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Elizabeth A. Brown  
Clerk of Supreme Court

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Zachary P. Takos, Esq., Nevada Bar No. 11293

Steven R. Hart, Esq., Nevada Bar No. 15418

**TAKOS LAW GROUP, LTD.**

1980 Festival Plaza Drive, Suite 300

Las Vegas, Nevada 89135

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*Counsel for David P. Biesinger, DPM*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada corporation,

Plaintiff,

v.

DAVID P. BIESINGER, DPM, an  
individual; and LORRAINE PALLANTI, an  
individual;

Defendants.

Case No. A-17-754423-B

Dept. No. XIII

**NOTICE OF APPEAL**

DAVID P. BIESINGER, DPM, an  
individual,

Counter-claimant,

v.

ABSOLUTE FOOT CARE SPECIALISTS,  
a Nevada corporation; DOES I through X;  
and ROE ENTITIES I through X;

Counter-defendants.

Notice is hereby given that David P. Biesinger, DPM, defendant/counter-claimant in the above-captioned case, appeals to the Nevada Supreme Court from the Findings of Fact, Conclusions of Law, and Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant

David P. Biesinger, DPM's Counterclaims and Judgment, both entered in this action on August 18, 2021 (the corresponding notices of entry having also been filed on August 18, 2021).

DATED this 16<sup>th</sup> day of September, 2021.

TAKOS LAW GROUP, LTD.

/s/ Zachary P. Takos  
Zachary P. Takos, Esq., Nevada Bar No. 11293  
Steven R. Hart, Esq., Nevada Bar No. 15418  
1980 Festival Plaza Drive, Suite 300  
Las Vegas, Nevada 89135

*Counsel for David P. Biesinger, DPM*

**CERTIFICATE OF SERVICE**

I hereby certify that I am over the age of 18 and not a party to the above-captioned action. I am familiar with Takos Law Group, Ltd.'s practice of collecting and processing correspondence for mailing. Under Takos Law Group, Ltd.'s practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing **NOTICE OF APPEAL** on the date noted below to all interested parties as follows:

XX BY E-FILING SERVICE: via Odyssey E-file & Serve

BY MAIL: Pursuant to NRCP 5(b), I placed a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

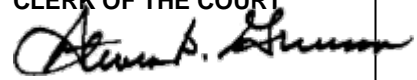
BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document via telecopy to the following facsimile number(s):

BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document via electronic mail to the following electronic mail address(es):

BY CERTIFIED MAIL: I placed a true and copy thereof enclosed in a sealed envelope, certified mail, return receipt requested, addressed as follows:

DATED this 16<sup>th</sup> day of September, 2021.

/s/ Zachary Takos  
TAKOS LAW GROUP, LTD.



ASTA

Zachary P. Takos, Esq., Nevada Bar No. 11293

Steven R. Hart, Esq., Nevada Bar No. 15418

**TAKOS LAW GROUP, LTD.**

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steven@takoslaw.com

*Counsel for David P. Biesinger, DPM*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada corporation,

Plaintiff,

v.

DAVID P. BIESINGER, DPM, an  
individual; and LORRAINE PALLANTI, an  
individual;

Defendants.

Case No. A-17-754423-B

Dept. No. XIII

**CASE APPEAL STATEMENT**

DAVID P. BIESINGER, DPM, an  
individual,

Counter-claimant,

v.

ABSOLUTE FOOT CARE SPECIALISTS,  
a Nevada corporation; DOES I through X;  
and ROE ENTITIES I through X;

Counter-defendants.

1. Defendant/Counter-claimant David P. Biesinger, DPM ("Appellant"), by and through his counsel of record, Takos Law Group, Ltd., hereby submit this case appeal statement.

2. The judgment being appealed was issued by the Honorable Mark R. Denton, Department 13 of the Eighth Judicial District Court, Clark County, Nevada.

3. Appellant:

David P. Biesinger, DPM  
Zachary P. Takos, Esq., Nevada Bar No. 11293  
Steven R. Hart, Esq., Nevada Bar No. 15418  
TAKOS LAW GROUP, LTD.  
1980 Festival Plaza Drive, Suite 300  
Las Vegas, NV 89135

4. Respondent:

Absolute Foot Care Specialists  
John R. Bailey, Esq., Nevada Bar No. 0137  
Joshua M. Dickey, Esq., Nevada Bar No. 6621  
Paul C. Williams, Esq., Nevada Bar No. 12524  
BAILEY KENNEDY  
8984 Spanish Ridge Avenue  
Las Vegas, NV 89148

5. It is Appellant's belief that all attorneys identified above are licensed in Nevada.

6. Appellant was represented by retained counsel in the district court.

7. Appellant is represented by retained counsel on appeal.

8. Appellant has neither sought nor been granted leave to proceed in *forma pauperis*.

9. The case was commenced on April 24, 2017.

10. This is a civil action involving claims for breach of contract, and counterclaims for breach of contract, among other things. This case culminated in a motion for summary judgment by Respondent on its cause of action for breach of contract and against Appellant's counterclaims, on which the district court issued a Findings of Fact, Conclusions of Law, and Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims and a Judgment, from which Appellant now appeals.

11. This matter is not the subject of an appeal to or original writ proceeding in the Supreme Court.

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12. This appeal does not involve child custody or visitation.

13. This is a civil case and does involve the possibility of settlement

DATED this 16<sup>th</sup> day of September, 2021.

TAKOS LAW GROUP, LTD.

/s/ Zachary P. Takos  
Zachary P. Takos, Esq., Nevada Bar No. 11293  
Steven R. Hart, Esq., Nevada Bar No. 15418  
1980 Festival Plaza Drive, Suite 300  
Las Vegas, Nevada 89135

*Counsel for David P. Biesinger, DPM*

**CERTIFICATE OF SERVICE**

I hereby certify that I am over the age of 18 and not a party to the above-captioned action. I am familiar with Takos Law Group, Ltd.'s practice of collecting and processing correspondence for mailing. Under Takos Law Group, Ltd.'s practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing **CASE APPEAL STATEMENT** on the date noted below to all interested parties as follows:

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BY MAIL: Pursuant to NRCP 5(b), I placed a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

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BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document via electronic mail to the following electronic mail address(es):

BY CERTIFIED MAIL: I placed a true and copy thereof enclosed in a sealed envelope, certified mail, return receipt requested, addressed as follows:

DATED this 16<sup>th</sup> day of September, 2021.

/s/ Zachary Takos  
TAKOS LAW GROUP, LTD.

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

**Absolute Foot Care Specialists, Plaintiff(s)**  
**vs.**  
**David Biesinger, DPM, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 13**  
Judicial Officer: **Denton, Mark R.**  
Filed on: **04/24/2017**  
Cross-Reference Case Number: **A754423**

CASE INFORMATION

**Statistical Closures**  
08/18/2021 Summary Judgment

Case Type: **Other Business Court Matters**  
Case Flags: **Discovery heard by Department  
Appealed to Supreme Court  
Jury Demand Filed  
Other Tort Case**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number A-17-754423-B  
Court Department 13  
Date Assigned 04/24/2017  
Judicial Officer Denton, Mark R.




PARTY INFORMATION

		<i>Lead Attorneys</i>
<b>Plaintiff</b>	<b>Absolute Foot Care Specialists</b>	<b>Bailey, John R</b> <i>Retained</i> 702-562-8820(W)
<b>Defendant</b>	<b>Biesinger, DPM, David P.</b>	<b>Takos Esq, Zachary P.</b> <i>Retained</i> 702-856-4629(W)
	<b>Pallanti, Lorraine</b> Removed: 07/01/2021 Dismissed	<b>Gronich, Jeffrey S.</b> <i>Retained</i> 702-259-7777(W)
<b>Counter Claimant</b>	<b>Biesinger, DPM, David P.</b>	<b>Takos Esq, Zachary P.</b> <i>Retained</i> 702-856-4629(W)
<b>Counter Defendant</b>	<b>Absolute Foot Care Specialists</b>	<b>Bailey, John R</b> <i>Retained</i> 702-562-8820(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX


04/24/2017	 Complaint (Business Court) Filed By: Counter Defendant Absolute Foot Care Specialists [1] Complaint
04/24/2017	 Initial Appearance Fee Disclosure Filed By: Counter Defendant Absolute Foot Care Specialists [2] Initial Appearance Fee Disclosure (NRS Chapter 19)
04/24/2017	Other Tort Case
04/27/2017	 Motion for Temporary Restraining Order Filed By: Counter Defendant Absolute Foot Care Specialists



DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

*[3] Plaintiff's Motion for: (1) Temporary Restraining Order; and (2) Preliminary Injunction on Order Shortening Time*


05/01/2017

 **Motion for Temporary Restraining Order** (9:00 AM) (Judicial Officer: Denton, Mark R.)  
*Plaintiff's Motion for: (1) Temporary Restraining Order on Order Shortening Time*

**MINUTES**

Granted;  
Granted


**SCHEDULED HEARINGS**

 **Motion for Preliminary Injunction** (05/15/2017 at 9:00 AM) (Judicial Officer: Denton, Mark R.)


**05/15/2017, 05/22/2017**

*Motion for Preliminary Injunction (Non-Evidentiary)*  
*Continued*


05/03/2017

 Temporary Restraining Order  
Filed by: Counter Defendant Absolute Foot Care Specialists  
*[4] Temporary Restraining Order*


05/04/2017

 Notice of Posting Bond  
Filed By: Counter Defendant Absolute Foot Care Specialists  
*[5] Notice of Posting Bond in Support of Temporary Restraining Order*


05/04/2017

 Notice of Entry of Order  
Filed By: Counter Defendant Absolute Foot Care Specialists  
*[6] Notice of Entry of Temporary Restraining Order*


05/10/2017

 Summons  
Filed by: Counter Defendant Absolute Foot Care Specialists  
*[7] Summons - David P. Biesinger, DPM*


05/10/2017

 Affidavit of Service  
Filed By: Counter Defendant Absolute Foot Care Specialists  
*[8] Affidavit of Service*


05/10/2017

 Affidavit of Service  
Filed By: Counter Defendant Absolute Foot Care Specialists  
*[9] Affidavit of Service*


05/10/2017

 Summons  
Filed by: Counter Defendant Absolute Foot Care Specialists  
*[10] Summons - Lorraine Pallanti*

05/12/2017

 Notice of Appearance  
Party: Counter Claimant Biesinger, DPM, David P.  
*[12] Notice of Appearance*

05/15/2017

 **Motion for Preliminary Injunction** (9:00 AM) (Judicial Officer: Denton, Mark R.)  
**05/15/2017, 05/22/2017**

*Motion for Preliminary Injunction (Non-Evidentiary)*

**MINUTES**

Continued;  
Granted;  
Continued;

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

Granted;  
*Continued*

05/15/2017	 Initial Appearance Fee Disclosure Filed By: Counter Claimant Biesinger, DPM, David P. <i>[11] Initial Appearance Fee Disclosure</i>
05/17/2017	 Opposition to Motion Filed By: Counter Claimant Biesinger, DPM, David P. <i>[13] Defendant David P. Biesinger s Opposition To Plaintiff s Motion For Preliminary Injunction</i>
05/18/2017	 Joinder To Motion Filed By: Defendant Pallanti, Lorraine <i>[14] Defendant Lorraine Pallanti's Joinder to Defendant David P. Biesinger s Opposition to Plaintiff's Motion for Preliminary Injunction</i>
05/18/2017	 Initial Appearance Fee Disclosure <i>[15] Initial Appearance Fee Disclosure</i>
05/18/2017	 Reply in Support Filed By: Counter Defendant Absolute Foot Care Specialists <i>[16] Plaintiff's Reply in Support of Its Motion for Preliminary Injunction</i>
05/22/2017	 Supplemental Filed by: Counter Claimant Biesinger, DPM, David P. <i>[17] Supplemental Declaration of David P. Biesinger, DPM in Support of Opposition to Plaintiff's Motion for Preliminary Injunction</i>
05/23/2017	 Response Filed by: Counter Defendant Absolute Foot Care Specialists <i>[18] Plaintiff's Response to the Supplemental Declaration of David P. Biesinger, DPM in Support of Opposition to Plaintiff's Motion for Preliminary Injunction</i>
05/26/2017	 Demand for Jury Trial Filed By: Counter Defendant Absolute Foot Care Specialists <i>[19] Plaintiff's Demand for Jury Trial</i>
06/02/2017	 Answer and Counterclaim Filed By: Counter Claimant Biesinger, DPM, David P. <i>[20] Defendant/Counterclaimant David P Biesinger s Answer And Counterclaim</i>
06/05/2017	 <b>Decision</b> (9:25 AM) (Judicial Officer: Denton, Mark R.) Decision Made; <i>Decision Made</i>
06/05/2017	 Decision <i>[21]</i>
06/07/2017	 Answer to Complaint Filed by: Defendant Pallanti, Lorraine <i>[22] Defendant Lorraine Pallanti's Answer to Plaintiff's Complaint</i>
06/13/2017	 Business Court Order

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

	<i>[23] Business Court Order</i>
06/15/2017	 Notice of Posting Bond Filed By: Counter Defendant Absolute Foot Care Specialists <i>[24] Notice of Posting Bond in Support of Order Granting Plaintiff's Motion for Preliminary Injunction</i>
06/15/2017	 Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[25] Order Granting Plaintiff's Motion for Preliminary Injunction</i>
06/16/2017	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[26] Notice of Entry of Order Granting Plaintiff's Motion for Preliminary Injunction</i>
06/29/2017	 Reply to Counterclaim Filed by: Counter Defendant Absolute Foot Care Specialists <i>[27] Plaintiff's Reply to Defendant/Counterclaimant David P. Biesinger's Counterclaims</i>
07/03/2017	 Motion to Amend Filed By: Counter Claimant Biesinger, DPM, David P. <i>[28] Defendant/Counterclaimant David P Biesinger's Motion to Amend Order Granting Plaintiff's Motion for Preliminary Injunction</i>
07/10/2017	 <b>Mandatory Rule 16 Conference</b> (2:15 PM) (Judicial Officer: Denton, Mark R.)  <b>MINUTES</b> Matter Heard; <i>Matter Heard</i>  <b>SCHEDULED HEARINGS</b> <b>CANCELED Status Check</b> (07/27/2017 at 9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i> <i>Status Check Re: JCCR Filing</i>
07/18/2017	 Motion for Order to Show Cause Filed By: Counter Defendant Absolute Foot Care Specialists <i>[29] Plaintiff's Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt for Violating Preliminary Injunction on Order Shortening Time</i>
07/19/2017	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>[30] Order Re Rule 16 Conference, Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Discovery Scheduling Order</i>
07/21/2017	 Joint Case Conference Report Filed By: Counter Defendant Absolute Foot Care Specialists <i>[31] Joint Case Conference Report</i>
07/25/2017	 Opposition to Motion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[32] Plaintiff's Opposition to Defendant David P. Biesinger, DPM's Motion to Amend Order Granting Motion for Preliminary Injunction</i>
07/27/2017	<b>CANCELED Status Check</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i> <i>Status Check Re: JCCR Filing</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

08/04/2017	 Opposition to Motion Filed By: Defendant Pallanti, Lorraine <i>[33] Defendant Lorraine Pallanti's Opposition to Plaintiff's Motion for Order to Show Cause</i>
08/07/2017	 Opposition to Motion Filed By: Counter Claimant Biesinger, DPM, David P. <i>[34] Defendant/Counterclaimant David P. Biesinger's Opposition to Plaintiff's Motion for Order to Show Cause</i>
08/08/2017	 Declaration Filed By: Counter Claimant Biesinger, DPM, David P. <i>[35] Dr. Biesinger's Declaration in Support of Opposition to Plaintiff's Motion for Order to Show Cause</i>
08/08/2017	 Reply in Support Filed By: Counter Defendant Absolute Foot Care Specialists <i>[36] Plaintiff's Reply in Support of Its Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt for Violating Preliminary Injunction</i>
08/10/2017	 <b>Motion for Order to Show Cause (9:00 AM)</b> (Judicial Officer: Denton, Mark R.) <i>Plaintiff's Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt for Violating Preliminary Injunction on Order Shortening Time</i> Granted in Part; <i>Granted in Part</i>
09/11/2017	 Order to Show Cause Filed by: Counter Defendant Absolute Foot Care Specialists <i>[37] Order to Show Cause</i>
09/11/2017	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[38] Notice of Entry of Order to Show Cause</i>
09/22/2017	 Response Filed by: Counter Claimant Biesinger, DPM, David P. <i>[40] Defendant/Counterclaimant David P. Biesinger's Response to Order to Show Cause</i>
09/24/2017	 Joinder to Opposition to Motion Filed by: Defendant Pallanti, Lorraine <i>[39] DEFENDANT LORRAINE PALLANTI S JOINDER TO DAVID BIESINGER S RESPONSE TO ORDER TO SHOW CAUSE</i>
09/29/2017	 Response Filed by: Counter Defendant Absolute Foot Care Specialists <i>[41] Plaintiff's Response to Defendants' Responses to Order to Show Cause</i>
10/06/2017	 Reply in Support Filed By: Counter Claimant Biesinger, DPM, David P. <i>[42] Defendant Biesinger's Reply in Support of Response to Order to Show Cause</i>
10/06/2017	 Reply Filed by: Defendant Pallanti, Lorraine <i>[43] Defendant Lorraine Pallanti's Reply to Plaintiff's Response to Defendants' Responses to Order to Show Cause</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

10/09/2017	 <b>Show Cause Hearing</b> (9:00 AM) (Judicial Officer: Denton, Mark R.)  <b>MINUTES</b> Decision Made; <i>Decision Made</i>
10/17/2017	 <b>Decision</b> (2:57 PM) (Judicial Officer: Denton, Mark R.) Decision Made; <i>Decision Made</i>
10/17/2017	 Decision <i>[44] Decision</i>
11/16/2017	<b>Order</b> (Judicial Officer: Denton, Mark R.) Debtors: David P. Biesinger, DPM (Defendant) Creditors: Absolute Foot Care Specialists (Plaintiff) Judgment: 11/16/2017, Docketed: 11/17/2017 Total Judgment: 35,599.15
11/16/2017	 Order to Show Cause Filed by: Counter Defendant Absolute Foot Care Specialists <i>[45] Order on Order to Show Cause</i>
11/17/2017	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[46] Notice of Entry of Order on Order to Show Cause</i>
01/03/2018	 Stipulation and Order to Extend Discovery Deadlines Filed By: Counter Defendant Absolute Foot Care Specialists <i>[47] Stipulation and Order to Extend Discovery Deadlines and Trial Date (First Request)</i>
01/03/2018	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[48] Notice of Entry of Stipulation and Order to Extend Discovery Deadlines and Trial Date (First Request)</i>
01/08/2018	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>[49] Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call</i>
07/18/2018	 Stipulation and Order Filed by: Counter Defendant Absolute Foot Care Specialists <i>[50] Stipulation and Order to: (1) Stay Discovery; and (2) Attend Judicial Settlement Conference</i>
07/18/2018	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[51] Notice of Entry of Stipulation and Order to: (1) Stay Discovery; and (2) Attend Judicial Settlement Conference</i>
07/23/2018	<b>CANCELED Pre Trial Conference</b> (3:30 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
08/06/2018	<b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
08/07/2018	

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

	 Notice <i>[52] Notice of Disassociation of Counsel for Defendant David P. Biesinger, DPM</i>
08/14/2018	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
01/07/2019	 <b>Pre Trial Conference</b> (2:35 PM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
01/22/2019	<b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i>
01/25/2019	 Stipulation and Order Filed by: Counter Defendant Absolute Foot Care Specialists <i>[53] Stipulation and Order to Reset Civil Jury Trial, Pre-Trial, and Calendar Call</i>
01/25/2019	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[54] Notice of Entry of Stipulation and Order to Reset Civil Jury Trial, Pre-Trial, and Calendar Call</i>
01/29/2019	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i>
01/31/2019	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>[55] Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call</i>
03/12/2019	 Order Setting Settlement Conference <i>[56] Order Setting Settlement Conference</i>
05/06/2019	 <b>Settlement Conference</b> (10:30 AM) (Judicial Officer: Gonzalez, Elizabeth) Not Settled; <i>Not Settled</i>
07/26/2019	 Notice Filed By: Counter Defendant Absolute Foot Care Specialists <i>[57] Notice of Lifting Stay</i>
09/09/2019	 Stipulation and Order Filed by: Counter Defendant Absolute Foot Care Specialists <i>[58] Stipulation and Order to: (1) Lift Stay on Discovery; (2) Reset Discovery Deadlines; and (3) Reset Trial Date</i>
09/09/2019	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[59] Notice of Entry of Stipulation and Order to: (1) Lift Stay of Discovery; (2) Reset Discovery Deadlines; and (3) Reset Trial Date</i>
09/18/2019	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>[60] Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call</i>
12/16/2019	 Notice of Change of Address Filed By: Counter Claimant Biesinger, DPM, David P.

