

IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>BRUCE G. FAGEL, A LAW CORPORATION aka LAW OFFICES OF BRUCE G. FAGEL & 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 10:26 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 3 OF 3

RILEY A. CLAYTON, ESQ.
Nevada Bar No. 005260
Email: rclayton@lawhjc.com
HALL JAFFE & CLAYTON, LLP
7425 Peak Drive
Las Vegas, Nevada 89128
Telephone: (702) 316-4111
Attorneys for Petitioners

PETITIONER'S APPENDIX

Exhibit	Bates Nos
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.

JOHN P. BLUMBERG, ESQ.
California Bar No. 70200
BLUMBERG LAW CORPORATION
444 West Ocean Blvd., Suite 1500
Long Beach, California 90802-4330
Attorney for Real Parties In Interest

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
MAIER GUTIERREZ & ASSC.
8816 Spanish Ridge Ave.
Las Vegas, Nevada 89148
Attorney for Real Parties In Interest

SERVICE BY U.S. MAIL ONLY

The Honorable Jerry A. Wiese, II
Department 30
Regional Justice Center, Courtroom 14A
200 Lewis Ave
Las Vegas, NV 89155
Respondent

Service by E-service

Dalton L. Hooks, Jr., Esq.
Sami Randolph, Esq.
HOOKS MENG & CLEMENT
2820 W. Charleston Blvd. Ste. C-23
Las Vegas, NV 89102
Attorneys for Copperpoint Defendants

Service by E-service

David A. Clark, Esq.
LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144
Attorneys for Defendants Schoop and Alch

Service by E-service

Robert C. McBride, Esq.
Heather S. Hall, Esq.
MCBRIDE HALL
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Silberberg Defendants

Service by E-service

Robert L. McKenna, III, Esq.
James Kjar, Esq.
John Schwalbach, Esq.
KJAR MCKENNA &
STOCKALPER, LLP
841 Apollo Street, Suite 100
El Segundo, California 90245
Attorneys for Silberberg Defendants

/s/ Lisa Rico

Employee of HALL JAFFE & CLAYTON

1 date at the top is August 2, looks like 2016, and is

2 handwritten:

3 "Attention Will or Marshall. Paperwork

4 received today something regarding house."

5 Do you recall seeing this?

6 A. Just this page?

7 Q. Well, there's another page. I'm just starting

8 with this page.

9 A. I don't remember this page.

10 Q. All right. The next page is dated July 29th,

11 2016, from Mark Kendall of CopperPoint.

12 Do you recall seeing this letter?

13 A. No.

14 Q. The next several pages are the "Petition For

15 Approval of Compromise and Settlement of Claim With

16 Credit."

17 Do you recall seeing this document?

18 A. No.

19 Q. Is it your testimony that you never saw it, or

20 is it your testimony that maybe you saw it and you don't

21 recall?

22 A. Maybe I saw it, and I don't recall. I don't

23 know. It -- if it's a fax, it depends on how it was

24 directed. I just don't recall, Mr. Blumberg.

25 Q. During the mediation, did you or Mr. Silberberg

1 tell the clients they didn't have to pay the 30 --

2 \$300,000 from the housing back to CopperPoint?

3 A. I had no such discussions.

4 Q. Did you ever have any such discussions with
5 them before the mediation?

6 A. About the house?

7 Q. Yes, about the -- about the payment by
8 CopperPoint and any lien that CopperPoint may have
9 for -- for that payment.

10 A. I don't recall having such discussions.

11 Q. Going now to the settlement agreement after
12 agreements were reached at the mediation, were you
13 involved in preparing for or modifying any of the
14 agreements?

15 A. No.

16 Q. Who was responsible for that?

17 A. The settlement agreements were sent to the
18 office and given to Mr. Silberberg.

19 Q. I'm going to bring up as Ex- --
20 And did you ever see them?

21 A. I believe I saw them.

22 Q. Did you have any responsibility for
23 communicating with the clients about the settlement
24 agreements?

25 A. The settlement agreements went to

1 Mr. Silberberg. I did not handle the settlement
2 agreements.

3 Q. That wasn't my question.

4 My question was did you have any involvement
5 in -- with the client with regard to the settlement
6 agreements?

7 A. I don't believe I did.

8 MR. BLUMBERG: Okay. I'm going to bring up
9 Exhibit 14.

10 (Exhibit 14 was marked.)

11 BY MR. BLUMBERG:

12 Q. 14 is an email from Will Collins to Daria
13 Harper. Do you see this?

14 A. I do.

15 Q. Does this refresh your recollection with regard
16 to my last question?

17 A. Yeah. I sent the settlement agreements to
18 them. You asked if I discussed it with them. I sent
19 them to them.

20 Q. Okay. And other than being the vehicle for
21 sending them to the clients, do you recall discussing
22 them with the clients at all?

23 A. I don't recall specific discussions with the
24 clients other than there are -- here's the settlement
25 agreements. They've been reviewed. Sign, notarize, if

1 necessary, get them back to us so that we can get things
2 moving along.

3 Q. And it was your understanding that Mr. Alch and
4 Mr. Silberberg reviewed and approved them; correct?

5 A. That was my understanding.

6 Q. During most of the litigation, were you aware
7 that Tom Alch was employed by Bruce Fagel?

8 A. For a period of time I believe he was still
9 working with Dr. Fagel and at some point transitioned to
10 another firm.

11 Q. And the other firm was the Shoop firm?

12 A. I believe so.

13 Q. Was there any discussion between you and
14 Mr. Silberberg about Mr. Alch's continuing -- Mr. Alch
15 continuing in his role as co-counsel on the case after
16 he had left Mr. -- Dr. Fagel's term --

17 A. I didn't have --

18 Q. -- excuse me -- Dr. Fagel's firm?

19 A. I didn't have any discussions regarding that.

20 MR. BLUMBERG: I'm going to bring up as Exhibit
21 15 the document that I will describe as a settlement
22 disbursement document.

23 (Exhibit 15 was marked.)

24 BY MR. BLUMBERG:

25 Q. It's called "Disbursement Sheet." And this is

1 three pages.

2 Do you recall seeing this document at or about
3 the time it was created?

4 A. I recall seeing it at some point.

5 Q. Did you ever look at how the amounts of
6 attorney's fees and distribution to the client were
7 calculated?

8 A. I had no part in that.

9 Q. When you say you "had no part in that," what is
10 "in that"?

11 A. I had no part in this document, creating it or
12 the distribution of attorney's fees relative to the
13 client's claims.

14 Q. Did you ever review the document for accuracy?

15 A. I was never asked to do that.

16 Q. That wasn't my question.

17 A. So no, I did not.

18 Q. You never reviewed the document for accuracy of
19 anything contained in it; correct?

20 A. Correct.

21 Q. Did you see where it said that Daniel's
22 recovery was \$1,050,000?

23 A. I see that now.

24 Q. Is this the first time you're seeing that?

25 A. I -- I remember seeing this form at some point,

1 but I don't know when it was, whether it was before or
2 after funds had been distributed. So to answer your
3 question, I never reviewed this in any detail.

4 Q. Okay. So is this the first time that you are
5 seeing that there was an allocation to Daniel of
6 \$1,050,000?

7 A. No, I don't think so. I don't think that's
8 accurate. I think I've seen it before.

9 Q. Okay. When you previously saw that there was
10 an allocation to Daniel of \$1,050,000, did you have an
11 understanding of how that allocation was made?

12 A. My understanding is the allocation was made by
13 Mr. Silberberg in discussions with the client, both
14 clients.

15 Q. I want to shift now to more recent events.
16 Were you involved in retaining attorneys in Arizona and
17 Nevada to represent Daria in connection with the
18 CopperPoint lien claims?

19 A. I was.

20 Q. What was that involvement?

21 A. We had previously gotten her and advised her to
22 get counsel in Arizona to deal with the eventuality of
23 what CopperPoint may do. And at some point, we were
24 informed that Mr. Schiffman, who was her attorney,
25 wanted us to get other lawyers for Daria. And when that

1 happened, Marshall instructed me to try and get her some
2 attorneys in Nevada and Arizona.

3 Q. And so were you tasked with finding those
4 lawyers?

5 A. I would say yes, I was finding -- trying to
6 find her some lawyers.

7 Q. And you found Adam Palmer in Arizona?

8 A. I did.

9 MR. BLUMBERG: I'm going to bring up as Exhibit
10 16 --

11 (Exhibit 16 was marked.)

12 BY MR. BLUMBERG:

13 Q. -- email -- I'm going to make it a little
14 bigger -- from you sent February 4, 2020, to Adam
15 Palmer.

16 Do you recall this email?

17 A. Yeah. Yeah, I remember this email.

18 Q. Was this email sent with Mr. Silberberg's
19 knowledge?

20 A. Of course.

21 Q. Why do you say "of course"?

22 A. Because I was speaking to him about getting
23 these lawyers and telling him what the status was. And
24 once Adam requested the information, I sent this email
25 and I believe I had -- was talking to Marshall when I

1 was typing this.

2 Q. Is there a reason why he wasn't cc'd on the
3 email?

4 A. No.

5 Q. Now, in this email there -- you -- you included
6 a statement, and it says:

7 "While the industrial accident caused the need
8 for the knee replacement, the fact that she
9 suffered an abscess in her spine is not related
10 in any way. Normally when an implant causes an
11 infection, you see local infection at the site
12 of the knee implant with the infection
13 spreading to other parts of the body.
14 Therefore, there is no causation between the
15 industrial accident and the underlying action
16 we filed in Nevada."

17 Did I read that correctly?

18 A. Yes.

19 Q. Were those your words or Mr. Silberberg's
20 words, that is, was he telling you what to write, or
21 were you writing that on your own?

22 A. My general recollection of this is we were --
23 Mr. Silberberg and I were talking while I was send --
24 composing this email to Mr. Palmer. I don't remember if
25 those were his words specifically, but it was a sum and

1 substance of a conversation I had had with him, meaning
2 Mr. Silberberg.

3 Q. Do you know what the source was of the medical
4 opinion about the spinal infection being unrelated to
5 the knee surgery?

6 A. Yes. When Mr. Silberberg and I evaluated the
7 potential for a case in Arizona, the analysis and
8 discussions that Mr. Silberberg had with experts and
9 relayed to me was that there was no connection between
10 the knee replacement and her abscess that we could ever
11 prove, nor did our experts think that Arizona -- that
12 there was a viable case in Arizona. This was all put in
13 a letter and sent to the client as well.

14 Q. I'm aware of the letter, but my question is
15 whether you had any conversation with any expert, in the
16 lengthy conversations that you had with all of the
17 experts in the case, that the spinal infection was
18 unrelated to the knee replacement?

19 A. The discussion with experts specifically as to
20 that issue in Arizona was done by Marshall. I never
21 had, to my recollection, specific discussions with our
22 experts retained in Nevada about Arizona and the care
23 she was -- she received there other than some experts
24 commenting they were smart to get her out of Havasu and
25 to Valley on a helicopter.

1 Q. So would it be correct that you never had a
2 conversation with any of the experts that were retained
3 to testify in Nevada to the effect that there was no
4 connection between the knee surgery and the spinal
5 abscess?

6 A. I believe that's correct.

7 Q. Why were you informing Mr. Palmer that there
8 was no causation between the industrial accident and the
9 failure to treat the spinal abscess?

10 A. Two parts. I believe because Marshall wanted
11 Mr. Palmer to know that information, and, two, because
12 it seemed an important factor.

13 Q. Why did it seem an important factor?

14 A. Because in discussions with Mr. Silberberg,
15 it -- it was -- we discussed that she had a knee
16 replacement because of the fall at work, but there was
17 never any medical evidence to tie her knee replacement
18 to what happened at Valley, and it seemed that what
19 happened at Valley had nothing to do with her issues
20 relative to workmen's comp.

21 Q. When you provided this information to
22 Mr. Palmer in the email, was it with the expectation
23 that he would use it in an effort to defeat
24 CopperPoint's lien claim?

25 A. I had no idea what Mr. Palmer was going to do

1 with respect to CopperPoint, but it was information that
2 we thought would be reasonable and helpful for him.

3 Q. Reasonable and helpful in convincing
4 CopperPoint that it had no lien?

5 A. I have no idea what Mr. Palmer was going to use
6 it for. He was the workmen's comp lawyer that we got
7 for Daria and Daniel.

8 Q. That wasn't my question. My question was what
9 your expectation was in providing the information to
10 him.

11 A. We -- we thought it would help.

12 Q. Did you consider what the consequences would be
13 if CopperPoint was informed that there was no connection
14 between the industrial injury and the spinal abscess?

15 A. I was not an Arizona workers' comp lawyer; so
16 no, I didn't consider that.

17 Q. Okay. Now, moving on, you also had some
18 communications with a lawyer whose name is Dustun
19 Holmes, D-u-s-t-u-n, and his firm -- I think it's
20 Pisanelli & Bice.

21 A. Yes.

22 Q. Do you recall that?

23 A. Yes.

24 Q. I'm going to bring up another exhibit. And if
25 you're thinking how many exhibits are there going to be,

1 this is the last one.

2 A. I wasn't thinking that yet, Mr. Blumberg.

3 MR. KJAR: -- hoping it.

4 (Reporter interruption.)

