagel firm? Would that be  
12   a correct statement?

13           MR. CLARK: Object to the form.

14   BY MR. BLUMBERG:

15        Q    That was a bad question.

16        A    You know, if the case did resolve, that  
17   would be my compensation, is I would get  
18   10 percent of the Fagel firm's fee on the case.

19        Q    Did you read the mediation brief that  
20   was written by Marshall Silberberg in the Harper  
21   case?

22        A    I might have skimmed it. It's been a  
23   long time. I don't have a recollection one way or  
24   the other.

25        Q    Did -- did you attend the mediation?

1        A    No, I did not.

2        Q    Did you have anything to do with  
3 recommending who would be the mediator?

4        A    Not that I remember.

5        Q    Do you remember who the mediator was?

6        A    I understand it was Stuart Bell.

7        Q    And how did you gain that understanding?

8        A    I don't remember how I gained it, but I  
9 just -- I know I knew it.

10       Q    By the time of the mediation, were you  
11 aware that CopperPoint Insurance Company of  
12 Arizona was claiming a lien on the proceeds of the  
13 Harper medical malpractice case?

14       A    No.

15       Q    I'm going to bring up Exhibit 5 again.

16           I'm looking at page 13 of Exhibit 5.

17 And these are the interrogatory responses from --  
18 rather, these are the interrogatory responses to  
19 interrogatories from Dr. Jussa. And we're looking  
20 at page 14 that has your signature.

21           If we go to 13, it says -- in answering  
22 Interrogatory No. 25, 25 says "Identify any and  
23 all liens, medical or otherwise, in existence that  
24 relate to the damages, losses, and/or expenses you  
25 claim as a result of the incident set forth in the

1    complaint."

2            And then in the response, there's an  
3    objection. And then it says "Subject to and  
4    without waiving the objections, Daria Harper's  
5    workers' compensation insurer, CopperPoint  
6    Insurance Company, managed through Paradigm" --  
7    and then it gives the address of CopperPoint  
8    Insurance Company -- "is asserting a right to  
9    subrogate. However, the lien being asserted is  
10   currently unknown. Although, as of October 3,  
11   2016, CopperPoint Insurance Company had paid  
12   \$2,103,033.65 of medical expenses," et cetera.

13           You would have seen that response before  
14   you signed the document, wouldn't you?

15        A    Correct. When I was at Bruce's office,  
16   I'm sure I -- it must have been in there. I would  
17   have read it before I signed it back then. I  
18   didn't remember it, but I see it.

19        Q    As of the time of the settlement  
20   mediation in the Harper case, had you ever read  
21   the Arizona workers' compensation statute that  
22   pertains to workers' compensation liens?

23        A    No.

24        Q    As of the time of the settlement  
25   mediation, did you have an opinion whether

1    CopperPoint Insurance Company had an enforceable  
2    lien?

3        A    I did not, no.

4        Q    Had you done any legal research in  
5    Nevada or Arizona on lien rights of a workers'  
6    compensation carrier to a -- with regard to a  
7    malpractice case in Nevada?

8            MR. CLARK: Object to form.

9            THE WITNESS: No, I -- I hadn't.

10    BY MR. BLUMBERG:

11        Q    As a California lawyer, would it be  
12    correct that you are aware of appellant cases that  
13    have held that in California, if a medical  
14    malpractice case were settled, then no insurance  
15    company could enforce a lien?

16        A    Yeah, I think as a general statement,  
17    yes, that's our 3333.1, yeah.

18        Q    And it was your understanding that 33 --  
19    that 3333.1 of California law said that if  
20    evidence were introduced at trial of a collateral  
21    source, then that collateral source had no lien  
22    rights?

23            MR. CLARK: Object to form.

24    BY MR. BLUMBERG:

25        Q    Do you recall -- was that your

1    understanding?

2            A    I don't know if the word "trial" -- it's  
3    been a long time, John, since I have looked at  
4    that statute, but I don't think that statute has  
5    the word "trial" in there. But I'll take your  
6    word for what's in there.

7            Q    Was it your understanding at the time  
8    that 3333.1 applied -- that the statute itself  
9    applied, by its terms, to settlements as well as  
10   trials?

11           MR. BLUMBERG: Object as to form. Vague  
12   as to time.

13           THE WITNESS: I don't remember my  
14   understanding, frankly, back there. I would think  
15   it would, but it's been years since I've dealt  
16   with that -- with that issue in doing medical  
17   malpractice.

18   BY MR. BLUMBERG:

19           Q    Do you recall whether -- or at the time  
20   of the mediation in the Harper case, you were  
21   familiar with NRS 42.021, weren't you?

22           A    In that general sense. I sent it to  
23   Marshall, yes.

24           Q    And was it your recollection that the  
25   statute was virtually identical to the California

1    statute?

2            MR. CLARK: Object as to form.

3            THE WITNESS: I think -- I think it was

4    virtually identical. I think that's when the

5    conversation came up much earlier, when I was at

6    Bruce's, why we also sent along that statute. I

7    couldn't tell you if it's word for word, but I

8    think it's super close, if not exact.

9    BY MR. BLUMBERG:

10        Q    So you had talked about the ten cases of

11    medical malpractice that you had handled in

12    Nevada, eight of which you have a recollection

13    resolved by settlement; correct?

14        A    I think I said that was all approximate,

15    and I -- I think there was one or two that we

16    dismissed before we settled. But those are

17    ballpark numbers. I can't say it's exactly ten,

18    but ...

19        Q    Do you recall a settlement of a Nevada

20    medical malpractice case where there was no

21    payment made to an insurance company that had a

22    lien?

23        A    Not particularly offhand, no. I mean,

24    someone who had a lien, yeah, that I don't know.

25        Q    You don't have a recollection one way or



1    the other?

2        A    I don't.

3        Q    So whether -- and let me just be clear.

4            Do you have a recollection that in any  
5 of the Nevada medical malpractice cases that you  
6 handled, there was an insurance company that was  
7 claiming a lien?

8        A    No. The case I settled just -- settled  
9 just before leaving, no. I tried -- it might have  
10 been a state or a government entity type of lien.  
11 But I think the last birth injury case that we had  
12 had -- had claims -- I don't know if you would use  
13 "lien" or "subrogation," but I think there's been  
14 Medicare and -- I forget what Nevada calls their  
15 state Medicaid system.

16        Q    But you don't recall any case where  
17 there was anything other than a government lien,  
18 such as Medicaid or Medicare?

19        A    There -- there could well have been.  
20 There could well have been insurance also. I just  
21 don't recall, as we're sitting here talking about  
22 it.

23        Q    Have you ever handled any Arizona  
24 medical malpractice cases?

25        A    When I was at Bruce's office, we had

1    one, yes.