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

	<i>[61] Notice of Change of Contact Information and Firm Affiliation</i>
12/23/2019	 Stipulation and Order Filed by: Counter Defendant Absolute Foot Care Specialists <i>[62] Stipulated Confidentiality Agreement and Protective Order</i>
12/23/2019	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[63] Notice of Entry of Stipulated Confidentiality Agreement and Protective Order</i>
01/13/2020	<b>CANCELED Pre Trial Conference (2:05 PM)</b> (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
01/16/2020	 Stipulation and Order to Extend Discovery Deadlines Filed By: Counter Defendant Absolute Foot Care Specialists <i>[64] Stipulation and Order to: (1) Extend Discovery Deadlines; and (2) Reset Trial Date (Second Request)</i>
01/17/2020	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[65] Notice of Entry of Stipulation and Order to: (1) Extend Discovery Deadlines; and (2) Reset Trial Date (Second Request)</i>
01/21/2020	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>[66] Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call</i>
01/27/2020	<b>CANCELED Calendar Call (2:00 PM)</b> (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
02/04/2020	<b>CANCELED Jury Trial (9:00 AM)</b> (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
02/21/2020	 Motion to Compel Filed By: Counter Defendant Absolute Foot Care Specialists <i>[67] Plaintiff Absolute Foot Care Specialists Motion to Compel Defendants Responses to Plaintiff's First Set of Requests for Production</i>
02/24/2020	 Clerk's Notice of Hearing <i>[68] Notice of Hearing</i>
03/06/2020	 Opposition to Motion to Compel Filed By: Defendant Pallanti, Lorraine <i>[69] DEFENDANT LORRAINE PALLANTI'S OPPOSITION TO PLAINTIFFS MOTION TO COMPEL</i>
03/14/2020	 Opposition to Motion to Compel Filed By: Counter Claimant Biesinger, DPM, David P. <i>[70] Defendant/Counterclaimant David P Biesinger's Opposition to Plaintiff Absolute Foot Care Specialists Motion to Compel Defendants Responses to Plaintiff's First Set of Requests for Production</i>
03/17/2020	 <b>Minute Order (3:45 PM)</b> (Judicial Officer: Denton, Mark R.) <i>Re: Telephonic Appearance</i> <i>Minute Order - No Hearing Held;</i> <i>Minute Order - No Hearing Held</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

03/19/2020	 Reply Filed by: Counter Defendant Absolute Foot Care Specialists <i>[71] Absolute Foot Care's Reply in Support of Its Motion to Compel Defendants' Responses to Plaintiff's First Set of Requests for Production</i>
03/26/2020	 <b>Motion to Compel</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Plaintiff Absolute Foot Care Specialists Motion to Compel Defendants Responses to Plaintiff's First Set of Requests for Production</i> Granted; <i>Granted</i>
04/16/2020	 Declaration Filed By: Counter Defendant Absolute Foot Care Specialists <i>[72] Declaration of Paul C. Williams, Esq. as to Attorneys' Fees and Costs Incurred Ancillary to Plaintiff Absolute Foot Care Specialists' Motion to Compel Defendants' Responses to Plaintiffs' First Set of Requests for Production</i>
04/17/2020	 Motion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[73] Plaintiff Absolute Foot Care Specialists' Unopposed Motion to Extend Discovery Deadline and Reset Trial Date</i>
04/20/2020	 Clerk's Notice of Hearing <i>[74] Notice of Hearing</i>
05/01/2020	 Order Granting Filed By: Counter Defendant Absolute Foot Care Specialists <i>[75] Order Granting Plaintiff Absolute Foot Care Specialists' Motion to Compel Defendants' Responses to Plaintiffs' First Set of Requests for Production</i>
05/01/2020	<b>Order</b> (Judicial Officer: Denton, Mark R.) Debtors: David P. Biesinger, DPM (Defendant), Lorraine Pallanti (Defendant) Creditors: Absolute Foot Care Specialists (Plaintiff) Judgment: 05/01/2020, Docketed: 05/04/2020 Total Judgment: 15,778.25
05/04/2020	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[76] Notice of Entry of Order Granting Plaintiff Absolute Foot Care Specialists' Motion to Compel Defendants' Responses to Plaintiff's First Set of Requests for Production</i>
05/05/2020	 Notice of Non Opposition Filed By: Counter Defendant Absolute Foot Care Specialists <i>[77] Notice of Non-Opposition to Plaintiff Absolute Foot Care Specialists' Unopposed Motion to Extend Discovery Deadline and Reset Trial Date (Third Request)</i>
05/11/2020	<b>CANCELED Pre Trial Conference</b> (2:25 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
05/18/2020	 Motion to Reconsider Filed By: Defendant Pallanti, Lorraine <i>[78] Defendant Lorraine Pallanti's Motion to Reconsider</i>
05/18/2020	 Motion to Reconsider Filed By: Counter Claimant Biesinger, DPM, David P. <i>[79] Defendant/ Counterclaimant David P. Biesinger's Motion to Reconsider and Amend</i>













DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

	<i>Order Granting Plaintiff Absolute Foot Care Specialists' Motion to Compel Defendants' Response to Plaintiff's First Set of Requests for Production</i>
05/19/2020	 <b>Minute Order</b> (10:30 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Plaintiff Absolute Foot Care Specialists' Unopposed Motion to Extend Discovery Deadline and Reset Trial Date</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
05/19/2020	 Clerk's Notice of Hearing <i>[80] Notice of Hearing</i>
05/20/2020	 Clerk's Notice of Nonconforming Document <i>[81] Clerk's Notice of Nonconforming Document</i>
05/20/2020	 Order Granting Motion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[82] Order Granting Plaintiff Absolute Foot Care Specialist's Unopposed Motion to Extend Discovery Deadlines and Reset Trial (3rd Request)</i>
05/21/2020	<b>CANCELED Motion to Extend Discovery</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i> <i>Plaintiff Absolute Foot Care Specialists' Unopposed Motion to Extend Discovery Deadline and Reset Trial Date</i>
05/21/2020	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>[83] Order Setting Civil Jury Trial, Pre-Trial and Calendar Call</i>
05/22/2020	 Clerk's Notice of Nonconforming Document and Curative Action <i>[84] Clerk's Notice of Curative Action</i>
05/22/2020	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[85] Notice of Entry of Order Granting Plaintiff Absolute Foot Care Specialists' Unopposed Motion to Extend Discovery Deadline and Reset Trial Date (Third Request)</i>
05/22/2020	 Clerk's Notice of Hearing <i>[87] Notice of Hearing</i>
05/26/2020	<b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
06/01/2020	 Opposition and Countermotion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[88] Plaintiff Absolute Foot Care Specialists': (1) Consolidated Opposition to Defendants' Motions to Reconsider and Amend Order Granting Motion to Compel; and (2) Countermotion for NRCP 37(b) Sanctions against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel</i>
06/02/2020	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
06/11/2020	 Reply in Support Filed By: Defendant Pallanti, Lorraine <i>[89] Defendant Lorraine Pallanti's Reply in Support of Her Motion to Reconsider</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

06/11/2020	 Reply in Support Filed By: Counter Claimant Biesinger, DPM, David P. <i>[90] DEFENDANT/COUNTERCLAIMANT DAVID P. BIESINGER S REPLY IN SUPPORT OF MOTION TO RECONSIDER AND AMEND ORDER GRANTING PLAINTIFF ABSOLUTE FOOT CARE SPECIALISTS MOTION TO COMPEL DEFENDANTS RESPONSES TO PLAINTIFF S FIRST SET OF REQUESTS FOR PRODUCTION</i>
06/15/2020	 <b>Minute Order</b> (3:30 PM) (Judicial Officer: Denton, Mark R.) <i>Re: June 18, 2020 Motions</i> Minute Order - No Hearing Held; Minute Order - No Hearing Held
06/17/2020	 Opposition to Motion Filed By: Counter Claimant Biesinger, DPM, David P. <i>[91] DEFENDANT/COUNTERCLAIMANT DAVID P. BIESINGER S OPPOSITION TO PLAINTIFF ABSOLUTE FOOT CARE SPECIALISTS MOTION FOR NRCP 37(b) SANCTIONS AGAINST DAVID P. BIESINGER, DPM</i>
06/18/2020	<b>CANCELED Motion For Reconsideration</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i> <i>Defendant/ Counterclaimant David P. Biesinger's Motion to Reconsider and Amend Order Granting Plaintiff Absolute Foot Care Spelialists' Motion to Compel Defendants' Response to Plaintiff's First Set of Requests for Production</i>
06/18/2020	<b>CANCELED Motion to Reconsider</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i> <i>Defendant Lorraine Pallanti's Motion to Reconsider</i>
06/18/2020	<b>CANCELED Opposition and Countermotion</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i> <i>Plaintiff Absolute Foot Care Specialists': (1) Consolidated Opposition to Defendants' Motions to Reconsider and Amend Order Granting Motion to Compel; and (2) Countermotion for NRCP 37(b) Sanctions against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel</i>
06/24/2020	 Reply in Support Filed By: Counter Defendant Absolute Foot Care Specialists <i>[92] Plaintiff Absolute Foot Care Specialists' Reply in Support of its Countermotion for NRCP 37(b) Sanctions against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel</i>
06/26/2020	 <b>Minute Order</b> (11:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: June 18, 2020 Motions</i> Minute Order - No Hearing Held; Minute Order - No Hearing Held
07/09/2020	 Order <i>[93] Order: (1) Denying Motions to Reconsider; and (2) Denying Countermotion for Sanctions</i>
07/09/2020	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[94] Notice of Entry of Order: (1) Denying Motions to Reconsider; and (2) Denying Countermotion for Sanctions</i>
07/20/2020	<b>CANCELED Pre Trial Conference</b> (1:55 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

08/03/2020	<b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
08/11/2020	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
08/20/2020	 <b>Stipulation and Order</b> Filed by: Counter Defendant Absolute Foot Care Specialists <i>[95] Stipulation and Order to Extend Deadline to File Dispositive Motions (Fourth Request)</i>
08/21/2020	 <b>Notice of Entry of Stipulation and Order</b> Filed By: Counter Defendant Absolute Foot Care Specialists <i>[96] Notice of Entry of Stipulation and Order to Extend Deadline to File Dispositive Motions (Fourth Request)</i>
09/04/2020	 <b>Motion</b> Filed By: Counter Defendant Absolute Foot Care Specialists <i>[97] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Renewed Motion for NRCP 37(b) Sanctions Against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel</i>
09/04/2020	 <b>Clerk's Notice of Hearing</b> <i>[98] Notice of Hearing</i>
10/01/2020	 <b>Minute Order</b> (2:15 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
10/05/2020	 <b>Motion for Sanctions</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <b>10/05/2020, 10/26/2020</b> <i>Plaintiff/Counterdefendant Absolute Foot Care Specialists' Renewed Motion for NRCP 37(b) Sanctions Against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel</i> Matter Continued; Granted in Part; Matter Continued; Granted in Part; <i>Matter Continued</i>
10/08/2020	 <b>Minute Order</b> (3:00 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
10/15/2020	 <b>Status Check</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Status Check: Substitution of Counsel for Defendant David Biesinger, DPM and Deadlines</i> Matter Heard; <i>Matter Heard</i>
10/19/2020	 <b>Substitution of Attorney</b> Filed by: Counter Claimant Biesinger, DPM, David P. <i>[99] Substitution of Counsel</i>
10/21/2020	 <b>Motion to Compel</b> Filed By: Counter Defendant Absolute Foot Care Specialists

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

*[100] Motion to Compel Defendant/Counterclaimant David P. Biesinger to Respond to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Written Discovery Requests*

10/21/2020



**Opposition to Motion**

Filed By: Counter Claimant Biesinger, DPM, David P.

*[101] Defendant/Counterclaimant David P. Biesinger's Opposition to Plaintiff Absolute Foot Care Specialists' Renewed Motion for NRCP 37(b) Sanctions*

10/22/2020



**Minute Order (2:00 PM)** (Judicial Officer: Denton, Mark R.)

*Re: BlueJeans Appearance*

Minute Order - No Hearing Held;

*Minute Order - No Hearing Held*

10/22/2020



**Clerk's Notice of Hearing**

*[102] Notice of Hearing*

10/23/2020



**Reply in Support**

Filed By: Counter Defendant Absolute Foot Care Specialists

*[103] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Reply in Support of Renewed Motion for NRCP 37(b) Sanctions against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel*

10/30/2020



**Demand for Jury Trial**

Filed By: Counter Claimant Biesinger, DPM, David P.

*[104] Defendant/Counterclaimant David P. Biesinger's Demand for Jury Trial*

11/04/2020



**Opposition to Motion to Compel**

Filed By: Counter Claimant Biesinger, DPM, David P.

*[105] Defendant/Counterclaimant David P. Biesinger's Opposition to Motion to Compel David P. Biesinger to Respond to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Written Discovery Requests*

11/05/2020



**Minute Order (7:00 AM)** (Judicial Officer: Denton, Mark R.)

*Re: Plaintiff/Counterdefendant Absolute Foot Care Specialists' Renewed Motion for NRCP 37 (b) Sanctions Against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel*

Minute Order - No Hearing Held;

*Minute Order - No Hearing Held*

11/09/2020



**Order**

Filed By: Counter Defendant Absolute Foot Care Specialists

*[106] Order Extending Dispositive Motion Deadline and Resetting Trial Date*

11/09/2020



**Notice of Entry of Order**

Filed By: Counter Defendant Absolute Foot Care Specialists

*[107] Notice of Entry of Order Extending Dispositive Motion Deadline and Resetting Trial Date*

11/10/2020



**Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call**

*[108] Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call*

11/16/2020












**Reply in Support**

Filed By: Counter Defendant Absolute Foot Care Specialists

*[109] Reply in Support of Motion to Compel Defendant/Counterclaimant David P. Biesinger to Respond to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Written Discovery Requests*

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

11/19/2020	 <b>Minute Order</b> (1:00 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
11/23/2020	 <b>Motion to Compel</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <b>11/23/2020, 12/14/2020</b> <i>Motion to Compel Defendant/Counterclaimant David P. Biesinger to Respond to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Written Discovery Requests</i> Matter Continued; Granted; Matter Continued; Granted; <i>Matter Continued</i>
12/08/2020	 <b>Order</b> Filed By: Counter Defendant Absolute Foot Care Specialists <i>[110] Order Granting, in part, Renewed Motion for NRCP 37(b) Sanctions</i>
12/10/2020	 <b>Minute Order</b> (11:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
12/10/2020	 <b>Notice of Entry of Order</b> Filed By: Counter Defendant Absolute Foot Care Specialists <i>[111] Notice of Entry of Order Granting, in Part, Renewed Motion for NRCP 37(b) Sanctions</i>
12/24/2020	 <b>Motion to Reconsider</b> Filed By: Counter Claimant Biesinger, DPM, David P. <i>[112] Defendant's Motion to Reconsider the Court's Order Granting, In Part, Plaintiff's Renewed Motion for NRCP 37(b) Sanctions</i>
12/29/2020	 <b>Clerk's Notice of Hearing</b> <i>[113] Notice of Hearing</i>
01/05/2021	 <b>Minute Order</b> (4:00 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
01/07/2021	 <b>Status Check</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <b>01/07/2021, 01/21/2021, 02/04/2021</b> <i>Status Check: Production of Documents</i> Matter Continued; Matter Continued; Matter Heard; Matter Continued; Matter Continued; Matter Heard; Matter Continued; Matter Continued; Matter Heard; <i>Matter Continued</i>
01/07/2021	

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

	 <b>Opposition to Motion</b> Filed By: Counter Defendant Absolute Foot Care Specialists <i>[114] Plaintiff's Opposition to Defendant's Motion to Reconsider the Court's Order Granting, in Part, Plaintiff's Renewed Motion for NRCP 37(b) Sanctions</i>
01/19/2021	<b>CANCELED Pre Trial Conference</b> (1:20 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
01/19/2021	 <b>Minute Order</b> (2:30 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
01/21/2021	<b>CANCELED Minute Order</b> (11:15 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - On in Error</i> <i>Re: BlueJeans Appearance</i>
01/21/2021	 <b>Reply in Support</b> Filed By: Counter Claimant Biesinger, DPM, David P. <i>[115] Defendant's Reply in Support of Motion to Reconsider the Court's Order Granting, in Part Plaintiff's Renewed Motion for NRCP 37(B) Sanctions</i>
01/25/2021	 <b>Order</b> <i>[116] Order on Motion to Compel Defendant/CounterClaimant David P. Biesinger to Respond to Plaintiff/CounterDefendant Absolute Foot Care Specialists' Written Discovery Requests</i>
01/25/2021	 <b>Notice of Entry of Order</b> Filed By: Counter Defendant Absolute Foot Care Specialists <i>[117] Notice of Entry of Order on Motion to Compel Defendant/Counterclaimant David P. Biesinger to Respond to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Written Discovery Requests</i>
01/28/2021	 <b>Declaration</b> Filed By: Counter Defendant Absolute Foot Care Specialists <i>[118] Supplemental Declaration of Paul C. Williams in Support of Plaintiff's Opposition to Defendant's Motion to Reconsider the Court's Order Granting, in Part, Plaintiff's Renewed Motion for NRCP 37(b) Sanctions</i>
02/01/2021	<b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
02/02/2021	 <b>Minute Order</b> (2:30 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
02/02/2021	 <b>Reply</b> Filed by: Counter Claimant Biesinger, DPM, David P. <i>[119] Reply to Supplemental Dec. of Paul Williams in Support of Plaintiff's Opposition to Defendant's Motion for Reconsideration</i>
02/04/2021	<b>Motion to Reconsider</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Defendant's Motion to Reconsider the Court's Order Granting, In Part, Plaintiff's Renewed Motion for NRCP 37(b) Sanctions</i> Granted in Part; <i>Granted in Part</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

02/04/2021	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
02/08/2021	 Stipulation and Order Filed by: Counter Defendant Absolute Foot Care Specialists <i>[120] Stipulation and Order to Extend Deadline to File Dispositive Motions (Fifth Request)</i>
02/09/2021	 <b>Minute Order</b> (7:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Defendant's Motion to Reconsider the Court's Order Granting, In Part, Plaintiff's Renewed Motion for NRCP 37(b) Sanctions</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
02/09/2021	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
02/09/2021	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[121] Notice of Entry of Stipulation and Order to Extend Deadline to File Dispositive Motions (Fifth Request)</i>
03/04/2021	 Order Filed By: Counter Claimant Biesinger, DPM, David P. <i>[122] ORDER ON MOTION TO RECONSIDER THE ORDER GRANTING, IN PART, RENEWED MOTION FOR NRCP 37(b) SANCTIONS</i>
03/04/2021	 Notice of Entry of Order Filed By: Counter Claimant Biesinger, DPM, David P. <i>[123] Notice of Entry of Order on Motion to Reconsider the Order Granting, In Part, Renewed Motion for NRCP 37(b) Sanctions</i>
04/18/2021	 Stipulation and Order to Extend Discovery Deadlines Filed By: Counter Defendant Absolute Foot Care Specialists <i>[124] Stipulation and Order to Extend Deadline to File Dispositive Motions (Sixth Request)</i>
04/19/2021	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[125] Notice of Entry of Stipulation and Order to Extend Deadline to File Dispositive Motions (Sixth Request)</i>
05/06/2021	 Stipulation and Order Filed by: Counter Defendant Absolute Foot Care Specialists <i>[126] Stipulation and Order to Extend Deadline to File Dispositive Motions (Seventh Request)</i>
05/07/2021	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[127] Notice of Entry of Stipulation and Order to Extend Deadline to File Dispositive Motions (Seventh Request)</i>
05/19/2021	 <b>Minute Order</b> (10:45 AM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>








DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

05/19/2021	 Stipulation and Order Filed by: Counter Defendant Absolute Foot Care Specialists <i>[128] Stipulation and Order to Extend Deadline to File Dispositive Motions (Eighth Request)</i>
05/19/2021	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[129] Notice of Entry of Stipulation and Order to Extend Deadline to File Dispositive Motions (Eighth Request)</i>
05/24/2021	 <b>Pre Trial Conference</b> (2:40 PM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
05/28/2021	 Motion for Summary Judgment Filed By: Counter Defendant Absolute Foot Care Specialists <i>[130] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims</i>
05/28/2021	 Appendix Filed By: Counter Defendant Absolute Foot Care Specialists <i>[131] Appendix of Exhibits to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims - Volume 1 of 2</i>
05/28/2021	 Temporary Seal Pending Court Approval Filed By: Counter Defendant Absolute Foot Care Specialists <i>[132] Appendix of Exhibits to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims - Volume 2 of 2 FILED UNDER SEAL</i>
05/28/2021	 Motion to Seal/Redact Records Filed By: Counter Defendant Absolute Foot Care Specialists <i>[133] Motion to Seal Exhibits 22 through 24 to the Appendix of Exhibits to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims</i>
05/28/2021	 Clerk's Notice of Hearing <i>[134] Notice of Hearing</i>
06/07/2021	<b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i>
06/14/2021	 Opposition Filed By: Counter Claimant Biesinger, DPM, David P. <i>[135] Defendant's Opposition to Plaintiff's Motion for Summary Judgment: (1) Breach of Contract Claims and (2) Defendant's Counterclaims</i>
06/15/2021	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i>
06/21/2021	 Stipulation and Order Filed by: Counter Defendant Absolute Foot Care Specialists <i>[136] Stipulation and Order to Extend Deadline to File Reply in Support of Motion for Summary Judgment (First Request)</i>



DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

06/22/2021	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[137] Notice of Entry of Stipulation and Order to Extend Deadline to File Reply in Support of Motion for Summary Judgment (First Request)</i>
06/23/2021	 Reply in Support Filed By: Counter Defendant Absolute Foot Care Specialists <i>[138] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Reply in Support of Its Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims</i>
06/24/2021	 <b>Minute Order (2:30 PM)</b> (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
06/28/2021	<b>Motion for Summary Judgment (9:00 AM)</b> (Judicial Officer: Denton, Mark R.) <i>Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims</i> Granted; <i>Granted</i>
06/28/2021	<b>Motion to Seal/Redact Records (9:00 AM)</b> (Judicial Officer: Denton, Mark R.) <i>Motion to Seal Exhibits 22 through 24 to the Appendix of Exhibits to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims</i> Granted; <i>Granted</i>
06/28/2021	<b>Opposition (9:00 AM)</b> (Judicial Officer: Denton, Mark R.) <i>Defendant's Opposition to Plaintiff's Motion for Summary Judgment: (1) Breach of Contract Claims and (2) Defendant's Counterclaims</i> Matter Heard; <i>Matter Heard</i>
06/28/2021	 <b>All Pending Motions (9:00 AM)</b> (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
06/29/2021	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>[139] Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call</i>
07/01/2021	 Stipulation and Order for Dismissal With Prejudice Filed By: Counter Defendant Absolute Foot Care Specialists <i>[140] Stipulation and Order for Dismissal with Prejudice as Between Plaintiff Absolute Foot Care Specialists and Defendant Lorraine Pallanti</i>
07/01/2021	<b>Order of Dismissal With Prejudice</b> (Judicial Officer: Denton, Mark R.) Debtors: Lorraine Pallanti (Defendant) Creditors: Absolute Foot Care Specialists (Plaintiff) Judgment: 07/01/2021, Docketed: 07/02/2021
07/06/2021	 Notice of Entry of Stipulation & Order for Dismissal Filed By: Counter Defendant Absolute Foot Care Specialists <i>[141] Notice of Entry of Stipulation and Order for Dismissal with Prejudice as Between</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

*Plaintiff Absolute Foot Care Specialists and Defendant Lorraine Pallanti*

07/09/2021	 <b>Minute Order</b> (7:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims</i> Minute Order - No Hearing Held; Minute Order - No Hearing Held
08/18/2021	 Findings of Fact, Conclusions of Law and Order <i>[142] Findings of Fact, Conclusions of Law, and Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on (1) Its Breach of Contract Claims; and (2) Defendant Counterclaimant David P. Biesinger, DPM's Counterclaims</i>
08/18/2021	 Judgment Filed By: Counter Defendant Absolute Foot Care Specialists <i>[143] Judgment</i>
08/18/2021	 Notice of Entry Filed By: Counter Defendant Absolute Foot Care Specialists <i>[144] Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendants/Counterclaimant David P. Biesinger, DPM's Counterclaims</i>
08/18/2021	 Notice of Entry of Judgment Filed By: Counter Defendant Absolute Foot Care Specialists <i>[145] Notice of Entry of Judgment</i>
08/18/2021	<b>Order of Dismissal Without Prejudice</b> (Judicial Officer: Denton, Mark R.) Debtors: David P. Biesinger, DPM (Defendant) Creditors: Absolute Foot Care Specialists (Plaintiff) Judgment: 08/18/2021, Docketed: 08/19/2021 Comment: Certain Claims
08/18/2021	<b>Amended Judgment Plus Legal Interest</b> (Judicial Officer: Denton, Mark R.) Debtors: David P. Biesinger, DPM (Defendant) Creditors: Absolute Foot Care Specialists (Plaintiff) Judgment: 08/18/2021, Docketed: 08/19/2021 Total Judgment: 794,727.40
08/23/2021	 Memorandum of Costs and Disbursements Filed By: Counter Defendant Absolute Foot Care Specialists <i>[146] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Memorandum of Costs and Disbursements</i>
08/23/2021	 Appendix Filed By: Counter Defendant Absolute Foot Care Specialists <i>[147] Appendix of Exhibits to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Memorandum of Costs and Disbursements - Volume 1 of 2</i>
08/23/2021	 Appendix Filed By: Counter Defendant Absolute Foot Care Specialists <i>[148] Appendix of Exhibits to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Memorandum of Costs and Disbursements - Volume 2 of 2</i>
08/25/2021	 Motion to Retax

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

	Filed By: Counter Claimant Biesinger, DPM, David P. <i>[149] Defendant's Motion to Retax Costs</i>
08/25/2021	 Clerk's Notice of Hearing <i>[150] Notice of Hearing</i>
09/08/2021	 Motion for Attorney Fees Filed By: Counter Defendant Absolute Foot Care Specialists <i>[151] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees and Costs</i>
09/09/2021	 Clerk's Notice of Hearing <i>[152] Notice of Hearing</i>
09/10/2021	 Opposition to Motion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[153] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Opposition to Defendant/Counterclaimant David P. Biesinger, DPM's Motion to Retax Costs</i>
09/16/2021	 Notice of Appeal Filed By: Counter Claimant Biesinger, DPM, David P. <i>[154] Notice of Appeal</i>
09/16/2021	 Case Appeal Statement Filed By: Counter Claimant Biesinger, DPM, David P. <i>[155] Case Appeal Statement</i>
09/20/2021	 Reply Filed by: Counter Claimant Biesinger, DPM, David P. <i>[156] Dr. Biesinger's Reply in Support of Motion to Retax Costs</i>
09/27/2021	<b>Motion to Retax</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>[149] Defendant's Motion to Retax Costs</i>
10/11/2021	<b>Motion for Attorney Fees and Costs</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) Events: 09/08/2021 Motion for Attorney Fees <i>Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees and Costs</i>
11/01/2021	<b>CANCELED Pre Trial Conference</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
11/22/2021	<b>CANCELED Calendar Call</b> (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
11/30/2021	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>

DATE	FINANCIAL INFORMATION
	<b>Defendant</b> Pallanti, Lorraine Total Charges 1,483.00 Total Payments and Credits 1,483.00 <b>Balance Due as of 9/21/2021 0.00</b>
	<b>Counter Claimant</b> Biesinger, DPM, David P. Total Charges 1,507.00 Total Payments and Credits 1,507.00

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-17-754423-B**

<b>Balance Due as of 9/21/2021</b>	<b>0.00</b>
<b>Counter Defendant</b> Absolute Foot Care Specialists	
Total Charges	1,733.00
Total Payments and Credits	1,733.00
<b>Balance Due as of 9/21/2021</b>	<b>0.00</b>
<b>Counter Defendant</b> Absolute Foot Care Specialists	
Temporary Restraining Order Balance as of 9/21/2021	<b>0.00</b>
<b>Counter Defendant</b> Absolute Foot Care Specialists	
Injunction Balance as of 9/21/2021	<b>0.00</b>

# BUSINESS COURT CIVIL COVER SHEET A-17-754423-B

Clark County, Nevada  
Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

XIII

## I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): ABSOLUTE FOOT CARE SPECIALISTS, a Nevada Corporation	Defendant(s) (name/address/phone): DAVID P. BIESINGER, DPM, an Individual; and LORRAINE PALLANTI, an individual,
Attorney (name/address/phone): JOHN R. BAILEY, JOSHUA M. DICKEY, PAUL C. WILLIAMS BAILEY KENNEDY 8984 SPANISH RIDGE AVENUE, LAS VEGAS, NEVADA 89148 TELEPHONE: (702) 562-8820	Attorney (name/address/phone): Unknown.