5 THE WITNESS: That was Mr. Kjar.

6 MR. BLUMBERG: Yeah, anything Mr. Kjar says

7 that's not preceded by the word "objection," I think it

8 can stipulate that it doesn't need to be taken down on

9 the record.

10 MR. KJAR: Just throw in something called

11 colloquy between counsel, if you like.

12 MR. BLUMBERG: All right. Now you made me lose

13 my track. Okay. Here.

14 MR. KJAR: You were just getting to the last

15 exhibit, John. What's the number?

16 MR. BLUMBERG: It's 17.

17 MR. KJAR: Thank you.

18 (Exhibit 17 was marked.)

19 BY MR. BLUMBERG:

20 Q. Okay. So 17 is three pages. It is a series of

21 emails. And the first page is dated March 5, 2020, from

22 Will Collins to Dustun Holmes.

23 Do you have the page in front of you?

24 A. I do.

25 Q. Now, going to -- wait a minute -- the bottom of

1 the first page, you wrote:

2 "Based on our research, we are optimistic on
3 our chances, but would very" -- "but very much
4 appreciate your efforts."

5 What research made you optimistic on your
6 chances that a declaratory relief action in Clark County
7 would result in the Court finding that there was no
8 lien?

9 A. So this related to the Nevada statute 42.021
10 that it said that workers' comp had no lien in a medical
11 malpractice case. That was referring to that.

12 Q. So when you say "based on our research," you
13 were referring to the statute itself, correct, and not
14 to any further research that you had done other than
15 what you previously testified to about finding the
16 McCluskey (phonetic) case where the statute was found to
17 be constitutional; is that correct?

18 A. Yes, that's correct. And it's -- I believe
19 it's McKroske, but I could be wrong.

20 Q. No, I think you're right.

21 A. Okay. That's the first time in a long time
22 I've been right.

23 Q. Okay. So by "research," you were talking about
24 your understanding of the statute and the appellate
25 cases interpreting the statute.

1 A. Yes.

2 Q. I don't have any other questions.

3 MR. KJAR: Anybody else?

4 MR. CLARK: Yes. David Clark.

5 EXAMINATION

6 BY MR. CLARK:

7 Q. Mr. Collins, can you hear me?

8 A. I can, Mr. Clark.

9 Q. Hi. I'm David Clark. I represent Tom Alch in
10 this matter. I just had one follow-up.

11 In connection with your testimony on Exhibit
12 14, which I believe is a settlement agreement, I believe
13 your testimony was that it was your understanding that
14 Marshall Silberberg and Tom Alch approved that
15 settlement?

16 A. I'm -- I'm sorry.

17 Q. I was just asking if that's -- if that's --
18 does that correctly state your testimony?

19 A. Yes. My recollection is that Marshall and Tom
20 both reviewed it and at which point I was instructed to
21 get it to the client for signature.

22 Q. And what's your understanding that Tom Alch
23 reviewed it based on?

24 A. A fuzzy recollection that it was sent to Tom or
25 Marshall and Tom had spoken.

1 Q. And do you recall any email or other
2 communication that evidences that it was sent to Tom?

3 A. I don't know if I sent it or Janette sent it.
4 I don't remember off the top of my head, no.

5 Q. But you have a recollection that it was sent?

6 A. That it was sent to Tom/ -- and/or reviewed by
7 Tom or discussed with Marshall. All I know is that I
8 was told that Marshall and Tom had approved the
9 settlement agreements and that I needed to get them to
10 the client for signature.

11 Q. Okay. And who told you that Tom had approved
12 it?

13 A. I think Marshall would tell me, "Get these to
14 the clients. They're good to go. They've been
15 reviewed," something to that effect. It was a --
16 Defendants were messing around in sending checks, and
17 Marshall was telling me to stay on them, stay on them,
18 and part of that had to do with getting them to the
19 clients, for sure.

20 Q. But you never had a conversation with Tom Alch
21 about approving the settlement agreement; is that
22 correct?

23 A. I had no discussions with Mr. Alch about the
24 settlement agreements, no.

25 Q. Okay. And were you present when Marshall had

1 any discussions with Tom Alch about approving the
2 settlement agreement?

3 A. I was not present for those conversations. I
4 didn't participate in them.

5 Q. Okay. So other than Marshall telling you that
6 Tom had approved it, do you have any other basis for
7 knowing one way or the other whether Tom approved it?

8 A. That's the basis of my understanding, as you
9 just said.

10 Q. Okay. Thank you. No further questions.

11 A. Okay.

12 MR. BLUMBERG: All right. Hearing nothing, I
13 assume we are through with this deposition.

14 MR. KJAR: All right, John. Are we doing
15 stipulations these days? I prefer to do those.

16 MR. BLUMBERG: I also prefer that whoever is
17 representing a witness during a deposition end up with
18 the original, but I am not an expert in Nevada law. And
19 if my co-counsel, Jason, could chime in and tell me if
20 there is anything I need to be aware of.

21 MR. MAIER: Well, typically the court reporter
22 will send the original to counsel taking the deposition.
23 So my office will get the original sealed version and
24 everybody else will get either electronic or paper
25 copies as they wish and whatever they order.

1 MR. BLUMBERG: Well, I guess we follow the
2 Nevada rules, then.

3 And Jason, does that mean that the noticing
4 attorney is responsible for the original?

5 MR. MAIER: Yes.

6 MR. BLUMBERG: Are there ever agreements where
7 the defending attorney gets the original per stip or
8 other agreement.

9 MR. MAIER: I've never come across that.

10 MR. BLUMBERG: Okay. Just asking.

11 Jim, sorry.

12 All right. So unless there's some kind of a
13 special ceremony that we have to have, I think this
14 deposition is concluded.

15 THE VIDEOGRAPHER: Okay. We are off the record
16 at 12:34 p.m.

17 THE COURT REPORTER: Counsel, could I get your
18 transcript orders on the record, please.

19 MR. CLARK: David Clark.

20 I'll take an electronic version.

21 MR. KJAR: Yes, I'd like to have the same.

22 MR. McBRIDE: McBride.

23 I don't need anything. Thanks.

24 MR. MAIER: And John, we have a standing order
25 with Oasis. So they'll get us, and we'll kick it over

1 to you.

2 MR. BLUMBERG: That's fine. Okay.

3 THE VIDEOGRAPHER: Before you guys go, any
4 video orders?

5 MR. CLARK: None by David Clark.

6 THE VIDEOGRAPHER: Okay.

7 MR. MAIER: John, I'll defer to you if you want
8 a copy of the video now or do you want to wait until
9 later to order a copy of the video?

10 MR. BLUMBERG: I'll wait. I have some things
11 on Netflix that have priority.

12 THE VIDEOGRAPHER: Okay. So no for Clark. No
13 for Blumberg.

14 What else did everybody say? Sorry.

15 MR. KJAR: Kjar will take a copy.

16 THE VIDEOGRAPHER: All right. Okay.

17 And Mr. McBride, Mr. Maier, and Silberberg, do
18 you want any copies?

19 MR. McBRIDE: No need for me. Robert McBride.
20 Thanks.

21 (Deposition concluded at 12:35 p.m.)

22

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1 CERTIFICATE OF WITNESS

2	PAGE	LINE	CHANGE	REASON
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19 * * * * *

20 I, WILLIAM S. COLLINS, ESQ., witness herein, do
hereby certify and declare under penalty of perjury the
21 within and foregoing transcription to be my deposition
in said action; that I have read, corrected, and do
22 hereby affix my signature to said deposition.

23

24 WILLIAM S. COLLINS, ESQ.
Witness Date

25

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
4 COUNTY OF WASHOE)

5 I, Dawn Bratcher Gustin, a duly certified court
6 reporter licensed in and for the State of Nevada, do
7 hereby certify:

8 That I reported the taking of the deposition of
9 the witness, WILLIAM S. COLLINS, ESQ., at the time and
10 place aforesaid;

11 That prior to being examined, the witness was by
12 me duly sworn to testify to the truth, the whole truth,
13 and nothing but the truth;

14 That I thereafter transcribed my shorthand notes
15 into typewriting and that the typewritten transcript of
16 said deposition is a complete, true, and accurate record
17 of the proceedings to the best of my ability.

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

IN WITNESS WHEREOF, I have hereunto set my hand
in the County of Washoe, State of Nevada, this 18th day
of November 2020.

Dawn Bratcher Gustin, CCR 253, RPR, CRR

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EXHIBIT 6A

EXHIBIT 6A

YAHOO! MAIL

Subject Valley Hospital Release
From Will Collins <wcollins@silberberglaw.com>
To: daria.harper@yahoo.com <daria.harper@yahoo.com>
Cc: Elena Bravo <elena@silberberglaw.com>, Janette Dockstader <janette@silberberglaw.com>
Date Fri, Jun 1, 2018 at 12:00 PM

Daria,

As we discussed on the phone. Attached is the release and settlement agreement from Valley Hospital. **Marshal and Tom have both reviewed and approved the document.** Please read the document, sign, where indicated. Additionally, please fill out the HIPPA form, which is the final page. Finally, the document must also be notarized.

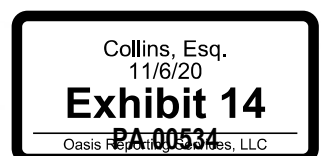
Once it is signed and notarized, please can and email a copy back to me so that I can get it to Valley's attorney to expedite the process. Please keep the original copy and mail it back to me in the envelope that I will send to your home. FedEx's website is down at the moment, but I will try to get something to you tomorrow.

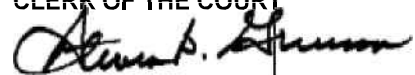
Thanks,

William S. Collins

Attorney

LAW OFFICES OF MARSHALL SILBERBERG
3333 Michelson Drive Suite 710
Irvine, CA 92612
Tel: (949) 718-0960
Fax: (949) 266-5811





RPLY

RILEY A. CLAYTON
Nevada Bar No. 005260
rclayton@lawhjc.com

HALL JAFFE & CLAYTON, LLP
7425 PEAK DRIVE
LAS VEGAS, NEVADA 89128
(702) 316-4111
FAX (702)316-4114

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY, an Arizona corporation;
COPPERPOINT GENERAL INSURANCE
COMPANY, an Arizona corporation; LAW
OFFICES OF MARSHALL SILBERGERG, P.C., a
California corporation; KENNETH MARSHALL
SILBERBEERG aka MARSHALL SILBERGER,
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 & ASSOCAITES, 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 REPLY
TO PLAINTIFFS' OPPOSITION
TO MOTION TO DISMISS BASED
UPON LACK OF PERSONAL
JURISDICTION**

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

Defendant, Bruce G. Fagel, a Law Corporation aka Law Offices of Dr. Bruce G. Fagel &
Associates ("Fagel Law"), hereby submits its Reply to Plaintiffs' Motion to Dismiss Based Upon
Lack of Personal Jurisdiction pursuant to NRCP 12(b)(2).

1 Respectfully, nothing in Plaintiffs' Opposition does anything to negate the controlling
2 facts or legal analysis, which otherwise confirm that general jurisdiction and specific personal
3 jurisdiction do not exist over Fagel Law. Therefore, Fagel Law's motion to dismiss based upon
4 lack of jurisdiction should be granted.

5 Dated this 23rd day of June 2021.

6 HALL JAFFE & CLAYTON, LLP

7 /s/ Riley A. Clayton

8
9 RILEY A. CLAYTON
10 Nevada Bar No. 005260
11 7425 Peak Drive
12 Las Vegas, Nevada 89128
Attorneys for Defendant, *Bruce G. Fagel, A Law
Corporation aka Law Offices of Bruce G. Fagel &
Associates*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14
15 **I. INTRODUCTION**

16 Fagel Law's motion to dismiss should be granted. Initially, it is critical to note that
17 Plaintiffs did not even argue (nor rightfully could they argue) that Nevada has "general
18 jurisdiction" over Fagel Law, a California law firm. Given the utter absence of any
19 "continuous and systematic" physical presence in Nevada, Plaintiffs have effectively
20 conceded that Fagel Law is **not** "essentially at home in the forum state," sufficient to warrant
21 the exercise of general jurisdiction over it. *Fulbright & Jaworski, LLP v. Eighth Jud. Dist.*
22 *Ct.*, 131 Nev. 30, 36 (2015). Therefore, this Court should grant Fagel Law's motion to
23 dismiss with respect to general jurisdiction.
24

25 The Court should also reach the same outcome with respect to alleged specific
26 personal jurisdiction. Once again it is critical to note that the outcome dispositive facts
27 regarding the absence of specific jurisdiction were not controverted or challenged in the
28

1 Opposition. These controlling and undisputed facts are: (1) Thomas Alch left Fagel Law's
2 employment on September 15, 2017(MTD p. 5, Fagel Declaration ¶12); and from that point
3 forward, (2) Fagel Law had no involvement, whatsoever, with respect to the specific conduct
4 allegedly supporting Plaintiffs' legal malpractice claims as pled in their Amended
5 Complaint (MTD pp.6-7; Fagel Declaration ¶¶9-22). Although Plaintiffs frequently
6 reference Fagel Law's purported *early* involvement in the underlying medical malpractice
7 case, their Opposition was silent with respect to Fagel Law's "involvement" regarding the
8 critical conduct supporting their instant legal malpractice claim, conceding that those
9 alleged actions occurred *after* Mr. Alch left Fagel Law and/or which did not involve Fagel
10 law, whatsoever. In other words, for purposes of the instant motion, **Fagel Law's non-**
11 **involvement with respect to the specific conduct allegedly supporting Plaintiff's legal**
12 **malpractice claim remains undisputed**: i.e., that Fagel Law (1) had no involvement,
13 whatsoever, in the drafting, reviewing, negotiating or handling of a purportedly improper
14 contingency fee agreement (MTD p. 6; Fagel Declaration ¶16); (2) had no involvement,
15 whatsoever, with respect to the alleged distribution or withholding of any settlement
16 proceeds (MTD p. 6, Fagel Declaration, ¶¶17-22) ; (3) had no involvement, whatsoever, in
17 the timing or manner in which settlement funds were disbursed (*Id.*); and (4) had no
18 involvement, whatsoever, in researching, evaluating, analyzing and/or advising the
19 Plaintiffs with respect to Copperpoint's purported right of subrogation/lien and how that
20 right/lien might impact the settlement (MTD p.5; Fagel Declaration ¶14). Rather, all of this
21 alleged legal malpractice/"suit related" conduct was performed by others, and/or well after
22 Mr. Alch had left Fagel Law's employment. *See e.g., Fulbright, supra*, at 41 (holding that
23 the legal malpractice "cause of action [must] arise from the consequences **in the forum**
24 **state of the defendant's activities,**" and that there must be evidence demonstrating "**what**

1 the legal advice was” and how Plaintiffs’ “cause of action against [the lawyers] arose
2 from that legal advice.” *Id.* Therefore, this Court should grant Fagel Law’s motion to
3 dismiss and conclude that it has no specific personal jurisdiction, either.