2            Q    Do you recall how that case resolved?

3            A    I -- that case was still ongoing when I  
4    left. And I think Bruce ultimately got another  
5    law firm involved. Because I think in Arizona you  
6    could file it under, you know, the Fagel name. So  
7    I think it was Bruce's name on the pleading, the  
8    Law Office of Bruce Fagel. I think ultimately he  
9    got another firm to act as, you know, Arizona  
10   counsel.

11          Q    You were licensed to practice in  
12   Arizona, weren't you?

13          A    Yes.

14          Q    And you still are?

15          A    Yes.

16          Q    At the time you were involved in the  
17   Harper case, did you know what Arizona law was  
18   regarding lien rights of a workers' compensation  
19   insurance company to the proceeds of an Arizona  
20   medical malpractice case?

21            MR. CLARK: Object as to form.

22            THE WITNESS: I didn't know Arizona work  
23   comp law at the time.

24          BY MR. BLUMBERG:

25          Q    Do you recall ever being asked by

1    Marshall Silberberg, or any lawyer in his office,  
2    about your opinion regarding whether a settlement  
3    would prevent CopperPoint Insurance Company from  
4    enforcing its lien rights?

5        A    No.

6        Q    Did you ever do any research of any  
7    kind -- legal research of any kind with regard to  
8    the Harper case on -- whether it was Arizona law  
9    or Nevada law?

10           MR. CLARK: Object to form.

11           THE WITNESS: No. Other than beyond  
12    just sending that statute to Marshall's office or  
13    Bruce's and whatever attachments I attached, no.

14    BY MR. BLUMBERG:

15        Q    Did you ever have a conversation with  
16    Marshall Silberberg, or any lawyer in his office,  
17    about negotiating with CopperPoint Insurance  
18    Company prior to any final settlement?

19        A    No, not that I recall.

20        Q    Changing the subject a little bit, what  
21    was your understanding, at the time you were  
22    handling the Harper case, whether Daniel Wininger  
23    had a separate claim for an additional \$350,000  
24    for his loss of consortium?

25        A    I think he did have a loss of consortium

1    claim. I don't have the complaint in front of me,  
2    but I'm sure he had a loss of consortium claim.

3            Q    That wasn't exactly my question. And  
4    maybe it's my fault, so let me ask it a better  
5    way.

6            Was it your understanding that Daniel  
7    Wininger had a separate claim that would entitle  
8    him to money over and above the \$350,000  
9    noneconomic damage cap in Nevada?

10          A    I'm not sure I understand or recollect,  
11    but I think the -- and it's been a while, so don't  
12    hold me to it. But I think the damages cap is --  
13    applies 350 per cause of action or per claim. And  
14    I can't tell you actually, to be honest, the  
15    actual statute now.

16          Q    Do you recall the last time you read the  
17    Nevada statute that pertains to recoverable  
18    damages in medical malpractice cases?

19          A    That would be when I -- I imagine would  
20    be when I was at Bruce's office, but ...

21          Q    And is -- and is it your recollection  
22    that the statute provides that if a -- a spouse  
23    has a loss of consortium claim, that there are  
24    actually two caps of \$350,000 each?

25          A    I would have to see the statute and --

1    statute at the time. I couldn't give you that  
2    kind of detail.

3        Q    Did you have an understanding in -- when  
4    you were involved in the Harper case that --  
5    whether Nevada law permitted recovery of economic  
6    damages on a loss of consortium claim?

7        A    I don't remember, offhand.

8        Q    Would it be correct you never gave  
9    advice in any form, whether written or verbal, to  
10   Daria Harper or Daniel Wininger?

11       A    True.

12       Q    Did Marshall Silberberg or any attorney  
13   in his office ever tell you they believed that the  
14   injuries that were caused by the Nevada doctors  
15   didn't have any relationship to the workers'  
16   compensation case?

17       A    That was at the -- I don't know if it  
18   was phrased that way. But at the very beginning,  
19   during those initial conversations with Bruce and  
20   Marshall prefiling, there were all sorts of  
21   discussions that the two of them were really  
22   having as the main attorneys about things like  
23   causation.

24            And they both acknowledged that it was a  
25   very tough causation case. And I don't remember

1    the whole thing that well, but I know she had an  
2    abscess or an infection. And originally I think  
3    she fell and had a knee surgery, and they didn't  
4    feel all of it was related. But it was a tough  
5    case, and I know that was one of the tough issues  
6    that they discussed, even about whether to file in  
7    Arizona or Nevada.

8        Q    Did you have an understanding whether  
9    the injuries that were caused by the Nevada  
10   doctors had a relationship to Daria Harper's  
11   workers' compensation case?

12           MR. CLARK: Object to form.

13           THE WITNESS: I didn't one way or the  
14   other. I just didn't know that kind of detail.

15   BY MR. BLUMBERG:

16        Q    Let me bring up Exhibit 4 again.

17           Now, looking at Interrogatory 22, it  
18   asks "If you are claiming that your future earning  
19   capacity will be impaired as a result of any  
20   injury or symptoms wholly or partially resulting  
21   from Defendant Jeffrey Davidson, M.D.'s, alleged  
22   negligence, state the following:"

23           The response, after the objections, is  
24   "As a result of the defendants' negligence, Daria  
25   Harper is permanently disabled and unable to

1    return to work."

2            You would have read that, correct,  
3    before you signed the document?

4            A    Sure.

5            Can you show me, is this the one I  
6    signed? I just didn't see the whole -- if you  
7    don't mind, just show me the signature.

8            All right. January 5th, 2017. Okay.  
9    I'm sorry, John, go ahead.

10          Q    And so my question is, you would have  
11    read the response to Number 22 before you signed  
12    it; correct?

13          A    Yes.

14          Q    Did Marshall Silberberg, or any lawyer  
15    in his office, ever tell you that the answer to  
16    Number 22 wasn't correct?

17          A    No.

18          Q    Did Marshall Silberberg, or any lawyer  
19    in his office, ever tell you that Daria Harper  
20    would have been disabled regardless of any  
21    negligence of the Nevada doctors?

22          A    I think that was -- that issue -- that  
23    causation issue was certainly part of the  
24    discussion of how tough the case was when we had  
25    the initial discussions back prefiling. It was a

1    tough causation case. But Marshall is a terrific  
2    attorney, so he was going to take it on.

3            Q    Did Marshall Silberberg, or any lawyer  
4    in his office, ever tell you they thought the  
5    Harper case couldn't be won?

6            A    No.

7                    (Exhibit No. 9 was marked for  
8                    identification.)

9    BY MR. BLUMBERG:

10          Q    I'm going to bring up as Exhibit 9 a  
11    document which is the plaintiffs' initial  
12    disclosure of expert witnesses and reports.