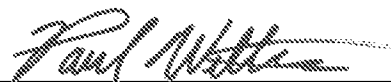
## II. Nature of Controversy *(Please check the applicable boxes for both the civil case type and business court case type)*

☐ Arbitration Requested

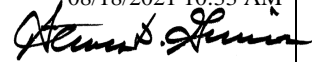
Civil Case Filing Types		Business Court Filing Types
<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Torts</b> <b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input checked="" type="checkbox"/> Other Tort	<b>CLARK COUNTY BUSINESS COURT</b> <input type="checkbox"/> NRS Chapters 78-89 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Mergers (NRS 92A) <input type="checkbox"/> Uniform Commercial Code (NRS 104) <input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate <input type="checkbox"/> Trademark or Trade Name (NRS 600) <input type="checkbox"/> Enhanced Case Management <input checked="" type="checkbox"/> Other Business Court Matters
<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Civil Writs</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	<b>WASHOE COUNTY BUSINESS COURT</b> <input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Investments (NRS 104 Art.8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademark/Trade Name (NRS 600) <input type="checkbox"/> Trade Secrets (NRS 600A) <input type="checkbox"/> Enhanced Case Management <input type="checkbox"/> Other Business Court Matters
Judicial Review/Appeal/Other Civil Filing		
<b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court	<b>Other Civil Filing</b> <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	

April 24, 2017

Date



Signature of initiating party or representative

  
CLERK OF THE COURT

**FFCO (CIV)**

JOHN R. BAILEY

Nevada Bar No. 0137

JOSHUA M. DICKEY

Nevada Bar No. 6621

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*Attorneys for Plaintiff/Counterdefendant*

*Absolute Foot Care Specialists*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada Corporation,

Plaintiff,

vs.

DAVID P. BIESINGER, DPM, an individual; and  
LORRAINE PALLANTI, an individual,

Defendants.

DAVID P. BIESINGER, DPM, an individual,

Counterclaimant,

vs.

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada Corporation; DOES I through X; and  
ROE ENTITIES I through X,

Counter-Defendant.

Case No. A-17-754423-B

Dept. No. XIII

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
PLAINTIFF/COUNTERDEFENDANT  
ABSOLUTE FOOT CARE SPECIALISTS'  
MOTION FOR SUMMARY JUDGMENT ON:  
(1) ITS BREACH OF CONTRACT CLAIMS;  
AND (2) DEFENDANT/COUNTERCLAIMANT  
DAVID P. BIESINGER, DPM'S  
COUNTERCLAIMS**

This matter came before this Court on June 28, 2021, at 9:00 a.m., for a hearing regarding Plaintiff Absolute Foot Care Specialists' ("Absolute Foot Care" or "Plaintiff") Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/

Counterclaimant David P. Biesinger, DPM’s Counterclaims (the “Motion for Summary Judgment”).

### **APPEARANCES**

- Paul C. Williams, Esq. of Bailey ♦ Kennedy on behalf of Plaintiff Absolute Foot Care;
- Zachary P. Takos, Esq. of Takos Law Group, Ltd. on behalf of Defendant David P. Biesinger, DPM (“Dr. Biesinger”); and
- Jeffrey Gronich, Esq. of Jeffrey Gronich, Attorney at Law, P.C. on behalf of former Defendant Lorraine Pallanti (“Ms. Pallanti”).<sup>1</sup>

The Court, having examined the briefs of the parties, the records and documents on file, and having heard argument of counsel, being fully advised of the premises, and good cause appearing, makes the following findings of fact, conclusions of law, and order:

### **FINDINGS OF FACT**

1. Absolute Foot Care is a Nevada corporation whose business is the practice of podiatric medicine in Clark County, Nevada.
2. Absolute Foot Care operates a podiatry office at 7125 Grand Montecito Parkway, #110, Las Vegas, Nevada 89149 (the “Centennial Office”).
3. Absolute Foot Care’s principal, Noah Levine, DPM (“Dr. Levine”), is the President of Absolute Foot Care and is a Doctor of Podiatric Medicine licensed to practice podiatry in Nevada since 2001.
4. Dr. Biesinger is a Doctor of Podiatric Medicine and, prior to his resignation on April 20, 2017, was an employee of Absolute Foot Care.
5. On June 7, 2010, Absolute Foot Care and Dr. Biesinger entered into the Employment Agreement pursuant to which Dr. Biesinger became an employee of Absolute Foot Care and agreed to perform certain duties and undertake certain responsibilities.

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<sup>1</sup> Based on a Stipulation and Order for Dismissal with Prejudice entered on July 6, 2021, Ms. Pallanti was dismissed from this case.

1           6.       The Employment Agreement contained restrictive covenants wherein Dr. Biesinger  
2 agreed, among other things, not to do the following for two years following the termination of his  
3 association with Absolute Foot Care: (a) practice podiatric medicine within eight miles of Absolute  
4 Foot Care’s Centennial Office; (b) solicit patients or other customers of Absolute Foot Care; or (c)  
5 solicit employees of Absolute Foot Care (the “Restrictive Covenants”).

6           7.       Dr. Biesinger agreed that Absolute Foot Care would be entitled to \$650,000.00 in  
7 liquidated damages if he breached any one or more of the Restrictive Covenants.

8           8.       The Employment Agreement specified that it had an initial term of two years (the  
9 “Initial Term”), but also contained an “evergreen” clause (the “Evergreen Clause”)—which  
10 provided that the Employment Agreement automatically renewed for successive one-year periods  
11 unless otherwise terminated it in accordance with Section VIII.B of the Employment Agreement.

12           9.       The Employment Agreement also provided that, at the end of the Initial Term, Dr.  
13 Biesinger would become eligible to become an equity owner in Absolute Foot Care “at and subject  
14 to the reasonable discretion of the Employer” if certain conditions were met. Specifically, the  
15 Employment Agreement stated that such a future agreement would need to be “memorialized in a  
16 separate agreement” under which Dr. Biesinger would become “eligible to acquire between ten  
17 percent (10%) and twenty percent (20%) of equity in” Absolute Foot Care for “an appropriate buy-  
18 in amount.” The Employment Agreement stated that Dr. Biesinger’s potential buy-in would require  
19 “a majority consensus and approval.”

20           10.      The Employment Agreement provided Dr. Biesinger with a monthly salary and two  
21 types of incentive pay. Under the first type of incentive pay, Absolute Foot Care paid Dr. Biesinger  
22 thirty percent (30%) of net revenue (minus his salary) directly attributable to his work. Under the  
23 second type of incentive pay, Dr. Biesinger was paid ten percent (10%) of the net amount collected  
24 (amount collected minus cost of product) from the sale of cosmetic products to patients treated by  
25 Dr. Biesinger.

26           11.      Shortly after the Initial Term, Dr. Biesinger and Absolute Foot Care began  
27 discussions regarding his potential purchase of an equity interest in Absolute Foot Care.  
28



12. On or about July 6, 2012, Dr. Biesinger and Absolute Foot Care executed a Letter of Intent (the “Letter of Intent”). The Letter of Intent states that it is an “expression of interest in allowing [Dr. Biesinger] to acquire an equity interest in [Absolute Foot Care] in accordance with Section VIII(A) of [the] Employment Agreement . . . .” The financial terms agreed upon in the Letter of Intent were: (a) Dr. Levine would sell up to 20 percent of his equity interest (20 of his 100 shares) in Absolute Foot Care to Dr. Biesinger; (b) “[t]he purchase price per percentage interest in the company shall be \$25,000.00 per share;” and (c) Dr. Biesinger could acquire the shares either all at once or over time.

13. On July 8, 2013, Absolute Foot Care and Dr. Biesinger entered into a Non-Disclosure Agreement (the “Non-Disclosure Agreement”) governing Dr. Biesinger’s access to Absolute Foot Care’s confidential financial information.

14. On January 25, 2013, Absolute Foot Care and Dr. Biesinger executed an Extension of Employment Agreement for Professional Services (the “Extension”). A recital of the Extension states that “the term of the [Employment] Agreement has expired and upon expiration, Employee and Employer agreed to continue their contractual relationship up to the point of this Extension, and adhered to all terms and conditions under the [Employment] Agreement.”

15. The Extension further provides, in pertinent part: “All terms and conditions of the [Employment] Agreement shall remain in full force and effect” except that the “term of the Contract shall be extended until January 22, 2015.”

16. From January 23, 2015—the date which Dr. Biesinger contends the Employment Agreement expired—to April 20, 2017, Dr. Biesinger remained employed with Absolute Foot Care under the terms and conditions of the Employment Agreement. Specifically, Absolute Foot Care continued to: (i) pay Dr. Biesinger a salary in accordance with the terms of the Employment Agreement; (ii) pay Dr. Biesinger incentive bonuses pursuant to formulas detailed in the Employment Agreement (irrespective of whether the incentive bonuses were correctly calculated); (iii) provide Dr. Biesinger with benefits (*e.g.* malpractice insurance) in accordance with the Employment Agreement; and (iv) perform in accordance with the Employment Agreement.

1           17.     In 2015, Dr. Biesinger and Absolute Foot Care resumed discussions regarding his  
2 potential purchase of an equity interest in Absolute Foot Care. The terms of the potential purchase  
3 were materially similar to those contained in the Letter of Intent—Dr. Biesinger could purchase up  
4 to a twenty percent (20%) interest for \$25,000.00 per share.

5           18.     While still employed at Absolute Foot Care, Dr. Biesinger purchased real property  
6 and was building out a medical suite located at 6200 North Durango, Las Vegas, Nevada (the  
7 “Durango Office”)—which is approximately one mile away from Absolute Foot Care’s Centennial  
8 Office.

9           19.     On April 20, 2017—when Dr. Levine and Absolute Foot Care’s Practice  
10 Administrator (Dr. Levine’s wife Lauren Levine) were away on vacation—Dr. Biesinger advised  
11 staff members that he was resigning from Absolute Foot Care and provided his key to the office to a  
12 staff member. Dr. Biesinger also placed a resignation letter on Dr. Levine’s desk, which was dated  
13 March 10, 2017.

14           20.     On April 21, 2017, Absolute Foot Care began experiencing a disproportionate  
15 amount of appointment cancellations from its patients.

16           21.     Absolute Foot Care learned that Dr. Biesinger and two former Absolute Foot Care  
17 employees had solicited multiple patients of Absolute Foot Care—including patients with which  
18 Dr. Biesinger had no prior relationship (*i.e.* patients that had only seen Dr. Levine)—to Dr.  
19 Biesinger’s new podiatry practice at his Durango Office, located within one mile of Absolute Foot  
20 Care’s Centennial Office. Specifically, Absolute Foot Care’s patients revealed that they had  
21 received phone calls from someone, purporting to act on Dr. Biesinger’s behalf, indicating: (a) that  
22 they had an appointment with Absolute Foot Care in the near future; (b) that Dr. Biesinger was no  
23 longer with Absolute Foot Care; (c) that Dr. Biesinger was starting his own practice (Centennial  
24 Foot & Ankle); and (d) to call Dr. Biesinger if they wanted to cancel their appointment with  
25 Absolute Foot Care and instead schedule an appointment with Dr. Biesinger at his new office.

26           22.     Additionally, Absolute Foot Care learned that Dr. Biesinger and his agents elected  
27 not to contact certain patients that Dr. Biesinger treated at Absolute Foot Care—although they were  
28

1 still in need of medical care—that were not likely to result in significant reimbursements; primarily,  
2 patients needing post-operative care.

3 23. On May 22, 2017, this Court entered a Preliminary Injunction, enjoining Dr.  
4 Biesinger from violating the Restrictive Covenants.

5 24. Despite the Preliminary Injunction, Dr. Biesinger continued to operate a podiatry  
6 practice (Centennial Foot & Ankle) at his Durango Office until July 21, 2017.

7 25. This Court ultimately held Dr. Biesinger in contempt for violating the Preliminary  
8 Injunction and awarded Absolute Foot Care a significant portion of its reasonable attorney’s fees  
9 and costs.

10 26. On December 8, 2020, this Court sanctioned Dr. Biesinger due to his failure to  
11 comply with this Court’s order compelling him to produce certain documents—after having given  
12 Dr. Biesinger numerous opportunities to comply. Specifically, this Court struck Biesinger’s  
13 affirmative defenses as a sanction pursuant to NRCP 37(b). Subsequently, on Biesinger’s Motion  
14 for Reconsideration, this Court amended its order to “Any of the affirmative defenses asserted by  
15 Biesinger that relate to performance/breach/damages issues shall be disallowed, leaving any and all  
16 denials and the Counterclaim intact, but not permitting evidence to be adduced that should have  
17 been provided.” (Order on Motion to Reconsider the Order Granting, in Part, Renewed Motion for  
18 NRCP 37(b) Sanctions, filed March 4, 2021, at 3:1-9.)

19 27. Absolute Foot Care’s expert opined that it suffered damages in excess of \$1 million  
20 due to Dr. Biesinger’s impermissible conduct. Dr. Biesinger disclosed a rebuttal expert that  
21 criticized Absolute Foot Care’s expert’s methodology.

22 28. Any findings of fact that are more appropriately considered conclusions of law shall  
23 be treated as such.

#### 24 **CONCLUSIONS OF LAW**

25 29. “A party may move for summary judgment, identifying each claim or defense — or  
26 the part of each claim or defense — on which summary judgment is sought.” NRCP 56(a). “The  
27 court shall grant summary judgment if the movant shows that there is no genuine dispute as to any  
28 material fact and the movant is entitled to judgment as a matter of law.” *Id.*

1           30.     “Summary judgment is an important procedural tool by which ‘factually insufficient  
2 claims or defenses [may] be isolated and prevented from going to trial with the attendant  
3 unwarranted consumption of public and private resources.’” *Boesiger v. Desert Appraisals, LLC*,  
4 135 Nev. 192, 194, 444 P.3d 436, 438-39 (2019) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317,  
5 327 (1986)).

6           31.     “Summary judgment is appropriate and shall be rendered forthwith when the  
7 pleadings and other evidence on file demonstrate that no genuine issue as to any material fact  
8 [remains] and that the moving party is entitled to a judgment as a matter of law.” *Wood v. Safeway*,  
9 *Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotation marks omitted). “The  
10 substantive law controls which factual disputes are material and will preclude summary  
11 judgment.” *Id.* at 731, 121 P.3d at 1031. “A factual dispute is genuine when the evidence is such  
12 that a rational trier of fact could return a verdict for the nonmoving party.” *Id.* The Court must  
13 construe “the evidence, and any reasonable inferences drawn from it, . . . in a light most favorable  
14 to the nonmoving party.” *Id.* at 729, 121 P.3d at 1029.

15           32.     The party moving for summary judgment “bears the initial burden of production to  
16 show the absence of a genuine issue of material fact.” *Cuzze v. Univ. & Comm. Coll. Sys. of Nev.*,  
17 123 Nev. 598, 602, 172 P.3d 131, 134 (2007) (*citing Celotex Corp.*, 477 U.S. at 323). “[I]f the  
18 nonmoving party will bear the burden of persuasion at trial, the party moving for summary  
19 judgment may satisfy the burden of production by either (1) submitting evidence that negates an  
20 essential element of the nonmoving party’s claim, or (2) ‘pointing out . . . that there is an absence  
21 of evidence to support the nonmoving party’s case.’” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*,  
22 123 Nev. 598, 602–03, 172 P.3d 131, 134 (2007) (quoting *Celotex Corp.*, 477 U.S. at 323); *accord*  
23 *NRCP 56(c)(1)(B)*. Assuming the moving party meets its initial burden of production in moving  
24 for summary judgment, the nonmoving party is then required to set forth those facts demonstrating  
25 the existence of a genuine issue for trial. *See Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d  
26 716, 720 (2008).

***Absolute Foot Care's Breach of Contract Claim***

33. Absolute Foot Care, for purposes of its Motion for Summary Judgment, elected its breach of contract claim and liquidated damages of \$650,000.00 as its sole remedy—*i.e.* Absolute Foot Care agreed to forego its other claims for relief<sup>2</sup> if the Motion for Summary Judgment was granted.

34. Under Nevada law, a breach of contract claim requires the following: “(1) formation of a valid contract; (2) performance or excuse of performance by the plaintiff; (3) material breach by the defendant; and (4) damages.” *Laguerre v. Nevada Sys. of Higher Educ.*, 837 F. Supp. 2d 1176, 1180 (D. Nev. 2011) (citing *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987)).

35. The Court concludes that: (i) the Employment Agreement was a valid contract; (ii) Absolute Foot Care performed its obligations under the Employment Agreement; (iii) Dr. Biesinger breached the Employment Agreement by violating the Restrictive Covenants; and (iv) Absolute Foot Care sustained damages as a result of Dr. Biesinger's breaches.

***The Evergreen Clause and the Extension***

36. Dr. Biesinger argues that the Employment Agreement expired on January 22, 2015 (and thus the Restrictive Covenants expired two years later on January 22, 2017) based on his contention that the Extension removed the Evergreen Clause from the Employment Agreement. The Court rejects this argument and finds that the Evergreen Clause remained in effect until Dr. Biesinger's departure from Absolute Foot Care on April 20, 2017.

37. Under Nevada law, unambiguous contracts are construed according to their plain language. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 678, 289 P.3d 221, 229 (2012).

38. ***First***, the Court finds that the plain language of the Extension demonstrates that it was not intended to remove the Evergreen Provision from the Employment Agreement. The

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<sup>2</sup> In addition to its breach of contract claim, Absolute Foot Care asserted the following claims for relief: (i) breach of the implied covenant of good faith and fair dealing; (ii) unjust enrichment; (iii) breach of fiduciary duty; (iv) conversion; (v) intentional interference; and (vi) civil conspiracy.

1 Extension expressly provides that “the term of the [Employment] Agreement has expired and upon  
2 expiration, Employee and Employer agreed to continue their contractual relationship up to the point  
3 of this Extension, and adhered to all terms and conditions under the [Employment] Agreement.” At  
4 that time, the only term in the Employment Agreement that had expired was the Initial Term.

5 39. The Extension then states that “by and through this Extension, Employee and  
6 Employer agree to formally extend the [Employment] Agreement for an additional two (2) years  
7 from the date of the execution of this Extension.”

8 40. The Extension then provides that “[a]ll terms and conditions of the [Employment]  
9 Agreement shall remain in full force and effect” except that the term (*i.e.* the Initial Term), “shall be  
10 extended until January 22, 2015.”

11 41. Dr. Biesinger’s argument that the Extension’s statement that the “term” had expired  
12 references the Employment Agreement generally (and not just the Initial Term) is contradicted by  
13 his own testimony. At his deposition, Dr. Biesinger conceded that, from June 7, 2012 (when the  
14 Initial Term expired), to January 2013 (when the Extension was signed) he was working for  
15 Absolute Foot Care pursuant to the Employment Agreement (*i.e.*, it had not expired).

16 42. The Court finds that the plain language of the Extension does not express an intent  
17 by the parties to remove the Evergreen Clause from the Employment Agreement. To the contrary,  
18 the parties expressed an intent that all terms and conditions of the Employment Agreement were to  
19 “remain in full force and effect,” and the Evergreen Clause is a term and condition of the  
20 Employment Agreement.

21 43. In essence, Dr. Biesinger argues that the Extension was intended to fully supplant  
22 the provisions contained in Section VII(A) of the Employment Agreement. However, the  
23 Extension does not express any such intent. Moreover, Section VII(A) contained other provisions  
24 in addition to the Initial Term and the Evergreen Clause. For example, Section VII(A) also  
25 included, among other things, Dr. Biesinger’s entitlement to be considered for purchasing an  
26 ownership interest in Absolute Foot Care (subject to certain conditions and the reasonable  
27 discretion of Absolute Foot Care). While Dr. Biesinger contends that the Extension removed the  
28 Evergreen Clause, he nonetheless argued that he was entitled to purchase an ownership interest in

1 Absolute Foot Care pursuant to Section VII(A). Dr. Biesinger’s attempt to have it both ways (*i.e.*  
2 the Extension removing the Evergreen Clause but not his entitlement to purchase an ownership  
3 interest) is unavailing—he cannot accept the benefits of the Employment Agreement and, at the  
4 same time, reject its corresponding burdens. *Bergstrom v. Estate of DeVoe*, 109 Nev. 575, 577, 854  
5 P.2d 860, 861 (1993) (“He cannot at the same time affirm the contract by retaining its benefits and  
6 rescind it by repudiating its burdens.”) (quoting CORBIN ON CONTRACTS § 1114).