4 **II. LEGAL ARGUMENT**

5 **A. Plaintiffs, Not Fagel Law, Bear The Burden To Establish Personal** 6 **Jurisdiction – Something That Plaintiffs Did Not Do Here.**

7 It is important to reiterate that when a nonresident defendant challenges personal
8 jurisdiction, the plaintiff bears the burden of showing that jurisdiction exists. *Fulbright &*
9 *Jaworski v. Eighth Jud. Dist. Ct.*, 342 P.3d 997, 1001 (Nev. 2015) (citing *Trump v. Eighth*
10 *Judicial Dist. Court*, 109 Nev. 687, 692 (1993). The plaintiff must establish, by a
11 preponderance of the evidence, that (1) Nevada's long-arm statute, NRS14.065, is satisfied;
12 and (2) the exercise of jurisdiction does not offend due process. *Catholic Diocese, Green Bay*
13 *v. John Doe 119*, 349 P.3d 518, 520 (Nev. 2015), *reh'g denied* (July 23, 2015) (citing *Arbella*
14 *Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 512 (2006); *Trump*, 109 Nev. at
15 693). As set forth in detail below, Plaintiffs have not established, and indeed cannot establish,
16 that Fagel Law’s contacts with Nevada are sufficient for the Court to obtain either general or
17 specific jurisdiction over it. Therefore, the Amended Complaint must be dismissed with respect
18 to Fagel Law because the exercise of jurisdiction over it would violate the requirements of due
19 process.
20
21

22 **B. Fagel Law Is Not Subject To General Jurisdiction in Nevada; Therefore,** 23 **Its Motion To Dismiss Should Be Granted.**

24 To Plaintiffs’ credit, Plaintiffs did not argue (nor could they argue) that general
25 jurisdiction exists over Fagel Law, a California corporation with its principal place of
26 business in California. (MTD, pp. 3, 14; Fagel Declaration, ¶27). Therefore, on that basis
27
28

1 alone this Court should grant Fagel Law's motion to dismiss based upon a lack of general
2 jurisdiction over it.

3 To briefly reiterate, general jurisdiction is available only in limited circumstances
4 when a non-resident defendant's contacts with the forum state are so "continuous and
5 systematic' as to render [it] essentially at home in the forum State." *Id.* (quoting *Goodyear*,
6 564 U.S. 915, 920 (2011); *see also Arbella*, 122 Nev. at 513 ("[G]eneral personal
7 jurisdiction exists when the defendant's forum state activities are **so substantial or**
8 **continuous and systematic** that it is considered present in that forum and thus subject to
9 suit there, even though the suit's claims are unrelated to that forum.")(Emphasis added).
10 Indeed, for a business entity like a corporation, courts clearly reserve general jurisdiction to
11 the two places where a business entity may be called "home," i.e., its state of organization and
12 its principal place of business. *BNSF Ry. Co. v. Tyrell*, 137 S. Ct. 1549, 1552 (2017).
13

14 Nevada is not and has never been "home" for Fagel Law, who previously only had
15 limited contacts or affiliations with Nevada, but even less so since Mr. Alch left Fagel Law's
16 employment in late 2017, almost four years ago. (MTD, p. 5; Fagel Declaration, ¶1). At that
17 time, only 2% of work time occurred in Nevada during this period, while 98% occurred in
18 California. *Id.* p. 9; Fagel Declaration, ¶31). Fagel Law did not own any real property in
19 Nevada, had no bank accounts here, had a single lawyer licensed in Nevada but who has been
20 on inactive status for years, had no secretarial or support staff here, and although it has a
21 Nevada number, the phone number routed calls directly into Fagel Law's California office.
22 (*Id.* pp. 3, 7, 10; Fagel Declaration, ¶¶2-6. 23, 3). Moreover, Fagel Law's representation of
23 Nevada clients and involvement in Nevada matters was, and still is de minimis, e.g., 2%-4%
24 of its total revenue over the past 10 years derives from Nevada litigation and only 8-10 cases
25 in Nevada over a 10-year period. (*Id.* at p. 8; Fagel Declaration, ¶¶24, 31). Certainly, Fagel
26
27
28

1 Law admits that it provided rental payments for a “virtual office” in Nevada, which “virtual
2 office” was shared by many other law firms, including Fagel Law’s affiliated law firm;
3 however, the rental of that virtual office space ceased shortly after Mr. Alch left Fagel Law’s
4 employment, thereby further distancing Fagel Law from any meaningful “home-like” activity
5 in Nevada from that point forward. (*Id.* p. 9; Fagel Declaration, ¶30). Accordingly, Fagel Law
6 does not have “continuous and systematic” contacts with Nevada that could warrant a finding
7 that Nevada is its “home” and, Plaintiffs effectively concede as much by not challenging this
8 issue in the Opposition. *See* EDCR 2.20(e) (holding that a failure to file a written opposition
9 may be construed as an admission that the motion is meritorious and serve as a consent to
10 granting the same). Therefore, Fagel Law’s motion to dismiss pursuant to NRCP 12(b)(2)
11 should be granted with respect to the issue of general jurisdiction.
12

13 **C. By Focusing On Irrelevant “Facts” For Purposes Of Establishing**
14 **Specific Jurisdiction, Which “Facts” Have No Connection With The**
15 **Allegations Supporting Their Legal Malpractice Claims, Plaintiffs**
16 **Have Failed To Overcome Their Burden; Therefore, The Motion to**
17 **Dismiss Should Be Granted.**

18 The thrust of Plaintiff’s Opposition to Fagel Law’s motion to dismiss is whether
19 “specific jurisdiction” exists over Fagel Law. It does not. Instead of correctly focusing
20 on the lawyers’ conduct that **purportedly supports their claims for legal malpractice**,
21 Plaintiffs cite to various “facts” and argue *ad nauseum* with respect to Fagel Law’s
22 purported conduct that occurred **prior to or after** the actual events supporting their
23 purported malpractice claim (i.e., the analysis and advice regarding Copperpoint’s
24 subrogation rights/lien, disbursement/withholding of settlement funds, and/or drafting of
25 the contingency fee agreement). When evaluating “minimum contacts” for purposes of
26 specific personal jurisdiction in a **legal malpractice context**, the Court must correctly
27 focus on Fagel Law’s advice/conduct that purportedly supports Plaintiffs’ legal
28

malpractice claim. *Fulbright & Jaworski, LLP v. Eighth Jud. Dist. Ct.*, 131 Nev. 30, 41 (2015); and *H.E.B. LLC v. Jackson Walker, LLP*, 437 P.3d 1060, *2 (Nev. 2019 Table Decision)(“Specific personal jurisdiction is proper only where the cause of action arises from the defendants contacts with the forum”. . . and those “activities must be the basis of the cause of action.”) Plaintiffs’ misguided focus on “facts” and issues that have no bearing, whatsoever, on the controlling facts for purposes of specific personal jurisdiction is fatal to Plaintiffs’ case. Therefore, this Court should grant Fagel Law’s motion to dismiss.

Plaintiffs agree (Opp. pp. 8-9) that in deciding whether specific personal jurisdiction is appropriate, the Court must undertake a three-prong analysis;

(1) [t]he defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state; (2) the cause of action must arise from the consequences in the forum state of the defendant’s 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. (Emphasis added).

Consipio Holding, BV v. Carlberg, 282 P.3d 751, 755 (Nev. 2012); *see also Viega GmbH*, 328 P.3d at 1157 (recognizing specific personal jurisdiction arises when the foreign defendant “purposefully 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.”) In other words, for a state to exercise jurisdiction consistent with due process, the defendant’s suit-related conduct must create a substantial connection with the forum state. *Walden v. Fiore*, 571 U.S. 277, 284 (2014). Moreover, by using the term “and,” all three of the foregoing conditions must be satisfied or the Court cannot exercise specific personal jurisdiction over the foreign defendant. *Consipio*, 282 P.3d at 755.

To demonstrate Fagel Law’s point concerning the absence of any “suit-related conduct” with a “substantial connection “with Nevada, it is important to revisit the “facts” proffered in Plaintiffs’ Opposition and compare them with the actual allegations of the Amended Complaint. Such an analysis readily dispels the notion that Fagel Law

1 “purposefully availed” itself of Nevada’s benefits and protections because Plaintiffs’ actual
2 claims for legal malpractice are founded upon alleged acts by others--the preparation of the
3 contingency fee agreement, disbursal/withholding of settlement funds, and/or Copperpoint’s
4 subrogation rights/lien – **none of which involved Fagel Law.**

5 * *Thomas Alch reportedly approved settlement agreements and was involved in*
6 *every aspect of the Harper medical malpractice case. (Opp. p. 5).* These “facts” are not
7 necessarily disputed, except to the following extent. First, assuming *arguendo* that Mr. Alch
8 approved the settlement agreement, this came **long after** Mr. Alch left Fagel Law, and only
9 while Mr. Alch was working on behalf of Marshall Silberberg – points that Plaintiffs cannot
10 (and do not) dispute. (*See Fagel Declaration, ¶26*). Second, although Plaintiffs allege
11 (without citing to any specific exhibit in this case) that Mr. Alch was “involved in every
12 aspect of the Harper medical malpractice case,” the key issue, once again, for a specific
13 personal jurisdiction inquiry is to ascertain the **specific conduct forms/supports the legal**
14 **malpractice action**, aka the “suit-based” conduct. Again, the relevant “suit-based” conduct
15 never involved Fagel Law and/or did not occur until after Mr. Alch left Fagel Law’s
16 employment in September 2017. (*Fagel Declaration, ¶¶14, 16-22*).

17 * *Thomas Alch reviewed/signed discovery responses in 2017, assisted with*
18 *experts, advised on Nevada law regarding loss of consortium and/or tax consequences (Opp.*
19 *pp. 3-5).* These “facts” are not necessarily disputed, except to the extent that they have any
20 material impact on the specific personal jurisdiction inquiry. Notably, Plaintiffs’ Amended
21 Complaint **does not allege** that the legal malpractice occurred with respect to the review of
22 discovery responses, the retention of experts, and/or the advice regarding loss of consortium
23 or taxes. Rather, Plaintiffs’ alleged legal malpractice claims involve the “suit related
24 conduct” by other parties--the preparation and negotiation of the contingency fee agreement,
25 the withholding/disbursal of settlement proceeds, and the advice regarding Copperpoint’s
26 subrogation right/lien. Plaintiffs did not contest, nor could they, that Fagel Law had any
27 involvement in the relevant, “suit-based” activity. Thus, Plaintiffs’ proffered “facts” are
28 irrelevant for purposes of specific personal jurisdiction and do not help them here.

1 * *Fagel Law paid for a virtual office in Nevada, had Thomas Alch take the*
2 *Nevada bar and open an affiliated law firm in Nevada, filed suits in Nevada, and paid for*
3 *advertising in Nevada (Opp. p. 3).* Importantly, these issues go to “general jurisdiction,”
4 which Plaintiffs conceded, and have nothing to do with specific personal jurisdiction.¹
5 Indeed, Fagel Law has never shied away from the fact that it had a virtual office in Nevada
6 and formerly had an affiliated law firm here. (Fagel Declaration, ¶30) In fact, these items
7 were specifically listed in Dr. Fagel’s Declaration, knowing that although they are true, they
8 have no significance, whatsoever, on any conduct relating to Plaintiffs’ legal malpractice
9 claims as alleged in the Amended Complaint. *Id.*

10 * *Fagel Law had 8-10 cases filed in Nevada wherein the affiliated Law Office*
11 *of Thomas S. Alch was listed as counsel (Opp. p. 3).* Again, this issue goes to “general
12 jurisdiction” and has no bearing on the specific personal jurisdiction analysis. Even if
13 relevant, the fact remains undisputed that these cases play a de minimis part in Fagel Law’s
14 overall book of business, comprising of only 2%-4% of its income. (Fagel Declaration, ¶
15 24). Moreover, Fagel Law’s handling of these unrelated cases have absolutely no relevance
16 on Plaintiffs’ legal malpractice claims asserted here, i.e., the handling of Plaintiffs’
17 contingency fee agreement, handling of Plaintiffs disbursement/withholding of settlement
18 proceeds, and handling of Copperpoint’s subrogation right/lien. Therefore, these “facts” are
19 irrelevant for purposes of the specific personal jurisdiction inquiry, too.