13            Do you see the document?

14          A    I do. Thank you.

15          Q    This was filed 4/13/2018.

16            Do you recall seeing this document at or  
17    about the time it was filed?

18          A    I don't, offhand. I see it has Bruce's  
19    address, but I don't have a recollection of it.  
20    I'm not saying it wasn't, but I just don't recall  
21    it.

22          Q    I understand you might not have a  
23    recollection, but you think you would have seen  
24    the document, including the expert reports that  
25    were attached to it?



1            MR. CLARK: Objection. Calls for  
2 speculation.

3            THE WITNESS: Probably. If it was -- I  
4 mean, I -- I couldn't tell you one way or the  
5 other. I certainly can't say no or definitely  
6 yes.

7 BY MR. BLUMBERG:

8        Q    Did Marshall Silberberg, or any lawyer  
9 in his office, ever tell you that their designated  
10 experts wouldn't testify regarding what they said  
11 in their declarations?

12        A    I don't remember.

13        Q    Did Marshall Silberberg, or any lawyer  
14 in his office, ever tell you that plaintiffs'  
15 designated experts were concerned about the  
16 opinions of the defense experts?

17        A    I don't remember.

18        Q    I want to talk about the settlement  
19 documents at this point.

20            Would it be correct that you personally  
21 reviewed and approved the settlement documents  
22 before they were sent to the clients for  
23 signature?

24        A    I don't think that is. I don't think I  
25 would have or did in this case. I don't have a

1    recollection, but I wasn't really involved in  
2    that.

3            MR. BLUMBERG: I'll bring up Exhibit 10.  
4            (Exhibit No. 10 was marked for  
5            identification.)

6    BY MR. BLUMBERG:

7        Q    Now, 10 is a one-page e-mail that was  
8    produced by the Silberberg office in this case.  
9    And it says -- and it's an e-mail from Will  
10   Collins to Daria Harper.

11           And it says "As we discussed on the  
12   phone, attached is the release and settlement  
13   agreement from Valley Hospital. Marshall and Tom  
14   have both reviewed and approved the document."

15           Do you believe that that is an untrue  
16   statement?

17        A    I just don't remember one way or the  
18   other. I don't -- do you have the Valley Hospital  
19   release I could take a look at?

20        Q    Well, I'll get to that.

21           But I'm -- but at this point, you don't  
22   have a recollection of having reviewed and  
23   approved the Valley Hospital settlement agreement?

24        A    Correct.

25           MR. BLUMBERG: I'm going to bring up

1    Exhibit 11.

2                    (Exhibit No. 11 was marked for  
3                    identification.)

4    BY MR. BLUMBERG:

5        Q    Now, Exhibit 11 is three pages. And let  
6    me make it a little bigger.

7            The third page down at the bottom, it's  
8    13 pages of a -- of a document. At the bottom it  
9    says "Harper vs. Janda."

10          Do you recall Janda was one of the  
11    defendants?

12        A    I mean, not particularly, but I -- I  
13    believe it, sure.

14        Q    And if we look at this document here, it  
15    says "The undersigned is an attorney for Daria  
16    Harper and Daniel Wininger, has reviewed the form  
17    of this release." There's a signature there.

18          Do you recognize that signature?

19        A    I do. I don't see the whole release.  
20    You're showing me, it looks like, one page. But  
21    that's my signature. Oh, it looks like -- so this  
22    is an e-mail chain. Okay.

23        Q    Right.

24          And so if we go to the first page of  
25    this document, there's an e-mail -- excuse me. Is

1    it the first page? Yeah.

2            There's an e-mail from Will Collins,  
3    May 22, 2018, to Thomas Alch. "Tom, here is the  
4    Janda release. Can you sign the last page?"

5            Do you see that?

6        A    I do.

7        Q    And then here is your response, May 22,  
8    2018, from Thomas Alch to Will Collins, "Will,  
9    attached is my signature page for the Janda  
10   release."

11           Do you see that?

12       A    Yes.

13       Q    Does that refresh your recollection that  
14   you read and signed the Janda release?

15           THE COURT REPORTER: Please repeat the  
16   objection.

17           MR. BLUMBERG: I'm hearing too many  
18   voices at once.

19           David, was there an objection?

20           MR. CLARK: Yes. Objection. Assumes  
21   facts not in evidence and misstates testimony.

22   BY MR. BLUMBERG:

23        Q    Mr. Alch, did I misstate something you  
24   had previously said in my question?

25        A    Well, gosh, I'm not arguing with you.

1    Something just popped up on my computer. Hold on.

2    Like a calendar, I think. Let me click that.

3            I'm not arguing with you about that at

4    all. That is my signature. But I definitely

5    never asked or told or authorized or had any

6    intension of that Shoop law firm name being there

7    anywhere on that release.

8            It looks like it was sent to me to

9    expedite things and -- and cooperate, make sure

10   the Harpers got the settlement. I signed that

11   page and sent it back.

12        Q    Let me ask the question a different way.

13            You recognize this e-mail from you dated

14   May 22, 2018? It says, "Will, attached is my

15   signature page for the Janda release."

16        A    Yeah, sure, that's an e-mail from me.

17            MR. BLUMBERG: I'm going to bring up

18   Exhibit 12 now.

19            (Exhibit No. 12 was marked for

20            identification.)

21   BY MR. BLUMBERG:

22        Q    You had asked about the entire release,

23   so Exhibit 12 is the release for Dr. Janda. And

24   let me just quickly scroll through it.

25            And there on the last page is your

1    signature; correct?

2        A    That is not my signature.

3        Q    Not your signature?

4        A    Correct.

5        Q    Okay. Do you know whose signature that  
6    is?

7        A    I do not.

8        Q    Did you ever see the distribution  
9    statement that Marshall Silberberg sent to his  
10   clients?

11       A    He sent one I think to me along with a  
12   check. I don't know if he sent that to the  
13   clients or not. And the one that I received, I  
14   think it was more of a distribution of fees. I  
15   don't think it -- it wasn't the -- it wasn't the  
16   whole distribution of the whole case, I don't  
17   think.

18                    (Exhibit No. 13 was marked for  
19                    identification.)

20   BY MR. BLUMBERG:

21        Q    I'm going to show you Exhibit 13.

22                    Is this the page that you were just  
23   referring to?

24        A    Yes, it is.

25        Q    Do you know how Marshall Silberberg

1    calculated the attorney fees?

2        A    I do not.

3        Q    Did you ever look to see whether the  
4    amount of attorney fees exceeded that allowed by  
5    either California law or Nevada law for medical  
6    malpractice cases?

7        A    I didn't. I'm sure Marshall would do it  
8    appropriately, so I didn't do the math.

9        Q    Now, on this page, it shows that  
10   50 percent attorney fees -- well, let me -- let me  
11   get back.