7 44. **Second**, assuming, *arguendo*, the Extension was ambiguous as to whether the parties  
8 intended to have the Evergreen Clause remain in full force and effect, the parties’ course of conduct  
9 confirms that the Evergreen Clause remained in place and that the Employment Agreement  
10 persisted through Dr. Biesinger’s departure from Absolute Foot Care.

11 45. Dr. Biesinger does not dispute that from January 22, 2015—the date Dr. Biesinger  
12 contends the Employment Agreement expired—until his departure, he was: (i) paid a salary in  
13 accordance with the terms of the Employment Agreement; (ii) paid incentive bonuses pursuant to  
14 formulas detailed in his Employment Agreement (irrespective of whether the incentive bonuses  
15 were correctly calculated); and (iii) provided with benefits (*e.g.* malpractice insurance, cell phone  
16 allowance, etc.).

17 46. Indeed, Dr. Biesinger’s Counterclaims are based upon the existence of the  
18 Employment Agreement through the time of his departure—he contends that Absolute Foot Care  
19 did not pay him incentive pay pursuant to the specific terms of the Employment Agreement and did  
20 not give him an opportunity to purchase an ownership interest in Absolute Foot Care pursuant to the  
21 Employment Agreement.

22 47. Moreover, the Court finds Dr. Biesinger’s arguments regarding an unauthenticated  
23 text message exchange are not persuasive. Even assuming the text message exchange was  
24 admissible, Dr. Levine’s alleged communications did not confirm that the Employment Agreement  
25 had expired and did not modify the Employment Agreement. Rather, Dr. Levine’s communications  
26 indicated that he believed that the formality of an extension was important to Dr. Biesinger,  
27 consistent with his deposition testimony.  
28

1           48.     **Third**, assuming, *arguendo*, that the Extension had removed the Evergreen  
2 Provision, under Nevada law, “when an employee and employer continue an employment  
3 relationship after the term of duration contained in a written contract, the original contract is  
4 presumed to renew automatically under the same terms and conditions until either party terminates  
5 the contract.” *Ringle v. Bruton*, 120 Nev. 82, 89, 86 P.3d 1032, 1037 (2004). Any terms of  
6 duration do not renew (*i.e.*, a two-year contract does not renew for two years); rather, the contract  
7 simply continues until either party terminates it. *See id.*

8           49.     Under *Ringle*, assuming, *arguendo*, Dr. Biesinger is correct and the Extension  
9 removed the Evergreen Clause, then the parties were subject to an amended Employment  
10 Agreement with the same terms and conditions, excepting the Evergreen Clause, for a term of two  
11 years. It is this amended Employment Agreement (without the Evergreen Clause) that would have  
12 extended by operation of law pursuant to *Ringle*—not the original Employment Agreement (with  
13 the Evergreen Clause).

14           50.     Thus, under Dr. Biesinger’s theory, the amended Employment Agreement (without  
15 the Evergreen Clause) would have ended, pursuant to its terms, on January 22, 2015. However, the  
16 amended Employment Agreement presumptively renewed by operation of law because Dr.  
17 Biesinger and Absolute Foot Care “continue[d] an employment relationship after the term of  
18 duration contained in” the amended Employment Agreement. *Ringle*, 120 Nev. at 89, 86 P.3d at  
19 1037. The amended Employment Agreement continued indefinitely—without any term as to  
20 duration—until Dr. Biesinger resigned on April 20, 2017. *See id.*

21           51.     In sum, because the Court finds the Evergreen Clause persisted after the Extension  
22 was executed, the Employment Agreement automatically renewed for one-year terms on January  
23 23, 2015, January 23, 2016, and January 23, 2017, and remained in effect until Dr. Biesinger’s  
24 departure from Absolute Foot Care on April 20, 2017. Alternatively, even if the Extension had  
25 abrogated the Evergreen Clause, the Court finds that the Employment Agreement renewed by  
26 operation of law pursuant to *Ringle*.



***Absolute Foot Care Performed Its Obligations Under the Employment Agreement***

52. The Court concludes that Absolute Foot Care performed its obligations under the Employment Agreement.

53. As detailed below, Dr. Biesinger contends that Absolute Foot Care breached the Employment Agreement and/or the implied covenant of good faith and fair dealing by failing to compensate him according to the Employment Agreement and by failing to provide him with an opportunity to purchase an ownership interest in Absolute Foot Care. Dr. Biesinger has asserted, as an affirmative defense, that Absolute Foot Care's alleged breaches of the Employment Agreement excused his performance.

54. However, this Court has stricken, as a sanction under NRCP 37(b), "the affirmative defenses asserted by Dr. Biesinger that relate to *performance/breach*/damages issues." (*See* Order Granting, in Part, Renewed Motion for NRCP 37(b) Sanctions, filed on Dec. 8, 2020, at 4; *see also* Order on Motion to Reconsider the Order Granting, in Part, Renewed Motion for NRCP 37(b) Sanctions, filed March 4, 2021, at 3:1-9 (emphasis added).)

55. Accordingly, Dr. Biesinger may not raise Absolute Foot Care's alleged breaches of the Employment Agreement as an affirmative defense to Absolute Foot Care's breach of contract claim.

***Dr. Biesinger Breached the Employment Agreement***

56. The Court concludes that Dr. Biesinger breached the Employment Agreement by violating the Restrictive Covenants. Specifically, Dr. Biesinger violated the Restrictive Covenants by: (i) operating a competing podiatry practice approximately one mile from Absolute Foot Care's Centennial Office; and (ii) soliciting Absolute Foot Care patients.

57. Dr. Biesinger contends that he "had a professional responsibility to inform patients of his departure" and thus his conduct did not constitute solicitation under the Restrictive Covenants. The Court is not persuaded by this argument.

58. ***First***, Dr. Biesinger's argument does not address the fact that he operated a competing podiatry practice approximately one mile from Absolute Foot Care's Centennial Office, which is a material breach of the Restrictive Covenants.

60. ***Third***, Dr. Biesinger and his agents called patients with which he had no relationship. Moreover, Dr. Biesinger and his agents elected not to contact patients that Dr. Biesinger treated at Absolute Foot Care that—although they were still in need of medical care—were not likely to result in significant reimbursements; primarily, patients needing post-operative care.

61. ***Fourth***, Absolute Foot Care’s patients would not have been abandoned if Dr. Biesinger had not solicited them. Absolute Foot Care (*i.e.* Dr. Levine) could have provided the requisite care for its patients.

Damages

### *Damages*

62. The Court concludes that Absolute Foot Care is entitled to \$650,000.00 in liquidated damages pursuant to the Employment Agreement.

63. Dr. Biesinger argues that the liquidated damages provision constitutes an unenforceable penalty. The Court finds that Dr. Biesinger may not raise this argument and, even if he could, Dr. Biesinger failed to meet his burden to demonstrate that there is a genuine issue of material fact as to the enforceability of the liquidated damages provision.

64. **First**, Dr. Biesinger did not raise this argument as an affirmative defense and it is therefore waived. *See Paulos v. FCHI, Ltd. Liab. Co.*, 136 Nev. Adv. Op. 2, 456 P.3d 589, 596 n.4 (2020) (“An affirmative defense that is not pleaded in the answer is waived.”); *In re Snelson*, 305 B.R. 255, 262–63 (Bankr. N.D. Tex. 2003) (“Courts have held that a contention that a liquidated damages provision is unenforceable because it is a penalty is an affirmative defense that the contending party must plead and prove.”) (collecting cases); *Pace Commun., Inc. v. Moonlight Design, Inc.*, 31 F.3d 587, 594 (7th Cir. 1994) (holding argument that a liquidated damages provision is an unenforceable penalty as an affirmative defense).

65. **Second**, even if Dr. Biesinger had raised this argument as an affirmative defense, this Court has stricken it, as a sanction under NRCP 37(b): “the affirmative defenses asserted by Dr. Biesinger that relate to performance/breach/**damages** issues.” (See Order Granting, in Part, Renewed Motion for NRCP 37(b) Sanctions, filed on Dec. 8, 2020, at 4; see also Order on Motion to Reconsider the Order Granting, in Part, Renewed Motion for NRCP 37(b) Sanctions, filed March 4, 2021, at 3:1-9 (emphasis added).)

66. **Third**, even if Dr. Biesinger could raise this argument as an affirmative defense, the Court finds that Dr. Biesinger has failed to establish the existence of a genuine issue of material fact as to whether the liquidated damages provision constitutes an unenforceable penalty. Under Nevada law, liquidated damages provisions “are **prima facie valid**” and the burden is on the party challenging the liquidated damages provision to “establish that its application amounts to a penalty.” *Haromy v. Sawyer*, 98 Nev. 544, 546-47, 654 P.2d 1022, 1023 (1982) (emphasis added). “In order to prove a liquidated damage clause constitutes a penalty, the challenging party must persuade the court that the liquidated damages are disproportionate to the actual damages sustained by the injured party.” *Id.* at 547, 654 P.2d at 1023.

67. Many courts have held that liquidated damages provisions are appropriate for non-competition provisions given the difficulties in calculating actual damages. See, e.g., *Wichita Clinic, P.A. v. Louis*, 185 P.3d 946, 957–59 (Kan. App. 2008); *Geisinger Clinic v. Di Cuccio*, 606 A.2d 509, 518 (Pa. Super. 1992).

68. Dr. Biesinger argues that his rebuttal expert’s criticism of Absolute Foot Care’s damages expert demonstrates that there is a genuine issue of material fact as to whether the liquidated damages constitute an unenforceable penalty. However, Absolute Foot Care has no obligation or burden to demonstrate that the liquidated damages are valid and enforceable—they are presumed so under Nevada law. See *Haromy*, 98 Nev. at 546-47, 654 P.2d at 1023. Instead, it is Dr. Biesinger’s burden to demonstrate that the liquidated damages are an unenforceable penalty. See *id.*

69. Dr. Biesinger’s rebuttal expert does not express any opinions concerning the liquidated damages or Absolute Foot Care’s actual damages; he only critiques Absolute Foot Care’s

expert's methodology. Further, Dr. Biesinger's rebuttal expert does not opine that Absolute Foot Care has not suffered any damages.

70. Thus, Dr. Biesinger's criticisms of Absolute Foot Care's expert are immaterial because Dr. Biesinger has failed to adduce any competent evidence (*i.e.* a damages calculation) that shows that the liquidated damages (*i.e.* \$650,000.00) are disproportionate to Absolute Foot Care's actual damages.

### *Advice of Counsel Defense*

71. Dr. Biesinger contends that he relied upon advice of counsel and alleged opinions from unidentified loan providers that he was not subject to the Restrictive Covenants. Dr. Biesinger's contention is immaterial.

72. **First**, Dr. Biesinger failed to raise advice of counsel as an affirmative defense and has thus waived it. *See* Ammondson v. N.W. Corp., 220 P.3d 1, 14–15 (Mont. 2009); *see also Bd. of Supervisors of LSU and A&M College v. Smack Apparel*, CV-04-1593, 2005 WL 8169213, at \*1 (E.D. La. Mar. 21, 2005) (holding “advice of counsel is an affirmative defense which must be asserted in an answer under Fed. R. Civ. P. 8(c), or it is waived.”); *Gause v. First Bank of Marianna*, 457 So. 2d 582, 585 (Fla. 1st Dist. App. 1984); *accord Paulos*, 136 Nev. Adv. Op. 2, 456 P.3d at 596 n.4.

73. **Second**, even if Dr. Biesinger had pled advice of counsel as an affirmative defense, it is not a defense to a breach of contract claim. Dr. Biesinger's motives, willfulness, and state of mind are irrelevant in deciding whether he breached the Employment Agreement. *See Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 869 P.2d 454, 461 (Cal. 1994) (“[T]he law generally does not distinguish between good and bad motives for breaching a contract.”). Thus, even if Dr. Biesinger relied on legal advice, it would not shield him from liability for his breaches of the Restrictive Covenants.

74. **Third**, Dr. Biesinger did not present any component evidence concerning the legal advice he allegedly received from unidentified counsel and determinations allegedly made by unidentified loan providers—the advice/opinions are inadmissible hearsay. *See* NRS 51.065;

1 accord U.S. v. Haisten, 790 Fed. Appx. 374, 378 (3d Cir. 2019) (finding statement from party that  
2 he received advice from counsel that his conduct was legal constituted hearsay).

3 75. In sum, the Court finds that there are no genuine issues as to any material facts  
4 concerning Absolute Foot Care's Breach of Contract claim and that Absolute Foot Care is entitled  
5 to judgment as a matter of law.

6 ***Dr. Biesinger's Counterclaims***

7 76. Dr. Biesinger has pled five counterclaims: (1) declaratory relief; (2) breach of  
8 contract; (3) breach of implied covenant of good faith and fair dealing; (4) unjust enrichment; and  
9 (5) NRS 608.040.

10 77. Dr. Biesinger's Declaratory Relief claim seeks a declaratory judgment that the  
11 Employment Agreement expired on January 22, 2015, and, as a result, the Restrictive Period ended  
12 on January 22, 2017.

13 78. Dr. Biesinger's four coercive counterclaims—breach of contract, breach of the  
14 implied covenant of good faith and fair dealing, unjust enrichment, and NRS 608.040—are based  
15 on allegations that Absolute Foot Care breached the Employment Agreement by failing to provide  
16 Dr. Biesinger with an opportunity to purchase an ownership interest in Absolute Foot Care and by  
17 failing to compensate him according to the Employment Agreement.

18 ***Dr. Biesinger Failed to Disclose a Damages Calculation***

19 79. Dr. Biesinger must adduce evidence of legally cognizable damages on his four  
20 coercive counterclaims to survive summary judgment because damages is an essential element of  
21 each claim. *See Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1240 (D. Nev. 2008)  
22 (breach of contract); *Reborn v. Univ. of Phx.*, No. 2:13-cv-00864-RFB-VCF, 2015 U.S. Dist.  
23 LEXIS 103250, at \*15 (D. Nev. Aug. 5, 2015) (breach of the implied covenant of good faith and  
24 fair dealing); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-  
25 NJK, 2019 U.S. Dist. LEXIS 142090, at \*5-6 (D. Nev. Aug. 19, 2019) (unjust enrichment); NRS  
26 608.040 (providing penalty for unpaid wages).

27 80. Dr. Biesinger not only failed to provide a damages calculation for any of his  
28 counterclaims, but he also failed to adduce any evidence that he has been damaged. Dr. Biesinger's

1 failure to disclose a calculation of damages (either his own calculation or through an expert)  
2 prohibits him from seeking damages. *See* NRCP 37(c)(1) (providing that where “a party fails to  
3 provide information or identify a witness as required by Rule 16.1(a)(1) ..., the party is not allowed  
4 to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless  
5 the failure was substantially justified or is harmless.”); *see also* NRCP 16.1(a)(1)(A)(iv) (requiring  
6 parties to disclose “a computation of each category of damages claimed by the disclosing  
7 party ....”).

8 81. Because Dr. Biesinger failed to identify evidence that he has been damaged or a  
9 calculation of damages for any of his four coercive counterclaims for relief, Absolute Foot Care is  
10 entitled to summary judgment in its favor. *See Hoffman v. Impact Confections, Inc.*, 544 F. Supp.  
11 2d 1121, 1128 (S.D. Cal. 2008) (granting summary judgment where plaintiff failed to provide any  
12 evidence or computation of damages).

13 ***Dr. Biesinger has Not Adduced Competent Evidence Indicating***  
14 ***Absolute Foot Care Breached the Employment Agreement***

15 82. Dr. Biesinger, in his contract-based counterclaims—breach of contract, breach of the  
16 implied covenant of good faith and fair dealing, and NRS 608.040—contends that Absolute Foot  
17 Care breached the Employment Agreement and/or the implied covenant of good faith and fair  
18 dealing by failing to compensate him according to the Employment Agreement and by failing to  
19 provide him with an opportunity to purchase an ownership interest in Absolute Foot Care.

20 83. The Court finds that Dr. Biesinger has failed to demonstrate the existence of a  
21 genuine issue of material fact as to whether Absolute Foot Care breached the Employment  
22 Agreement.

23 84. ***First***, Dr. Biesinger has not adduced any competent evidence that Absolute Foot  
24 Care failed to pay him in accordance with the terms of the Employment Agreement.

25 85. ***Second***, the Court concludes that no rational fact-finder could determine that  
26 Absolute Foot Care failed to provide Dr. Biesinger with an opportunity to purchase an ownership  
27 interest in Absolute Foot Care pursuant to the Employment Agreement. The uncontroverted  
28 evidence demonstrates that Absolute Foot Care: (i) had a financial evaluation performed; (ii)

1 entered into the Letter of Intent with Dr. Biesinger shortly after the Initial Term expired; (iii) agreed  
2 with Dr. Biesinger on the purchase price (\$25,000.00 per share) based on the financial evaluation;  
3 (iv) offered to provide Dr. Biesinger with information he needed to evaluate the potential purchase;  
4 (v) entered into a Non-Disclosure Agreement with Dr. Biesinger to enable him to view Absolute  
5 Foot Care’s sensitive financial information; and (vi) presented Dr. Biesinger with a draft purchase  
6 agreement for his review.

7 86. While Dr. Biesinger argues that he needed additional information to determine  
8 whether he wanted to purchase an ownership interest in Absolute Foot Care, he failed to present  
9 any competent evidence that he told Absolute Foot Care he needed additional information or that  
10 information had not been provided to him.

11 87. Further, Dr. Biesinger’s contention that Absolute Foot Care changed the financial  
12 terms of the potential purchase (from \$25,000.00 for 20% of Absolute Foot Care’s shares to  
13 \$25,000.00 per share) is contradicted by the Letter of Intent—which was signed by both parties and  
14 demonstrates that the contemplated purchase price was \$25,000.00 per share.

15 ***Dr. Biesinger’s Unjust Enrichment Claim Fails as a Matter of Law***

16 88. Dr. Biesinger asserts, through his Unjust Enrichment counterclaim, that Absolute  
17 Foot Care: (i) “unjustly retained the financial benefit of Dr. Biesinger’s medical and surgical  
18 services, and sales of medical supplies, without payment of full compensation to Dr. Biesinger;”  
19 and (ii) “retained the added benefit of Dr. Biesinger’s physician services to its practice, without ever  
20 having afforded Dr. Biesinger any meaningful opportunity to become an equity partner . . . .”

21 89. The Court finds that Dr. Biesinger’s Unjust Enrichment claim fails as a matter of  
22 law.

23 90. ***First***, because there is an express written agreement (the Employment Agreement),  
24 Dr. Biesinger may not assert a claim for unjust enrichment. See *Rockstar, Inc. v. Original Good*  
25 *Brand Corp.*, No. 09-cv-1499, 2010 WL 3154120, at \*5 (D. Nev. Aug. 9, 2010) (holding the “law  
26 of Nevada is clear—where there is an express written agreement, a party may not assert a claim for  
27 unjust enrichment.”); accord *Leasepartners Corp. v. Robert L. Brooks Tr. Dated November 12,*  
28 *1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997) (“An action based on a theory of unjust

1 enrichment is not available when there is an express, written contract, because no agreement can be  
2 implied when there is an express agreement.”).

3 91. **Second**, Dr. Biesinger has not adduced any competent evidence to demonstrate  
4 Absolute Foot Care was unjustly enriched. Outside of a contractual agreement, a party is not  
5 entitled to obtain an ownership interest or bonus compensation simply by virtue of his or her labor.  
6 *See Erickson v. Brown*, 813 N.W.2d 531, 539 (N.D. 2012).

7 92. Further, Dr. Biesinger has not adduced any evidence that his compensation from  
8 Absolute Foot Care was inadequate or otherwise different from that which was required under the  
9 Employment Agreement. *See id.*

10 ***Dr. Biesinger’s Declaratory Relief Counterclaim***

11 93. Dr. Biesinger’s Declaratory Relief counterclaim seeks a declaratory judgment that  
12 the Employment Agreement expired on January 22, 2015, and, as a result, the Restrictive Period  
13 ended on January 22, 2017.

14 94. “The Declaratory Judgment Act does not grant litigants an absolute right to a legal  
15 determination.” *United States v. State of Wash.*, 759 F.2d 1353, 1356 (9th Cir. 1985). In deciding  
16 whether declaratory relief is proper, courts “consider both the circumstances of the parties and the  
17 sound jurisprudence of the court.” *Id.* at 1357. “Declaratory relief should be denied when it will  
18 neither serve a useful purpose in clarifying and settling the legal relations in issue nor terminate the  
19 proceedings and afford relief from the uncertainty and controversy faced by the parties.” *Id.*

20 95. While the existence of other adequate remedies is not necessarily a bar to declaratory  
21 relief, “[w]here determination of [a] breach of contract claim [will] resolve any question regarding  
22 interpretation of the contract, there is no need for declaratory relief, and dismissal of a companion  
23 declaratory relief claim is appropriate.” *StreamCast Networks, Inc. v. IBIS LLC*, No. CV 05-04239  
24 MMM (Ex), 2006 U.S. Dist. LEXIS 97607, at \*11 (C.D. Cal. May 1, 2006) (internal quotation  
25 marks omitted) (alterations in original) (collecting cases); *accord Tevis v. Hoseit (In re Tevis)*, Nos.  
26 EC-10-1318-JuKiD, EC-10-1319-JuKiD, EC-10-1320-JuKiD, EC-10-1321-JuKiD, 2011 Bankr.  
27 LEXIS 5307, at \*42 (B.A.P. 9th Cir. Dec. 9, 2011) (“Where there is an accrued cause of action for  
28 a past breach of contract or other wrong, declaratory relief is inappropriate.”).



97. In sum, the Court finds that there are no genuine issues as to any material facts concerning Dr. Biesinger's counterclaims and that Absolute Foot Care is entitled to judgment in its favor on such counterclaims as a matter of law.

98. Any conclusions of law that are more appropriately considered findings of fact shall be treated as such.

## ORDER

Based on the foregoing findings of fact and conclusions of law, and good cause appearing,

IT IS HEREBY ORDERED that Absolute Foot Care's Motion for Summary Judgment is GRANTED.

IT IS FURTHER ORDERED that summary judgment is entered in favor of Absolute Foot Care and against Dr. Biesinger with respect to: (i) Absolute Foot Care's breach of contract claim; and (ii) Dr. Biesinger's counterclaims.

IT IS FURTHER ORDERED that a monetary judgment—in the amount of six hundred fifty thousand dollars (\$650,000.00) and any applicable prejudgment interest—consistent with this Order will be entered in favor of Absolute Foot Care and against Dr. Biesinger through a separate written judgment.

IT IS FURTHER ORDERED that Absolute Foot Care’s remaining claims—breach of the implied covenant of good faith and fair dealing; unjust enrichment; breach of fiduciary duty; conversion; intentional interference; and civil conspiracy—are hereby DISMISSED, without prejudice, as MOOT.

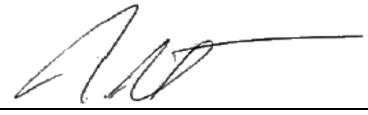
IT IS FURTHER ORDERED that the Preliminary Injunction entered on June 15, 2017, is hereby DISSOLVED.

///

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IT IS FURTHER ORDERED that the Court Clerk shall immediately release to Absolute Foot Care Specialists the security posted by Absolute Foot Care Specialists: (i) for the Temporary Restraining Order (in the amount of \$500.00) on or about May 3, 2017; and (ii) for the Preliminary Injunction (in the amount of \$25,000.00) on or about June 15, 2017.