20 * *Fagel Law received payment from the settlement of the underlying medical*
21 *malpractice claim (Opp. p. 2-4, 7).* Once again, Fagel Law has not shied away from the
22 “fact” that it received compensation after the settlement of the Plaintiffs’ underlying medical
23 malpractice case. (Fagel Declaration, ¶9). **That compensation was proposed to and**
24

25
26 ¹ It is true that the *Fulbright* court references the fact that solicitation of the Nevada client is relevant for purposes
27 of the specific personal jurisdiction inquiry. *Fulbright*, 131 Nev. at 40 (holding that if an out-of-state law firm
28 solicited the client’s business in Nevada, then that may play a factor for establishing jurisdiction). However, in this
case, there is no evidence that Plaintiffs, who are Arizona (not Nevada) residents, were ever solicited by Fagel
Law. Rather, the converse is true – the Plaintiffs sought out Marshall Silberberg, a California lawyer, and later,
Marshall Silberberg asked Fagel Law to associate as counsel. (Fagel declaration, ¶ 7). Fagel Law’s purported
payments for advertising has no bearing here.

1 **agreed to in California, and** Fagel Law **acknowledged** it in its motion to dismiss. (MTD,
2 po. 6). This “fact,” however, is wholly irrelevant to the specific personal jurisdiction inquiry
3 when there is no allegation in Plaintiffs’ Amended Complaint suggesting that the purported
4 malpractice involves Fagel Law’s ability to earn a fee. In fact, receiving payment for legal
5 service is not even a factor mentioned in Nevada’s legal malpractice personal jurisdiction
6 jurisprudence. *See e.g., Fulbright, supra; H.E.B., supra, and China Auto Logistics, Inc. v.*
7 *DLA Piper, LLP*, 2021 WL 830189 (D. Nev. 2021). Moreover, it is undisputed that
8 Silberberg controlled and disbursed the fee. Fagel Law had absolutely no involvement
9 regarding the timing or issuance of that payment. Therefore, simply because Fagel Law
10 earned a fee from the underlying medical malpractice case, this “fact” has no significance
11 for purposes of the specific personal jurisdiction analysis.

12 As has been demonstrated from the foregoing analysis, none of the conduct alleged
13 in Plaintiffs’ Amended Complaint, which purportedly supports their malpractice claim, was
14 ever addressed by Plaintiffs in their Opposition, nor was there any analysis done showing
15 that Fagel Law was in any way involved in the “suit-related” conduct. As the Nevada
16 Supreme Court has unequivocally held, specific personal jurisdiction can only exist over a
17 foreign law firm where the “activities [forming the legal malpractice claim] must be the
18 basis of the cause of action. *See, H.E.B. LLC v. Jackson Walker, LLP*, 437 P.3d 1060, *2
19 (Nev. 2019 Table Decision)(“Specific personal jurisdiction is proper **only** where the
20 cause of action arises from the defendants contacts with the forum”. . . and **those**
21 **“activities must be the basis of the cause of action.”**)² Therefore, by failing to address
22 tie/connect the specific conduct forming the basis of the legal malpractice action to Fagel
23 Law, this Court should agree that Plaintiffs have not satisfied their burden, and that there is
24 no Constitutional basis to exercise personal jurisdiction over Fagel Law in this matter

25
26 ² In *Walden v. Fiore*, 571 U.S. 277, 289–89 (2014), the Court held that a Nevada court could not exercise
27 jurisdiction over Georgia officers who confiscated money from Nevada residents outside of Nevada, even assuming
28 the officers knew the individuals were residents of Nevada and would suffer foreseeable harm there. *See also*
Axiom Foods Inc. v. Acerchem Int’l, Inc., 874 F.3d 1064, 1070 (9th Cir. 2017) (“Following *Walden*, we now hold
that while a theory of individualized targeting may remain relevant to the minimum contacts inquiry, it will not, on
its own, support the exercise of specific jurisdiction...”).

1
2 **D. A Defendant's Purported *Liability* Does Not, Therefore, Equate To The
3 Court Having Personal Jurisdiction Over That Defendant.**

4 Plaintiffs spend substantial time discussing Nevada and California law regarding
5 potential vicarious liability of partners or joint venturers, citing *Radaker v. Scott*, 109 Nev.
6 653 (1993) and *Cahill Bros. Inc. v. Clementina Co.*, 208 Cal. App. 2d. 367 (1962). (Opp.
7 pp. 7-9). Plaintiffs argue that because one member of a partnership or joint venture may
8 be liable, all partners or joint venturers may, likewise, be liable. (Opp. pp. 8-9). Assuming,
9 *arguendo*, that Fagel Law was in some form of a joint venture with anyone associated with
10 this case, and assuming, *arguendo*, that the other joint venturers committed malpractice
11 such that their malpractice can be imputed to all partners or joint venturers, that analysis
12 **means nothing** for purposes of the instant motion. Here, the issue is not whether Fagel
13 Law may be *liable* to the Plaintiffs for the purported acts of Silberberg, Collins, and/or
14 Alch, but rather, *whether personal jurisdiction exists* over Fagel Law. None of the cases
15 cited by Plaintiffs address the **threshold personal jurisdiction inquiry**, thereby rendering
16 them readily and fully distinguishable. Indeed, it is axiomatic that before a court may
17 impose *liability* upon any defendant, it must first establish that *jurisdiction* exists over that
18 defendant. *See e.g.*, NRCP 12(b)(1)(dismissal based on lack of subject-matter jurisdiction)
19 and (b)(2)(dismissal based on lack of personal jurisdiction); *see also*, *Swain v. Molten Co.*
20 73 F.3d 711, 718 (7th Cir. 1996) ("If the district court finds itself without [personal]
21 jurisdiction...then it is obligated to dismiss the case because it has no authority over the
22 defendant.") In fact, the United States Supreme Court even recognized this critical liability
23 vs. jurisdiction distinction in *Shaffer v. Heitner*, 433 U.S. 186, 204 (1997) by stating:

24 Whether due process is satisfied must depend rather upon the quality and
25 nature of the activity in relation to the fair and orderly administration of the
26 laws which it was the purpose of the due process clause to insure. **That clause
does not contemplate that a state may make binding a judgment in
personam against an individual or corporate defendant with which the
state has no contacts, ties, or relations.** (Emphasis added)

27 Here, Plaintiffs have not satisfied their **threshold burden** of establishing personal
28 jurisdiction over Fagel Law; therefore, any potential *liability* of Fagel Law, whether direct

1 or vicarious, is irrelevant. If Plaintiffs want to correctly assert *liability* against Fagel Law,
2 they must first do so in some other forum where personal jurisdiction lies, *i.e.*, California.
3 As such, Fagel Law's motion to dismiss this case should be granted, irrespective of any
4 vicarious liability purportedly being foisted upon them as a putative "joint venturer."

5 **E. Plaintiffs Failed To Address The Other Key Components Of The**
6 **Personal Jurisdiction Inquiry; Therefore, Fagel Law's Motion Should**
7 **Be Granted.**

8 Plaintiffs' Opposition is silent with respect to their domicile/residency, and the
9 reason for this silence seems clear – the primary basis for having personal jurisdiction in
10 a particular forum where the plaintiff resides is absent here. Again, the Plaintiffs are
11 Arizona and not Nevada residents, thereby further undercutting any potential basis for
12 specific jurisdiction.

13 Beyond that, Plaintiffs did not even address the third prong of Nevada's specific
14 jurisdiction test, *i.e.*, whether requiring Fagel Law to appear and defend suit in Nevada would
15 be Constitutionally unreasonable. In its Motion, Fagel Law pointed out the fact that Nevada
16 courts require the parties to address five factors establishing whether defending a suit in
17 Nevada would be unreasonable. *Consipio Holding, BV v. Carlberg*, 282 P.3d 751, 755 (Nev.
18 2012). Again, these factors establishing Constitutional "reasonableness" include:

19 (1) the burden that the defendant will face in defending claims in
20 Nevada, (2) Nevada's interest in adjudicating those claims, (3) the
21 plaintiffs' interests in obtaining expedited relief, (4) along with
22 interstate considerations such as efficiency, and (5) social 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)
27 (recognizing the same factors). Here, despite being advised of and invited to analyze these
28 factors, Plaintiffs' Opposition is silent. On the other hand, in its motion to dismiss Fagel Law
addressed each of these factors and demonstrated why forcing it to defend this case in
Nevada would be unreasonable.

1 Again, Fagel Law is a California corporation with no physical presence here. Fagel
2 Law's principal place of business is in Los Angeles, California. The Plaintiffs do not live
3 in Nevada, nor does the principal of Fagel Law, Dr. Fagel, reside in Nevada. Requiring
4 Fagel Law to travel to Nevada solely for the purpose of defending against Plaintiffs' action
5 will be burdensome to a law firm that has effectively no lingering contact with Nevada.
6 Likewise, Nevada has little interest in adjudicating Plaintiffs' claims against Fagel Law,
7 particularly since this Court has already determined that Arizona law would apply to the
8 Copperpoint lien/subrogation issue, and the drafting of the contingency fee agreement and
9 disbursement of the proceeds all happened in California with the Silberberg firm. Moreover,
10 Plaintiffs did nothing to address interstate considerations, such as efficiency, which would be
11 furthered by dismissing Plaintiffs' Amended Complaint against Fagel Law. In fact, Plaintiffs
12 already are represented by a California lawyer in this case. Thus, there should be little difficulty
13 in Plaintiffs bringing suit in California where Fagel Law is incorporated and has its principal
14 place of business, where Silberberg resides and is incorporated, and where the allegedly tortious
15 ("suit related") conduct occurred.

16 Finally, Plaintiffs did not address the public policy component of the personal jurisdiction
17 inquiry, which also supports dismissal of Plaintiffs' Amended Complaint. Indeed, failing
18 to dismiss Fagel Law would encourage other litigants to wrongfully bring similar actions
19 against nonresident defendants on the sole basis that a plaintiff from some foreign
20 jurisdiction filed a suit in Nevada that, allegedly, went poorly due to the alleged errors and
21 omissions of some other out-of-state lawyer. Again, by failing to address these
22 Constitutionally material issues, EDCR 2.20(e) holds that Plaintiffs failure to do so should
23 be construed as an admission that Fagel Law's position is meritorious.

24 In sum, Plaintiffs failed to satisfy their burden to support a finding that Fagel Law
25 purposefully availed itself of the privilege of acting in Nevada or that Fagel Law's alleged "suit
26 related" conduct had any Constitutionally sufficient connection to Nevada. Respectfully,
27 requiring Fagel Law to appear and defend suit in Nevada would be unreasonable and
28

1 unconstitutional, particularly when even Silberberg admits that Fagel Law had no involvement
2 in the handling or decision-making of the underlying medical malpractice case at the relevant
3 time period. Under controlling United States Supreme Court and Nevada Supreme Court
4 precedent, the Court therefore should dismiss Plaintiffs' Amended Complaint as it relates to
5 Fagel Law.

6 **IV. CONCLUSION**

7 Based on the foregoing, non-resident defendant, Fagel Law, respectfully requests
8 that this Court dismiss it from Plaintiff's Amended Complaint for lack of personal
9 jurisdiction pursuant to NRCP 12(b)(2).
10

11 Dated this 23rd day of June 2021.

12 HALL JAFFE & CLAYTON, LLP

13 */s/ Riley A. Clayton*

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

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that I am an employee of HALL JAFFE & CLAYTON, LLP and on the 23rd day of June 2021, I served the foregoing **DEFENDANT BRUCE G. FAGEL, A LAW CORPORATION AKA LAW OFFICES OF BRUCE G. FAGEL & ASSOCIATES REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS BASED UPON LACK OF PERSONAL JURISDICTION** on the following parties by electronic transmission through the Court's e-filing and service program, addressed to the following:

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

Jason R. Maier, Esq.
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, NV 89148
Attorneys for Plaintiff

Dalton L. Hooks, Jr., Esq.
Sami Randolph, Esq.
HOOKS MENG & CLEMENT
2820 W. Charleston Blvd. Ste. C-23
Las Vegas, NV 89102
*Attorneys for Defendants Copperpoint Mutual
Insurance Holding Co. and Copperpoint General Insurance Company*

Robert c. McBride, Esq.
Heather S. Hall, Esq.
McBRIDE HALL
8329 W. Sunset Road, Suite 260
Las Vegas, Nv 89113

Robert L. McKenna, III, Esq.
James Kjar, Esq.
Jon Schwalbach, Esq,
KJAR, McKENNA & STOCKALPER, LLP
841 Apollo Street, Ste. 100
El Segundo CA 90245
*Attorneys for Defendants,
Law Offices of Marshall Silberberg, P.C. and
Kenneth Marshall Silberberg*

1 David A. Clark, Esq.
2 LIPSON NEILSON, P.C.
3 9900 Covington Cross Drive, Suite 120
4 Las Vegas, NV 89144
5 *Attorneys for Defendants*
6 *Shoop A. Professional Law Corporation*
7 *and Thomas A. Alch*

8 */s/ Michele Stones*

9 An Employee of
10 HALL JAFFE & CLAYTON, LLP
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**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

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

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

vs.)