12            It indicates what 50 percent of the  
13   attorney fees is. And then it says, "Less  
14   5 percent to Tom Alch," and it shows \$28,268.

15            Do you see that?

16        A    I do.

17        Q    Now, you have been previously talking  
18   about 10 percent.

19            Do you know why this 5 percent to Tom  
20   Alch was subtracted from the 50 percent?

21        A    I don't. I mean, my agreement with  
22   Bruce was I would get 50 percent -- I'm sorry -- I  
23   would get 10 percent of his attorney fees that --  
24   that he recovered on Nevada cases.

25        Q    Well, maybe we can solve this mystery.

1    Let me see if I can bring up another document.

2            MR. BLUMBERG: I'm going to bring up

3    Exhibit 14.

4            (Exhibit No. 14 was marked for

5            identification.)

6    BY MR. BLUMBERG:

7        Q    Now, 14 is two pages. The first page is

8    a letter to you from Marshall Silberberg's office

9    that talks about enclosing a check for \$28,268.

10   And then there is a copy of two checks on the

11   second page, one to you, and then another one to

12   Bruce Fagel.

13            So do you recall receiving the check

14   from the Silberberg office?

15        A    I did, yes.

16        Q    Now, right before the deposition, your

17   attorney had provided me with a document. Give me

18   a second. I will bring it up.

19            So here is what was just provided to me

20   just prior to the deposition, and I think you have

21   talked about it. It is a 1099 form for 2018 from

22   the Fagel office to you, and it shows compensation

23   on this form of \$38,742.98. And the second page

24   of the document shows a check to you for

25   \$10,474.98 from the Fagel office. At the bottom



1    it says "Goodwin fees."

2            What is that?

3        A    That was a California San Bernardino  
4    case. That was one of the cases that I agreed  
5    to -- with Bruce to keep working on after I left.  
6    And so that case settled soon after. It went to a  
7    mediation and settled soon after, and that would  
8    represent my 10 percent of Bruce's attorney's  
9    fees.

10       Q    Now, you had specified at the very  
11    beginning of the deposition --

12       A    Or actually -- I'm sorry, John,  
13    that's -- I apologize. That's -- in the  
14    California cases, I can't remember my percentage,  
15    but it was -- it was significantly lower than --  
16    it was lower than 10 percent. That would  
17    represent whatever my percentage was of Bruce's  
18    net fees on that Goodwin case.

19       Q    At the beginning of the deposition, you  
20    talked about doing some math to arrive at some  
21    amount of money that you had received from Bruce  
22    Fagel on the Harper case.

23       A    Correct. Yes.

24       Q    So did you subtract the amount on the  
25    Goodwin check from the amount of the 1099 to

1    arrive at that number?

2        A    I did. Because I remember Bruce paid  
3    me -- whatever the number comes out to -- I think  
4    it's \$26,268, which was the other 5 percent of the  
5    Harper fee. And so subtracting the Goodwin fee  
6    from that 1099 number came to the exact number  
7    that Bruce paid me for Harper.

8        Q    And I've just done -- I've just done the  
9    math, and it looks like \$28,268.

10       A    That sounds right. It should be exactly  
11    the same number that Marshall sent to me.

12           MR. BLUMBERG: I will make that  
13    Exhibit 15, what we've just been looking at.  
14                            (Exhibit No. 15 was marked for  
15                            identification.)

16    BY MR. BLUMBERG:

17        Q    Do you know why Marshall Silberberg sent  
18    you 5 percent and Bruce Fagel sent you an  
19    additional 5 percent?

20        A    I don't remember why, but -- if that was  
21    their agreement or it was an erroneous  
22    understanding. I don't know exactly what happened  
23    with that.

24        Q    I'm almost done here.

25            Do you know a firm called the Seltzer

1    Law Group?

2        A    I do.

3        Q    Do you have a relationship with that law  
4    firm?

5        A    We work on cases together.

6        Q    Are you aware that they list you as a  
7    trial lawyer on their firm website?

8        A    No.

9        Q    I may have asked you a variant of this  
10   question early on.

11            When was the last time you acted as  
12   first chair in any trial?

13        A    A long -- it's been a long time.    It  
14   might have been ten or so years.    I first chaired  
15   a case in Santa Monica, San Diego, and downtown,  
16   all three med mal cases when I was at Bruce's.  
17   And it's been a long -- it's been a long time.

18            MR. BLUMBERG: I think I may be done.  
19   Let's take a ten-minute break while I look at my  
20   notes and see if we can wrap this up, unless other  
21   counsel are going to be asking questions so that  
22   we can estimate our time.

23            Okay. Ten minutes. Let's come back at  
24   ten minutes after 12:00.

25            THE VIDEOGRAPHER: The time is now

1    11:58 a.m. We are off the record.

2                    (Whereupon, a recess was taken.)

3            THE VIDEOGRAPHER: The time is now

4    12:11 p.m. We are back on the record.

5    BY MR. BLUMBERG:

6        Q    Mr. Alch, I sent you a request for  
7    document production and a request for document  
8    production at deposition. And among the  
9    categories were documents that you had received  
10   pertaining to the underlying Harper case.

11            What did you do to comply with the  
12   document production demand with regard to  
13   documents that you may have stored on a personal  
14   computer or on your computer at the Shoop firm?

15        A    I gave everything to -- to my counsel,  
16   which -- which was I think everything that was put  
17   in that disclosure.

18        Q    Well, that wasn't my question. My  
19   question wasn't what you gave to your counsel.

20            My question was, how did you go about  
21   searching your computers for responsive documents?

22        A    Oh, it was just on my desktop for  
23   Harper, those documents that -- that were in  
24   there.

25        Q    Did you search e-mails?

1        A    I did.

2        Q    How did you go about doing that?

3        A    Is been quite a while, but I think I  
4 just typed in "Harper."

5        Q    We looked at -- at Exhibit 11, which  
6 I'll bring back up on the screen. 11 is an e-mail  
7 from you at the Shoop firm, May 22, 2018, showing  
8 your response to the e-mail from Will Collins.

9            Do you have an explanation of why those  
10 documents -- why those e-mails wouldn't have been  
11 uncovered or found by you in your computer?

12        A    I don't know one way or the other that  
13 they weren't or were. I'm looking at that e-mail.

14        Q    You don't have any recollection of  
15 seeing the e-mail that is on the screen as  
16 Exhibit 11?

17        A    No, I don't. Other than looking at it  
18 today, obviously.

19        Q    Does it make sense to you that you  
20 wouldn't have e-mails or any documents on the  
21 Harper case from September 15th, 2017, through May  
22 of 2018?

23            MR. CLARK: Objection. Argumentative.

24            THE WITNESS: I don't really get the  
25 question, nor am I saying I didn't.

1    BY MR. BLUMBERG:

2        Q    No documents were produced by you that  
3    are pertinent to the Harper case with regard to  
4    anything that went on after you left the Fagel  
5    firm.

6            And I'm asking, do you have a  
7    recollection that you actually did receive e-mails  
8    and documents during that time period?

9        A    I'm sure I did. I think I produced  
10   that -- that release and some other documents that  
11   I -- that I had.

12        Q    Other than the releases, anything?

13        A    There was drafts of that -- of expert  
14   declarations and so forth.

15        Q    When we're talking about drafts of  
16   expert declarations, weren't those while you were  
17   at the Fagel firm? Or are we talking about the  
18   expert declarations that were filed with the  
19   expert disclosure in April of 2018?

20        A    I think that I had drafts that were  
21   produced in the 16.1 that -- you know, what's  
22   called the disclosures of expert declarations. I  
23   think it's more, John, than was just attached to  
24   the complaint.

25        Q    Well, your -- your counsel can correct

1    me, but there was no production of drafts of  
2    expert declarations that was produced.

3        A    Then I could be wrong. But I'm looking  
4    at 16.1, it looks like it's a -- 161 total pages.

5        Q    Are you talking about the disclosure  
6    with your answer to the complaint?

7        A    I don't know exactly when the  
8    disclosures -- you know, goes out, but yes.

9            MR. BLUMBERG: Okay. Then I'm going to  
10   need five minutes. We'll go off the record. I  
11   need to take a look at your disclosures, and then  
12   we will be done.

13            So off the record, please.

14            THE VIDEOGRAPHER: The time is now  
15   12:17 p.m. We are off the record.

16            (Whereupon, a recess was taken.)

17            THE VIDEOGRAPHER: The time is now  
18   12:24 p.m. We are back on the record.

19   BY MR. BLUMBERG:

20        Q    Mr. Alch, would you turn your camera  
21   back on?

22        A    I'm back. Thank you.

23        Q    While we were off the record, I had a  
24   conversation with Mr. Clark, and he is going to  
25   work with you and the Shoop firm to do a forensic

1    search of your computer to find all e-mails  
2    relating to the Harper matter.

3            MR. BLUMBERG: Is that correct,  
4    Mr. Clark?

5            MR. CLARK: Well, I -- I want to confer  
6    with my client on that. But I understand your  
7    request, and I understand what you want. But I  
8    haven't agreed to do the forensic yet. I've just  
9    got to talk to my client and see what that would  
10   entail, so ...

11           MR. BLUMBERG: Can you let me know  
12   within five days whether you will do that so that  
13   I don't need to make a -- make a discovery issue  
14   out of having somebody go in forensically into the  
15   computer?

16           MR. CLARK: Agreed.

17   BY MR. CLARK:

18        Q    All right. Mr. Alch, you were correct.  
19   In the initial disclosure, there were about 160  
20   some documents and -- that you had produced. And  
21   I see in those documents the unsigned copies of  
22   the expert declarations on -- in 2018.

23            Do you recall seeing those?

24        A    I think I -- I know I received them,  
25   sure. I don't have a recollection of them, but



1    I'm sure I got them, so I had them on my computer.

2            Q    And that you also produced, in your  
3    initial disclosure, the life care plan and the  
4    economist's report for Dr. Formush [phonetic  
5    spelling]; correct?

6            A    Yes.

7            Q    And you are also provided with a  
8    handwritten memorandum of understanding of the  
9    settlement with Janda, two-page handwritten,  
10   signed by Marshall Silberberg and Mr. Cotton on  
11   behalf of Dr. Janda.

12            Do you recall that?

13            A    Yes. I don't recall it, but I know that  
14   was in the file.

15            Q    How did you find those documents when  
16   you were searching for them?

17            A    They were just there in Harper. So  
18   on -- on my desktop or PC, that's where I had  
19   everything I had in there.

20            Q    And the only documents that you had in  
21   that file were the approximately 160 pages that --  
22   well, strike that.

23            The 168 pages in your initial disclosure  
24   included your insurance policy; correct?

25            A    I don't remember, but I -- you know, I'm

1    sure.

2            Q    All right. So with the exception of the  
3    insurance policy, the only documents you had in  
4    your -- on your desktop relating to Harper were  
5    the ones that were produced?

6            A    Correct. As far as I know, yes.

7            MR. BLUMBERG: All right. Thank you. I  
8    have no further questions.

9            THE WITNESS: Appreciate it. Thank you.

10          MR. BLUMBERG: Anyone else?

11          MR. SCHWALBACH: I have no questions.

12          MR. MAIER: No questions.

13          MR. BLUMBERG: All right. Then we are  
14    through.

15          Madam Court Reporter, do you need to  
16    make some kind of pronouncement?

17          THE VIDEOGRAPHER: This concludes the  
18    deposition of Thomas Steven Alch. The time is now  
19    12:28 p.m. We are off the record.

20          THE COURT REPORTER: Who is going to  
21    need to order a copy of the transcript?

22          Mr. Clark?

23          MR. CLARK: Yes.

24          MR. SCHWALBACH: Me too, Madam Reporter,  
25    Jon Schwalbach.

1                    (Whereupon, the deposition  
2                    concluded at 12:28 p.m.)

3                    \* \* \* \* \*

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1            CERTIFICATE OF COURT REPORTER

2    STATE OF NEVADA    )

) ss:

3    COUNTY OF CLARK    )

4        I, Heidi K. Konsten, Certified Court Reporter  
5    licensed by the State of Nevada, do hereby certify  
6    that I reported the deposition of THOMAS STEVEN  
7    ALCH, on December 29, 2020, at 10:06 a.m.

8        Prior to being deposed, the witness was duly  
9    sworn by me to testify to the truth. I thereafter  
10   transcribed my said stenographic notes via  
11   computer-aided transcription into written form,  
12   and that the transcript is a complete, true and  
13   accurate transcription and that a request was not  
14   made for a review of the transcript.

15       I further certify that I am not a relative,  
16   employee or independent contractor of counsel or  
17   any party involved in the proceeding, nor a person  
18   financially interested in the proceeding, nor do I  
19   have any other relationship that may reasonably  
20   cause my impartiality to be questioned.

21       IN WITNESS WHEREOF, I have set my hand in my  
22   office in the County of Clark, State of Nevada,  
23   this January 11, 2021.

24

\_\_\_\_\_  
Heidi K. Konsten, RPR, CCR No. 845

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# **EXHIBIT 3**

# **EXHIBIT 3**

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3 DARIA HARPER, an )  
individual; and DANIEL )  
4 WININGER, an individual, ) CASE NO.:  
A-20-814541-C  
5 Plaintiffs, )  
6 vs. )  
7 COPPERPOINT MUTUAL )  
INSURANCE HOLDING )  
8 COMPANY, an Arizona )  
corporation; COPPERPOINT )  
9 GENERAL INSURANCE )  
COMPANY, an Arizona )  
10 corporation; LAW OFFICES )  
OF MARSHALL SILBERBERG, )  
11 P.C., a California )  
corporation; KENNETH )  
12 MARSHALL SILBERBERG aka )  
MARSHALL SILBERBERG aka K. )  
13 MARSHALL SILBERBERG an )  
individual; THOMAS S. ALCH )  
14 aka THOMAS STEVEN ALCH, )  
an individual; SHOOP, A )  
15 PROFESSIONAL LAW CORPORATION )  
A California corporation; )  
16 DOES 1-50, inclusive, )  
17 Defendants. )  
18  
19 VIDEOTAPED AND VIDEOCONFERENCED  
20 DEPOSITION OF KENNETH MARSHALL SILBERBERG  
21 Taken on Monday, November 9, 2020  
At 10:44 a.m.  
22 By a Certified Court Reporter  
Remotely in Las Vegas, Nevada  
23 Reported By: Karen L. Jones, CCR NO. 694  
24  
25 Job No.: 41837

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## I N D E X

WITNESS: KENNETH MARSHALL SILBERBERG

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1 PROCEEDINGS

2 \* \* \* \* \*

3

4 THE VIDEOGRAPHER: We are on the record.

5 Today is November 9th, 2020. The time is 10:44 a.m.

6 This is the remote deposition of Kenneth

7 Marshall [sic] in the case Harper versus

8 CopperPoint. I am Dylan Thomas with Oasis Reporting

9 Services. I will be monitoring the proceedings in

10 the recording of both video and audio today.

11 At this time I will ask counsel to

12 identify themselves, state whom they represent, and

13 agree on the record that there is no objection to

14 the court reporter administering a binding oath to

15 the witness through remote videoconferencing. If no

16 objection is stated, we will proceed forward with

17 the agreement of all counsel.

18 We will begin appearances with the

19 noticing attorney.

20 MR. BLUMBERG: John Blumberg

21 representing Plaintiff. No objection.

22 MR. CLARK: David Clark representing

23 Thomas Alch -- Defendants Thomas Alch and the Shoop

24 law firm. No objection.

25 MR. KJAR: James Kjar for the witness.



1 MR. MCBRIDE: Robert McBride, local  
2 Nevada counsel, also for Mr. Silberberg.

3 THE VIDEOGRAPHER: Okay. The court  
4 reporter today is Karen Jones with Oasis Reporting  
5 Services.

6 Karen, you may now swear in the witness.  
7 Whereupon,

8 KENNETH MARSHALL SILBERBERG,  
9 having been first duly sworn to testify to the  
10 truth, the whole truth and nothing but the truth,  
11 was examined and testified as follows:

12 EXAMINATION

13 BY MR. BLUMBERG:

14 Q. Would you state your full name, please.

15 A. Full name is Kenneth Marshall  
16 Silberberg.

17 Q. Mr. Silberberg, today is the day for  
18 your deposition. Is there any reason that you can  
19 think of that you wouldn't be able to understand  
20 questions put to you or formulate answers?

21 A. No.

22 Q. You're not suffering from the effects of  
23 any physical illness, medication, or other  
24 impairment that might diminish your ability to be  
25 able to testify today?

1 A. No.

2 Q. Did I get an answer?

3 A. Yeah, I said no.

4 Q. You are the sole owner of your law firm?

5 A. That's correct.

6 Q. And is that formally Law Offices of

7 Marshall Silberberg, PC?

8 A. Yes.

9 Q. I'm going to put Exhibit 1 on the  
10 screen. (Indicating.) Exhibit 1 is the notice of  
11 today's deposition.

12 A. All right.

13 Q. And I'll be putting documents on the  
14 screen, and if I ever describe a document and you  
15 don't see it on the screen, please tell me, because  
16 every once in a while there's a -- there's a failure  
17 of my technological skills.

18 A. I hear you.

19 All right, John, I don't see any  
20 document.

21 Q. I haven't brought it up yet. Be  
22 patient.

23 (Exhibit 1 marked.)

24 BY MR. BLUMBERG:

25 Q. All right. The document on the screen

1 should be Amended Notice of Taking Videotaped  
2 Deposition.

3 Do you see the document?

4 A. I do.

5 Q. And your attorney produced documents and  
6 a formal response to this, but there are some  
7 documents I need to specifically ask you about that  
8 are required.

9 Is the document on the screen large  
10 enough for you to see or do I need to enlarge it?

11 A. No, I'm good with my glasses on. So I'm  
12 good.

13 Q. Number 10 asks for all documents that  
14 show deposits made and money withdrawn from the  
15 client trust account of Marshall Silberberg relating  
16 to Daria Harper and Daniel Wininger.

17 I did not receive a trust accounting in  
18 response to this. Do you remember producing one?

19 A. As far as my recollection is,  
20 Mr. Blumberg, is, yes, we have sent all -- some of  
21 the checks that we received from the defendants and  
22 all trust checks that we wrote to Daria and to  
23 Daniel. And as far as I know, those checks were, in  
24 fact, sent to Mr. Kjar's office.

25 Q. There may have been a misunderstanding

1 then, because this required all documents showing  
2 deposits made and money withdrawn from the trust  
3 account, which would be a printout of your -- of  
4 your trust account for Daria and Daniel.

5           Would you be able to produce that  
6 document; that is, does that exist somewhere  
7 electronically in your office?

8       A.     I don't think that does exist. We don't  
9 make deposits and identify. I mean, we may have two  
10 or three cases and we'll make one big deposit, and  
11 we make our deposits, I believe at this point,  
12 electronically. In other words, we do them here  
13 from the office on a machine. But I will inquire,  
14 and obviously if something like that exists, you'll  
15 get it.

16       Q.     Okay. All attorneys, as you know, are  
17 required, at least starting with the olden days, of  
18 showing deposits made into a trust account and  
19 withdrawals from the trust account. We used to do  
20 it by putting pencil to paper and now it's done  
21 electronically. And if you will produce that, then  
22 I would appreciate it.

23       A.     Absolutely.

24       Q.     All right.

25       A.     I will. Let me make a note so I can --

1 I can -- that's Item 10, right?

2 Q. Yes, that's Item 10.

3 Now, going to Item 13, it requests all  
4 documents that show consent by Daria Harper and  
5 Daniel Wininger to the payment of attorneys' fees to  
6 Bruce Fagel.

7 The response did not indicate -- seemed  
8 to indicate that such document may exist, but  
9 nothing was produced.

10 Are you aware of any such document?

11 A. We're looking at which one,  
12 Mr. Blumberg? 13?

13 Q. 13, yes.

14 A. Let me just read this.

15 Okay. I am not aware of any document,  
16 any formal document, that would comply with that.

17 Q. All right. Thank you.

18 Number 14 requires all documents that  
19 show an attorney-client contract between Daria  
20 Harper and Daniel Wininger, on the one hand, and  
21 Thomas S. Alch on the other hand.

22 Are you aware of the existence of any  
23 such document?

24 A. No.

25 MR. CLARK: I'm sorry. I didn't hear

1 that.

2 THE WITNESS: No. I'm sorry, David.

3 No.

4 MR. CLARK: Thank you.

5 BY MR. BLUMBERG:

6 Q. All right. Number 15 requires all  
7 documents that show consent by Daria Harper and  
8 Daniel Wininger to the payment of any attorneys'  
9 fees to Thomas S. Alch.

10 Are you aware of any such document?

11 A. No.

12 Q. And finally, Number 16 requires all  
13 documents that show receipt, deposit, and  
14 disposition of refunds of money received from the  
15 Eighth Judicial District Court of Clark County.

16 Are you aware of any documents  
17 reflecting Number 16?

18 A. I am not. I know that a letter was sent  
19 requesting the refund. I don't think we ever  
20 received it, so the answer is no.

21 Q. All right. Thank you.

22 Do you know how Daria Harper was  
23 referred to your firm?

24 A. Yes. Yes. Sorry. Maybe you're not  
25 hearing me.

1 Q. How was she referred to your firm?

2 A. (Audio disruption ) -- my recollection

3 is that her -- I think it was her nephew worked in

4 this building, did some IT, some technical stuff, on

5 our server, and he made the referral or the

6 introduction to -- to Daria.

7 Q. Do you recall that man's name?

8 A. I do not. I do not.

9 Q. Do you recall the date, approximate  
10 date, your firm was first contacted regarding this  
11 case?

12 A. No, I don't. I think it was -- I can --  
13 I can give -- I know you don't want me to guess or  
14 speculate, but I'm going to assume it was around  
15 October, November, 2014.

16 Q. All right. Let me bring up as  
17 Exhibit 2 --

18 A. Or '15. It may be '15, not '14.

19 MR. BLUMBERG: Let me bring up as  
20 Exhibit 2 -- let's see. Give me a second. There it  
21 is. Exhibit 2.

22 (Exhibit 2 marked.)

23 BY MR. BLUMBERG:

24 Q. This is an e-mail, and it's dated

25 November 10, an e-mail from Kim Carasso to Janette

1 Dockstader regarding Daria Harper, and it says,  
2 "They want to retain us," et cetera. And it's  
3 November 10.

4 Would that jive with your recollection  
5 of about when --

6 A. Yeah.

7 Q. -- the date was?

8 A. Yes.

9 Q. At some point, did you speak with Daria  
10 Harper or Daniel Wininger?

11 A. Yeah, I'm going to assume so. I mean, I  
12 met them in Denver, but I'm going to assume I spoke  
13 to them, you know, around November, December,  
14 two-thousand --

15 Q. Did you --

16 A. -- what year was it?

17 Q. Did you travel to Denver to meet with  
18 them?

19 A. No. I mean, yes and no. I had -- Jeff,  
20 I had a case, a wrongful death case, out here in  
21 Palm Springs. The husband of the dead woman had  
22 moved to Boulder, Colorado, and Jeff Keane went to  
23 Boulder to take his deposition. So I went to  
24 Boulder, took that deposition, and then had made  
25 arrangements to meet with Daniel and Daria at Craig



1 Hospital after that deposition.

2 Q. So the answer is that --

3 A. Kind of.

4 Q. Kind of. Let me ask it as a better  
5 question.

6 You met with them at Craig Hospital in  
7 Colorado?

8 A. Yes.

9 Q. Now, you ultimately entered into an  
10 attorney-client agreement with them, didn't you?

11 A. I did.

12 Q. Let me put that up on the screen.

13 This is a four-page document. The date  
14 is March 10, 2016. It appears to bear your  
15 signature, that of Daria Harper and that of Daniel  
16 Wininger.

17 Is this your attorney-client agreement,  
18 which I think you call a contingent fee agreement?

19 MR. CLARK: Counsel, is this Exhibit 3?

20 MR. BLUMBERG: It is.

21 MR. CLARK: Thank you.

22 (Exhibit 3 marked.)

23 BY MR. BLUMBERG:

24 Q. Now, from the time that you started  
25 working on this matter until March 10, 2016, was

1 anyone else in your firm other than you personally  
2 involved in evaluating the merits of the case?

3 A. John, your voice, it -- the initial part  
4 of the question dragged down. What was --

5 Q. Let me start over.

6 A. Yeah.

7 Q. Between December 2015 and March 2016,  
8 was anyone other than you personally involved in  
9 working up the case and evaluating its merits?

10 A. I don't recall. Probably not.

11 Q. At some point did Will Collins become  
12 involved in the case?

13 A. Yes.

14 Q. Do you recall when that was?

15 A. No. I don't recall when he started  
16 working there, so...

17 Q. Okay. Do you recall whether it was  
18 around March 2016, or was he working for you around  
19 that date?

20 A. I think so. Do you want me to check? I  
21 can ask Janette. She can probably tell me.

22 Q. We'll come back to that.

23 A. Okay.

24 Q. Was Mr. Collins' role essentially  
25 limited to what you would tell him to do on a

1 task-by-task basis or was it something broader?

2 A. Well, it's a little broader than that.

3 I mean, he did do what I asked him to do, but he had  
4 some, obviously, discretion to do things, and if he  
5 had questions, he'd come to me.

6 Q. Talking now about your experience in  
7 representing clients, had you previously represented  
8 clients in a Nevada medical malpractice case?

9 A. I don't -- I don't believe so.

10 Q. You don't believe so?

11 A. I don't believe so, no.

12 Q. Sometimes I'm going to ask you to repeat  
13 because I'll be hearing a distortion of some kind.

14 A. Okay.

15 Q. Not -- not that I'm trying to take up  
16 space on a page.

17 Did you do any legal research prior to  
18 drafting the complaint?

19 You just froze on the screen. I need to  
20 make sure you're still there.

21 A. I'm here.

22 Q. I'll start over.

23 Did you do any legal research, prior to  
24 preparing the complaint, to learn what the medical  
25 malpractice law was in Nevada?

1       A.     I don't recall doing any.

2       Q.     Would it be a correct statement that you  
3 drafted the complaint that was ultimately filed in  
4 Clark County?

5       A.     Probably not a fair statement.

6       Q.     Who drafted the complaint, to your  
7 recollection?

8       A.     I don't know, but if Will was working  
9 here, he probably did -- he probably drafted it. I  
10 haven't looked at the complaint, Mr. Blumberg, so --  
11 but it's unusual that I draft complaints. The  
12 lawyers that work here do that.

13      Q.     If it wasn't Will, who would it have  
14 been?

15      A.     It would have been -- it would have been  
16 me if it wasn't Will.

17      Q.     Now, in Nevada -- in Nevada,  
18 declarations of doctors are required to be  
19 concurrently filed with the complaint.

20             Are you aware of that?

21      A.     Yes.

22      Q.     "Yes"?

23      A.     Yes. Uh-huh.

24      Q.     And in this case, there were two  
25 declarations that were filed, one of Dr. Neer,

1 N-E-E-R, and one of Dr. Ritter.

2 Did you speak with those two doctors  
3 prior to their declarations being prepared?

4 A. Yes.

5 Q. And were you instrumental in drafting  
6 the declarations that they signed? I think they may  
7 have been called affidavits as well.

8 A. I don't remember.

9 Q. Did anyone else from your office speak  
10 to Dr. Neer and Dr. Ritter in connection with  
11 getting opinions to put into affidavits to file  
12 concurrently with the complaint?

13 A. I don't recall that, John.

14 Q. Let me put up as Exhibit 4 the  
15 declarations.

16 (Exhibit 4 marked.)

17 BY MR. BLUMBERG:

18 Q. All right. This is called the Affidavit  
19 of Michael Steven Ritter, M.D., with a signature on  
20 page 3 of the document. And then the Affidavit of  
21 David Neer, M.D., four pages in length, with a  
22 signature on page 4.

23 Do you recognize these documents?

24 A. No. I haven't reviewed them, so -- but  
25 I assume those are the documents that we filed.

1 Q. Okay. Would you have reviewed them

2 prior to their being filed?

3 A. I'm sure I did.

4 Q. And do you recall whether anyone other

5 than you conferred with them prior to their signing

6 declarations or affidavits?

7 A. No.

8 Q. "No"?

9 A. No.

10 Q. I want to go now to another subject

11 relating to Bruce Fagel.

12 Did you enter into an agreement with

13 Bruce Fagel regarding the prosecution of the case in

14 Nevada?

15 A. No.

16 Q. Did you have an oral understanding or an

17 oral agreement with Bruce Fagel regarding some

18 participation by him or his office in the

19 prosecution of the Daria Harper case in Nevada?

20 A. Not really. Do you want me to explain?

21 Q. Sure.

22 A. Okay. Bruce had been a -- a referral

23 source for cases that he didn't want to take, and

24 referred a fair amount -- not a fair amount, but

25 some good cases to this office.

1           So when this case came in and I was  
2 going to get involved, obviously I needed local  
3 counsel, and I knew that Tom Alch had a license in  
4 Nevada. So basically as a thank you to Bruce for  
5 sending me cases, I asked Bruce if I could utilize  
6 Tom's license, have him be our local counsel, and  
7 then as my sense of gratitude to Bruce for referring  
8 cases to me, I would then share my fee with Bruce,  
9 basically, you know as a thank you to him for  
10 referring cases to me.

11           So that's how it all worked out.

12       Q.     So regardless of the motivation, would  
13 it be correct that Bruce Fagel agreed that Tom Alch,  
14 who was his employee, would be local counsel working  
15 in association with your firm in the Daria Harper  
16 case?

17       A.     Well, no. There was no "agreement," as  
18 you put it. What -- what it was was that we were  
19 going to utilize Tom to help us with just the local  
20 rules initially, to make sure that we were compliant  
21 with the local rules. At that point, once that was  
22 all done -- once that was done, there was really no  
23 agreement. They weren't going to participate, as  
24 you said, in the prosecution of the case at all.  
25 They did not participate in the -- once we got the

1 local rules established and the complaint filed  
2 and initial discovery, they had no involvement in  
3 the case.

4 Q. When you say "they," do you mean neither  
5 Alch nor Fagel?

6 A. That's correct. Once we started going  
7 and getting discovery done, that was the end. I  
8 didn't consult with anybody at that office ever.

9 Tom helped out initially -- his office,  
10 his secretary -- making sure that things got filed  
11 and that they were complying with the local rules.

12 Once that was done and the real  
13 prosecution of the case started, they had no  
14 involvement at all.

15 Q. Would it be a correct statement that --  
16 or, strike that.

17 Was it your understanding that in order  
18 for you to use Tom Alch as local counsel, you needed  
19 the permission of Bruce Fagel?

20 A. No, I didn't think so. I mean, I talked  
21 to Tom directly. I mean, no, I didn't. I didn't --  
22 I didn't seek nor did I receive Bruce Fagel's  
23 consent or permission. It was Tom's license in  
24 Nevada, not Bruce's.

25 Q. To your knowledge, was Tom an employee



1 of Bruce Fagel?

2 A. You know, John, I don't know what their  
3 relationship was.

4 Q. Do you know who paid the rent on the  
5 Las Vegas office?

6 A. No clue.

7 Q. Was your --

8 A. Assuming there was. I assume there was  
9 a Las Vegas office.

10 Q. I'm sorry. You gave an answer and I  
11 didn't hear you. Start over, please.

12 A. I'm sorry, I'm sorry. I don't know the  
13 answer to that, if there is a Las Vegas office. I  
14 did not know. I never went to any Las Vegas office  
15 associated with Tom Alch ever. So -- I went to law  
16 offices, but that was the defense lawyers' offices,  
17 when I took the defendant depositions.

18 Q. Did you ever see a pleading that had a  
19 Las Vegas address for Tom Alch?

20 A. I don't know. I don't recall. I'm  
21 going to assume so. I mean, they were on the --  
22 they were on the pleadings, but I don't recall  
23 looking at them.

24 Q. Did you tell Bruce Fagel what percentage  
25 of your attorney's fee you would share with him at

1 the outset?

2 A. Yeah, I did. I told him I'd split it  
3 with him.

4 Q. 50-50? "Yes"?

5 A. Yes, sorry.

6 Q. Was there a separate agreement or  
7 understanding of what Tom Alch would get for acting  
8 as local counsel?

9 A. Not -- no. Not with me.

10 Q. Would that have been an agreement  
11 with -- between Tom Alch and Bruce Fagel?

12 A. Well, as you recall, at some point  
13 during the prosecution of this case, Tom left and --  
14 and formed a partnership with somebody else. I  
15 can't remember his name. Shoop I think is the name.

16 And so whatever agreement they had,  
17 Bruce and Tom had, with respect to cases, that was  
18 between them.

19 Q. Now, the complaint itself was filed by  
20 Tom Alch, wasn't it?

21 A. I don't know. Probably.

22 Q. You weren't admitted -- you weren't  
23 admitted yet pro hac vice in Nevada, were you?

24 A. At some point I was. I don't -- I don't  
25 recall the date where we got admitted pro hac vice.