Dated this 18th day of August, 2021



ABG

9AA 054 216F B326  
Mark R. Denton  
District Court Judge

Respectfully submitted by:  
BAILEY ♦ KENNEDY  
By: /s/ Paul C. Williams  
JOHN R. BAILEY  
JOSHUA M. DICKEY  
PAUL C. WILLIAMS  
*Attorneys for Plaintiff/Counterdefendant  
Absolute Foot Care Specialists*

Approved as to Form:  
TAKOS LAW GROUP, LTD.  
By: /s/ Steven R. Hart  
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## Sharon Murnane

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**From:** Steven Hart <steven@takoslaw.com>  
**Sent:** Tuesday, August 10, 2021 5:02 PM  
**To:** Paul Williams  
**Cc:** Zachary Takos; Joshua Dickey; Karen Rodman; Sharon Murnane  
**Subject:** Re: Absolute Foot Care v. Biesinger - Order & Judgment

Thanks Paul. I have reviewed and you may affix my e-signature to both the FFCL & Order and the Judgment.

Sincerely,

Steven R. Hart, Esq.

**TakosLawGroup, Ltd.**

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Las Vegas, Nevada 89135

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**From:** Paul Williams <PWilliams@baileykennedy.com>  
**Date:** Friday, August 6, 2021 at 10:10 AM  
**To:** Steven Hart <steven@takoslaw.com>  
**Cc:** Zachary Takos <zach@takoslaw.com>, Joshua Dickey <JDickey@baileykennedy.com>, Karen Rodman <KRodman@baileykennedy.com>, Sharon Murnane <SMurnane@baileykennedy.com>  
**Subject:** RE: Absolute Foot Care v. Biesinger - Order & Judgment

Hi Steven,

Attached are revisions to your redline of the FFCL & Order (i.e. I accepted your revisions, and then edited from that version) in both clean and redline versions. We assume you have no revisions to the Judgment.

If the revisions to the FFCL & Order are acceptable, please confirm that I may affix your electronic signature to the same and the Judgment.

Thank you,

Paul C. Williams  
Bailey Kennedy, LLP  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
(702) 562-8820 (Main)

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 Absolute Foot Care Specialists,  
Plaintiff(s)

CASE NO: A-17-754423-B

7 vs.

DEPT. NO. Department 13

8  
9 David Biesinger, DPM,  
Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Findings of Fact, Conclusions of Law and 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:

15 Service Date: 8/18/2021

16 Zachary Takos zach@takoslaw.com

17 Bailey Kennedy . bkfederaldownloads@baileykennedy.com

18 John Bailey . jbailey@baileykennedy.com

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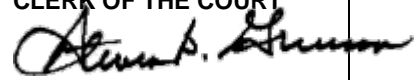
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*Attorneys for Plaintiff*  
*Absolute Foot Care Specialists*

DISTRICT COURT  
CLARK COUNTY, NEVADA

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada Corporation,

Plaintiff,

vs.

DAVID P. BIESINGER, DPM, an individual; and  
LORRAINE PALLANTI, an individual,

Defendants.

DAVID P. BIESINGER, DPM, an individual,

Counterclaimant,

vs.

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada Corporation; DOES I through X; and  
ROE ENTITIES I through X,

Counter-Defendant.

Case No. A-17-754423-B  
Dept. No. XIII

**NOTICE OF ENTRY OF FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER  
GRANTING PLAINTIFF/  
COUNTERDEFENDANT ABSOLUTE FOOT  
CARE SPECIALISTS' MOTION FOR  
SUMMARY JUDGMENT ON: (1) ITS  
BREACH OF CONTRACT CLAIMS; AND (2)  
DEFENDANT/COUNTERCLAIMANT DAVID  
P. BIESINGER, DPM'S COUNTERCLAIMS**

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, and Order Granting  
Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1)  
Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's

Counterclaims was entered in the above-entitled action on August 18, 2021, a true and correct copy of which is attached hereto.

DATED this 18<sup>th</sup> day of August, 2021.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams  
JOHN R. BAILEY  
JOSHUA M. DICKEY  
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*Attorneys for Plaintiff Absolute  
Foot Care Specialists*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 18<sup>th</sup> day of August, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

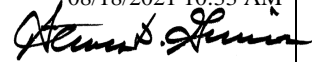
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DISTRICT COURT  
CLARK COUNTY, NEVADA

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada Corporation,

Plaintiff,

vs.

DAVID P. BIESINGER, DPM, an individual; and  
LORRAINE PALLANTI, an individual,

Defendants.

DAVID P. BIESINGER, DPM, an individual,

Counterclaimant,

vs.

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada Corporation; DOES I through X; and  
ROE ENTITIES I through X,

Counter-Defendant.

Case No. A-17-754423-B  
Dept. No. XIII

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
PLAINTIFF/COUNTERDEFENDANT  
ABSOLUTE FOOT CARE SPECIALISTS'  
MOTION FOR SUMMARY JUDGMENT ON:  
(1) ITS BREACH OF CONTRACT CLAIMS;  
AND (2) DEFENDANT/COUNTERCLAIMANT  
DAVID P. BIESINGER, DPM'S  
COUNTERCLAIMS**

This matter came before this Court on June 28, 2021, at 9:00 a.m., for a hearing regarding  
Plaintiff Absolute Foot Care Specialists' ("Absolute Foot Care" or "Plaintiff") Motion for  
Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/



Counterclaimant David P. Biesinger, DPM’s Counterclaims (the “Motion for Summary Judgment”).

### **APPEARANCES**

- Paul C. Williams, Esq. of Bailey ♦ Kennedy on behalf of Plaintiff Absolute Foot Care;
- Zachary P. Takos, Esq. of Takos Law Group, Ltd. on behalf of Defendant David P. Biesinger, DPM (“Dr. Biesinger”); and
- Jeffrey Gronich, Esq. of Jeffrey Gronich, Attorney at Law, P.C. on behalf of former Defendant Lorraine Pallanti (“Ms. Pallanti”).<sup>1</sup>

The Court, having examined the briefs of the parties, the records and documents on file, and having heard argument of counsel, being fully advised of the premises, and good cause appearing, makes the following findings of fact, conclusions of law, and order:

### **FINDINGS OF FACT**

1. Absolute Foot Care is a Nevada corporation whose business is the practice of podiatric medicine in Clark County, Nevada.
2. Absolute Foot Care operates a podiatry office at 7125 Grand Montecito Parkway, #110, Las Vegas, Nevada 89149 (the “Centennial Office”).
3. Absolute Foot Care’s principal, Noah Levine, DPM (“Dr. Levine”), is the President of Absolute Foot Care and is a Doctor of Podiatric Medicine licensed to practice podiatry in Nevada since 2001.
4. Dr. Biesinger is a Doctor of Podiatric Medicine and, prior to his resignation on April 20, 2017, was an employee of Absolute Foot Care.
5. On June 7, 2010, Absolute Foot Care and Dr. Biesinger entered into the Employment Agreement pursuant to which Dr. Biesinger became an employee of Absolute Foot Care and agreed to perform certain duties and undertake certain responsibilities.

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<sup>1</sup> Based on a Stipulation and Order for Dismissal with Prejudice entered on July 6, 2021, Ms. Pallanti was dismissed from this case.

1           6.       The Employment Agreement contained restrictive covenants wherein Dr. Biesinger  
2 agreed, among other things, not to do the following for two years following the termination of his  
3 association with Absolute Foot Care: (a) practice podiatric medicine within eight miles of Absolute  
4 Foot Care's Centennial Office; (b) solicit patients or other customers of Absolute Foot Care; or (c)  
5 solicit employees of Absolute Foot Care (the "Restrictive Covenants").

6           7.       Dr. Biesinger agreed that Absolute Foot Care would be entitled to \$650,000.00 in  
7 liquidated damages if he breached any one or more of the Restrictive Covenants.

8           8.       The Employment Agreement specified that it had an initial term of two years (the  
9 "Initial Term"), but also contained an "evergreen" clause (the "Evergreen Clause")—which  
10 provided that the Employment Agreement automatically renewed for successive one-year periods  
11 unless otherwise terminated it in accordance with Section VIII.B of the Employment Agreement.

12           9.       The Employment Agreement also provided that, at the end of the Initial Term, Dr.  
13 Biesinger would become eligible to become an equity owner in Absolute Foot Care "at and subject  
14 to the reasonable discretion of the Employer" if certain conditions were met. Specifically, the  
15 Employment Agreement stated that such a future agreement would need to be "memorialized in a  
16 separate agreement" under which Dr. Biesinger would become "eligible to acquire between ten  
17 percent (10%) and twenty percent (20%) of equity in" Absolute Foot Care for "an appropriate buy-  
18 in amount." The Employment Agreement stated that Dr. Biesinger's potential buy-in would require  
19 "a majority consensus and approval."

20           10.      The Employment Agreement provided Dr. Biesinger with a monthly salary and two  
21 types of incentive pay. Under the first type of incentive pay, Absolute Foot Care paid Dr. Biesinger  
22 thirty percent (30%) of net revenue (minus his salary) directly attributable to his work. Under the  
23 second type of incentive pay, Dr. Biesinger was paid ten percent (10%) of the net amount collected  
24 (amount collected minus cost of product) from the sale of cosmetic products to patients treated by  
25 Dr. Biesinger.

26           11.      Shortly after the Initial Term, Dr. Biesinger and Absolute Foot Care began  
27 discussions regarding his potential purchase of an equity interest in Absolute Foot Care.  
28

12. On or about July 6, 2012, Dr. Biesinger and Absolute Foot Care executed a Letter of Intent (the “Letter of Intent”). The Letter of Intent states that it is an “expression of interest in allowing [Dr. Biesinger] to acquire an equity interest in [Absolute Foot Care] in accordance with Section VIII(A) of [the] Employment Agreement . . . .” The financial terms agreed upon in the Letter of Intent were: (a) Dr. Levine would sell up to 20 percent of his equity interest (20 of his 100 shares) in Absolute Foot Care to Dr. Biesinger; (b) “[t]he purchase price per percentage interest in the company shall be \$25,000.00 per share;” and (c) Dr. Biesinger could acquire the shares either all at once or over time.

13. On July 8, 2013, Absolute Foot Care and Dr. Biesinger entered into a Non-Disclosure Agreement (the “Non-Disclosure Agreement”) governing Dr. Biesinger’s access to Absolute Foot Care’s confidential financial information.

14. On January 25, 2013, Absolute Foot Care and Dr. Biesinger executed an Extension of Employment Agreement for Professional Services (the “Extension”). A recital of the Extension states that “the term of the [Employment] Agreement has expired and upon expiration, Employee and Employer agreed to continue their contractual relationship up to the point of this Extension, and adhered to all terms and conditions under the [Employment] Agreement.”

15. The Extension further provides, in pertinent part: “All terms and conditions of the [Employment] Agreement shall remain in full force and effect” except that the “term of the Contract shall be extended until January 22, 2015.”

16. From January 23, 2015—the date which Dr. Biesinger contends the Employment Agreement expired—to April 20, 2017, Dr. Biesinger remained employed with Absolute Foot Care under the terms and conditions of the Employment Agreement. Specifically, Absolute Foot Care continued to: (i) pay Dr. Biesinger a salary in accordance with the terms of the Employment Agreement; (ii) pay Dr. Biesinger incentive bonuses pursuant to formulas detailed in the Employment Agreement (irrespective of whether the incentive bonuses were correctly calculated); (iii) provide Dr. Biesinger with benefits (*e.g.* malpractice insurance) in accordance with the Employment Agreement; and (iv) perform in accordance with the Employment Agreement.

1           17.     In 2015, Dr. Biesinger and Absolute Foot Care resumed discussions regarding his  
2 potential purchase of an equity interest in Absolute Foot Care. The terms of the potential purchase  
3 were materially similar to those contained in the Letter of Intent—Dr. Biesinger could purchase up  
4 to a twenty percent (20%) interest for \$25,000.00 per share.

5           18.     While still employed at Absolute Foot Care, Dr. Biesinger purchased real property  
6 and was building out a medical suite located at 6200 North Durango, Las Vegas, Nevada (the  
7 “Durango Office”)—which is approximately one mile away from Absolute Foot Care’s Centennial  
8 Office.

9           19.     On April 20, 2017—when Dr. Levine and Absolute Foot Care’s Practice  
10 Administrator (Dr. Levine’s wife Lauren Levine) were away on vacation—Dr. Biesinger advised  
11 staff members that he was resigning from Absolute Foot Care and provided his key to the office to a  
12 staff member. Dr. Biesinger also placed a resignation letter on Dr. Levine’s desk, which was dated  
13 March 10, 2017.

14           20.     On April 21, 2017, Absolute Foot Care began experiencing a disproportionate  
15 amount of appointment cancellations from its patients.

16           21.     Absolute Foot Care learned that Dr. Biesinger and two former Absolute Foot Care  
17 employees had solicited multiple patients of Absolute Foot Care—including patients with which  
18 Dr. Biesinger had no prior relationship (*i.e.* patients that had only seen Dr. Levine)—to Dr.  
19 Biesinger’s new podiatry practice at his Durango Office, located within one mile of Absolute Foot  
20 Care’s Centennial Office. Specifically, Absolute Foot Care’s patients revealed that they had  
21 received phone calls from someone, purporting to act on Dr. Biesinger’s behalf, indicating: (a) that  
22 they had an appointment with Absolute Foot Care in the near future; (b) that Dr. Biesinger was no  
23 longer with Absolute Foot Care; (c) that Dr. Biesinger was starting his own practice (Centennial  
24 Foot & Ankle); and (d) to call Dr. Biesinger if they wanted to cancel their appointment with  
25 Absolute Foot Care and instead schedule an appointment with Dr. Biesinger at his new office.

26           22.     Additionally, Absolute Foot Care learned that Dr. Biesinger and his agents elected  
27 not to contact certain patients that Dr. Biesinger treated at Absolute Foot Care—although they were  
28

1 still in need of medical care—that were not likely to result in significant reimbursements; primarily,  
2 patients needing post-operative care.

3 23. On May 22, 2017, this Court entered a Preliminary Injunction, enjoining Dr.  
4 Biesinger from violating the Restrictive Covenants.

5 24. Despite the Preliminary Injunction, Dr. Biesinger continued to operate a podiatry  
6 practice (Centennial Foot & Ankle) at his Durango Office until July 21, 2017.

7 25. This Court ultimately held Dr. Biesinger in contempt for violating the Preliminary  
8 Injunction and awarded Absolute Foot Care a significant portion of its reasonable attorney’s fees  
9 and costs.

10 26. On December 8, 2020, this Court sanctioned Dr. Biesinger due to his failure to  
11 comply with this Court’s order compelling him to produce certain documents—after having given  
12 Dr. Biesinger numerous opportunities to comply. Specifically, this Court struck Biesinger’s  
13 affirmative defenses as a sanction pursuant to NRCP 37(b). Subsequently, on Biesinger’s Motion  
14 for Reconsideration, this Court amended its order to “Any of the affirmative defenses asserted by  
15 Biesinger that relate to performance/breach/damages issues shall be disallowed, leaving any and all  
16 denials and the Counterclaim intact, but not permitting evidence to be adduced that should have  
17 been provided.” (Order on Motion to Reconsider the Order Granting, in Part, Renewed Motion for  
18 NRCP 37(b) Sanctions, filed March 4, 2021, at 3:1-9.)

19 27. Absolute Foot Care’s expert opined that it suffered damages in excess of \$1 million  
20 due to Dr. Biesinger’s impermissible conduct. Dr. Biesinger disclosed a rebuttal expert that  
21 criticized Absolute Foot Care’s expert’s methodology.

22 28. Any findings of fact that are more appropriately considered conclusions of law shall  
23 be treated as such.

#### 24 **CONCLUSIONS OF LAW**

25 29. “A party may move for summary judgment, identifying each claim or defense — or  
26 the part of each claim or defense — on which summary judgment is sought.” NRCP 56(a). “The  
27 court shall grant summary judgment if the movant shows that there is no genuine dispute as to any  
28 material fact and the movant is entitled to judgment as a matter of law.” *Id.*

1           30.     “Summary judgment is an important procedural tool by which ‘factually insufficient  
2 claims or defenses [may] be isolated and prevented from going to trial with the attendant  
3 unwarranted consumption of public and private resources.’” *Boesiger v. Desert Appraisals, LLC*,  
4 135 Nev. 192, 194, 444 P.3d 436, 438-39 (2019) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317,  
5 327 (1986)).

6           31.     “Summary judgment is appropriate and shall be rendered forthwith when the  
7 pleadings and other evidence on file demonstrate that no genuine issue as to any material fact  
8 [remains] and that the moving party is entitled to a judgment as a matter of law.” *Wood v. Safeway*,  
9 *Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotation marks omitted). “The  
10 substantive law controls which factual disputes are material and will preclude summary  
11 judgment.” *Id.* at 731, 121 P.3d at 1031. “A factual dispute is genuine when the evidence is such  
12 that a rational trier of fact could return a verdict for the nonmoving party.” *Id.* The Court must  
13 construe “the evidence, and any reasonable inferences drawn from it, . . . in a light most favorable  
14 to the nonmoving party.” *Id.* at 729, 121 P.3d at 1029.

15           32.     The party moving for summary judgment “bears the initial burden of production to  
16 show the absence of a genuine issue of material fact.” *Cuzze v. Univ. & Comm. Coll. Sys. of Nev.*,  
17 123 Nev. 598, 602, 172 P.3d 131, 134 (2007) (*citing Celotex Corp.*, 477 U.S. at 323). “[I]f the  
18 nonmoving party will bear the burden of persuasion at trial, the party moving for summary  
19 judgment may satisfy the burden of production by either (1) submitting evidence that negates an  
20 essential element of the nonmoving party’s claim, or (2) ‘pointing out . . . that there is an absence  
21 of evidence to support the nonmoving party’s case.’” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*,  
22 123 Nev. 598, 602–03, 172 P.3d 131, 134 (2007) (quoting *Celotex Corp.*, 477 U.S. at 323); *accord*  
23 *NRCP 56(c)(1)(B)*. Assuming the moving party meets its initial burden of production in moving  
24 for summary judgment, the nonmoving party is then required to set forth those facts demonstrating  
25 the existence of a genuine issue for trial. *See Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d  
26 716, 720 (2008).

***Absolute Foot Care's Breach of Contract Claim***

33. Absolute Foot Care, for purposes of its Motion for Summary Judgment, elected its breach of contract claim and liquidated damages of \$650,000.00 as its sole remedy—*i.e.* Absolute Foot Care agreed to forego its other claims for relief<sup>2</sup> if the Motion for Summary Judgment was granted.

34. Under Nevada law, a breach of contract claim requires the following: “(1) formation of a valid contract; (2) performance or excuse of performance by the plaintiff; (3) material breach by the defendant; and (4) damages.” *Laguerre v. Nevada Sys. of Higher Educ.*, 837 F. Supp. 2d 1176, 1180 (D. Nev. 2011) (citing *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987)).

35. The Court concludes that: (i) the Employment Agreement was a valid contract; (ii) Absolute Foot Care performed its obligations under the Employment Agreement; (iii) Dr. Biesinger breached the Employment Agreement by violating the Restrictive Covenants; and (iv) Absolute Foot Care sustained damages as a result of Dr. Biesinger's breaches.

***The Evergreen Clause and the Extension***

36. Dr. Biesinger argues that the Employment Agreement expired on January 22, 2015 (and thus the Restrictive Covenants expired two years later on January 22, 2017) based on his contention that the Extension removed the Evergreen Clause from the Employment Agreement. The Court rejects this argument and finds that the Evergreen Clause remained in effect until Dr. Biesinger's departure from Absolute Foot Care on April 20, 2017.

37. Under Nevada law, unambiguous contracts are construed according to their plain language. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 678, 289 P.3d 221, 229 (2012).

38. ***First***, the Court finds that the plain language of the Extension demonstrates that it was not intended to remove the Evergreen Provision from the Employment Agreement. The

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<sup>2</sup> In addition to its breach of contract claim, Absolute Foot Care asserted the following claims for relief: (i) breach of the implied covenant of good faith and fair dealing; (ii) unjust enrichment; (iii) breach of fiduciary duty; (iv) conversion; (v) intentional interference; and (vi) civil conspiracy.

1 Extension expressly provides that “the term of the [Employment] Agreement has expired and upon  
2 expiration, Employee and Employer agreed to continue their contractual relationship up to the point  
3 of this Extension, and adhered to all terms and conditions under the [Employment] Agreement.” At  
4 that time, the only term in the Employment Agreement that had expired was the Initial Term.

5 39. The Extension then states that “by and through this Extension, Employee and  
6 Employer agree to formally extend the [Employment] Agreement for an additional two (2) years  
7 from the date of the execution of this Extension.”

8 40. The Extension then provides that “[a]ll terms and conditions of the [Employment]  
9 Agreement shall remain in full force and effect” except that the term (*i.e.* the Initial Term), “shall be  
10 extended until January 22, 2015.”

11 41. Dr. Biesinger’s argument that the Extension’s statement that the “term” had expired  
12 references the Employment Agreement generally (and not just the Initial Term) is contradicted by  
13 his own testimony. At his deposition, Dr. Biesinger conceded that, from June 7, 2012 (when the  
14 Initial Term expired), to January 2013 (when the Extension was signed) he was working for  
15 Absolute Foot Care pursuant to the Employment Agreement (*i.e.*, it had not expired).

16 42. The Court finds that the plain language of the Extension does not express an intent  
17 by the parties to remove the Evergreen Clause from the Employment Agreement. To the contrary,  
18 the parties expressed an intent that all terms and conditions of the Employment Agreement were to  
19 “remain in full force and effect,” and the Evergreen Clause is a term and condition of the  
20 Employment Agreement.

21 43. In essence, Dr. Biesinger argues that the Extension was intended to fully supplant  
22 the provisions contained in Section VII(A) of the Employment Agreement. However, the  
23 Extension does not express any such intent. Moreover, Section VII(A) contained other provisions  
24 in addition to the Initial Term and the Evergreen Clause. For example, Section VII(A) also  
25 included, among other things, Dr. Biesinger’s entitlement to be considered for purchasing an  
26 ownership interest in Absolute Foot Care (subject to certain conditions and the reasonable  
27 discretion of Absolute Foot Care). While Dr. Biesinger contends that the Extension removed the  
28 Evergreen Clause, he nonetheless argued that he was entitled to purchase an ownership interest in



1 Absolute Foot Care pursuant to Section VII(A). Dr. Biesinger’s attempt to have it both ways (*i.e.*  
2 the Extension removing the Evergreen Clause but not his entitlement to purchase an ownership  
3 interest) is unavailing—he cannot accept the benefits of the Employment Agreement and, at the  
4 same time, reject its corresponding burdens. *Bergstrom v. Estate of DeVoe*, 109 Nev. 575, 577, 854  
5 P.2d 860, 861 (1993) (“He cannot at the same time affirm the contract by retaining its benefits and  
6 rescind it by repudiating its burdens.”) (quoting CORBIN ON CONTRACTS § 1114).

7 44. **Second**, assuming, *arguendo*, the Extension was ambiguous as to whether the parties  
8 intended to have the Evergreen Clause remain in full force and effect, the parties’ course of conduct  
9 confirms that the Evergreen Clause remained in place and that the Employment Agreement  
10 persisted through Dr. Biesinger’s departure from Absolute Foot Care.