COPPERPOINT MUTUAL INSURANCE)
HOLDING COMPANY, an Arizona Corp.;)
COPPERPOINT GENERAL INSURANCE)
COMPANY, an Arizona Corp; LAW OFFICES)
OF MARSHALL SILVERBERG, P.C., a)
California Corp.; KENNETH MARSHALL)
SILVERBERG aka MARSHALL SILVERBERG)
Aka K. MARSHALL SILVERBERG, an)
Individual; THOMAS S. ALCH aka THOMAS)
STEVEN ALCH, an individual; SHOOP, A)
PROFESSIONAL LAW CORPORATION, a)
California Corporation, BRUCE G. F AGEL, A)
LAW CORPORATION aka LAW OFFICES OF)
BRUCE G. F AGEL & ASSOCAITES, a)
California Corporation DOES 1-50, inclusive,)
)
Defendants.)

ORDER

INTRODUCTION

The above-referenced matter is scheduled for a hearing on June 30, 2021, with regard to Defendant, Bruce G. Fagel's Motion to Dismiss Based upon Lack of Personal Jurisdiction. Pursuant to the Administrative Orders of the Court, as well as EDCR, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the papers, and consequently, this order issues.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff, Daria Harper, is an Arizona resident, who was employed by an Arizona employer that carried workers' compensation insurance with Defendant, Copperpoint General Insurance Company (Copperpoint). Plaintiff was initially injured in Arizona

1 during her employment with Islander RV Resort, and she filed for and obtained
2 workers' compensation benefits in Arizona. Plaintiff required medical treatment in Las
3 Vegas, and was injured as a result of medical negligence. Plaintiff then filed a medical
4 malpractice/professional negligence suit in Clark County, Nevada. The industrial claim
5 was administered in accordance with the provisions of the Arizona Workers'
6 Compensation Act, and Defendant Copperpoint paid benefits of approximately
7 \$3,171,095. With regard to Plaintiff's professional negligence claim in Nevada, Plaintiff
8 received \$6,250,000.00 in settlement funds. Plaintiff claims her recovery was limited
9 by NRS 42.021 which would diminish her recovery by the admission of evidence that
10 medical bills and lost earnings were paid by workers' compensation. But that same
11 statute would preclude a lien by the workers' compensation carrier if such payments
12 were admitted at trial. Defendant, Copperpoint, has ceased paying Plaintiff benefits,
13 claiming that it has a credit for \$3,171,095, and it is not required to pay further benefits
until it has recouped its lien.

14 Subsequently, Defendant sent Plaintiff a letter asking for an update. Counsel for
15 Plaintiff informed Defendant that the matter was settled and no lien was valid against
16 the settlement because NRS 42.021 precludes such a lien. Defendant then sent a notice
17 of claim status, informing Plaintiff of their belief in the validity of the lien pursuant to
18 Arizona statute A.R.S. 23-1023, and informing Plaintiff that further medical expenses
19 would not be paid until the funds paid by Defendant had been recouped. After service
20 of this notice, Defendant also informed Plaintiff that they would cease providing her
21 any and all benefits in 30 days. One month later, Defendant sent another letter
22 informing Plaintiff that all benefits were terminated until the lien amount \$3,171,095
was paid.

23 The Complaint in this case was filed on May 04, 2020, seeking declaratory relief
24 regarding whether Defendant was entitled to terminate benefits and demand
25 repayment of its lien (whether the lien is valid); seeking injunctive relief to make
26 Defendant continue to pay workers compensation benefits to Plaintiff (should
27 Defendant win on the lien issue); and asserting causes of action for legal malpractice
28 and breach of fiduciary duty against Defendants Law Offices of Marshall Silberberg,
PC, Kenneth Marshall Silberberg, and Thomas S. Alch aka Thomas Steven Alch, Shoop,
a Professional Law Corporation. Plaintiffs also alleged fraud and breach of contract by

1 Defendants Law Offices of Marshall Silberberg, PC, and Kenneth Marshall Silberberg.
2 Plaintiffs also seek punitive damages.

3 On May 20, 2020, Plaintiffs filed an application for TRO and Motion for
4 Preliminary Injunction. This Court heard oral argument regarding the Application for
5 TRO and Motion for Preliminary Injunction on July 08, 2020. This Court indicated
6 that there were issues raised that would preclude the granting of a preliminary
7 injunction. Additionally, the Court advised that monetary loss was insufficient to
8 establish irreparable harm. Consequently, the Motion for Preliminary Injunction was
9 denied.

10 Subsequently, Defendants Copperpoint and Thomas S. Alch each filed a Motion
11 to Dismiss, or Alternatively, Motion for Summary Judgment, which was joined by
12 Defendants Law Offices of Marshall Silberberg, PC and Kenneth Marshall Silberberg.
13 Additionally, Defendant Shoop filed a Motion to Dismiss for Lack of Personal
14 Jurisdiction, and Plaintiffs filed a Motion for Partial Summary Judgment. These items
15 were all decided on the papers in an order filed on October 26, 2020. Defendant
16 Copperpoint's Motion was granted, dismissing Copperpoint from this litigation in their
17 entirety. Alch's Motion was denied. Shoop's Motion was continued to February 24,
18 2021, and Plaintiffs' Motion was denied. Plaintiffs filed a Notice of Appeal on
19 November 24, 2020, along with a Motion to Certify the October 26, 2020 Order as
20 Final Pursuant to NRCP 54. The Case Appeal Statement was filed on December 11,
21 2020. The \$500 appeal bond was posted on December 15, 2020. No Opposition
22 having been filed, the Motion to Certify the October 26, 2020, Order as Final Pursuant
23 to NRCP 54 was granted (as it relates to the Plaintiffs claims against Copperpoint) in a
24 minute order dated December 30, 2020.

25 Plaintiffs sought leave to file an Amended Complaint pursuant to NRCP 15 to
26 expand upon the allegations in the original Complaint and to add Bruce G. Fagel, A Law
27 Corporation, also known as Law Offices of Bruce G. Fagel & Associates, as a defendant.
28 Upon taking the deposition of Defendant Thomas S. Alch, Plaintiffs learned that
Defendant Alch was the agent of and acting on behalf of Bruce G. Fagel, A Law
Corporation, also known as Law Offices of Bruce G. Fagel & Associates. Plaintiffs also
learned that Bruce G. Fagel, A Law Corporation, also known as Law Offices of Bruce G.
Fagel & Associates, was a party to a joint venture with the then-named legal

malpractice defendants, Alch and Silberberg. Plaintiffs' Motion was granted on March 9, 2021 and they filed an Amended Complaint the same day. Apparently, Bruce G. Fagel, A Law Corporation, also known as Law Offices of Bruce G. Fagel & Associates was served with the summons and amended complaint on April 1, 2021.

On April 1, 2021, the Court entered a Stipulation and Order to Stay Case pending appeal in the Supreme Court of Nevada. However, on April 20, 2021, the Court entered a clarified Stipulation and Order to Stay Case, which provides that stay does not apply to the responsive pleading deadline of Defendant Bruce G. Fagel, A Law Corporation, also known as Law Offices of Bruce G. Fagel & Associates ("Fagel Law"). Defendant Fagel Law filed an Initial Appearance Fee Disclosure and the present Motion to Dismiss on May 21, 2021. Plaintiffs filed an Opposition thereafter on June 4, 2021, and a Reply was filed June 23, 2021.

SUMMARY OF LEGAL ARGUMENTS.

Defendant Fagel Law filed present Motion on 5/21/21. Defendant argues for dismissal under NRCP 12(b)(5) because the Court lacks either general or specific jurisdiction.

Defendant's first argument is that Nevada is not and has never been "home" its home, and that it extremely limited contacts or affiliations with Nevada. According to the Declaration of Bruce G. Fagel, Fagel Law had a "virtual" office for its affiliate, the Law Office of Thomas S. Alch for some years. Thomas S. Alch ended his affiliation with Fagel Law in September 2017. Fagel Law has not had an office in Nevada since December 2018. While Fagel Law maintained a virtual office, only 2% of work time occurred in Nevada while 98% occurred in California. Fagel Law does not own any real property in Nevada and has no bank accounts here. It has a single lawyer licensed in Nevada but who has been on inactive status for years, has no secretarial or support staff here, and although it has a Nevada number, the phone number routes calls directly into Fagel Law's California office. Moreover, Fagel Law's representation of Nevada clients and involvement in Nevada matters is de minimis, with only 2-5% of its total revenue over the past 10 years. Fagle argues that "home," as the Court has defined it for general jurisdiction purposes, is California - the place of its incorporation and its principal place of its business.

1 Defendant cites to an unpublished US Supreme Court opinion to bolster its
2 position. The case is *BNSF Ry. Co. v. Tyrell, et al.*, 16-405, 2017 WL 2322834 (U.S.
3 May 30, 2017). There, a North Dakota resident brought a Federal Employers' Liability
4 Act (FELA) suit against BNSF Railway Company in Montana state court for claims
5 relating to injuries that occurred outside of Montana. *BNSF Ry. Co.* at 4. The Court
6 noted that BNSF was neither incorporated nor headquartered in Montana. *Id.* Although
7 the BNSF operated over 2,000 miles of railway in the State and employed more than
8 2,000 employees, its activity in there was not such "as to render it essentially at home"
9 in Montana. *Id.*; referencing *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014).

10 In that case, the Court held:

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

16 *BNSF Ry. Co.*, 2017 WL 2322834 at 10.

17 Defendant next asserts that the Court also lacks specific jurisdiction. Defendant
18 argues that all relevant case law presumes that the Plaintiffs are from the forum state.
19 However, here the plaintiffs are/were from Arizona, not Nevada. Plaintiffs have not
20 and cannot establish that Fagel Law engaged in any specific "suit-related conduct" that
21 would create a substantial connection between Fagel Law and Nevada.

22 Plaintiffs' central allegation is that they received inadequate/insufficient advice
23 concerning the existence and ramifications regarding the Copperpoint
24 subrogation/lien, but Fagle contends that no one associated with Fagel Law was
25 involved in the settlement of the underlying case, the research and analysis of the
26 potential ramifications of the Copperpoint subrogation/lien, whether Nevada law or
27 Arizona law would apply to that determination, what the Plaintiffs knew about the
28 existence of the lien, and/or provided legal advice to the Plaintiffs regarding those
issues, etc. Rather, Silberberg admitted that he handled all critical "suit-related"
activity.

1 Defendant contrasts the present facts with those in *Fulbright & Jaworski v.*
2 *Eighth Jud. Dis. Court*, 131 Nev. 30, 36 (2015), where the Court held a Texas-based law
3 firm did not purposefully avail itself of the benefit of acting client's home state of
4 Nevada simply by meeting with the client in Nevada. Defendant argues that here there
5 are no allegations of any "suit related" activity being performed by Fagel Law in
6 Nevada, and no allegations of any meeting or contact in Nevada that forms any part of
7 Plaintiffs' claims.

8 Even if all of Plaintiffs' allegations about Fagel Law's conduct are taken to be
9 true for purposes of this jurisdictional analysis, nothing in those allegations provides a
10 connection to Nevada that is sufficient to permit the Court to assert jurisdiction.
11 Requiring Fagel to appear and defend this suit in Nevada would be unreasonable and
12 burdensome. Nevada has little interest in adjudicating Plaintiffs' claims, particularly
13 since this Court has already determined that Arizona law would apply to the
14 Copperpoint lien/subrogation issue, and the contingency fee agreement and
15 disbursement of the proceeds all happened in California with the Silberberg firm.

16 Defendant argues that none of the allegedly tortious "suit related" conduct took
17 place in Nevada, and did not even involve Fagel Law since Silberberg handled the
18 resolution of the case, the Copperpoint lien issue, the contingency fee agreements, and
19 the disbursement of proceeds.

20 Defendant argues that Fagel Law has not maintained even a virtual office in
21 Nevada since December 2018 and has not taken any new Nevada matters since 2018.
22 Plaintiffs could have brought this suit in California where Fagel Law is incorporated
23 and has its principal place of business, where Silberberg resides and is incorporated,
24 and where the allegedly tortious ("suit related") conduct occurred.

25 Finally, Defendant argues that public policy supports dismissal of Plaintiffs'
26 Amended Complaint against Fagel Law. Failure to dismiss Plaintiffs' claims against
27 Fagel Law would encourage litigants to bring similar actions against nonresident
28 defendants on the sole basis that a plaintiff from a foreign jurisdiction had a failed
lawsuit in the State allegedly due to the errors and omissions of an out-of-state

In opposition, Plaintiffs argue that Fagel Law purposefully availed itself of the
benefits of serving the market in Nevada on ten separate occasions by paying for the
cost of a Nevada office and directing its agent/employee, who was licensed to practice

1 in Nevada, to file lawsuits in Nevada. Although Fagel Law argues that its connection
2 with Nevada was practically non-existent, that is involvement in the underlying medical
3 malpractice lawsuit was nominal at best, the facts prove otherwise.