11 45. Dr. Biesinger does not dispute that from January 22, 2015—the date Dr. Biesinger  
12 contends the Employment Agreement expired—until his departure, he was: (i) paid a salary in  
13 accordance with the terms of the Employment Agreement; (ii) paid incentive bonuses pursuant to  
14 formulas detailed in his Employment Agreement (irrespective of whether the incentive bonuses  
15 were correctly calculated); and (iii) provided with benefits (*e.g.* malpractice insurance, cell phone  
16 allowance, etc.).

17 46. Indeed, Dr. Biesinger’s Counterclaims are based upon the existence of the  
18 Employment Agreement through the time of his departure—he contends that Absolute Foot Care  
19 did not pay him incentive pay pursuant to the specific terms of the Employment Agreement and did  
20 not give him an opportunity to purchase an ownership interest in Absolute Foot Care pursuant to the  
21 Employment Agreement.

22 47. Moreover, the Court finds Dr. Biesinger’s arguments regarding an unauthenticated  
23 text message exchange are not persuasive. Even assuming the text message exchange was  
24 admissible, Dr. Levine’s alleged communications did not confirm that the Employment Agreement  
25 had expired and did not modify the Employment Agreement. Rather, Dr. Levine’s communications  
26 indicated that he believed that the formality of an extension was important to Dr. Biesinger,  
27 consistent with his deposition testimony.  
28

1           48.     **Third**, assuming, *arguendo*, that the Extension had removed the Evergreen  
2 Provision, under Nevada law, “when an employee and employer continue an employment  
3 relationship after the term of duration contained in a written contract, the original contract is  
4 presumed to renew automatically under the same terms and conditions until either party terminates  
5 the contract.” *Ringle v. Bruton*, 120 Nev. 82, 89, 86 P.3d 1032, 1037 (2004). Any terms of  
6 duration do not renew (*i.e.*, a two-year contract does not renew for two years); rather, the contract  
7 simply continues until either party terminates it. *See id.*

8           49.     Under *Ringle*, assuming, *arguendo*, Dr. Biesinger is correct and the Extension  
9 removed the Evergreen Clause, then the parties were subject to an amended Employment  
10 Agreement with the same terms and conditions, excepting the Evergreen Clause, for a term of two  
11 years. It is this amended Employment Agreement (without the Evergreen Clause) that would have  
12 extended by operation of law pursuant to *Ringle*—not the original Employment Agreement (with  
13 the Evergreen Clause).

14           50.     Thus, under Dr. Biesinger’s theory, the amended Employment Agreement (without  
15 the Evergreen Clause) would have ended, pursuant to its terms, on January 22, 2015. However, the  
16 amended Employment Agreement presumptively renewed by operation of law because Dr.  
17 Biesinger and Absolute Foot Care “continue[d] an employment relationship after the term of  
18 duration contained in” the amended Employment Agreement. *Ringle*, 120 Nev. at 89, 86 P.3d at  
19 1037. The amended Employment Agreement continued indefinitely—without any term as to  
20 duration—until Dr. Biesinger resigned on April 20, 2017. *See id.*

21           51.     In sum, because the Court finds the Evergreen Clause persisted after the Extension  
22 was executed, the Employment Agreement automatically renewed for one-year terms on January  
23 23, 2015, January 23, 2016, and January 23, 2017, and remained in effect until Dr. Biesinger’s  
24 departure from Absolute Foot Care on April 20, 2017. Alternatively, even if the Extension had  
25 abrogated the Evergreen Clause, the Court finds that the Employment Agreement renewed by  
26 operation of law pursuant to *Ringle*.

***Absolute Foot Care Performed Its Obligations Under the Employment Agreement***

52. The Court concludes that Absolute Foot Care performed its obligations under the Employment Agreement.

53. As detailed below, Dr. Biesinger contends that Absolute Foot Care breached the Employment Agreement and/or the implied covenant of good faith and fair dealing by failing to compensate him according to the Employment Agreement and by failing to provide him with an opportunity to purchase an ownership interest in Absolute Foot Care. Dr. Biesinger has asserted, as an affirmative defense, that Absolute Foot Care's alleged breaches of the Employment Agreement excused his performance.

54. However, this Court has stricken, as a sanction under NRCP 37(b), "the affirmative defenses asserted by Dr. Biesinger that relate to *performance/breach*/damages issues." (*See* Order Granting, in Part, Renewed Motion for NRCP 37(b) Sanctions, filed on Dec. 8, 2020, at 4; *see also* Order on Motion to Reconsider the Order Granting, in Part, Renewed Motion for NRCP 37(b) Sanctions, filed March 4, 2021, at 3:1-9 (emphasis added).)

55. Accordingly, Dr. Biesinger may not raise Absolute Foot Care's alleged breaches of the Employment Agreement as an affirmative defense to Absolute Foot Care's breach of contract claim.

***Dr. Biesinger Breached the Employment Agreement***

56. The Court concludes that Dr. Biesinger breached the Employment Agreement by violating the Restrictive Covenants. Specifically, Dr. Biesinger violated the Restrictive Covenants by: (i) operating a competing podiatry practice approximately one mile from Absolute Foot Care's Centennial Office; and (ii) soliciting Absolute Foot Care patients.

57. Dr. Biesinger contends that he "had a professional responsibility to inform patients of his departure" and thus his conduct did not constitute solicitation under the Restrictive Covenants. The Court is not persuaded by this argument.

58. ***First***, Dr. Biesinger's argument does not address the fact that he operated a competing podiatry practice approximately one mile from Absolute Foot Care's Centennial Office, which is a material breach of the Restrictive Covenants.

60. ***Third***, Dr. Biesinger and his agents called patients with which he had no relationship. Moreover, Dr. Biesinger and his agents elected not to contact patients that Dr. Biesinger treated at Absolute Foot Care that—although they were still in need of medical care—were not likely to result in significant reimbursements; primarily, patients needing post-operative care.

61. ***Fourth***, Absolute Foot Care’s patients would not have been abandoned if Dr. Biesinger had not solicited them. Absolute Foot Care (*i.e.* Dr. Levine) could have provided the requisite care for its patients.

Damages

### *Damages*

62. The Court concludes that Absolute Foot Care is entitled to \$650,000.00 in liquidated damages pursuant to the Employment Agreement.

63. Dr. Biesinger argues that the liquidated damages provision constitutes an unenforceable penalty. The Court finds that Dr. Biesinger may not raise this argument and, even if he could, Dr. Biesinger failed to meet his burden to demonstrate that there is a genuine issue of material fact as to the enforceability of the liquidated damages provision.

64. **First**, Dr. Biesinger did not raise this argument as an affirmative defense and it is therefore waived. *See Paulos v. FCHI, Ltd. Liab. Co.*, 136 Nev. Adv. Op. 2, 456 P.3d 589, 596 n.4 (2020) (“An affirmative defense that is not pleaded in the answer is waived.”); *In re Snelson*, 305 B.R. 255, 262–63 (Bankr. N.D. Tex. 2003) (“Courts have held that a contention that a liquidated damages provision is unenforceable because it is a penalty is an affirmative defense that the contending party must plead and prove.”) (collecting cases); *Pace Commun., Inc. v. Moonlight Design, Inc.*, 31 F.3d 587, 594 (7th Cir. 1994) (holding argument that a liquidated damages provision is an unenforceable penalty as an affirmative defense).

1           65.     **Second**, even if Dr. Biesinger had raised this argument as an affirmative defense,  
2 this Court has stricken it, as a sanction under NRCP 37(b): “the affirmative defenses asserted by Dr.  
3 Biesinger that relate to performance/breach/**damages** issues.” (See Order Granting, in Part,  
4 Renewed Motion for NRCP 37(b) Sanctions, filed on Dec. 8, 2020, at 4; see also Order on Motion  
5 to Reconsider the Order Granting, in Part, Renewed Motion for NRCP 37(b) Sanctions, filed March  
6 4, 2021, at 3:1-9 (emphasis added).)

7           66.     **Third**, even if Dr. Biesinger could raise this argument as an affirmative defense, the  
8 Court finds that Dr. Biesinger has failed to establish the existence of a genuine issue of material fact  
9 as to whether the liquidated damages provision constitutes an unenforceable penalty. Under  
10 Nevada law, liquidated damages provisions “are *prima facie valid*” and the burden is on the party  
11 challenging the liquidated damages provision to “establish that its application amounts to a  
12 penalty.” *Haromy v. Sawyer*, 98 Nev. 544, 546-47, 654 P.2d 1022, 1023 (1982) (emphasis added).  
13 “In order to prove a liquidated damage clause constitutes a penalty, the challenging party must  
14 persuade the court that the liquidated damages are disproportionate to the actual damages sustained  
15 by the injured party.” *Id.* at 547, 654 P.2d at 1023.

16           67.     Many courts have held that liquidated damages provisions are appropriate for non-  
17 competition provisions given the difficulties in calculating actual damages. See, e.g., *Wichita*  
18 *Clinic, P.A. v. Louis*, 185 P.3d 946, 957–59 (Kan. App. 2008); *Geisinger Clinic v. Di Cuccio*, 606  
19 A.2d 509, 518 (Pa. Super. 1992).

20           68.     Dr. Biesinger argues that his rebuttal expert’s criticism of Absolute Foot Care’s  
21 damages expert demonstrates that there is a genuine issue of material fact as to whether the  
22 liquidated damages constitute an unenforceable penalty. However, Absolute Foot Care has no  
23 obligation or burden to demonstrate that the liquidated damages are valid and enforceable—they are  
24 presumed so under Nevada law. See *Haromy*, 98 Nev. at 546-47, 654 P.2d at 1023. Instead, it is  
25 Dr. Biesinger’s burden to demonstrate that the liquidated damages are an unenforceable penalty.  
26 See *id.*

27           69.     Dr. Biesinger’s rebuttal expert does not express any opinions concerning the  
28 liquidated damages or Absolute Foot Care’s actual damages; he only critiques Absolute Foot Care’s

expert's methodology. Further, Dr. Biesinger's rebuttal expert does not opine that Absolute Foot Care has not suffered any damages.

70. Thus, Dr. Biesinger's criticisms of Absolute Foot Care's expert are immaterial because Dr. Biesinger has failed to adduce any competent evidence (*i.e.* a damages calculation) that shows that the liquidated damages (*i.e.* \$650,000.00) are disproportionate to Absolute Foot Care's actual damages.

#### *Advice of Counsel Defense*

71. Dr. Biesinger contends that he relied upon advice of counsel and alleged opinions from unidentified loan providers that he was not subject to the Restrictive Covenants. Dr. Biesinger's contention is immaterial.

72. **First**, Dr. Biesinger failed to raise advice of counsel as an affirmative defense and has thus waived it. *See* Ammondson v. N.W. Corp., 220 P.3d 1, 14–15 (Mont. 2009); *see also Bd. of Supervisors of LSU and A&M College v. Smack Apparel*, CV-04-1593, 2005 WL 8169213, at \*1 (E.D. La. Mar. 21, 2005) (holding “advice of counsel is an affirmative defense which must be asserted in an answer under Fed. R. Civ. P. 8(c), or it is waived.”); *Gause v. First Bank of Marianna*, 457 So. 2d 582, 585 (Fla. 1st Dist. App. 1984); *accord Paulos*, 136 Nev. Adv. Op. 2, 456 P.3d at 596 n.4.

73. **Second**, even if Dr. Biesinger had pled advice of counsel as an affirmative defense, it is not a defense to a breach of contract claim. Dr. Biesinger's motives, willfulness, and state of mind are irrelevant in deciding whether he breached the Employment Agreement. *See Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 869 P.2d 454, 461 (Cal. 1994) (“[T]he law generally does not distinguish between good and bad motives for breaching a contract.”). Thus, even if Dr. Biesinger relied on legal advice, it would not shield him from liability for his breaches of the Restrictive Covenants.

74. **Third**, Dr. Biesinger did not present any component evidence concerning the legal advice he allegedly received from unidentified counsel and determinations allegedly made by unidentified loan providers—the advice/opinions are inadmissible hearsay. *See* NRS 51.065;

1 accord U.S. v. Haisten, 790 Fed. Appx. 374, 378 (3d Cir. 2019) (finding statement from party that  
2 he received advice from counsel that his conduct was legal constituted hearsay).

3 75. In sum, the Court finds that there are no genuine issues as to any material facts  
4 concerning Absolute Foot Care's Breach of Contract claim and that Absolute Foot Care is entitled  
5 to judgment as a matter of law.

6 ***Dr. Biesinger's Counterclaims***

7 76. Dr. Biesinger has pled five counterclaims: (1) declaratory relief; (2) breach of  
8 contract; (3) breach of implied covenant of good faith and fair dealing; (4) unjust enrichment; and  
9 (5) NRS 608.040.

10 77. Dr. Biesinger's Declaratory Relief claim seeks a declaratory judgment that the  
11 Employment Agreement expired on January 22, 2015, and, as a result, the Restrictive Period ended  
12 on January 22, 2017.

13 78. Dr. Biesinger's four coercive counterclaims—breach of contract, breach of the  
14 implied covenant of good faith and fair dealing, unjust enrichment, and NRS 608.040—are based  
15 on allegations that Absolute Foot Care breached the Employment Agreement by failing to provide  
16 Dr. Biesinger with an opportunity to purchase an ownership interest in Absolute Foot Care and by  
17 failing to compensate him according to the Employment Agreement.

18 ***Dr. Biesinger Failed to Disclose a Damages Calculation***

19 79. Dr. Biesinger must adduce evidence of legally cognizable damages on his four  
20 coercive counterclaims to survive summary judgment because damages is an essential element of  
21 each claim. *See Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1240 (D. Nev. 2008)  
22 (breach of contract); *Reborn v. Univ. of Phx.*, No. 2:13-cv-00864-RFB-VCF, 2015 U.S. Dist.  
23 LEXIS 103250, at \*15 (D. Nev. Aug. 5, 2015) (breach of the implied covenant of good faith and  
24 fair dealing); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-  
25 NJK, 2019 U.S. Dist. LEXIS 142090, at \*5-6 (D. Nev. Aug. 19, 2019) (unjust enrichment); NRS  
26 608.040 (providing penalty for unpaid wages).

27 80. Dr. Biesinger not only failed to provide a damages calculation for any of his  
28 counterclaims, but he also failed to adduce any evidence that he has been damaged. Dr. Biesinger's

1 failure to disclose a calculation of damages (either his own calculation or through an expert)  
2 prohibits him from seeking damages. *See* NRCP 37(c)(1) (providing that where “a party fails to  
3 provide information or identify a witness as required by Rule 16.1(a)(1) ..., the party is not allowed  
4 to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless  
5 the failure was substantially justified or is harmless.”); *see also* NRCP 16.1(a)(1)(A)(iv) (requiring  
6 parties to disclose “a computation of each category of damages claimed by the disclosing  
7 party ....”).

8 81. Because Dr. Biesinger failed to identify evidence that he has been damaged or a  
9 calculation of damages for any of his four coercive counterclaims for relief, Absolute Foot Care is  
10 entitled to summary judgment in its favor. *See Hoffman v. Impact Confections, Inc.*, 544 F. Supp.  
11 2d 1121, 1128 (S.D. Cal. 2008) (granting summary judgment where plaintiff failed to provide any  
12 evidence or computation of damages).

13 ***Dr. Biesinger has Not Adduced Competent Evidence Indicating***  
14 ***Absolute Foot Care Breached the Employment Agreement***

15 82. Dr. Biesinger, in his contract-based counterclaims—breach of contract, breach of the  
16 implied covenant of good faith and fair dealing, and NRS 608.040—contends that Absolute Foot  
17 Care breached the Employment Agreement and/or the implied covenant of good faith and fair  
18 dealing by failing to compensate him according to the Employment Agreement and by failing to  
19 provide him with an opportunity to purchase an ownership interest in Absolute Foot Care.

20 83. The Court finds that Dr. Biesinger has failed to demonstrate the existence of a  
21 genuine issue of material fact as to whether Absolute Foot Care breached the Employment  
22 Agreement.

23 84. ***First***, Dr. Biesinger has not adduced any competent evidence that Absolute Foot  
24 Care failed to pay him in accordance with the terms of the Employment Agreement.

25 85. ***Second***, the Court concludes that no rational fact-finder could determine that  
26 Absolute Foot Care failed to provide Dr. Biesinger with an opportunity to purchase an ownership  
27 interest in Absolute Foot Care pursuant to the Employment Agreement. The uncontroverted  
28 evidence demonstrates that Absolute Foot Care: (i) had a financial evaluation performed; (ii)



1 entered into the Letter of Intent with Dr. Biesinger shortly after the Initial Term expired; (iii) agreed  
2 with Dr. Biesinger on the purchase price (\$25,000.00 per share) based on the financial evaluation;  
3 (iv) offered to provide Dr. Biesinger with information he needed to evaluate the potential purchase;  
4 (v) entered into a Non-Disclosure Agreement with Dr. Biesinger to enable him to view Absolute  
5 Foot Care’s sensitive financial information; and (vi) presented Dr. Biesinger with a draft purchase  
6 agreement for his review.

7 86. While Dr. Biesinger argues that he needed additional information to determine  
8 whether he wanted to purchase an ownership interest in Absolute Foot Care, he failed to present  
9 any competent evidence that he told Absolute Foot Care he needed additional information or that  
10 information had not been provided to him.

11 87. Further, Dr. Biesinger’s contention that Absolute Foot Care changed the financial  
12 terms of the potential purchase (from \$25,000.00 for 20% of Absolute Foot Care’s shares to  
13 \$25,000.00 per share) is contradicted by the Letter of Intent—which was signed by both parties and  
14 demonstrates that the contemplated purchase price was \$25,000.00 per share.

15 ***Dr. Biesinger’s Unjust Enrichment Claim Fails as a Matter of Law***

16 88. Dr. Biesinger asserts, through his Unjust Enrichment counterclaim, that Absolute  
17 Foot Care: (i) “unjustly retained the financial benefit of Dr. Biesinger’s medical and surgical  
18 services, and sales of medical supplies, without payment of full compensation to Dr. Biesinger;”  
19 and (ii) “retained the added benefit of Dr. Biesinger’s physician services to its practice, without ever  
20 having afforded Dr. Biesinger any meaningful opportunity to become an equity partner . . . .”

21 89. The Court finds that Dr. Biesinger’s Unjust Enrichment claim fails as a matter of  
22 law.

23 90. ***First***, because there is an express written agreement (the Employment Agreement),  
24 Dr. Biesinger may not assert a claim for unjust enrichment. See *Rockstar, Inc. v. Original Good*  
25 *Brand Corp.*, No. 09-cv-1499, 2010 WL 3154120, at \*5 (D. Nev. Aug. 9, 2010) (holding the “law  
26 of Nevada is clear—where there is an express written agreement, a party may not assert a claim for  
27 unjust enrichment.”); accord *Leasepartners Corp. v. Robert L. Brooks Tr. Dated November 12,*  
28 *1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997) (“An action based on a theory of unjust

1 enrichment is not available when there is an express, written contract, because no agreement can be  
2 implied when there is an express agreement.”).

3 91. **Second**, Dr. Biesinger has not adduced any competent evidence to demonstrate  
4 Absolute Foot Care was unjustly enriched. Outside of a contractual agreement, a party is not  
5 entitled to obtain an ownership interest or bonus compensation simply by virtue of his or her labor.  
6 *See Erickson v. Brown*, 813 N.W.2d 531, 539 (N.D. 2012).

7 92. Further, Dr. Biesinger has not adduced any evidence that his compensation from  
8 Absolute Foot Care was inadequate or otherwise different from that which was required under the  
9 Employment Agreement. *See id.*

10 ***Dr. Biesinger’s Declaratory Relief Counterclaim***

11 93. Dr. Biesinger’s Declaratory Relief counterclaim seeks a declaratory judgment that  
12 the Employment Agreement expired on January 22, 2015, and, as a result, the Restrictive Period  
13 ended on January 22, 2017.

14 94. “The Declaratory Judgment Act does not grant litigants an absolute right to a legal  
15 determination.” *United States v. State of Wash.*, 759 F.2d 1353, 1356 (9th Cir. 1985). In deciding  
16 whether declaratory relief is proper, courts “consider both the circumstances of the parties and the  
17 sound jurisprudence of the court.” *Id.* at 1357. “Declaratory relief should be denied when it will  
18 neither serve a useful purpose in clarifying and settling the legal relations in issue nor terminate the  
19 proceedings and afford relief from the uncertainty and controversy faced by the parties.” *Id.*

20 95. While the existence of other adequate remedies is not necessarily a bar to declaratory  
21 relief, “[w]here determination of [a] breach of contract claim [will] resolve any question regarding  
22 interpretation of the contract, there is no need for declaratory relief, and dismissal of a companion  
23 declaratory relief claim is appropriate.” *StreamCast Networks, Inc. v. IBIS LLC*, No. CV 05-04239  
24 MMM (Ex), 2006 U.S. Dist. LEXIS 97607, at \*11 (C.D. Cal. May 1, 2006) (internal quotation  
25 marks omitted) (alterations in original) (collecting cases); *accord Tevis v. Hoseit (In re Tevis)*, Nos.  
26 EC-10-1318-JuKiD, EC-10-1319-JuKiD, EC-10-1320-JuKiD, EC-10-1321-JuKiD, 2011 Bankr.  
27 LEXIS 5307, at \*42 (B.A.P. 9th Cir. Dec. 9, 2011) (“Where there is an accrued cause of action for  
28 a past breach of contract or other wrong, declaratory relief is inappropriate.”).

5           97. In sum, the Court finds that there are no genuine issues as to any material facts  
6 concerning Dr. Biesinger's counterclaims and that Absolute Foot Care is entitled to judgment in its  
7 favor on such counterclaims as a matter of law.

8            98.     Any conclusions of law that are more appropriately considered findings of fact shall  
9 be treated as such.

10 **ORDER**

11 Based on the foregoing findings of fact and conclusions of law, and good cause appearing,  
12 IT IS HEREBY ORDERED that Absolute Foot Care's Motion for Summary Judgment is  
13 GRANTED.

IT IS FURTHER ORDERED that summary judgment is entered in favor of Absolute Foot  
Care and against Dr. Biesinger with respect to: (i) Absolute Foot Care's breach of contract claim;  
and (ii) Dr. Biesinger's counterclaims.

IT IS FURTHER ORDERED that a monetary judgment—in the amount of six hundred fifty thousand dollars (\$650,000.00) and any applicable prejudgment interest—consistent with this Order will be entered in favor of Absolute Foot Care and against Dr. Biesinger through a separate written judgment.

IT IS FURTHER ORDERED that Absolute Foot Care’s remaining claims—breach of the implied covenant of good faith and fair dealing; unjust enrichment; breach of fiduciary duty; conversion; intentional interference; and civil conspiracy—are hereby DISMISSED, without prejudice, as MOOT.

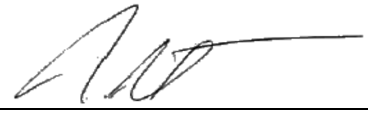
25 IT IS FURTHER ORDERED that the Preliminary Injunction entered on June 15, 2017, is  
26 hereby DISSOLVED.

27 |||

28 |||

IT IS FURTHER ORDERED that the Court Clerk shall immediately release to Absolute Foot Care Specialists the security posted by Absolute Foot Care Specialists: (i) for the Temporary Restraining Order (in the amount of \$500.00) on or about May 3, 2017; and (ii) for the Preliminary Injunction (in the amount of \$25,000.00) on or about June 15, 2017.