4 Plaintiffs point out that between 1999 and 2017, Fagel paid for and rented an
5 office in Nevada, advertised for Nevada medical malpractice cases, and handled
6 approximately ten Nevada cases. Alch was Fagel Law's employee and agent in Nevada,
7 and while employed by Fagel Law, filed the complaint, assisted in discovery, and gave
8 advice on Nevada law. After Alch ceased being Fagel's employee, he continued as
9 Fagel's agent in Nevada, Fagel continued to pay for Alch's Nevada office; Alch reviewed
10 expert witness reports, gave advice on Nevada law, and approved settlement
11 agreements.

12 "It is well settled that a corporation can act only through its agents." *Smith's*
13 *Food & Drug Ctrs., Inc. v. Bellegarde*, 114 Nev. 602, 608, 958 P.2d 1208, 1212

14 Plaintiffs argue that specific jurisdiction exists, as Fagel Law's contacts with
15 Nevada were intentional and purposeful when it advertised to Nevada residents and
16 paid for office space for its agent to represent clients in Nevada courts and receive
17 monetary rewards. Fagel's contacts prior to the Harper medical malpractice case
18 provide the basis for general personal jurisdiction, and Fagel's contacts in connection
19 with the Harper medical malpractice case provide the basis for specific personal
20 jurisdiction.

21 Plaintiffs argue that Fagel's argument that none of its actions caused Plaintiffs
22 harm as a result of the settlement ignores the allegations of the complaint that Alch was
23 an agent of Fagel law when his negligence harmed Plaintiffs. Plaintiffs also argue that
24 even if neither Fagel nor Alch were personally negligent, they would be liable as joint
25 venturers, as alleged in paragraph 9 of the amended complaint. Plaintiffs contend that
26 Silberberg, Fagel and Alch entered into a joint venture, the purpose of which was to
27 combine their efforts to pursue a medical malpractice lawsuit in Nevada, and that
28 attorney's fees would be shared equally between Fagel and Silberberg, with Alch
receiving 10% of Fagel's share. 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. Plaintiffs
reference *Radaker v. Scott* (1993) 109 Nev. 653, 658, 855 P.2d 1037, 1040, where the

1 Nevada Supreme Court explained that partners in a joint venture are jointly and
2 severally liable for everything chargeable to the partnership under NRS 87.130.

3 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

4 For a Court to obtain personal jurisdiction over a nonresident defendant, a
5 plaintiff must show: (1) That the requirements of Nevada's long-arm statute have been
6 satisfied, and (2) that due process is not offended by the exercise of jurisdiction."
7 *Arbella Mut. Ins. Co. v. Eighth Jud. Dist. Court*, 122 Nev. 509, 512, 134 P.3d 710, 712
8 (2006) (quoting *Firouzabadi v. First Jud. Dist.Ct. In & For Carson City*, 110 Nev. 1348,
9 1352, 885 P.2d 616, 619 (1994)). Nevada's long arm statute, NRS 14.065, reaches the
10 constitutional limits of due process under the Fourteenth Amendment, which requires
11 that the defendant have such minimum contacts with the State that the defendant
12 could reasonably anticipate being haled into court here, thereby complying with
13 "traditional notions of fair play and substantial justice." *Arbella*, 122 Nev. at 512, 134
14 P.3d at 710, 712 (quoting *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)). Due
15 process requirements are satisfied if the nonresident defendant's contacts are sufficient
16 to obtain either (1) general jurisdiction or (2) specific personal jurisdiction, and it is
17 reasonable to subject the nonresident defendant to suit here. *Arbella* at 712.

18 General jurisdiction exists where the Defendant's activities in the forum State
19 are so substantial or continuous and systematic that it may be deemed present in the
20 forum and is thereby subject to suit over claims unrelated to its activities there. *Viega*
21 *GmbH v. Eighth Jud. Dist. Ct.*, 30 Nev. 368, 375, 328 P.3d 1152, 1157 (2014); *Daimler*
22 *AG v. Bauman*, 571 U.S. 117, 127 (2014). A general jurisdiction inquiry "calls for an
23 appraisal of a [defendant's] activities in their entirety, nationwide and worldwide."
24 *Fulbright & Jaworski v. Eighth Jud. Dis. Court*, 131 Nev. 30, 36 (2015) (quoting
25 *Daimler*, 571 U.S. 117, 127. Although Fagel Law previously had a "virtual" office in
26 Nevada, such that it had an attorney/agent practicing in Nevada, and the activities in
27 Nevada may have been substantial, continuous, and systematic at one time, they do not
28 appear to be so now. That does not mean, however, that jurisdiction does not lie for
events which happened while the activities were substantial, continuous and
systematic. Even if the Court were not to find general jurisdiction, however, the Court
believes that specific jurisdiction applies.

1 A state may exercise specific personal jurisdiction over a non-resident
2 defendant, “only where (1) the defendant purposefully establishes contacts with the
3 forum state and affirmatively directs conduct toward the forum state, and (2) the cause
4 of action arises from that purposeful contact with the forum or conduct targeting the
5 forum. *Baker v. Eighth Jud. Dist. Court ex rel. County of Clark*, 116 Nev. 527, 999 P.2d
6 1020, 1024 (2000) (citing *Trump v. Eighth Jud. Dist. Court*, 109 Nev. 687, 699–700
7 (1993)). In the present case, Thomas Alch was an employee or agent of Fagel Law,
8 provided legal services in Nevada, and was at least allegedly involved in the providing
9 of legal services and advice to the Plaintiffs, relating to the Arizona workers’
10 compensation claim, and its relation to the Nevada professional negligence claim.

11 For purposes of a Motion to Dismiss under NRCP 12, the allegations of the
12 Complaint must be presumed to be true, and all evidence and allegations must be
13 viewed in the light most favorable to the nonmoving party. Further, a Complaint is
14 generally not dismissed unless the Court finds that Plaintiff would not be entitled to
15 relief under any set of facts which could be proved. Although a jurisdictional analysis is
16 a legal analysis, not a factual analysis, it is dependent at least in part on the Court’s
17 determination of whether the moving Defendant purposely availed itself of the form
18 state, and whether the purposeful contacts with the state resulted in the Plaintiff’s
19 claims. Based on the information and evidence provided to the Court, this Court
20 believes that the Plaintiff has established sufficient evidence of the Defendant’s
21 purposeful contacts with the State of Nevada, and that such contacts, especially
22 through the involvement of its agent, Thomas Alch, satisfies the requirements of
23 specific personal jurisdiction.

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

26 “A joint venture is a contractual relationship in the nature of an informal
27 partnership wherein two or more persons conduct some business enterprise,
28 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 insight.
NRS 87.060 defines a partnership as an association of two or more persons to
carry on as co-owners a business for profit. NRS 87.130 indicates that the
partnership will be bound where loss or injury is inflicted upon a third party by a

1 partner acting in the ordinary course of the business of the partnership.
2 Moreover, all partners are to be held liable jointly and severally for everything
3 chargeable to the partnership under NRS 87.130. See NRS 87.150.”

4 This Court finds that there is at least some evidence that may establish a joint
5 venture in favor of the Plaintiff’s claims. Paragraph 5 of Plaintiff’s Amended Complaint
6 provides:

7 At all times mentioned herein, defendant THOMAS STEVEN ALCH, also known
8 as THOMAS S. ALCH (“ALCH”), was and is licensed to practice law in California
9 and Nevada. From March 17, 1997, until September 15, 2017, ALCH was an
10 agent and/or employee of defendant BRUCE G. FAGEL, A LAW
11 CORPORATION, also known as Law Offices of Bruce G. Fagel & From March 17,
12 1997, until September 15, 2017, ALCH was an agent and/or employee of
13 defendant BRUCE G. FAGEL, A LAW CORPORATION, also known as Law
14 Offices of Bruce G. Fagel & Associates (“FAGEL”). From September 16, 2017, to
15 the present, ALCH was an agent and/or employee of SHOOP, A
16 PROFESSIONAL LAW CORPORATION (“SHOOP”). SHOOP was and is a
17 corporation duly incorporated under the laws of California and located in Los
18 Angeles County, California, and procured professional liability insurance that
19 covers the negligent acts and omissions of its agent and/or employee defendant
20 ALCH. From September 16, 2017, to the present, ALCH was the agent of FAGEL,
21 acting on FAGEL’s behalf for the purpose of prosecuting lawsuits in the state of
22 Nevada. At all times after September 15, 2017, ALCH and FAGEL were engaged
23 in a joint venture, pursuant to which FAGEL paid for an office in Las Vegas,
24 Nevada, and paid the expenses of ALCH, so that ALCH would be able to practice
25 law in Nevada and represent the clients of FAGEL in Nevada, for the goal of
26 earning attorney fees for themselves. FAGEL was and is a corporation duly
27 incorporated under the laws of California and located in Los Angeles County,
28 California, and is liable for the negligent acts and omissions of its joint venturer,
agent and/or employee, defendant ALCH.

21 According to the Declaration of Bruce G. Fagel, Fagel Law held itself out to have
22 a Nevada office and a Nevada licensed attorney to perform legal services in Nevada
23 from 1997-2017. Specifically, Fagel states that it rented a “virtual office” suite location
24 in Nevada, so that The Law Office of Thomas S. Alch, could comply with Nevada’s Rules
25 of Professional Conduct. The fictitious firm name in Nevada was “The Law Offices of
26 Thomas S. Alch, an affiliate Bruce G. Fagel & Associates.”

27 **CONCLUSION/ORDER**

28 Based upon the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that Bruce Fagel’s Motion to Dismiss for Lack of
Jurisdiction is hereby **DENIED**.

Because this matter has been decided on the pleadings, the hearing scheduled for June 30, 2021, will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear.

Dated this 4th day of July, 2021

[Handwritten signature]

JERRY A. WIESE II
DISTRICT COURT JUDGE

91B 03F 1D17 6DB3
Jerry A. Wiese
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daria Harper, Plaintiff(s)

CASE NO: A-20-814541-C

7 vs.

DEPT. NO. Department 30

8 Copperpoint Mutual Insurance
9 Holding Company, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 7/4/2021

15 Kellie Piet

kpiet@mcbridehall.com

16 Heather Hall

hshall@mcbridehall.com

17 David Clark

dclark@lipsonneilson.com

18 MGA Docketing

docket@mgalaw.com

19 Kimberly Glad

kglad@lipsonneilson.com

20 Susana Nutt

snutt@lipsonneilson.com

21 Joann deJonge

jdejonge@lawhjc.com

22 Debra Marquez

dmarquez@lipsonneilson.com

23 Robert McBride

rcmbride@mcbridehall.com

24 Riley Clayton, Esq.

rclayton@lawhjc.com

25 Michelle Newquist

mnewquist@mcbridehall.com

1	Terry Rodriguez	trodriguez@hmc.law
2	Candace Cullina	ccullina@mcbridehall.com
3	Tiffane Safar	tsafar@mcbridehall.com
4	sami Randolph	srandolph@hmc.law
5	John Blumberg	advocates@blumberglaw.com
6	Dalton Hooks, Jr.	dalton@hmc.law
7	Dalton Hooks, Jr.	dalton@hmc.law
8	Alan Schiffman	alan@schiffmanlaw.com
9	Terry Rodriguez	trodriguez@hmc.law
10	Kenneth Silberberg	ms@silberberglaw.com
11	Kenneth Silberberg	ms@silberberglaw.com
12	Thomas Alch	thomas.alch@shooplaw.com
13	James Kjar	kjar@kmslegal.com
14	Jon Schwalbach	jschwalbach@kmslegal.com
15	James Kjar	kjar@kmslegal.com
16	Jon Schwalbach	jschwalbach@kmslegal.com
17	Jessica O'Neill	joneill@kmslegal.com
18	Robert McKenna, III	rmckenna@kmslegal.com
19	Penny Williams	pwilliams@mcbridehall.com
20	Melissa Grass	mgrass@copperpoint.com
21	Kelly Lasorsa	klasorsa@blumberglaw.com
22	William Brenske	bak@baklawlv.com
23	JJ Kashnow	jkashnow@mcbridehall.com
24		
25		
26		
27		
28		

1 Timothy Evans

tevens@mcbridehall.com

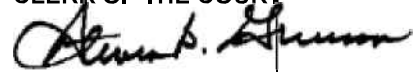
2 Amy Anderson

aanderson@kmslegal.com

3
4 If indicated below, a copy of the above mentioned filings were also served by mail
5 via United States Postal Service, postage prepaid, to the parties listed below at their last
6 known addresses on 7/6/2021

7 Jason Maier

Maier Gutierrez & Associates
Attn: Jason Maier, Esq
8816 Spanish Ridge Avenue
Las Vegas, NV, 89148



1 **NEOJ**
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 SILBERBEERG 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 & ASSOCAITES, a California
corporation DOES 1-50, inclusive,

Defendants.

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

NOTICE OF ENTRY OF ORDER

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Dated this 30th day of July, 2021.