Dated this 18th day of August, 2021



ABG

9AA 054 216F B326  
Mark R. Denton  
District Court Judge

Respectfully submitted by:  
  
BAILEY ♦ KENNEDY  
  
By: /s/ Paul C. Williams  
JOHN R. BAILEY  
JOSHUA M. DICKEY  
PAUL C. WILLIAMS  
*Attorneys for Plaintiff/Counterdefendant  
Absolute Foot Care Specialists*

Approved as to Form:  
  
TAKOS LAW GROUP, LTD.  
  
By: /s/ Steven R. Hart  
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STEVEN R. HART  
NEVADA BAR NO. 15418  
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TELEPHONE (702) 856-4629  
FACSIMILE: (702) 9324-4422  
*Attorney for Defendant David P. Biesinger, DPM*

## Sharon Murnane

---

**From:** Steven Hart <steven@takoslaw.com>  
**Sent:** Tuesday, August 10, 2021 5:02 PM  
**To:** Paul Williams  
**Cc:** Zachary Takos; Joshua Dickey; Karen Rodman; Sharon Murnane  
**Subject:** Re: Absolute Foot Care v. Biesinger - Order & Judgment

Thanks Paul. I have reviewed and you may affix my e-signature to both the FFCL & Order and the Judgment.

Sincerely,

Steven R. Hart, Esq.

**TakosLawGroup, Ltd.**

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**From:** Paul Williams <PWilliams@baileykennedy.com>  
**Date:** Friday, August 6, 2021 at 10:10 AM  
**To:** Steven Hart <steven@takoslaw.com>  
**Cc:** Zachary Takos <zach@takoslaw.com>, Joshua Dickey <JDickey@baileykennedy.com>, Karen Rodman <KRodman@baileykennedy.com>, Sharon Murnane <SMurnane@baileykennedy.com>  
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Thank you,

Paul C. Williams  
Bailey Kennedy, LLP  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
(702) 562-8820 (Main)

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Absolute Foot Care Specialists,  
7 Plaintiff(s)

CASE NO: A-17-754423-B

8 vs.

DEPT. NO. Department 13

9 David Biesinger, DPM,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 8/18/2021

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20 Joshua Dickey .	jdickey@baileykennedy.com
21 Karen Rodman .	KRodman@baileykennedy.com
22 Paul C. Williams .	pwilliams@baileykennedy.com
23 Sharon Murnane .	smurnane@baileykennedy.com
24 Jeffrey Gronich	jgronich@gronichlaw.com
25 Katie Erickson	katie@takoslaw.com
26 Steven Hart	steven@takoslaw.com

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Dustin Clark

dclark@nevadafirm.com

*Heather S. Linn*  
CLERK OF THE COURT

**JUDG (CIV)**

JOHN R. BAILEY

Nevada Bar No. 0137

JOSHUA M. DICKEY

Nevada Bar No. 6621

PAUL C. WILLIAMS

Nevada Bar No. 12524

**BAILEY ♦ KENNEDY**

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PWilliams@BaileyKennedy.com

*Attorneys for Plaintiff/Counterdefendant*

*Absolute Foot Care Specialists*

DISTRICT COURT

CLARK COUNTY, NEVADA

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada Corporation,

Plaintiff,

vs.

DAVID P. BIESINGER, DPM, an individual; and  
LORRAINE PALLANTI, an individual,

Defendants.

Case No. A-17-754423-B  
Dept. No. XIII

**JUDGMENT**

DAVID P. BIESINGER, DPM, an individual,

Counterclaimant,

vs.

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada Corporation; DOES I through X; and  
ROE ENTITIES I through X,

Counter-Defendant.

Pursuant to the Court's Findings of Fact, Conclusions of Law, and Order Granting

Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on:

(1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's

Counterclaims, JUDGMENT is hereby entered in favor of Plaintiff/Counterdefendant Absolute



Foot Care Specialists and against Defendant/Counterclaimant David P. Biesinger, DPM, in the amount of SEVEN HUNDRED NINETY-FOUR THOUSAND, SEVEN HUNDRED TWENTY-SEVEN AND 40/100 DOLLARS (\$794,727.40)—consisting of \$650,000.00 in damages and \$144,727.40 in pre-judgment interest as of July 23, 2021. Post-judgment interest shall accrue from the date of entry of this Judgment at the highest rate allowed by law until this Judgment is paid in full.

In addition to any attorney's fees and costs awarded ancillary to this Judgment, Plaintiff/Counterdefendant Absolute Foot Care Specialists shall be entitled to recover any attorney's fees and costs incurred related to any post-judgment proceedings instituted to collect and enforce this Judgment.

Dated this 18th day of August, 2021



ABG

009 E8B 451B AC6E  
Mark R. Denton  
District Court Judge

Respectfully submitted by:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

JOHN R. BAILEY

JOSHUA M. DICKEY

PAUL C. WILLIAMS

*Attorneys for Plaintiff/Counterdefendant  
Absolute Foot Care Specialists*

Approved as to Form:

TAKOS LAW GROUP, LTD.

By: /s/ Steven R. Hart

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Nevada Bar No. 11293

STEVEN R. HART

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Facsimile: (702) 9324-4422

*Attorney for Defendant David P. Biesinger, DPM*

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Thank you,

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Bailey Kennedy, LLP  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
(702) 562-8820 (Main)

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3 DISTRICT COURT  
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6 Absolute Foot Care Specialists,  
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CASE NO: A-17-754423-B

8 vs.

DEPT. NO. Department 13

9 David Biesinger, DPM,  
10 Defendant(s)

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14 Court. The foregoing Judgment was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

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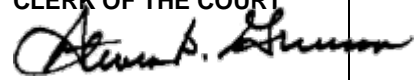
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1 **NJUD (CIV)**

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JOSHUA M. DICKEY

3 Nevada Bar No. 6621

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7 JBailey@BaileyKennedy.com

JDickey@BaileyKennedy.com

8 PWilliams@BaileyKennedy.com

9 *Attorneys for Plaintiff*

*Absolute Foot Care Specialists*

10  
11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 ABSOLUTE FOOT CARE SPECIALISTS, a  
14 Nevada Corporation,

Plaintiff,

15 vs.

16 DAVID P. BIESINGER, DPM, an individual; and  
17 LORRAINE PALLANTI, an individual,

Defendants.

18  
19 DAVID P. BIESINGER, DPM, an individual,

Counterclaimant,

20 vs.

21 ABSOLUTE FOOT CARE SPECIALISTS, a  
22 Nevada Corporation; DOES I through X; and  
23 ROE ENTITIES I through X,

Counter-Defendant.

Case No. A-17-754423-B  
Dept. No. XIII

**NOTICE OF ENTRY OF JUDGMENT**

24  
25  
26 TO: ALL INTERESTED PARTIES  
27  
28

PLEASE TAKE NOTICE that a Judgment was entered in the above-entitled action on August 18, 2021, a true and correct copy of which is attached hereto.

DATED this 18<sup>th</sup> day of August, 2021.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams  
JOHN R. BAILEY  
JOSHUA M. DICKEY  
PAUL C. WILLIAMS  
*Attorneys for Plaintiff Absolute  
Foot Care Specialists*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 18<sup>th</sup> day of August, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

ZACHARY P. TAKOS  
STEVEN R. HART, ESQ.  
**TAKOS LAW GROUP, LTD.**  
1980 Festival Plaza Drive, Suite 300  
Las Vegas, Nevada 89135

Email: zach@takoslaw.com  
steven@takoslaw.com

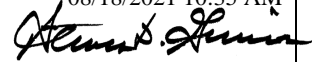
*Attorney for Defendant*  
DAVID BIESINGER, DPM

JEFFREY GRONICH  
**JEFFREY GRONICH,  
ATTORNEY AT LAW, P.C.**  
1810 East Sahara Avenue, Suite 109  
Las Vegas, Nevada 89104

Email: jgronich@gronichlaw.com

*Attorneys for Defendant*  
LORRAINE PALLANTI

/s/ Sharon Murnane  
Employee of BAILEY ♦ KENNEDY

  
CLERK OF THE COURT

**JUDG (CIV)**

JOHN R. BAILEY

Nevada Bar No. 0137

JOSHUA M. DICKEY

Nevada Bar No. 6621

PAUL C. WILLIAMS

Nevada Bar No. 12524

**BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

JBailey@BaileyKennedy.com

JDickey@BaileyKennedy.com

PWilliams@BaileyKennedy.com

*Attorneys for Plaintiff/Counterdefendant  
Absolute Foot Care Specialists*

DISTRICT COURT

CLARK COUNTY, NEVADA

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada Corporation,

Plaintiff,

vs.

DAVID P. BIESINGER, DPM, an individual; and  
LORRAINE PALLANTI, an individual,

Defendants.

Case No. A-17-754423-B  
Dept. No. XIII

**JUDGMENT**

DAVID P. BIESINGER, DPM, an individual,

Counterclaimant,

vs.

ABSOLUTE FOOT CARE SPECIALISTS, a  
Nevada Corporation; DOES I through X; and  
ROE ENTITIES I through X,

Counter-Defendant.

Pursuant to the Court's Findings of Fact, Conclusions of Law, and Order Granting  
Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on:  
(1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's  
Counterclaims, JUDGMENT is hereby entered in favor of Plaintiff/Counterdefendant Absolute

Foot Care Specialists and against Defendant/Counterclaimant David P. Biesinger, DPM, in the amount of SEVEN HUNDRED NINETY-FOUR THOUSAND, SEVEN HUNDRED TWENTY-SEVEN AND 40/100 DOLLARS (\$794,727.40)—consisting of \$650,000.00 in damages and \$144,727.40 in pre-judgment interest as of July 23, 2021. Post-judgment interest shall accrue from the date of entry of this Judgment at the highest rate allowed by law until this Judgment is paid in full.

In addition to any attorney's fees and costs awarded ancillary to this Judgment, Plaintiff/Counterdefendant Absolute Foot Care Specialists shall be entitled to recover any attorney's fees and costs incurred related to any post-judgment proceedings instituted to collect and enforce this Judgment.

Dated this 18th day of August, 2021



ABG

009 E8B 451B AC6E  
Mark R. Denton  
District Court Judge

Respectfully submitted by:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

JOHN R. BAILEY

JOSHUA M. DICKEY

PAUL C. WILLIAMS

*Attorneys for Plaintiff/Counterdefendant  
Absolute Foot Care Specialists*

Approved as to Form:

TAKOS LAW GROUP, LTD.

By: /s/ Steven R. Hart

ZACHARY P. TAKOS

Nevada Bar No. 11293

STEVEN R. HART

Nevada Bar No. 15418

1980 Festival Plaza Drive, Suite 300

Las Vegas, Nevada 89135

zach@takoslaw.com

steven@takoslaw.com

Telephone (702) 856-4629

Facsimile: (702) 9324-4422

*Attorney for Defendant David P. Biesinger, DPM*



## Sharon Murnane

---

**From:** Steven Hart <steven@takoslaw.com>  
**Sent:** Tuesday, August 10, 2021 5:02 PM  
**To:** Paul Williams  
**Cc:** Zachary Takos; Joshua Dickey; Karen Rodman; Sharon Murnane  
**Subject:** Re: Absolute Foot Care v. Biesinger - Order & Judgment

Thanks Paul. I have reviewed and you may affix my e-signature to both the FFCL & Order and the Judgment.

Sincerely,

Steven R. Hart, Esq.

**Tako**LawGroup, Ltd.

1980 Festival Plaza Drive, Suite 300  
Las Vegas, Nevada 89135  
O: 702.856.4629  
C: 801.380.8950  
F: 702.924.4422

CONFIDENTIALITY NOTICE: This email may contain information which is privileged, confidential, and protected by the attorney-client privilege and/or the attorney work product doctrine. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this communication in error, please destroy it and notify me immediately.

IRS CIRCULAR 230 NOTICE: To ensure compliance with Internal Revenue Service requirements, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or tax-related matter(s) addressed herein.

---

**From:** Paul Williams <PWilliams@baileykennedy.com>  
**Date:** Friday, August 6, 2021 at 10:10 AM  
**To:** Steven Hart <steven@takoslaw.com>  
**Cc:** Zachary Takos <zach@takoslaw.com>, Joshua Dickey <JDickey@baileykennedy.com>, Karen Rodman <KRodman@baileykennedy.com>, Sharon Murnane <SMurnane@baileykennedy.com>  
**Subject:** RE: Absolute Foot Care v. Biesinger - Order & Judgment

Hi Steven,

Attached are revisions to your redline of the FFCL & Order (i.e. I accepted your revisions, and then edited from that version) in both clean and redline versions. We assume you have no revisions to the Judgment.

If the revisions to the FFCL & Order are acceptable, please confirm that I may affix your electronic signature to the same and the Judgment.

Thank you,

Paul C. Williams  
Bailey Kennedy, LLP  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
(702) 562-8820 (Main)

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Absolute Foot Care Specialists,  
7 Plaintiff(s)

CASE NO: A-17-754423-B

8 vs.

DEPT. NO. Department 13

9 David Biesinger, DPM,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 8/18/2021

16 Zachary Takos zach@takoslaw.com

17 Bailey Kennedy . bkfederaldownloads@baileykennedy.com

18 John Bailey . jbailey@baileykennedy.com

19 Joshua Dickey . jdickey@baileykennedy.com

20 Karen Rodman . KRodman@baileykennedy.com

21 Paul C. Williams . pwilliams@baileykennedy.com

22 Sharon Murnane . smurnane@baileykennedy.com

23 Jeffrey Gronich jgronich@gronichlaw.com

24 Katie Erickson katie@takoslaw.com

25 Steven Hart steven@takoslaw.com

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Dustin Clark

dclark@nevadafirm.com

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**May 01, 2017**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>May 01, 2017</b>	<b>9:00 AM</b>	<b>Motion for Temporary Restraining Order</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Marwanda Knight

**RECORDER:** Martha Szramek

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Paul Williams, Esq. and Joshua Dickey, Esq., appeared on behalf of Pltf  
David Biesinger, DPM, Pro Se Deft  
Lorraine Pallanti, Pro Se Deft

Mr. Biesinger advised he had not been able to retain counsel and requested an extension of today's hearing. Court advised it was only considering a Temporary Restraining Order ("TRO") today. Upon inquiry of the Court, Mr. Dickey advised Pltfs were seeking to restrain Dr. Biesinger from engaging in competitive activities within the restricted zone as set forth in his employment agreement, solicitation of patients, and the use of Absolute Foot Care information.

In response, Mr. Biesinger advised of an extension to his contract signed January 25, 2013, which was good for two years; advised there was no provision in the contract to extend the employment agreement. As of January 25, 2017 that non-compete has passed its two year window and is no longer enforceable.

Following argument, COURT STATED ITS FINDINGS, and ORDERED, Motion for TRO GRANTED relative to the second and third aspects: solicitation of patients, solicitation of staff, and use of information. The Court will not grant a TRO to restrain competition otherwise; bond SET at \$500.00.

COURT FURTHER ORDER it would hear the Motion for Preliminary Injunction on Monday, May 15, 2017 at 9:00 a.m. (non-evidentiary).

Court clarified its ruling.

05/15/2017 9:00 a.m | PRELIMINARY INJUNCTION HEARING (NON-EVIDENTIARY)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**May 15, 2017**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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May 15, 2017	9:00 AM	Motion for Preliminary Injunction
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Marwanda Knight

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- COURT ORDERED, Motion CONTINUED by forthcoming stipulation and order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**May 22, 2017**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>May 22, 2017</b>	<b>9:00 AM</b>	<b>Motion for Preliminary Injunction</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Marwanda Knight

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Joshua Dickey, Esq. and Paul Williams, Esq., appeared on behalf of Pltf  
Dustin Clark, Esq. and Puonyarat Premsrirut, Esq., appeared on behalf of Deft

Following argument by counsel, Court stated the matter would stand submitted; advised that the Temporary Restraining Order ("TRO") that was entered on May 3, 2017 would remain in effect until the Court renders its decision, and ORDERED, matter taken UNDER ADVISEMENT.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**June 05, 2017**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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**June 05, 2017**

**9:25 AM**

**Decision**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Marwanda Knight

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- No parties present. Minute Order only - no hearing held.

After review and consideration of the pleadings on file herein and the argument of counsel at the time of the May 22, 2017 hearing, COURT ORDERS, Plaintiff's Motion for Preliminary Injunction, GRANTED. Please see the Court's written Decision filed June 5, 2017 for full context.

Counsel for Pltf is directed to submit a proposed order including preliminary findings of fact and conclusions of law consistent with the foregoing and with briefing and argument supportive of the same.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**July 10, 2017**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>July 10, 2017</b>	<b>2:15 PM</b>	<b>Mandatory Rule 16 Conference</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** No Location

**COURT CLERK:** Marwanda Knight

**RECORDER:**

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Clark, Dustin L	Attorney
	Dickey, Joshua M.	Attorney

**JOURNAL ENTRIES**

- Counsel met with the Court in Chambers for the purpose of the Mandatory Rule 16 Conference. Court advised discovery is now heard by the Department for Business Court matters and all discovery motions should be directed to this Court's attention. Further, Court noted counsel could consider today's conference to be their Rule 16.1 Conference.

Thereafter, Court stated that it still requires a Joint Case Conference Report and directed it to be submitted by the close of business on July 21, 2017 ; the JCCR is to comply with NRCP 16.1(c)(1,3, & 4). COURT ORDERED, status check SET for July 27, 2017 at 9:00 am to determine if the Joint Case Conference Report (JCCR) has been filed. If filed, attendance is not required. However, if the JCCR has not been filed counsel must appear to explain why it has not been filed and the amount of time needed for compliance.

Upon the Court's inquiry as to how much time counsel would require for discovery; both counsel

confirmed they would require nine (9) months until the close of discovery. Court advised that based upon that date the Department would issue a combined Scheduling/Trial Order. Court further noted that the case is currently being carried as a jury case. Based upon the stipulation of counsel and Order of the Court, discovery can begin immediately.

The Court also queried counsel as to the case being ripe for a Settlement Conference, Mr. Dickey advised of preliminary discussions regarding settlement, noting it is not time for a conference. Court directed counsel to contact the Department's Judicial Executive Assistant if at some point there was a consensus for a Settlement Conference. If no consensus, the party that desires a Settlement Conference may file a motion to compel.

Upon further inquiry of the Court as to case management and the need for a protective order, Mr. Dickey stated they would probably need a protective order in this matter. Court advised that they are commonly done by stipulation and that if counsel cannot arrive at a stipulation the Court is here to help.

07/27/2017 9:00 a.m. | STATUS CHECK RE: JCCR FILING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**August 10, 2017**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>August 10, 2017</b>	<b>9:00 AM</b>	<b>Motion for Order to Show Cause</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Marwanda Knight

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- APPEARANCES: Joshua Dickey and Paul Williams, Attorney for Deft Dr. and Mrs. Levine of Absolute Food Care Specialists  
Jeffrey Gronich, Attorney for Deft, Lorraine Pallanti  
Dustin Clark, Attorney for Deft, David P. Biesinger, DPM

Following argument by counsel, Court stated it would not consider any of the items of relief being sought; however, the Court will issue an order to show cause that will be limited to a demonstration of the fact of the move and addressing the issue of payment of attorney's fees and costs incurred in seeking to enforce the injunction. All of the other aspects of what is being sought will be reserved for trial. Court advised it would place the hearing on its Motions calendar for argument with offers of proof.

Court directed Pltf's counsel to submit the proposed order to show cause limited to the two aspects provided, WITHOUT PREJUDICE to counsels' contentions relative to what should result from the contempt. Further, Court advised it would not strike the pleadings.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**October 09, 2017**

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A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

---

**October 09, 2017      9:00 AM      Show Cause Hearing**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Marwanda Knight

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- APPEARANCES: Joshua Dickey, Attorney for Pltf  
Dustin Clark, Attorney for Deft

Following argument and representations made by counsel, Court stated it would review the matter further before making its ruling, and ORDERED, matter UNDER ADVISEMENT.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**October 17, 2017**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>October 17, 2017</b>	<b>2:57 PM</b>	<b>Decision</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Marwanda Knight

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- No parties present. Minute Order only - no hearing held.

After review and consideration of the pleadings on file herein and the argument of counsel at the time of the October 9, 2017 hearing on the Order to Show Cause entered on September 11, 2017, Court decided the submitted issues as expressed in its Decision filed October 17, 2017, which should be referred to for full context of the Court's ruling.

Counsel for Pltf is directed to submit a proposed order consistent with the Court's ruling and which sets forth the underpinnings of the same with the aspects of counsel's briefing and argument supportive of the same.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**January 07, 2019**

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A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

---

**January 07, 2019      2:35 PM      Pre Trial Conference**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** No Location

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- No appearance. Court noted it received a letter indicating counsel entered into a stipulation to stay discovery and forgot to vacate the trial dates. As such, COURT ORDERED, trial dates VACATED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**May 06, 2019**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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**May 06, 2019                      10:30 AM                      Settlement Conference**

**HEARD BY:** Gonzalez, Elizabeth                      **COURTROOM:** RJC Courtroom 03E

**COURT CLERK:** Dulce Romea

**RECORDER:**

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Biesinger, DPM, David P.	Defendant
		Counter Claimant
	Clark, Dustin L	Attorney
	Gronich, Jeffrey S.	Attorney
	Pallanti, Lorraine	Defendant
	Williams, Paul	Attorney

**JOURNAL ENTRIES**

- APPEARANCES CONTINUED: Noah and Lauren Levine, Client Representatives for Plaintiff.

Settlement options discussed with no settlement reached.

1-13-20                      2:05 PM                      PRE TRIAL CONFERENCE (DEPT XIII)

1-27-20                      2:00 PM                      CALENDAR CALL (DEPT XIII)

2-4-20                      9:00 AM                      JURY TRIAL (DEPT XIII)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters****COURT MINUTES****March 17, 2020**

A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
                                  vs.  
                                  David Biesinger, DPM, Defendant(s)

**March 17, 2020      3:45 PM      Minute Order**

**HEARD BY:** Denton, Mark R.**COURTROOM:** Chambers**COURT CLERK:** Madalyn Kearney**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Notice of Required Telephonic Appearance

Please be advised that temporarily and until further notice, Department 13 will be following the rules favoring telephonic transmission equipment appearances as outlined in SCR Part IX-B (A): Rules Governing Appearance by Telephonic Transmission Equipment for Civil and Family Court Proceeding. For the convenience of parties, please refer to SCR 4(1): Appearance by Telephonic Equipment for guidance on proceeding with scheduled matters during this period. (Appearances for motions in limine will also be permitted by telephone.) Compliance with SCR 4(5) will not be required. Instead, the procedure stated below will be utilized.

Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus CoVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters between now and April 17, 2020, do so by Court-approved telephonic means only Please review SCR 4 for matters that are exempted. As a result, your matter scheduled March 26, 2020, in this case will be held telephonically. You are hereby requested to send a FAX to (702) 671-4428 with your case name and number, your name, and the telephone



number (land line preferable) that you can be reached at. When your case is ready to be heard, the marshal or court staff will give you a call.

To make the record clearer, please state your name before speaking.