RILEY A. CLAYTON
Nevada Bar No. 005260

PA 00566

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CERTIFICATION OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that I am an employee of HALL JAFFE & CLAYTON, LLP and on the 30 day of July, 2021, I served the foregoing **NOTICE OF ENTRY OF ORDER** the following parties by electronic transmission through the Court's e-filing and service program, addressed to the following:

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

Jason R. Maier, Esq.
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, NV 89148
Attorneys for Plaintiff

Dalton L. Hooks, Jr., Esq.
Sami Randolph, Esq.
HOOKS MENG & CLEMENT
2820 W. Charleston Blvd. Ste. C-23
Las Vegas, NV 89102
*Attorneys for Defendants Copperpoint Mutual
Insurance Holding Co. and Copperpoint General Insurance Company*

Robert C. McBride, Esq.
Heather S. Hall, Esq.
McBRIDE HALL
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113

Robert L. McKenna, III, Esq.
James Kjar, Esq.
Jon Schwalbach, Esq.
KJAR, McKENNA & STOCKALPER, LLP
841 Apollo Street, Ste. 100
El Segundo CA 90245
*Attorneys for Defendants,
Law Offices of Marshall Silberberg, P.C. and
Kenneth Marshall Silberberg*

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



An Employee of
HALL JAFFE & CLAYTON, LLP

Heavenly
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

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

Plaintiffs,

vs.

COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY, an Arizona Corp.;
COPPERPOINT GENERAL INSURANCE
COMPANY, an Arizona Corp; LAW OFFICES
OF MARSHALL SILVERBERG, P.C., a
California Corp.; KENNETH MARSHALL
SILVERBERG aka MARSHALL SILVERBERG
Aka K. MARSHALL SILVERBERG, an
Individual; THOMAS S. ALCH aka THOMAS
STEVEN ALCH, an individual; SHOOP, A
PROFESSIONAL LAW CORPORATION, a
California Corporation, BRUCE G. F AGEL, A
LAW CORPORATION aka LAW OFFICES OF
BRUCE G. F AGEL & ASSOCAITES, a
California Corporation DOES 1-50, inclusive,

Defendants.

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

ORDER

INTRODUCTION

The above-referenced matter is scheduled for a hearing on June 30, 2021, with regard to Defendant, Bruce G. Fagel's Motion to Dismiss Based upon Lack of Personal Jurisdiction. Pursuant to the Administrative Orders of the Court, as well as EDCR, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the papers, and consequently, this order issues.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff, Daria Harper, is an Arizona resident, who was employed by an Arizona employer that carried workers' compensation insurance with Defendant, Copperpoint General Insurance Company (Copperpoint). Plaintiff was initially injured in Arizona

1 during her employment with Islander RV Resort, and she filed for and obtained
2 workers' compensation benefits in Arizona. Plaintiff required medical treatment in Las
3 Vegas, and was injured as a result of medical negligence. Plaintiff then filed a medical
4 malpractice/professional negligence suit in Clark County, Nevada. The industrial claim
5 was administered in accordance with the provisions of the Arizona Workers'
6 Compensation Act, and Defendant Copperpoint paid benefits of approximately
7 \$3,171,095. With regard to Plaintiff's professional negligence claim in Nevada, Plaintiff
8 received \$6,250,000.00 in settlement funds. Plaintiff claims her recovery was limited
9 by NRS 42.021 which would diminish her recovery by the admission of evidence that
10 medical bills and lost earnings were paid by workers' compensation. But that same
11 statute would preclude a lien by the workers' compensation carrier if such payments
12 were admitted at trial. Defendant, Copperpoint, has ceased paying Plaintiff benefits,
13 claiming that it has a credit for \$3,171,095, and it is not required to pay further benefits
until it has recouped its lien.

14 Subsequently, Defendant sent Plaintiff a letter asking for an update. Counsel for
15 Plaintiff informed Defendant that the matter was settled and no lien was valid against
16 the settlement because NRS 42.021 precludes such a lien. Defendant then sent a notice
17 of claim status, informing Plaintiff of their belief in the validity of the lien pursuant to
18 Arizona statute A.R.S. 23-1023, and informing Plaintiff that further medical expenses
19 would not be paid until the funds paid by Defendant had been recouped. After service
20 of this notice, Defendant also informed Plaintiff that they would cease providing her
21 any and all benefits in 30 days. One month later, Defendant sent another letter
22 informing Plaintiff that all benefits were terminated until the lien amount \$3,171,095
was paid.

23 The Complaint in this case was filed on May 04, 2020, seeking declaratory relief
24 regarding whether Defendant was entitled to terminate benefits and demand
25 repayment of its lien (whether the lien is valid); seeking injunctive relief to make
26 Defendant continue to pay workers compensation benefits to Plaintiff (should
27 Defendant win on the lien issue); and asserting causes of action for legal malpractice
28 and breach of fiduciary duty against Defendants Law Offices of Marshall Silberberg,
PC, Kenneth Marshall Silberberg, and Thomas S. Alch aka Thomas Steven Alch, Shoop,
a Professional Law Corporation. Plaintiffs also alleged fraud and breach of contract by

1 Defendants Law Offices of Marshall Silberberg, PC, and Kenneth Marshall Silberberg.
2 Plaintiffs also seek punitive damages.

3 On May 20, 2020, Plaintiffs filed an application for TRO and Motion for
4 Preliminary Injunction. This Court heard oral argument regarding the Application for
5 TRO and Motion for Preliminary Injunction on July 08, 2020. This Court indicated
6 that there were issues raised that would preclude the granting of a preliminary
7 injunction. Additionally, the Court advised that monetary loss was insufficient to
8 establish irreparable harm. Consequently, the Motion for Preliminary Injunction was
denied.

9 Subsequently, Defendants Copperpoint and Thomas S. Alch each filed a Motion
10 to Dismiss, or Alternatively, Motion for Summary Judgment, which was joined by
11 Defendants Law Offices of Marshall Silberberg, PC and Kenneth Marshall Silberberg.
12 Additionally, Defendant Shoop filed a Motion to Dismiss for Lack of Personal
13 Jurisdiction, and Plaintiffs filed a Motion for Partial Summary Judgment. These items
14 were all decided on the papers in an order filed on October 26, 2020. Defendant
15 Copperpoint's Motion was granted, dismissing Copperpoint from this litigation in their
16 entirety. Alch's Motion was denied. Shoop's Motion was continued to February 24,
17 2021, and Plaintiffs' Motion was denied. Plaintiffs filed a Notice of Appeal on
18 November 24, 2020, along with a Motion to Certify the October 26, 2020 Order as
19 Final Pursuant to NRCP 54. The Case Appeal Statement was filed on December 11,
20 2020. The \$500 appeal bond was posted on December 15, 2020. No Opposition
21 having been filed, the Motion to Certify the October 26, 2020, Order as Final Pursuant
22 to NRCP 54 was granted (as it relates to the Plaintiffs claims against Copperpoint) in a
minute order dated December 30, 2020.

23 Plaintiffs sought leave to file an Amended Complaint pursuant to NRCP 15 to
24 expand upon the allegations in the original Complaint and to add Bruce G. Fagel, A Law
25 Corporation, also known as Law Offices of Bruce G. Fagel & Associates, as a defendant.
26 Upon taking the deposition of Defendant Thomas S. Alch, Plaintiffs learned that
27 Defendant Alch was the agent of and acting on behalf of Bruce G. Fagel, A Law
28 Corporation, also known as Law Offices of Bruce G. Fagel & Associates. Plaintiffs also
learned that Bruce G. Fagel, A Law Corporation, also known as Law Offices of Bruce G.
Fagel & Associates, was a party to a joint venture with the then-named legal

1 malpractice defendants, Alch and Silberberg. Plaintiffs' Motion was granted on March
2 9, 2021 and they filed an Amended Complaint the same day. Apparently, Bruce G.
3 Fagel, A Law Corporation, also known as Law Offices of Bruce G. Fagel & Associates
4 was served with the summons and amended complaint on April 1, 2021.

5 On April 1, 2021, the Court entered a Stipulation and Order to Stay Case pending
6 appeal in the Supreme Court of Nevada. However, on April 20, 2021, the Court entered
7 a clarified Stipulation and Order to Stay Case, which provides that stay does not apply
8 to the responsive pleading deadline of Defendant Bruce G. Fagel, A Law Corporation,
9 also known as Law Offices of Bruce G. Fagel & Associates ("Fagel Law"). Defendant
10 Fagel Law filed an Initial Appearance Fee Disclosure and the present Motion to Dismiss
11 on May 21, 2021. Plaintiffs filed an Opposition thereafter on June 4, 2021, and a Reply
12 was filed June 23, 2021.

12 **SUMMARY OF LEGAL ARGUMENTS.**

13 Defendant Fagel Law filed present Motion on 5/21/21. Defendant argues for
14 dismissal under NRCP 12(b)(5) because the Court lacks either general or specific
15 jurisdiction.

16 Defendant's first argument is that Nevada is not and has never been "home" its
17 home, and that it extremely limited contacts or affiliations with Nevada. According to
18 the Declaration of Bruce G. Fagel, Fagel Law had a "virtual" office for its affiliate, the
19 Law Office of Thomas S. Alch for some years. Thomas S. Alch ended his affiliation with
20 Fagel Law in September 2017. Fagel Law has not had an office in Nevada since
21 December 2018. While Fagel Law maintained a virtual office, only 2% of work time
22 occurred in Nevada while 98% occurred in California. Fagel Law does not own any
23 real property in Nevada and has no bank accounts here. It has a single lawyer licensed
24 in Nevada but who has been on inactive status for years, has no secretarial or support
25 staff here, and although it has a Nevada number, the phone number routes calls
26 directly into Fagel Law's California office. Moreover, Fagel Law's representation of
27 Nevada clients and involvement in Nevada matters is de minimis, with only 2-5% of its
28 total revenue over the past 10 years. Fagle argues that "home," as the Court has
defined it for general jurisdiction purposes, is California - the place of its incorporation
and its principal place of its business.

1 Defendant cites to an unpublished US Supreme Court opinion to bolster its
2 position. The case is *BNSF Ry. Co. v. Tyrell, et al.*, 16-405, 2017 WL 2322834 (U.S.
3 May 30, 2017). There, a North Dakota resident brought a Federal Employers' Liability
4 Act (FELA) suit against BNSF Railway Company in Montana state court for claims
5 relating to injuries that occurred outside of Montana. *BNSF Ry. Co.* at 4. The Court
6 noted that BNSF was neither incorporated nor headquartered in Montana. *Id.* Although
7 the BNSF operated over 2,000 miles of railway in the State and employed more than
8 2,000 employees, its activity in there was not such "as to render it essentially at home"
in Montana. *Id.*; referencing *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014).

9 In that case, the Court held:

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

16 *BNSF Ry. Co.*, 2017 WL 2322834 at 10.

17 Defendant next asserts that the Court also lacks specific jurisdiction. Defendant
18 argues that all relevant case law presumes that the Plaintiffs are from the forum state.
19 However, here the plaintiffs are/were from Arizona, not Nevada. Plaintiffs have not
20 and cannot establish that Fagel Law engaged in any specific "suit-related conduct" that
21 would create a substantial connection between Fagel Law and Nevada.

22 Plaintiffs' central allegation is that they received inadequate/insufficient advice
23 concerning the existence and ramifications regarding the Copperpoint
24 subrogation/lien, but Fagel contends that no one associated with Fagel Law was
25 involved in the settlement of the underlying case, the research and analysis of the
26 potential ramifications of the Copperpoint subrogation/lien, whether Nevada law or
27 Arizona law would apply to that determination, what the Plaintiffs knew about the
28 existence of the lien, and/or provided legal advice to the Plaintiffs regarding those
issues, etc. Rather, Silberberg admitted that he handled all critical "suit-related"
activity.

1 Defendant contrasts the present facts with those in *Fulbright & Jaworski v.*
2 *Eighth Jud. Dis. Court*, 131 Nev. 30, 36 (2015), where the Court held a Texas-based law
3 firm did not purposefully avail itself of the benefit of acting client's home state of
4 Nevada simply by meeting with the client in Nevada. Defendant argues that here there
5 are no allegations of any "suit related" activity being performed by Fagel Law in
6 Nevada, and no allegations of any meeting or contact in Nevada that forms any part of
7 Plaintiffs' claims.

8 Even if all of Plaintiffs' allegations about Fagel Law's conduct are taken to be
9 true for purposes of this jurisdictional analysis, nothing in those allegations provides a
10 connection to Nevada that is sufficient to permit the Court to assert jurisdiction.
11 Requiring Fagel to appear and defend this suit in Nevada would be unreasonable and
12 burdensome. Nevada has little interest in adjudicating Plaintiffs' claims, particularly
13 since this Court has already determined that Arizona law would apply to the
14 Copperpoint lien/subrogation issue, and the contingency fee agreement and
15 disbursement of the proceeds all happened in California with the Silberberg firm.

16 Defendant argues that none of the allegedly tortious "suit related" conduct took
17 place in Nevada, and did not even involve Fagel Law since Silberberg handled the
18 resolution of the case, the Copperpoint lien issue, the contingency fee agreements, and
19 the disbursement of proceeds.

20 Defendant argues that Fagel Law has not maintained even a virtual office in
21 Nevada since December 2018 and has not taken any new Nevada matters since 2018.
22 Plaintiffs could have brought this suit in California where Fagel Law is incorporated
23 and has its principal place of business, where Silberberg resides and is incorporated,
24 and where the allegedly tortious ("suit related") conduct occurred.

25 Finally, Defendant argues that public policy supports dismissal of Plaintiffs'
26 Amended Complaint against Fagel Law. Failure to dismiss Plaintiffs' claims against
27 Fagel Law would encourage litigants to bring similar actions against nonresident
28 defendants on the sole basis that a plaintiff from a foreign jurisdiction had a failed
lawsuit in the State allegedly due to the errors and omissions of an out-of-state

In opposition, Plaintiffs argue that Fagel Law purposefully availed itself of the
benefits of serving the market in Nevada on ten separate occasions by paying for the
cost of a Nevada office and directing its agent/employee, who was licensed to practice

1 in Nevada, to file lawsuits in Nevada. Although Fagel Law argues that its connection
2 with Nevada was practically non-existent, that is involvement in the underlying medical
3 malpractice lawsuit was nominal at best, the facts prove otherwise.

4 Plaintiffs point out that between 1999 and 2017, Fagel paid for and rented an
5 office in Nevada, advertised for Nevada medical malpractice cases, and handled
6 approximately ten Nevada cases. Alch was Fagel Law's employee and agent in Nevada,
7 and while employed by Fagel Law, filed the complaint, assisted in discovery, and gave
8 advice on Nevada law. After Alch ceased being Fagel's employee, he continued as
9 Fagel's agent in Nevada, Fagel continued to pay for Alch's Nevada office; Alch reviewed
10 expert witness reports, gave advice on Nevada law, and approved settlement
11 agreements.

12 "It is well settled that a corporation can act only through its agents." *Smith's*
13 *Food & Drug Ctrs., Inc. v. Bellegarde*, 114 Nev. 602, 608, 958 P.2d 1208, 1212

14 Plaintiffs argue that specific jurisdiction exists, as Fagel Law's contacts with
15 Nevada were intentional and purposeful when it advertised to Nevada residents and
16 paid for office space for its agent to represent clients in Nevada courts and receive
17 monetary rewards. Fagel's contacts prior to the Harper medical malpractice case
18 provide the basis for general personal jurisdiction, and Fagel's contacts in connection
19 with the Harper medical malpractice case provide the basis for specific personal
20 jurisdiction.

21 Plaintiffs argue that Fagel's argument that none of its actions caused Plaintiffs
22 harm as a result of the settlement ignores the allegations of the complaint that Alch was
23 an agent of Fagel law when his negligence harmed Plaintiffs. Plaintiffs also argue that
24 even if neither Fagel nor Alch were personally negligent, they would be liable as joint
25 venturers, as alleged in paragraph 9 of the amended complaint. Plaintiffs contend that
26 Silberberg, Fagel and Alch entered into a joint venture, the purpose of which was to
27 combine their efforts to pursue a medical malpractice lawsuit in Nevada, and that
28 attorney's fees would be shared equally between Fagel and Silberberg, with Alch
receiving 10% of Fagel's share. 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. Plaintiffs
reference *Radaker v. Scott* (1993) 109 Nev. 653, 658, 855 P.2d 1037, 1040, where the

1 Nevada Supreme Court explained that partners in a joint venture are jointly and
2 severally liable for everything chargeable to the partnership under NRS 87.130.

3 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

4 For a Court to obtain personal jurisdiction over a nonresident defendant, a
5 plaintiff must show: (1) That the requirements of Nevada's long-arm statute have been
6 satisfied, and (2) that due process is not offended by the exercise of jurisdiction."
7 *Arbella Mut. Ins. Co. v. Eighth Jud. Dist. Court*, 122 Nev. 509, 512, 134 P.3d 710, 712
8 (2006) (quoting *Firouzabadi v. First Jud. Dist.Ct. In & For Carson City*, 110 Nev. 1348,
9 1352, 885 P.2d 616, 619 (1994)). Nevada's long arm statute, NRS 14.065, reaches the
10 constitutional limits of due process under the Fourteenth Amendment, which requires
11 that the defendant have such minimum contacts with the State that the defendant
12 could reasonably anticipate being haled into court here, thereby complying with
13 "traditional notions of fair play and substantial justice." *Arbella*, 122 Nev. at 512, 134
14 P.3d at 710, 712 (quoting *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)). Due
15 process requirements are satisfied if the nonresident defendant's contacts are sufficient
16 to obtain either (1) general jurisdiction or (2) specific personal jurisdiction, and it is
17 reasonable to subject the nonresident defendant to suit here. *Arbella* at 712.

18 General jurisdiction exists where the Defendant's activities in the forum State
19 are so substantial or continuous and systematic that it may be deemed present in the
20 forum and is thereby subject to suit over claims unrelated to its activities there. *Viega*
21 *GmbH v. Eighth Jud. Dist. Ct.*, 30 Nev. 368, 375, 328 P.3d 1152, 1157 (2014); *Daimler*
22 *AG v. Bauman*, 571 U.S. 117, 127 (2014). A general jurisdiction inquiry "calls for an
23 appraisal of a [defendant's] activities in their entirety, nationwide and worldwide."
24 *Fulbright & Jaworski v. Eighth Jud. Dis. Court*, 131 Nev. 30, 36 (2015) (quoting
25 *Daimler*, 571 U.S. 117, 127. Although Fagel Law previously had a "virtual" office in
26 Nevada, such that it had an attorney/agent practicing in Nevada, and the activities in
27 Nevada may have been substantial, continuous, and systematic at one time, they do not
28 appear to be so now. That does not mean, however, that jurisdiction does not lie for
events which happened while the activities were substantial, continuous and
systematic. Even if the Court were not to find general jurisdiction, however, the Court
believes that specific jurisdiction applies.

1 A state may exercise specific personal jurisdiction over a non-resident
2 defendant, “only where (1) the defendant purposefully establishes contacts with the
3 forum state and affirmatively directs conduct toward the forum state, and (2) the cause
4 of action arises from that purposeful contact with the forum or conduct targeting the
5 forum. *Baker v. Eighth Jud. Dist. Court ex rel. County of Clark*, 116 Nev. 527, 999 P.2d
6 1020, 1024 (2000) (citing *Trump v. Eighth Jud. Dist. Court*, 109 Nev. 687, 699–700
7 (1993)). In the present case, Thomas Alch was an employee or agent of Fagel Law,
8 provided legal services in Nevada, and was at least allegedly involved in the providing
9 of legal services and advice to the Plaintiffs, relating to the Arizona workers’
10 compensation claim, and its relation to the Nevada professional negligence claim.

11 For purposes of a Motion to Dismiss under NRCP 12, the allegations of the
12 Complaint must be presumed to be true, and all evidence and allegations must be
13 viewed in the light most favorable to the nonmoving party. Further, a Complaint is
14 generally not dismissed unless the Court finds that Plaintiff would not be entitled to
15 relief under any set of facts which could be proved. Although a jurisdictional analysis is
16 a legal analysis, not a factual analysis, it is dependent at least in part on the Court’s
17 determination of whether the moving Defendant purposely availed itself of the form
18 state, and whether the purposeful contacts with the state resulted in the Plaintiff’s
19 claims. Based on the information and evidence provided to the Court, this Court
20 believes that the Plaintiff has established sufficient evidence of the Defendant’s
21 purposeful contacts with the State of Nevada, and that such contacts, especially
22 through the involvement of its agent, Thomas Alch, satisfies the requirements of
23 specific personal jurisdiction.

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

26 “A joint venture is a contractual relationship in the nature of an informal
27 partnership wherein two or more persons conduct some business enterprise,
28 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 insight.
NRS 87.060 defines a partnership as an association of two or more persons to
carry on as co-owners a business for profit. NRS 87.130 indicates that the
partnership will be bound where loss or injury is inflicted upon a third party by a

1 partner acting in the ordinary course of the business of the partnership.
2 Moreover, all partners are to be held liable jointly and severally for everything
3 chargeable to the partnership under NRS 87.130. See NRS 87.150.”

4 This Court finds that there is at least some evidence that may establish a joint
5 venture in favor of the Plaintiff’s claims. Paragraph 5 of Plaintiff’s Amended Complaint
6 provides:

7 At all times mentioned herein, defendant THOMAS STEVEN ALCH, also known
8 as THOMAS S. ALCH (“ALCH”), was and is licensed to practice law in California
9 and Nevada. From March 17, 1997, until September 15, 2017, ALCH was an
10 agent and/or employee of defendant BRUCE G. FAGEL, A LAW
11 CORPORATION, also known as Law Offices of Bruce G. Fagel & From March 17,
12 1997, until September 15, 2017, ALCH was an agent and/or employee of
13 defendant BRUCE G. FAGEL, A LAW CORPORATION, also known as Law
14 Offices of Bruce G. Fagel & Associates (“FAGEL”). From September 16, 2017, to
15 the present, ALCH was an agent and/or employee of SHOOP, A
16 PROFESSIONAL LAW CORPORATION (“SHOOP”). SHOOP was and is a
17 corporation duly incorporated under the laws of California and located in Los
18 Angeles County, California, and procured professional liability insurance that
19 covers the negligent acts and omissions of its agent and/or employee defendant
20 ALCH. From September 16, 2017, to the present, ALCH was the agent of FAGEL,
21 acting on FAGEL’s behalf for the purpose of prosecuting lawsuits in the state of
22 Nevada. At all times after September 15, 2017, ALCH and FAGEL were engaged
23 in a joint venture, pursuant to which FAGEL paid for an office in Las Vegas,
24 Nevada, and paid the expenses of ALCH, so that ALCH would be able to practice
25 law in Nevada and represent the clients of FAGEL in Nevada, for the goal of
26 earning attorney fees for themselves. FAGEL was and is a corporation duly
27 incorporated under the laws of California and located in Los Angeles County,
28 California, and is liable for the negligent acts and omissions of its joint venturer,
agent and/or employee, defendant ALCH.

21 According to the Declaration of Bruce G. Fagel, Fagel Law held itself out to have
22 a Nevada office and a Nevada licensed attorney to perform legal services in Nevada
23 from 1997-2017. Specifically, Fagel states that it rented a “virtual office” suite location
24 in Nevada, so that The Law Office of Thomas S. Alch, could comply with Nevada’s Rules
25 of Professional Conduct. The fictitious firm name in Nevada was “The Law Offices of
26 Thomas S. Alch, an affiliate Bruce G. Fagel & Associates.”

27 **CONCLUSION/ORDER**

28 Based upon the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that Bruce Fagel’s Motion to Dismiss for Lack of
Jurisdiction is hereby **DENIED**.

Because this matter has been decided on the pleadings, the hearing scheduled for June 30, 2021, will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear.

Dated this 4th day of July, 2021



JERRY A. WIESE II
DISTRICT COURT JUDGE

91B 03F 1D17 6DB3
Jerry A. Wiese
District Court Judge

1 **CSERV**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5		
6	Daria Harper, Plaintiff(s)	CASE NO: A-20-814541-C
7	vs.	DEPT. NO. Department 30
8	Copperpoint Mutual Insurance	
9	Holding Company, Defendant(s)	

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/4/2021

15 Kellie Piet	kpiet@mcbridehall.com
16 Heather Hall	hshall@mcbridehall.com
17 David Clark	dclark@lipsonneilson.com
18 MGA Docketing	docket@mgalaw.com
19 Kimberly Glad	kglad@lipsonneilson.com
20 Susana Nutt	snutt@lipsonneilson.com
21 Joann deJonge	jdejonge@lawhjc.com
22 Debra Marquez	dmarquez@lipsonneilson.com
23 Robert McBride	rcmbride@mcbridehall.com
24 Riley Clayton, Esq.	rclayton@lawhjc.com
25 Michelle Newquist	mnewquist@mcbridehall.com
26	
27	
28	

1	Terry Rodriguez	trodriguez@hmc.law
2	Candace Cullina	ccullina@mcbridehall.com
3	Tiffane Safar	tsafar@mcbridehall.com
4	sami Randolph	srandolph@hmc.law
5	John Blumberg	advocates@blumberglaw.com
6	Dalton Hooks, Jr.	dalton@hmc.law
7	Dalton Hooks, Jr.	dalton@hmc.law
8	Alan Schiffman	alan@schiffmanlaw.com
9	Terry Rodriguez	trodriguez@hmc.law
10	Kenneth Silberberg	ms@silberberglaw.com
11	Kenneth Silberberg	ms@silberberglaw.com
12	Thomas Alch	thomas.alch@shooplaw.com
13	James Kjar	kjar@kmslegal.com
14	Jon Schwalbach	jschwalbach@kmslegal.com
15	James Kjar	kjar@kmslegal.com
16	Jon Schwalbach	jschwalbach@kmslegal.com
17	Jessica O'Neill	joneill@kmslegal.com
18	Robert McKenna, III	rmckenna@kmslegal.com
19	Penny Williams	pwilliams@mcbridehall.com
20	Melissa Grass	mgrass@copperpoint.com
21	Kelly Lasorsa	klasorsa@blumberglaw.com
22	William Brenske	bak@baklawlv.com
23	JJ Kashnow	jkashnow@mcbridehall.com
24		
25		
26		
27		
28		

1 Timothy Evans

tevens@mcbridehall.com

2 Amy Anderson

aanderson@kmslegal.com

3
4 If indicated below, a copy of the above mentioned filings were also served by mail
5 via United States Postal Service, postage prepaid, to the parties listed below at their last
6 known addresses on 7/6/2021

7 Jason Maier

Maier Gutierrez & Associates

Attn: Jason Maier, Esq

8816 Spanish Ridge Avenue

Las Vegas, NV, 89148