Please note, all witnesses appearing telephonically must have a court-approved notary and/or official present on their end to swear them in.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 3/17/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**March 26, 2020**

---

A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

---

**March 26, 2020      9:00 AM      Motion to Compel**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Clark, Dustin L	Attorney
	Gronich, Jeffrey S.	Attorney
	Williams, Paul	Attorney

**JOURNAL ENTRIES**

- Hearing conducted telephonically. Following arguments by Mr. Williams, Mr. Clark, and Mr. Gronich, COURT ORDERED, Plaintiff Absolute Foot Care Specialists Motion to Compel Defendants Responses to Plaintiff's First Set of Requests for Production GRANTED except the tax returns will be for the years 2017, 2018, and 2019. Court directed Plaintiff's counsel to leave a blank in the proposed order for attorney's fees and to submit an affidavit indicating what fees were involved relative to the bringing of this Motion. Court noted it does not want the fees going back months and months. Mr. Williams to prepare the order.

CLERK'S NOTE: Pursuant to Administrative Order 20-10, all proposed orders must be submitted by e-mail to DC13inbox@ClarkCountyCourts.us in both a Microsoft Word document and a .pdf document. /mk 3/26/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**May 19, 2020**

---

A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

---

**May 19, 2020      10:30 AM      Minute Order**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- CAUSE APPEARING, and the same being unopposed, and pursuant to EDCR 2.20(e) and 2.23(c), the Court GRANTS Plaintiff's Unopposed Motion to Extend Discovery Deadline and Reset Trial Date calendared for Thursday, May 21, 2020 at 9:00 A.M. without oral argument and ORDERS such Motion removed from its civil motions calendar of that date. Counsel for Plaintiff is to submit a proposed order in the form of Exhibit 1 attached to the Motion.

IT IS SO ORDERED.

CLERK'S NOTE: Pursuant to Administrative Order 20-10, all proposed orders must be submitted by e-mail to DC13inbox@ClarkCountyCourts.us in both a Microsoft Word document and a .pdf document. This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 5/19/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**June 15, 2020**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>June 15, 2020</b>	<b>3:30 PM</b>	<b>Minute Order</b>
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**HEARD BY:** Denton, Mark R. **COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- DUE to the continuing coronavirus situation, the Court has determined to deem the matter(s) scheduled for hearing in this case on its Motions calendar for June 18, 2020 to be submitted on the briefs and under advisement, and it vacates hearing of the same from such calendar and will render its decision/ruling in due course.

IT IS SO ORDERED.

CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 6/15/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters****COURT MINUTES****June 26, 2020**

A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

**June 26, 2020      11:00 AM      Minute Order**

**HEARD BY:** Denton, Mark R.**COURTROOM:** Chambers**COURT CLERK:** Madalyn Kearney**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- HAVING reviewed and considered the parties' filings pertaining to Defendant "Pallanti's Motion to Reconsider and Defendant/Counterclaimant Biesinger's Motion to Reconsider and Amend Order and Plaintiff Absolute Foot Care Specialists' Countermotion for NRCP 37(b) Sanctions" deemed submitted and under advisement as of June 18, 2020 pursuant to the Minute Order of June 15, 2020, and being persuaded by the Opposition to Defendants' respective Motions, but deeming Plaintiffs' Countermotion to be premature pending Defendants' opportunity to comply with its within rulings on Defendants' Motions, the Court DENIES Defendants' Motions and DENIES Plaintiff s Countermotion without prejudice to renewal if Defendants have not complied within a reasonable time.

Counsel for Plaintiff is directed to submit a proposed order consistent herewith and with briefing supportive of the same. Such proposed order is to be submitted to opposing counsel for review and signification of approval/disapproval. Instead of seeking to litigate meaning of any disapproval through correspondence directed to the Court or to counsel with copies to the Court, any such clarification or disapproval should be the subject of appropriate motion practice.

IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 6/26/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**October 01, 2020**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>October 01, 2020</b>	<b>2:15 PM</b>	<b>Minute Order</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled October 5, 2020 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 307 274 151

URL: [bluejeans.com/ 307274151](https://bluejeans.com/307274151)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by

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Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 10/1/20



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**October 05, 2020**

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A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

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**October 05, 2020      9:00 AM      Motion for Sanctions**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**      Clark, Dustin L      Attorney  
                 Gronich, Jeffrey S.      Attorney  
                 Williams, Paul      Attorney

**JOURNAL ENTRIES**

- Counsel present via BlueJeans.

Mr. Clark advised in the time since the Motion has been filed he has had an ongoing medical issue, he is in the process of relocating to Utah, and there is a substitution of counsel that is in the process of being filed. Mr. Williams confirmed when they found out Mr. Clark would be withdrawing they agreed to extend the deadline for Defendant Biesinger to file a response to the Motion. Mr. Williams added there are still a few depositions to be taken, supplements to written discovery, and the dispositive motion deadline is November 9th. As such, Mr. Williams requested to set a Status Check next week to confirm substitution of counsel, discuss extension of the dispositive motion deadline, and set a deadline for counsel to file an opposition to the Motion. COURT ORDERED, matter SET for Status Check regarding substitution of counsel and establishing deadlines. COURT FURTHER ORDERED, Motion for Sanctions CONTINUED.

10/15/20 9:00 AM STATUS CHECK: SUBSTITUTION OF COUNSEL FOR DEFENDANT DAVID

PRINT DATE: 09/21/2021

Page 22 of 58

Minutes Date: May 01, 2017

**A-17-754423-B**

BIESINGER, DPM AND DEADLINES

CONTINUED TO: 10/26/20 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**October 08, 2020**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>October 08, 2020</b>	<b>3:00 PM</b>	<b>Minute Order</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled October 15, 2020 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 307 274 151

URL: [bluejeans.com/ 307274151](https://bluejeans.com/307274151)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

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CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 10/8/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**October 15, 2020**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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**October 15, 2020      9:00 AM      Status Check**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gronich, Jeffrey S.	Attorney
	Williams, Paul	Attorney

**JOURNAL ENTRIES**

- Counsel present via BlueJeans.

Court noted when the matter last came before it Mr. Clark advised he would no longer be able to continue on this case and there would be a substitution of counsel by now. Mr. Williams concurred and added the upcoming dispositive motion deadline needs to be extended, the trial date needs to be extended, and depositions need to be completed. Mr. Gronich agreed the deadlines need to be pushed back. Court directed Plaintiff's counsel to submit a proposed order addressing the change in the deadlines and resetting of trial. Mr. Williams requested to address the lack of new counsel and set a deadline for new counsel to appear by. Court advised the Motion set for October 26, 2020 will remain on calendar and they will proceed accordingly. Mr. Gronich requested to continue that matter as the relief that is being requested will affect his client. Mr. Williams advised they are requesting Mr. Biesinger's answer be stricken and not entry of default judgment. Court reiterated the Motion will remain on calendar for October 26, 2020.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**October 22, 2020**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>October 22, 2020</b>	<b>2:00 PM</b>	<b>Minute Order</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled October 26, 2020 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

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Meeting ID: 307 274 151

URL: [bluejeans.com/ 307274151](https://bluejeans.com/307274151)

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CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 10/22/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**October 26, 2020**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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**October 26, 2020      9:00 AM      Motion for Sanctions**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gronich, Jeffrey S.	Attorney
	Takos Esq, Zachary P.	Attorney
	Williams, Paul	Attorney

**JOURNAL ENTRIES**

- Counsel present via BlueJeans.

Following arguments by Mr. Williams and Mr. Takos, COURT ORDERED, Plaintiff/  
Counterdefendant Absolute Foot Care Specialists' Renewed Motion for NRCP 37(b) Sanctions  
Against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel  
UNDER ADVISEMENT.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**November 05, 2020**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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**November 05, 2020      7:00 AM      Minute Order**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- HAVING further reviewed and considered the parties' filings and the arguments of counsel pertaining to "Plaintiff/Counterdefendant Absolute Foot Care Specialist's Renewed Motion for NRC P 37(b) Sanctions Against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel," heard and taken under advisement on October 26, 2020, and being now fully advised in the premises, and noting that the sanctions sought by the Motion are to strike Defendant/Counterclaimant Biesinger's Answer in part regarding liability and to obtain an award of attorneys' fees; and further noting that Defendant/Counterclaimant Biesinger's operative pleading appears to be his Answer and Counterclaim filed June 2, 2017, and that Plaintiff/Counterdefendant's Motion does not address the viability of the Counterclaim but only establishment of liability relative to Plaintiff's action; and being persuaded by Plaintiff/Counterdefendant's Motion that sanctions are appropriate but not to the extent sought by the Motion, the Court thus GRANTS the Motion IN PART and it will strike all of the affirmative defenses purportedly pleaded in Defendant/Counterclaimant's aforesaid operative pleading, leaving any and all denials and the Counterclaim intact but not permitting evidence to be adduced that should have been provided; and, having made such ruling, the Court considers further sanction by way of attorneys' fees to be unwarranted.

Counsel for Plaintiff/Counterdefendant is directed to submit a proposed order consistent herewith and with briefing and argument supportive of the same. Such proposed order is to be submitted to opposing counsel for review and signification of approval/disapproval.

IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 11/5/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**November 19, 2020**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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**November 19, 2020      1:00 PM      Minute Order**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled November 23, 2020 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 944 156 346

URL: [bluejeans.com/ 944156346](https://bluejeans.com/944156346)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

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CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 11/19/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**November 23, 2020**

---

A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

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**November 23, 2020      9:00 AM      Motion to Compel**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gronich, Jeffrey S.	Attorney
	Williams, Paul	Attorney

**JOURNAL ENTRIES**

- Steven Hart, Esq. present for Defendant David Biesinger, DPM. Counsel present via BlueJeans.

Court disclosed the law firm representing the Plaintiff represents an adversary of a family member in ongoing litigation. Upon Court's inquiry, counsel had no problem with the disclosure made. Following arguments by Mr. Williams and Mr. Hart, COURT ORDERED, matter CONTINUED 3 weeks. Court directed counsel to have a meet and confer in the meantime. Mr. Williams advised he will reach out to Mr. Hart to get one set up. Court noted it will be looking to see how the meet and confer goes and hopefully these issues can be resolved.

CONTINUED TO: 12/14/20 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**December 10, 2020**

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A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

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**December 10, 2020      11:00 AM      Minute Order**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled December 14, 2020 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 628 582 066

URL: [bluejeans.com/ 628582066](https://bluejeans.com/628582066)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

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CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 12/10/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**December 14, 2020**

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A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

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**December 14, 2020      9:00 AM      Motion to Compel**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**      Dickey, Joshua M.      Attorney  
                 Gronich, Jeffrey S.      Attorney  
                 Takos Esq, Zachary P.      Attorney

**JOURNAL ENTRIES**

- Counsel present via BlueJeans.

Mr. Dickey advised there was a production that resolved most of the issues that were in dispute and they still have an issue regarding request for production #8. Following arguments by Mr. Dickey and Mr. Takos, COURT ORDERED, Motion to Compel Defendant/Counterclaimant David P. Biesinger to Respond to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Written Discovery Requests GRANTED as to the remaining items as to which production should have been made. COURT FURTHER ORDERED, matter SET for Status Check regarding production of those documents.

1/7/21 9:00 AM STATUS CHECK: PRODUCTION OF DOCUMENTS



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**January 05, 2021**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>January 05, 2021</b>	<b>4:00 PM</b>	<b>Minute Order</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled January 7, 2021 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 502 385 931

URL: [bluejeans.com/502385931](https://bluejeans.com/502385931)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

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CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 1/5/21

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**January 07, 2021**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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**January 07, 2021      9:00 AM      Status Check**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gronich, Jeffrey S.	Attorney
	Williams, Paul	Attorney

**JOURNAL ENTRIES**

- Steven Hart, Esq. present for Defendant David Biesinger, DPM. Counsel present via BlueJeans.

Colloquy regarding what documents have been produced. Upon Court's inquiry, Mr. Welch advised they need the patient data either in excel or csv format and exhibits 11-16 of the Reply brief in support of the first Motion to Compel filed in March 2020 in either excel or csv format in the 2017-2018 timeframe. Mr. Hart noted some of the reports have already been produced, such as 12, 13 and 15. COURT ORDERED the production of the items specified that have not yet been produced. COURT FURTHER ORDERED, matter CONTINUED. Court advised it will consider the fee issue and compliance issue on January 21st.

CONTINUED TO: 1/21/21 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**January 19, 2021**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>January 19, 2021</b>	<b>2:30 PM</b>	<b>Minute Order</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled January 21, 2021 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 502 385 931

URL: [bluejeans.com/502385931](https://bluejeans.com/502385931)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by

BlueJeans.

You may also download the BlueJeans app and join the meeting by entering the meeting ID.

PLEASE NOTE the following protocol each participant will be required to follow:

You will be automatically muted upon entry to the meeting. Please remain muted while waiting for your matter to be called. If you are connecting by phone, you can mute/unmute yourself on your phone or by pressing \*4.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 1/19/21

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**January 21, 2021**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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**January 21, 2021      9:00 AM      Status Check**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:** Williams, Paul

Attorney

**JOURNAL ENTRIES**

- Steven Hart, Esq. present for Defendant David Biesinger DPM. Counsel present via BlueJeans.

Mr. Williams advised Dr. Biesinger has produced additional documents, reports, and data they have been seeking; however, there are some things that his client has not gone through yet to verify. Mr. Williams added they provided a report they are requesting and were told Dr. Biesinger does not have the ability to do that report. Mr. Williams requested setting a status check in two weeks to let counsel have some discussions regarding the documents. Mr. Hart advised he has been in contact with Dr. Biesinger's vendor and they have informed him because it is a custom report being sought it requires back end coding. Mr. Hart added the vendor has laid people off due to covid and they have discontinued that service for the foreseeable future. Mr. Hart noted it is their position that that is something they cannot produce for the foreseeable future. Mr. Williams noted counsel can have discussions to see if there are other ways to get that data. COURT ORDERED, matter CONTINUED and Defendant's Motion to Reconsider the Court's Order Granting, In Part, Plaintiff's Renewed Motion for NRCP 37(b) Sanctions currently set for January 28th CONTINUED.

2/4/21 9:00 AM DEFENDANTS' MOTION TO RECONSIDER THE COURT'S ORDER GRANTING

PRINT DATE: 09/21/2021

Page 43 of 58

Minutes Date: May 01, 2017

IN PART, PLAINTIFF'S RENEWED MOTION FOR NRCP 37(B) SANCTIONS...STATUS CHECK:  
PRODUCTION OF DOCUMENTS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**February 02, 2021**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>February 02, 2021</b>	<b>2:30 PM</b>	<b>Minute Order</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled February 4, 2021 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 663 783 212

URL: [bluejeans.com/ 663783212](https://bluejeans.com/663783212)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by



BlueJeans.

You may also download the BlueJeans app and join the meeting by entering the meeting ID.

PLEASE NOTE the following protocol each participant will be required to follow:

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Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 2/2/21

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**February 04, 2021**

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A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

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**February 04, 2021      9:00 AM      All Pending Motions**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**      Gronich, Jeffrey S.      Attorney  
                 Williams, Paul      Attorney

**JOURNAL ENTRIES**

- STATUS CHECK: PRODUCTION OF DOCUMENTS...DEFENDANT'S MOTION TO RECONSIDER THE COURT'S ORDER GRANTING, IN PART, PLAINTIFF'S RENEWED MOTION FOR NRCP 37(B) SANCTIONS

Steven Hart, Esq. present for Defendant David Biesinger DPM. Counsel present via BlueJeans.

As to the production of documents, Mr. Williams advised Mr. Biesinger's counsel provided a report that might work as it has demographic information. Mr. Hart added there has been a lot of back and forth between counsel regarding this production since the last hearing, they have been working with Blue Orchid Marketing for these reports, and EOBs have also been produced. Upon Court's inquiry, counsel agreed another status check is not necessary on this issue. Mr. Williams advised his client will be requesting attorney's fees on this. Following arguments by Mr. Hart and Mr. Williams, COURT ORDERED, Defendant's Motion to Reconsider the Court's Order Granting, in Part, Plaintiff's Renewed Motion for NRCP 37(b) Sanctions UNDER ADVISEMENT.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**February 09, 2021**

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A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

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**February 09, 2021      7:00 AM      Minute Order**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- HAVING further reviewed and considered the parties' filings and argument of counsel pertaining to Defendant Biesinger's "...Motion to Reconsider the Court's Order Granting, in Part, Plaintiff's Renewed Motion for NRCP 37(B)(sic) Sanctions," heard and taken under advisement on February 4, 2021, and being now fully advised in the premises, and noting that Plaintiff's Motion to Compel filed February 21, 2020 at page 3, lines 12-15, resulting in the Court's Order of May 1, 2020 referenced at page 8, line 1 of Plaintiff's Opposition, classified the discovery at issue as being within five specific categories which appear to the Court to relate to performance/breach/damages issues, and noting that some of the affirmative defenses pleaded by Defendant do not appear to relate only to such categories, and that the Court's Order which is the subject of Defendant's pending Motion is likely overbroad in striking affirmative defenses not related to such categories, and determining that, while NRCP 60(b) is not applicable, relief may be granted under NRCP 54(b), and that reconsideration of the breadth of the striking order as it now stands is warranted, the Court GRANTS Defendant's Motion IN PART and will revise its Order entered December 8, 2020 by changing the second sentence in the "Order" portion thereof at page 5, lines 5-7 to read: "Any of the affirmative defenses asserted by Dr. Biesinger that relate to performance/breach/damages issues shall be disallowed, leaving any and all denials and the Counterclaim intact, but not permitting evidence to be adduced that should

have been provided."

Counsel for Defendant Biesinger is directed to submit a proposed order consistent herewith after providing the same to opposing counsel for signification of approval/disapproval. Instead of seeking to clarify or litigate meaning or any disapproval through correspondence to the Court or to counsel with copies to the Court, any such clarification or disapproval should be the subject of appropriate motion practice.

IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 2/9/21

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**May 19, 2021**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>May 19, 2021</b>	<b>10:45 AM</b>	<b>Minute Order</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled May 24, 2021 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 751 790 305

URL: [bluejeans.com/ 751790305](https://bluejeans.com/751790305)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by

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Please be mindful of where your camera is pointing.

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CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 5/19/21

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**May 24, 2021**

---

A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

---

**May 24, 2021      2:40 PM      Pre Trial Conference**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Gronich, Jeffrey S.      Attorney  
                 Williams, Paul      Attorney

**JOURNAL ENTRIES**

- Steven Hart, Esq. present for Defendant David Biesinger, DPM.

Upon Court's inquiry, Mr. Williams estimated 5 days or less for trial assuming they are full trial days. Mr. Hart concurred. Mr. Williams added they still have not filed dispositive motions and it might be best to continue trial to September or October. Mr. Gronich advised November does not work for his schedule. Court directed counsel to contact its Judicial Executive Assistant if there is a consensus to set up a Settlement Conference. Mr. Williams added there is a 5 year rule issue in April of next year. COURT ORDERED, trial dates VACATED and to be RESET.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**June 24, 2021**

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A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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<b>June 24, 2021</b>	<b>2:30 PM</b>	<b>Minute Order</b>
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**HEARD BY:** Denton, Mark R.

**COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled June 28, 2021 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 751 790 305

URL: [bluejeans.com/ 751790305](https://bluejeans.com/751790305)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by



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CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 6/24/21

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**June 28, 2021**

---

A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

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**June 28, 2021      9:00 AM      All Pending Motions**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**      Gronich, Jeffrey S.      Attorney  
Takos Esq, Zachary P.      Attorney  
Williams, Paul      Attorney

**JOURNAL ENTRIES**

- PLAINTIFF/COUNTERDEFENDANT ABSOLUTE FOOT CARE SPECIALISTS' MOTION FOR SUMMARY JUDGMENT ON: (1) ITS BREACH OF CONTRACT CLAIMS; AND (2) DEFENDANT/COUNTERCLAIMANT DAVID P. BIESINGER, DPM'S COUNTERCLAIMS...DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT: (1) BREACH OF CONTRACT CLAIMS AND (2) DEFENDANT'S COUNTERCLAIMS...MOTION TO SEAL EXHIBITS 22 THROUGH 24 TO THE APPENDIX OF EXHIBITS TO PLAINTIFF/COUNTERDEFENDANT ABSOLUTE FOOT CARE SPECIALISTS' MOTION FOR SUMMARY JUDGMENT ON: (1) ITS BREACH OF CONTRACT CLAIMS; AND (2) DEFENDANT/COUNTERCLAIMANT DAVID P. BIESINGER, DPM'S COUNTERCLAIMS

Counsel present via BlueJeans.

Court noted it recieved no opposition to the Motion to Seal. Cause appearing and there being no opposition, COURT ORDERED, Motion to Seal Exhibits 22 through 24 to the Appendix of Exhibits to

Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims GRANTED. Following arguments by Mr. Williams and Mr. Takos, COURT FURTHER ORDERED, Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims UNDER ADVISEMENT.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**July 09, 2021**

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A-17-754423-B      Absolute Foot Care Specialists, Plaintiff(s)  
vs.  
David Biesinger, DPM, Defendant(s)

---

**July 09, 2021      7:00 AM      Minute Order**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- HAVING further reviewed and considered the parties' filings and argument of counsel pertaining to "Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims," heard and taken under advisement on June 28, 2021, and being fully advised in the premises, and being persuaded that the Motion has merit, the Court GRANTS the same and will render final adjudication on the bases and in the manner set forth in Plaintiff/Counterdefendant s Reply brief filed June 23, 2021, page 3, lines 14-20. Counsel for Plaintiff/Counterdefendant is directed to submit a proposed order consistent herewith and with supportive briefing/argument following submission of the same to opposing counsel for signification of approval/disapproval. Instead of seeking to clarify or litigate meaning or any disapproval through correspondence directed to the Court or to counsel with copies to the Court, any such clarification or disapproval should be the subject of appropriate motion practice.

IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn

PRINT DATE: 09/21/2021

Page 57 of 58

Minutes Date: May 01, 2017

Kearney, to all registered parties for Odyssey File & Serve. /mk 7/9/21



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE  
**NOTICE OF DEFICIENCY**  
ON APPEAL TO NEVADA SUPREME COURT

**ZACHARY P. TAKOS, ESQ.**  
**1980 FESTIVAL PLAZA DR., STE 300**  
**LAS VEGAS, NV 89135**

**DATE: September 21, 2021**  
**CASE: A-17-754423-B**

**RE CASE:** ABSOLUTE FOOT CARE SPECIALISTS vs. DAVID P. BIESINGER, DPM; LORRAINE PALLANTI

NOTICE OF APPEAL FILED: September 16, 2021

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
  - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

***Please refer to Rule 3 for an explanation of any possible deficiencies.***

---

***\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF/COUNTERDEFENDANT ABSOLUTE FOOT CARE SPECIALISTS' MOTION FOR SUMMARY JUDGMENT ON: (1) ITS BREACH OF CONTRACT CLAIMS; AND (2) DEFENDANT/COUNTERCLAIMANT DAVID P. BIESINGER, DPM'S COUNTERCLAIMS; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF/COUNTERDEFENDANT ABSOLUTE FOOT CARE SPECIALISTS' MOTION FOR SUMMARY JUDGMENT ON: (1) ITS BREACH OF CONTRACT CLAIMS; AND (2) DEFENDANT/COUNTERCLAIMANT DAVID P. BIESINGER, DPM'S COUNTERCLAIMS; JUDGMENT; NOTICE OF ENTRY OF JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

ABSOLUTE FOOT CARE SPECIALISTS ,

Plaintiff(s),

vs.

DAVID P. BIESINGER, DPM; LORRAINE  
PALLANTI,

Defendant(s),

Case No: A-17-754423-B

Dept No: XIII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 21 day of September 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk