

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

Electronically Filed
Dec 23 2021 10:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

SHAIA SCHUCHMACHER; AND)
BEVERLY SCHUCHMACHER,)

Petitioners,)

CASE NO: _____

v.)

THE EIGHTH JUDICIAL DISTRICT)
COURT OF THE STATE OF NEVADA)
IN AND FOR THE COUNTY OF CLARK;))
AND THE HONORABLE CARLI L.)
KIERNY, District Court Judge,)
Clark County, Nevada,)

**APPENDIX TO PETITION FOR WRIT OF
MANDAMUS – VOLUME 3**

Respondent,)

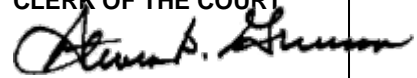
ALANA BARTON, both Individually and)
as Special Administrator of the Estate)
of YVONNE SUGGS,)

Real Parties in Interest/)
Plaintiffs in the underlying)
action.)

PRESCOTT T. JONES
Nevada Bar No. 11617
RANDALL TINDALL
Nevada Bar No. 6522
CARISSA YUHAS
Nevada Bar No. 14692
Resnick & Louis, P.C.
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Attorneys for Petitioners

ALANA BARTON; BH BARTON; AND)
ALEXANDER MENDIA,)

Real Parties in Interest/)
CounterDefendant and)
Third-Party Defendants in)
underlying action.)



JOIN (CIV)
LAURA PAYNE-HUNT, ESQ.
Nevada Bar No. 4718
The Law Offices of Laura Payne-Hunt
330 East Warm Springs Road
Las Vegas, NV 89119
702-450-4868
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALANA BARTON, both Individually and as
Special Administrator of the Estate of
YVONNE SUGGS

Plaintiff(s),

CASE NO.: A-19-802489-C

DEPT. NO.: 2

vs.

SHAIA SCHUCHMACHER; BEVERLY
SCHUCHMACHER, DOES I through X and
ROE CORPORATIONS I through X, inclusive,

Defendant(s)

**ALANA BARTON, BOTH INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR
OF THE ESTATE OF YVONNE SUGGS JOINDER TO THE OPPOSITION OF
COUNTER-DEFENDANT ALANA BARTON AND THIRD-PARTY DEFENDANT BH
BARTON TO MOTION FOR SUMMARY JUDGEMENT AND MOTION TO STRIKE
FILED BY SHAIA AND BEVERLY SCHUHMACHER**

COMES NOW, Plaintiff ALANA BARTON, both Individually and as Special
Administrator of the Estate of YVONNE SUGGS by and through its counsel of record, Laura
Payne-Hunt, Esq. of The Law Offices of Laura Payne-Hunt and respectfully files this joinder
to the Opposition of Counter-Defendant Alana Barton and Third-Party Defendant BH Barton
Opposition to Motion For Summary Judgement and Motion To Strike Filed By SHAIA
SCHUCHMACHER and BEVERLY SCHUCHMACHER. This Joinder incorporates the

1 arguments of Counter-Defendant Alana Barton And Third-Party Defendant BH Barton and all
2 documents filed in this case, and any oral argument that this Court may wish to entertain.

3 DATED this **12th day of May, 2021.**
4

5
6 **THE LAW OFFICES OF LAURA PAYNE-HUNT**

7 **/s/ Laura Payne-Hunt**

8 Laura Payne-Hunt, Esq.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b) and N.E.F.C.R. 9, I hereby certify that the foregoing

3
4 ALANA BARTON, BOTH INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE
5 ESTATE OF YVONNE SUGGS JOINDER TO THE OPPOSITION OF COUNTER-DEFENDANT
6 ALANA BARTON AND THIRD-PARTY DEFENDANT BH BARTON TO MOTION FOR
7 SUMMARY JUDGEMENT AND MOTION TO STRIKE FILED BY SHAIA AND BEVERLY
8 SCHUHMACHER

9 was served as follows:

10 _____ by placing a true and correct copy in the United States mail, at Las Vegas, Nevada, first
11 class, postage fully prepaid to the address below.

12
13 _____ transmitting a true and correct copy thereof via facsimile to the numbers listed below.

14
15 XX by serving pursuant to N.E.F.C.R. 9 via the Court's electronic service system.

16 DATED this **12th day of May, 2021.**

17
18 Carissa Christensen, Esq.
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23 Attorney for Defendants
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/s/ Laura Payne-Hunt
Employee of The Law Offices of Laura Payne-Hunt



ROPP

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Beverly Schuchmacher

DISTRICT COURT

CLARK COUNTY, NEVADA

ALANA BARTON, both Individually and as
Special Administrator of the Estate of
YVONNE SUGGS,

Plaintiff,

v.

SHAIA SCHUCHMACHER; BEVERLY
SCHUCHMACHER, DOES I through X and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

SHAIA SCHUCHMACHER; BEVERLY
SCHUCHMACHER,

Counterclaimants,

v.

ALANA BARTON,

Counter-defendant.

CASE NO.: A-19-802489-C

DEPT: 2

**REPLY TO ALANA BARTON AND BH
BARTON'S OPPOSITION AND
PLAINTIFF'S JOINDER THERETO TO
SHAIA SCHUCHMACHER AND
BEVERLY SCHUCHMACHER'S
MOTION FOR SUMMARY
JUDGMENT AND MOTION TO
STRIKE PLAINTIFF'S EXPERTS**

Hearing Date: 05/26/2021

Hearing Time: 9:30 a.m.

1 SHAIA SCHUCHMACHER; BEVERLY
2 SCHUCHMACHER,

3 Third-Party Plaintiffs,

4 v.

5 BH BARTON; ALEXANDER MENDIA

6 Third-Party Defendants.

7
8 SHAIA SCHUCHMACHER and BEVERLY SCHUCHMACHER, by and through their
9 attorneys of record, Randall Tindall, Esq. and Carissa Christensen, Esq., of the law firm of
10 Resnick & Louis, P.C., hereby submit their reply to Alana Barton and BH Barton's opposition
11 and Plaintiff's joinder thereto to the motion to strike Plaintiff's experts pursuant to NRCP
12 16(c)(2)(C) and motion for summary judgment.

13 This reply is based upon NRCP 16(c)(2)(C), NRCP 56, the papers and pleadings on file,
14 the memorandum of points and authorities, the exhibits, and any oral argument that this court
15 may require.
16

17 DATED this 19th day of May, 2021.

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

19 */s/ Carissa Christensen*

20 RANDALL TINDALL

21 Nevada Bar No. 6522

22 **CARISSA CHRISTENSEN**

23 Nevada Bar No. 14692

24 8925 W. Russell Road Suite 220

25 Las Vegas, NV 89148

26 *Attorneys for Shaia Schuchmacher &*

27 *Beverly Schuchmacher*
28

POINTS AND AUTHORITIES

A. Plaintiff's joinder to Alana Barton and BH Barton's opposition should not be considered because it is untimely and does not comply with EDCR 2.20(d) or EDCR 2.20(e).

Mr. and Mrs. Schuchmacher filed and served their motion to strike Plaintiff's experts and motion for summary judgment on 04/15/2021. Alana Barton and BH Barton (in their capacities as Counter-Defendant and Third-Party Defendant) filed and served their opposition on 04/29/2021. Plaintiff did not file and serve her joinder to Alana Barton and BH Barton's opposition until 14 days later on 05/13/2021.

Pursuant to EDCR 2.20(d), any joinder should be filed within 7 days of the motion or opposition. Since Plaintiff's joinder was not served until 14 days after service of the opposition, it should be disregarded as untimely.

B. Mr. and Mrs. Schuchmacher's motions must be granted pursuant to EDCR 2.20(e) because there has been no properly asserted opposition since Counter-Defendant and Third-Party Defendant do not have standing to oppose the motions and Plaintiff's joinder is untimely.

When a motion for summary judgment is made and supported, an **adversary party** who does not set forth specific facts showing a genuine issue to be resolved at trial may have a summary judgment entered against him. Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 284, 662 P.2d 610 (1983)(emphasis added). Furthermore, a party asserting that a fact cannot be or is genuinely disputed must support the assertion by either: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an **adverse party** cannot produce admissible evidence to support the fact. *See*, NRCP 56(c)(1).

1 It follows that to have standing to oppose a motion for summary judgment, the party must
2 have some adversary interest in the outcome of the motion. Federal courts have recently been
3 faced with this dispositive decision and found no standing. Rather than allowing sole opposition
4 to a motion by a coparty, these courts have required that parties be adverse to one another on at
5 least some claims in order to promote efficient disposition of trials. *See, Blonder v. Casco Inn*
6 *Residential Care, Inc.*, No. 99-274-P-C, 2000 U.S. Dist. LEXIS 8054, at *1, *3–4 (D. Me. May
7 4, 2000) (finding the codefendant did not have standing to oppose the defendant’s motion for
8 summary judgment regarding claims for injuries sustained in a fire); *Eckert v. City of*
9 *Sacramento & Union Pac. R.R. Co.*, No. 2:07- cv-00825-GEB-GGH, 2009 U.S. Dist. LEXIS
10 95655, at *7–9 (E.D. Cal. Sept. 29, 2009) (refusing to grant standing to the city as a codefendant
11 to oppose Union Pacific’s motion for summary judgment because the city was not an adverse
12 party); *Thurman v. Wood Grp. Prod. Servs., Inc.*, No. 09-4142 Sec.: J(3), 2010 U.S. Dist. LEXIS
13 132190, at *4–5 (E.D. La. Dec. 14, 2010) (holding that only parties to the motion for summary
14 judgment, those on opposing sides, were eligible to oppose the motion).
15
16

17 Additionally, in support of the notion that parties with standing to oppose a motion must
18 have some adversary interest in the outcome of the motion is the related concept of standing to
19 appeal the outcome of such a motion. NRAP 3A(a) provides that only a party who is aggrieved
20 by an appealable judgment or order has the right to appeal. *See*, NRAP 3A(a).
21

22 Applying these principles, it is clear that Alana Barton and BH Barton, in their capacities
23 of Counter-Defendant and Third-Party Defendant, do not have standing to oppose Mr. and Mrs.
24 Schuchmacher’s motions. There may well be instances in which a co-party does have some
25 existing right that will be adversely affected by the grant of summary judgment or any other
26 motion in favor of another, and, if so, his or her opposition may be considered. However, this is
27 not the situation here.
28

1 Counter-Defendant and Third-Party Defendant, Alana Barton and BH Barton, did not
2 designate either expert at issue in the motion to strike as witnesses who would testify on their
3 behalf. In fact, to do so would be non-sensical. Mr. and Mrs. Schuchmacher's claims against
4 Alana Barton and BH Barton stem from the alleged breach of duties pursuant to NRS
5 118A.310(1)(a) and the terms of the Lease Agreement to keep the subject property in a clean and
6 good condition, to keep and maintain the landscaping and pool located at the subject property in
7 a clean and good condition, and to immediately report any defect or problem on the subject
8 property to Mr. and Mrs. Schuchmacher. As such, Alana Barton and BH Barton would have no
9 need for testimony from a medical expert. Additionally, the opinions of Mr. Opfer directly
10 implicate Alana Barton and BH Barton as being in breach of their duties if it is to be believed
11 that hazards existed on the property. Thus, Alana Barton and BH Barton have no adversary
12 interest in Mr. and Mrs. Schuchmacher's motion to strike Plaintiff's experts being granted and do
13 not have standing to oppose the motion.
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15
16 Likewise, Alana Barton and BH Barton will not be aggrieved in any way if Mr. and Mrs.
17 Schuchmacher's motion for summary judgment is granted. Mr. and Mrs. Schuchmacher's
18 counterclaim and third-party complaint allege that Alana Barton and BH Barton are liable for
19 any and all damages Plaintiff claims to have sustained based on their breach of duties to
20 ultimately keep the subject property in a clean and good condition. Thus, Alana Barton and BH
21 Barton only stand to gain if summary judgment is granted against Plaintiff's claims for damages.
22 Accordingly, Alana Barton and BH Barton do not have standing to oppose the motion for
23 summary judgment.
24

25 Consequently, Mr. and Mrs. Schuchmacher's motions should be granted pursuant to
26 EDCR 2.20(e). As stated above, the opposition filed by Alana Barton and BH Barton in their
27 capacities as Counter-Defendant and Third-Party Defendant on 04/29/2021 should not be
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1 considered by the court. Additionally, Plaintiff's joinder is untimely and should also be
2 disregarded by the Court. EDCR 2.20(e) reads:

3 Within 14 days after the service of the motion, and 5 days after service of any
4 joinder to the motion, the opposing party must serve and file written notice of
5 nonopposition or opposition thereto, together with a memorandum of points and
6 authorities and supporting affidavits, if any, stating facts showing why the motion
7 and/or joinder should be denied. Failure of the opposing party to serve and file
8 written opposition may be construed as an admission that the motion and/or
9 joinder is meritorious and a consent to granting the same.

10 Thus, the Court should construe the failure to serve any proper opposition to Mr. and
11 Mrs. Schuchmacher's motions as an admission that the motions are meritorious and grant the
12 motions.

13 **C. Even if the merits of the opposition and/or joinder were considered, Mr. and Mrs.**
14 **Schuchmacher's motions should still be granted.**

15 ***1. Mr. and Mrs. Schuchmacher's motion to strike Plaintiff's expert, Neil Opfer,***
16 ***should be granted because his opinions do not meet the standards of NRS***
17 ***50.275 or Hallmark v. Eldridge.***

18 Notwithstanding the admissibility arguments detailed below regarding Mr. Opfer's
19 untimely supplemental report, the information provided therein does nothing to support a finding
20 that his opinions meet the standards of NRS 50.275 and Nevada case law interpreting the same.
21 Mr. Opfer's ultimate conclusions remain that "the fatality of Ms. Yvonne Suggs is most likely
22 that she was outside in the landscaped area picking up after the dog" and that "there were
23 numerous trip-fall hazards present in the areas to the West and South of the pool deck." ***Mr.***
24 ***Opfer still did not provide any specific opinions as to what hazard specifically caused Ms.***
Suggs to trip or whether Ms. Suggs even tripped at all.

25 Mr. Opfer's supplemental report actually confirms that his opinion that Ms. Suggs was
26 likely in the landscaped area picking up after the dog is based upon an unknown individual
27 informing him that this was the "likely circumstance". There is no question that this opinion is
28

1 not the product of reliable methodology. It is not testable, nor has it been tested, published, or
2 subjected to peer review. It is not generally accepted in the scientific community. Clearly, this
3 opinion is based on assumption, conjecture, and generalization rather than facts. Further, Mr.
4 Opfer correctly notes that Mr. Elliot's report points out the speculative nature of Mr. Opfer's
5 opinion and illustrates this by providing many other scenarios that could have equally been the
6 "likely circumstance". Thus, it must be excluded.

7
8 Mr. Opfer's inclusion of opinions regarding several "tripping hazards" in different places
9 throughout the backyard is also not based upon reliable authority. In support of his broad
10 opinion, Mr. Opfer cited to Chapter 10 of the 1997 Uniform Building Code requirements for
11 ramps for disabled-person access and stairways in determining that the difference in height in
12 several areas between the landscaped area and the pool deck was too steep of a slope/step which
13 posed a tripping hazard. Mr. Opfer's supplemental report attempts to distract the Court by
14 focusing on Mr. Elliot's critique of which version (1997 or 2009) of the Uniform Building Code
15 would apply to the instant situation. However, Mr. Opfer completely misconstrues Mr. Elliot's
16 point in that no matter which version of the Uniform Building Code is applied, the reliance on
17 these codes is simply incorrect. *The area at issue on the subject property does not contain a*
18 *ramp structure or a means of egress.* Mr. Opfer's supplemental report suggests that in the event
19 of a fire, one may need to exit the property in an emergency by utilizing the landscaped area and
20 thus, it is a means of egress. However, he fails to note that the landscaped area is completely
21 walled in and there is no exit from the property in this area whatsoever.

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23
24 Mr. Opfer does not deny that Chapter 10 of the UBC applies to means of egress. As
25 such, it does not take a battle of the experts to determine that the codes Mr. Opfer relied on in
26 support of developing his opinions are simply not applicable to the area where the landscaping
27 meets the pool deck. It is not a means of egress since it is not connected to a building or
28

1 structure to a public way or any way of exit. Without any reliable authority to support Mr.
2 Opfer's opinion that the landscaping presented a tripping hazard, this conclusion fails to meet the
3 standards of NRS 50.275 and Nevada case law interpreting the same.

4 Consequently, Mr. Opfer's entire opinion amounts to nothing more than subjective
5 speculation which has been based on assumptions and insufficient facts and data. Accordingly,
6 Mr. Opfer must be stricken as an expert and his opinions cannot be admissible at trial.

7
8 ***2. Mr. and Mrs. Schuchmacher's motion to strike Plaintiff's experts should be***
9 ***granted in its entirety because any supplemental reports should be stricken as***
10 ***untimely, therefore, the experts' opinions do not meet the standards of NRS***
11 ***50.275 or Hallmark v. Eldridge.***

12 NRCP 37 authorizes sanctions for a party's failure to make disclosures or cooperate in
13 discovery. NRCP 37(c)(1) provides that if a party fails to provide information or identify a
14 witness as required by Rule 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not
15 allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a
16 trial, unless the failure was substantially justified or is harmless. The burden of proving
17 "substantial justification" or "harmlessness" is on the party that failed to comply with its
18 disclosure obligations. Yeti by Molly Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1106 (9th
19 Cir. 2001). Additionally, the Ninth Circuit has defined the situations where an expert may
20 supplement his opinions in MRO Communs., Inc. v. AT&T, U.S. App. LEXIS 32522, 17-18 (9th
21 Cir. Nev. 1999)¹. The MRO Court specifically held that parties cannot use Rule 26(e) to create a
22 loophole to supplement expert reports after the deadline. *Id.* That is exactly what Plaintiff is
23 attempting to do here.

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27 ¹ Under Nevada law, "Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive
28 authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts."
Executive Mgmt. v. Ticor Title Ins., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

1 The basis provided in the opposition and joinder for not excluding Dr. Raven's opinions
2 is a supplemental report in which Dr. Raven simply provides that her previous opinions were
3 based on a reasonable degree of medical probability. However, this document was not timely
4 disclosed and was clearly generated specifically to rebut and prejudice the arguments made in
5 Mr. and Mrs. Schuchmacher's motion. Discovery in this matter has closed² and Plaintiff has not
6 provided any justification for this late disclosure. Pursuant to NRCP 37(b)(1), this supplemental
7 report should be stricken.
8

9 Thus, Dr. Raven is limited at trial to the statements made in her initial report. Because
10 Dr. Raven cannot provide any testimony that her opinions are held to a reasonable degree of
11 medical probability, Dr. Raven's opinions are highly speculative pursuant to Morsicato v. Save-
12 On Drug Stores, Inc., 121 Nev. 153, 111 P.3d 1112 (2005) and her opinions cannot be admissible
13 at trial.
14

15 Furthermore, although the addition of Mr. Opfer's supplemental report adds nothing to
16 defeat the argument that his opinions are based on sheer speculation, as discussed above, his
17 supplemental report should also be stricken pursuant to NRCP 37(b)(1) since it was not disclosed
18 during discovery.

19 ***3. There is not any genuine issue of material fact that would operate to prevent***
20 ***summary judgment being granted.***

21 Although summary judgment may not be used to deprive litigants of trials on the merits
22 where material factual doubt exists, the availability of summary proceedings promotes judicial
23 economy and reduces litigation expense associated with actions clearly lacking in merit.
24 Therefore, it is readily understood why the party opposing summary judgment may not simply
25 rest on the allegations of the pleadings. To the contrary, the non-moving party must, by
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27 ² Discovery was recently reopened by the Court on 05/12/2021 only for the limited purpose of allowing Plaintiff to
28 serve written discovery requests, depose Alexander Mendia, and retain any additional experts necessary.

1 competent evidence, produce specific facts that demonstrate the presence of a genuine issue for
2 trial. Elizabeth E. v. ADT Sec. Sys. W., 108 Nev. 889, 839 P.2d 1308 (1992). A genuine issue
3 of material fact is one where the evidence is such that a reasonable jury could return a verdict for
4 the nonmoving party. Posadas v. City of Reno, 109 Nev. 448, 851 P.2d 438 (1993).

5 Additionally, pursuant to NRCP 56(e), affidavits in support of or in opposition to
6 summary judgment shall set forth such facts as would be admissible in evidence. *See also*,
7 Collins v. Union Federal Savings & Loan Ass'n, 99 Nev. 284, 301, 662 P.2d 610, 621 (1983)
8 (requiring that evidence in support of or in opposition to summary judgment must be evidence
9 that would be admissible at trial); Schneider v. Continental Assurance Co., 110 Nev. 1270, 1274,
10 885 P.2d 572, 575 (1994) (“The district court thus erred in relying solely on inadmissible
11 evidence to grant summary judgment”); Adamson v. Bowker, 85 Nev. 115, 119, 450 P.2d 796,
12 799 (1969) (“[E]vidence that would be inadmissible at the trial of the case is inadmissible on a
13 motion for summary judgment”).
14
15

16 As discussed above, the opinions of Plaintiff’s experts (including their untimely
17 supplemental reports) are inadmissible and cannot be used to defeat summary judgment.
18 However, setting aside the arguments raised in Mr. and Mrs. Schuchmacher’s motion for
19 summary judgment regarding the inadmissibility of these opinions and the impact this has on
20 Plaintiff’s claims for the sake of this reply, even if the expert opinions were considered and after
21 the evidence is viewed in the light most favorable to Plaintiff, Plaintiff cannot meet her burden of
22 proof to demonstrate that Mr. and Mrs. Schuchmacher breached a duty by allowing a dangerous
23 condition to exist on the subject property or that the alleged dangerous condition was the actual
24 or proximate cause of Ms. Suggs’ death.
25

26 A dangerous condition is, generally, “[a] property defect creating a substantial risk of
27 injury when the property is used in a reasonably foreseeable manner.” Condition, Black’s Law
28

1 Dictionary (10th ed. 2014). Plaintiff cannot deny that she admitted the landscaped area was *not*
2 *a common walking path*. Even if Mr. Opfer's opinion that tripping hazards existed is taken into
3 account, Plaintiff's own testimony discredits that the tripping hazards would create a substantial
4 risk of injury because it would not be reasonably foreseeable for an individual to be walking in
5 that area. Thus, even when the evidence is viewed in the light most favorable to Plaintiff, no
6 dangerous condition existed on the subject property and Plaintiff cannot demonstrate that Mr.
7 and Mrs. Schuchmacher breached a duty.

8
9 Moreover, Plaintiff has not provided even a scintilla of evidence to demonstrate that Ms.
10 Suggs tripped on the alleged "dangerous condition". Even if Mr. Opfer and Dr. Raven's
11 opinions were considered, the evidence when viewed in a light most favorable to Plaintiff merely
12 demonstrates that Ms. Suggs died as a result of being in the pool (whether from a cardiac event
13 and/or drowning). Thus, Plaintiff cannot meet her burden of proof that the alleged dangerous
14 condition was the actual or proximate cause of Ms. Suggs' death.

15
16 Accordingly, Plaintiff's claim for negligence must fail as a matter of law. *See, Perez v.*
17 *Las Vegas Medical Ctr.*, 107 Nev. 1, 805 P.2d 589 (1991)(holding that if even one element of a
18 negligence claim cannot be proven, summary judgment must be granted). This alone is enough
19 to grant the motion for summary judgment. *See, Wood v. Safeway, Inc.*, 121 Nev. Adv. Rep. 73,
20 121 P.3d 1026 (2005)(holding that summary judgment is appropriate under NRCP 56 when the
21 pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are
22 properly before the court demonstrate that no genuine issue of material fact exists, and the
23 moving party is entitled to judgment as a matter of law).

24
25 Most importantly, even if Plaintiff could demonstrate that an alleged dangerous condition
26 may have caused Ms. Suggs to fall into the pool, summary judgment would still be required to be
27 granted because it is equally as probable based on the evidence that Ms. Suggs fell into the pool
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1 for a multitude of other reasons. *See, Wilson v. Circus Circus Hotels*, 101 Nev. 751, 710, P.2d
2 77 (1985)(holding that **when causes of a situation or injury are equally probable, a jury's**
3 **determination of liability and its verdict will be determined to be based on speculation and**
4 **conjecture**)(emphasis added). Thus, no genuine issue of material fact exists because no
5 reasonable jury could return a verdict for Plaintiff. Any such verdict would be improperly based
6 upon speculation and conjecture.

7
8 **D. Plaintiff has not moved for relief pursuant to NRCP 56(d).**

9 Although it has not been specifically requested, the Court should be aware that this is not
10 a situation where Plaintiff can argue that the Court should deny the motion without prejudice or
11 continue the motion so that Plaintiff can do some discovery to attempt to prove her case. While
12 NRCP 56(d) does allow the Court to deny a motion or order a continuance to permit affidavits to
13 be obtained or depositions to be taken or discovery to be had, Plaintiff has not properly requested
14 this relief.

15
16 As the Supreme Court of Nevada affirmed in *Choy v. Ameristar Casinos, Inc.*, the party
17 opposing a motion for summary judgment and seeking a denial or continuance of the motion in
18 order to conduct further discovery provide an affidavit giving the reasons why the party cannot
19 present facts essential to justify the party's opposition. 127 Nev. 870, 872, 265 P.3d 698 (2011).
20 Plaintiff has failed to provide any affidavit specifying reasons why she cannot present essential
21 facts at this time. Even if Plaintiff had included an affidavit, there is no discovery presently
22 allowed that would provide Plaintiff with the evidence needed to overcome the merits of Mr. and
23 Mrs. Schuchmacher's motions. Thus, even if Plaintiff had properly requested relief pursuant to
24 NRCP 56(d), it should be denied.

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E. Conclusion

Based on the foregoing, Mr. and Mrs. Schuchmacher respectfully submit the court would abuse its discretion and commit clear error if it did not grant their motion to strike Plaintiff’s experts and motion for summary judgment.

DATED this 19th day of May, 2021.

RESNICK & LOUIS, P.C.

/s/ Carissa Christensen

RANDALL TINDALL
Nevada Bar No. 6522
CARISSA CHRISTENSEN
Nevada Bar No. 14692
8925 W. Russell Road Suite 220
Las Vegas, NV 89148
*Attorneys for Shaia Schuchmacher &
Beverly Schuchmacher*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that service of the foregoing **REPLY TO ALANA BARTON**
3 **AND BH BARTON'S OPPOSITION AND PLAINTIFF'S JOINDER THERETO TO**
4 **SHAIA SCHUCHMACHER AND BEVERLY SCHUCHMACHER'S MOTION FOR**
5 **SUMMARY JUDGMENT AND MOTION TO STRIKE PLAINTIFF'S EXPERTS** was
6 served this 19th day of May, 2021, by:

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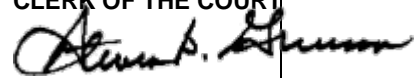
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18 */s/ Lisa Bell*

19 By: _____
20 An Employee of Resnick & Louis, P.C.



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 ALANA BARTON,

9 Plaintiff,

10 vs.

11 SHAIA SCHUCHMACHER,

12 Defendant,

CASE#: A-19-802489-C

DEPT. II

13
14 BEFORE THE HONORABLE CARLI L. KIERNY, DISTRICT COURT JUDGE
15 WEDNESDAY, JULY 28, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **SHAIA SCHUCHMACHER AND BEVERLY SCHUCHMACHER'S**
18 **MOTION FOR SUMMARY JUDGMENT AND MOTION TO STRIKE**
19 **PLAINTIFF'S EXPERTS**

20 APPEARANCES: [All appearance via videoconference]

21 For Plaintiffs:

Alana Barton

22 Estate of Yvonne Suggs

LAURA M. PAYNE HUNT, ESQ.

23 For Defendants:

CARISSA C. YYUHAS, ESQ.

24 For Counter Defendant:

Alana Barton

ELIZABETH B. LOWELL, ESQ.

25 RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, July 28, 2021

2
3 [Case called at 9:50 a.m.]

4 THE COURT: Let's do Barton versus Schuchmacher,
5 A802489, Page 9.

6 MS. PAYNE HUNT: Good morning, this is [audio
7 distortion] Hunt, bar number 4718, plaintiff's counsel for [audio
8 distortion] Barton and the Estate of Yvonne Suggs.

9 THE COURT: Okay.

10 MS. LOWELL: Good morning, Your Honor, Elizabeth
11 Lowell for Alana Barton as a counter defendant, bar number --

12 MS. YUHAS: And good morning, Your Honor, -- good
13 morning, Your Honor, this is Carissa Yuhas, bar number 14692,
14 appearing for defendant's Mr. and Mrs. Schuchmacher.

15 THE COURT: Okay, great.

16 So this is on for a motion for summary judgment and
17 motion to strike plaintiff's experts. This is your motion for Ms.
18 Schuchmacher, defense. Is there anything that you wanted to add
19 to the written pleadings?

20 MS. YUHAS: Your Honor, I do think the written pleadings
21 are fairly thorough. I do want to add, you know, the issue of the fact
22 that the joinder was filed untimely. The joinder to the opposition
23 was filed untimely. While we were -- you know, before this matter
24 got continued it was kind on a pressing deadline and so that was a
25 matter of high importance. And then additionally, the opposition

1 that was filed by the counter defendant and third-party defendant, I
2 want to reiterate that that -- they have no standing to oppose this
3 motion. They're not adverse parties to my clients in the fact that --
4 facts of the motion for summary judgement. In fact they only stand
5 to benefit from this motion for summary judgment being granted.

6 Additionally the experts that we're seeking to strike their
7 opinions they were not [indiscernible] by them as -- in their
8 capacities as counter defendant and third-party defendant and so
9 they don't have any standing to oppose that here.

10 The other thing that I would like to add, there was an
11 issue raised when we previously had this hearing and the Senior
12 Judge was filling in.

13 THE COURT: Yeah.

14 MS. YUHAS: Counsel for plaintiff had raised the issue
15 that discovery was ongoing and that simply is not true in that it does
16 not affect this motion. As you probably recall, and you've seen our
17 order and signed the order, the motion to reopen discovery was for
18 limited purposes. And it was plaintiff's motion, plaintiff had every
19 opportunity to state what discovery they needed. They only wanted
20 to depose Mr. Mendia, who is represented by plaintiff's counsel as
21 well. And serve some written discovery and then retain additional
22 experts. There was no mention at the hearing, in the brief, nothing
23 about needing additional time for their experts who were already
24 retained to supplement their opinions.

25 In the opposition they did include a couple supplemental,

1 I guess we would call them, reports or addendums to their report.
2 These were not disclosed previously in discovery before the cutoff.
3 I've now filed a motion to strike these formally, because they were
4 disclosed just last week. And in fact Dr. Opfer's report was just
5 disclosed yesterday. So I will be getting a motion on file if
6 necessary to strike that as well for being untimely.

7 THE COURT: I do see that filed on 7/27.

8 MS. YUHAS: And I wanted to bring that to the Court's --

9 THE COURT: Did you file that yesterday?

10 MS. YUHAS: Yes, it was filed yesterday. It was only
11 disclosed on the 20th, I believe, last week. And so that's why the
12 motion to strike was just recently filed.

13 THE COURT: And is that going to be heard here or is
14 that going to be in front of the Discovery Commissioner? I'm sorry;
15 I just haven't had a chance to go through the motion in its entirety.

16 MS. YUHAS: Yeah, not a problem. I didn't expect you
17 to. It's schedule to be in front of you, I believe the beginning of
18 September --

19 THE COURT: Okay.

20 MS. YUHAS: -- was the date.

21 THE COURT: Got it. All right, anything else?

22 MS. YUHAS: And other than that, other than that I think
23 you know, the pleadings speak for themselves, especially the
24 arguments raised in the reply. I just want to reiterate that there is
25 really -- even, you know, taking into account if we're going to take

1 into account all the expert reports and opinions that they have
2 provided whether untimely or not there is still no genuine issue of
3 material fact here, especially when we look at it in the eyes of
4 *Wilson v. Circus Circus Hotels*.

5 What we have here is a multitude of, you know, things
6 that could have happened or might have happened. We could
7 speculate all day, but when it comes down to it, is there is no
8 evidence that Ms. Suggs tripped, that she tripped on a dangerous
9 condition and that her -- the cause of that contributed or caused her
10 death. There's multiple reasons why the motion for summary
11 judgment must be granted here and those are listed in our brief.

12 THE COURT: All right. Turning to Ms. Payne Hunt.

13 MS. PAYNE HUNT: Good morning, Your Honor, when
14 we heard this [audio distortion] Judge Cherry, Ms. Yuha's
15 represented to Judge Cherry that discovery had not -- was closed.
16 And Judge Cherry got quite irate with that disclosure to the Court.
17 [audio distortion] that in fact it had been reopened and [audio
18 distortion] record. And she said well yes for limited purposes. And
19 Judge Cherry was somewhat irate at [audio distortion] and he
20 continued to [audio distortion].

21 I think there's a lot of misrepresentations here and I'd just
22 like for the record to be clear.

23 THE COURT: Okay.

24 MS. PAYNE HUNT: I think that the pleadings defy these
25 representations as well. First of all, the argument that co-counsel

1 do not have standing to challenge the motion is completely without
2 merit. They are defendants in this matter. Should this matter be
3 found to be in favor the plaintiff, they would have personal liability in
4 this matter for damages sustained by Ms. Barton would have to pay
5 those damages. So we are co-counsel in this, because we are both
6 being -- they are being sued by the Schuchmacher's. So they
7 absolutely have standing to challenge this motion.

8 In addition, our joinder was filed. I don't think the joinder
9 is even necessary but it is filed before the Court [audio distortion]
10 motion. A few other representations [audio distortion] back and
11 forth of [audio distortion] order of reopening discovery, we don't
12 have [audio distortion] in this matter, so there was no prejudice
13 [audio distortion].

14 THE RECORDER: I'm not getting --

15 MS. PAYNE HUNT: -- the representation --

16 THE COURT: Ma'am, I'm so sorry, Ms. Payne Hunt, you
17 are breaking up. We're missing about every third word.

18 MS. PAYNE HUNT: I'm so sorry.

19 THE COURT: I just want to make sure I hear your entire
20 argument so.

21 MS. PAYNE HUNT: Yeah, [audio distortion] that for sure,
22 Your Honor. I'm a little closer now.

23 THE COURT: Yes.

24 MS. PAYNE HUNT: Is that any better? I --

25 THE COURT: It is better. I'm sorry make you lean over

1 like that. Go ahead.

2 MS. PAYNE HUNT: That's okay. I'm sorry you have to
3 at my face close up. So I'll try and go back to the arguments, Your
4 Honor. First of all, they -- discovery [audio distortion] by the Court.
5 That [audio distortion] and granted -- most -- it was reopened [audio
6 distortion] for I think the Court signed was outside the minute order
7 but we submitted competing orders. There is no prejudice here.

8 And these -- another misrepresentation that was just
9 made was that we just produced these reports. That's untrue.
10 These reports are before Your Honor. They were just formally
11 produced, because discovery is reopened for expert witnesses. But
12 they're attached. There's nothing new. They're attached back in
13 April to the opposition here. So the representation and motion to
14 strike new expert reports, it's just a technicality. These are already
15 produced. They're already attached here. Okay.

16 And the legal argument that we presented is very solid.
17 The case law is submitted by the defense in this case is weak at
18 best in relying on cases that are not one on point and not one
19 favorable. These experts that are produced by us in this matter are
20 extraordinarily qualified. And that is the best way that I can put it.
21 Mr. Opfers has been teaching engineering at UNLV since 1996.
22 Ms. Raven has been a board certified forensic medical examiner for
23 over 20 years. They are very qualified experts. This case is a
24 battle of the experts.

25 They are making factual arguments to you, but stating to

1 you that no factual material fact in dispute exists. If in fact an
2 eyewitness was necessary every time there was someone drowned
3 in order to have liability, there would be no drowning cases, that
4 would be a wonderful thing, because no one drown because
5 someone would see them and pull them out of the water.

6 So what we have here is a reconstruction of how this
7 person tragically lost their life on this property. And the experts in
8 this case, they -- although they differ in their opinions are very
9 strong. And I don't want to -- the Court is well versed here in the
10 qualification of expert. It's been well briefed, so I don't want to go
11 through everything that that Court already knows about the
12 *Hallmark* standard, and the *Daubert*, and the rules of evidence.

13 But these -- these witnesses are scientific witnesses that
14 are abundantly qualified that will clearly help the finder of fact
15 determine how in fact this happened. Their experts differ. He talks
16 about a pooper scooper. Their expert -- that's I guess against the
17 wall, that why wasn't he using that as a fact. Our experts talk about
18 that extreme trip hazards in this yard and how they don't meet code.
19 Their expert talks about, we don't use the right code. Our expert
20 rebuts and says no we do use the right code.

21 This is a battle of the expert and their testimony based on
22 their qualifications. This is not a matter that is anywhere near
23 meets the standard for summary judgment and there is no legal
24 foundation to strike the pleadings or the witnesses in this case,
25 Your Honor.

1 THE COURT: Ms. Payne Hunt, do you want to address
2 the reliable methodology regarding Dr. Opfer, the reliability of his
3 methodology?

4 MS. PAYNE HUNT: Yes. Yes, he has -- and I want to
5 allow Elizabeth to address this as well, but he has been a building
6 and construction expert for over 25 years. He went to the premises.
7 There are extensive measurements and photos of the scene. In his
8 report, he states clearly why these findings that he makes [audio
9 distortion] with the fact that instead of regular landscape rock they
10 take literally bricks. Bricks like you build a brick wall and sledge-
11 hammer them and put them in the landscape and the landscape
12 has deteriorated to the point where there is even 4 inch gaps all
13 over the exterior of the pool, what used to be a paver situation.

14 So Mr. Opfer utilizes the facts of his review of the
15 premises and then uses the building code that states that these are
16 numerous trip hazards because of the distance between the step
17 downs and explains why these do not meet the building standard
18 and why these are trip hazards in his report.

19 THE COURT: All right. Let me see if I have any other
20 questions for you.

21 MS. PAYNE HUNT: Okay. I was [audio distortion]

22 MS. LOWELL: I'm sorry. You seem to be breaking -- did
23 someone ask for Elizabeth Lowell?

24 MS. PAYNE HUNT: I believe --

25 THE COURT: Yes. Ms. Payne Hunt tagged you in.

1 MS. PAYNE HUNT: Oh yeah, I [audio distortion] want to
2 respond as well.

3 MS. LOWELL: Yes, I did want to rely on the pleadings. I
4 just would like to emphasize to the Court neither one of these
5 experts has been deposed. So the -- you know, they have had no -
6 - if the defense has questions about their methodology or about
7 their reliability, they could have deposed the experts and asked
8 them to explain. Or the Court could do a voir dire. It would just be
9 quite unusual to just take their report, which is not their testimony
10 and assume their testimony is not going to meet the standards
11 when it has never been elicited by anyone.

12 I also Neil Opfer, he did a lot of measurements. So that's
13 a reliable method. He applied those methods to his measurements,
14 to his -- the uniform building code. The other expert disagrees as to
15 what the applicable code is. But clearly that's not something that,
16 you know, that I can speak to as that's a matter for the experts.
17 The jury should be allowed to hear the theories of both experts as
18 to what code applies.

19 THE COURT: All right.

20 MS. LOWELL: I also did want to add one additional note
21 is that I haven't heard much about Dr. Raven.

22 THE COURT: Uh-huh.

23 MS. LOWELL: I don't believe -- something that hasn't
24 been mentioned is the defendant's objection to her report is that
25 she does not mention that her opinions are to a reasonable degree

1 of medical certainty. But I would note that the defendant's own
2 coroner's report also -- it uses very speculative words. Ms. -- Dr.
3 Shuman who is the coroner she says she may have suffered a
4 coronary event. It seems -- you know, the wording in the report is
5 very speculative.

6 He was deposed and at that time he was asked is this to
7 a reasonable degree of medical certainty. And he responded yes it
8 is. But, you know, our expert was never deposed and therefore no
9 one asked her that question. I don't think that's required to be put
10 into a report or both experts' reports would be disqualified. The
11 Rule 16.1 says you need to have your opinions and the basis for
12 them. Not the degree of certainty of your opinion And that's all I
13 have Your Honor, thank you.

14 THE COURT: Okay, great, thank you. Turning to, Ms.
15 Yuhas, it is your motion. You do get the final word, anything that
16 you wanted to add?

17 MS. YUHAS: Yes, thank you. I would like to touch on a
18 few things that were raised. As far as the discussion of, you know,
19 discovery being reopened and what the purpose is. I think it
20 distracts from the fact that there's been no attempts by plaintiff or
21 third-party defendant to show how that discovery is going to affect
22 this motion.

23 There's been honestly, you know, since the motion to
24 reopen discovery was granted that was on May 12th. Since then
25 only written discovery has been propounded on my client and it was

1 about her financial -- financials and other rental property, but
2 nothing to do with anything that would support, you know, the
3 argument that plaintiff are raising in opposition of this motion today.
4 And there's been no affidavit stating, you know, how they anticipate
5 this continued discovery to affect that as well.

6 Moving on to, you know, the experts methodology here.

7 THE COURT: Uh-huh.

8 MS. YUHAS: It's a huge that we have because, you
9 know, we're not disputing that the experts are qualified at this point,
10 you know, that's not the issue. The issue is the methodology in
11 reaching the opinions that they did. The opinions of Mr. Opfer are
12 that Ms. Suggs likely was likely outside in the landscaped area
13 picking up after her dog. And there were numerous fall hazards in
14 the left of the pool. This is based on speculation. Mr. Opfer even
15 admits in his report that the opinions that somebody -- or that she
16 was outside -- likely outside picking up after her dog was from an
17 unknown, unidentified individual. That's not reliable methodology.
18 There -- it's purely based on speculation.

19 Additionally the issue with the numerous trip hazards, you
20 know, he lists out and they talk about how he did a bunch of
21 measurements and found, you know, essentially went through the
22 backyard and found anything that he could imagine that somebody
23 would trip on. The issue is, you know, the growing issue is that this
24 area that plaintiff has now pinpointed as the dangerous condition,
25 the area back behind the pool, is a clearly landscaped area and

1 that's what, you know, we referred to it in this case. Essentially it's
2 a garden bed. Plaintiff herself in her deposition admitted that this is
3 not a walking path, not a common walking area. She even said you
4 would not want to walk on those rocks. And so, you know, plaintiff's
5 claim fails right there. There is no dangerous condition. The -- you
6 know, to use this area in the reasonably foreseeable use is not to
7 walk through this area. And so there are no trip hazards there.

8 Additionally the argument about Dr. Raven's report, I do
9 think that there is an issue here with her not providing that her
10 opinions are to a reasonable degree of medical certainty. Of course
11 she provides this addendum late, after discovery has closed. It was
12 provided in their opposition. It was not formally disclosed until just
13 recently and that's why we have the formal motion to strike against
14 it. So, you know, it severely prejudices my client and they -- in that,
15 you know, they want to say that well Dr. Raven was never deposed.
16 That's not my client's burden. It's plaintiff's burden to prove this
17 case. Of course we weren't going to depose her when her opinions
18 don't rise to a level that requires us to go further -- dig further.

19 And you know, they want to raise that the coroner's report
20 -- and they call it the defendant's coroner that, you know, we've
21 disclosed him as a non-retained expert simply because he
22 performed the autopsy of Ms. Suggs. But it's not, you know, our
23 retained expert in this case. But we did go further and get his
24 testimony and he did, you know, rise his opinion to that level of
25 reasonable medical certainty.

1 So I wanted to just, you know, bring that back to say that,
2 you know, I think the issues are getting distracted in that they want
3 to point out things the defendant didn't do, or you know, for the lack
4 of evidence in this case. But that's not our burden. It's plaintiff's
5 burden to prove her case. And for the mere four reasons, there's --
6 I mean, take your pick. Even if we put in all of the expert opinions,
7 there still is no genuine issue of material fact.

8 And what we -- if this case presented at trial we'd be
9 preventing just pure speculation. Or sorry, I mean, plaintiff would
10 be presenting just pure speculation to the jury. And the jury would
11 be forced to choose between equally probable events. And that
12 was is what *Wilson v. Circus Circus*, you know, disallows. And
13 those law and motion for summary judgment should be granted.

14 THE COURT: All right. Thank you, Ms. Yuhas. I certainly
15 understand the arguments. Regarding summary judgment, we'll
16 address that first. There is an element of prematurity to this, because
17 discovery is still open. I do understand that it's very limited and might
18 not go to these issues, but there is that issue.

19 But moreover, I am finding that there are still genuine issues
20 of material fact that I think should be determined by the trier of fact.
21 These arguments set forth that there's obviously this dispute regarding
22 proximate or direct cause of Ms. Suggs' death. And we do have an
23 expert testifying that this is to a scenario that is -- that is possible and he
24 has the underpinnings to do so, as I'll address later. There's questions
25 regarding assumption of risk other defenses. There's questions

1 regarding the liability of the methods used by the experts and frankly
2 which experts are to be believed. Ultimately knowing this cause of
3 death it's an essential element for the claim of -- for relief and it's
4 present, I just don't think at this time summary judgment is appropriate
5 given that these material issues still exist.

6 Regarding the expert witnesses, when I apply the *Hallmark*
7 factors I do find that both experts meet that standard.

8 The matter regarding the untimely opposition, I find that to be
9 a technical issue. I think striking their opposition based solely on timing
10 issue when we had continued this, when we reopened discovery and
11 when this motion itself had been continued from Justice Cherry to this
12 date for me to make a more full determination on that, ultimately I think
13 striking it would just be completely unfair at this point.

14 The issue that was raised under the *Hallmark* factors,
15 obviously qualifications were there. No one is disputing those. When
16 we're getting to the assistance prong and getting to the reliable
17 methodology, ultimately we have accident reconstructionist that's mostly
18 -- Dr. -- or Mr. Opfer's information -- Mr. Opfer's the challenged expert
19 here. We have a situation where he did what expert reconstructionist do
20 which is take measurements, photos, and see if he can recreate a
21 possibility where this outcome happened.

22 This is very similar to what the this -- the Nevada Supreme
23 Court analyzed in *Matthews versus State* in a criminal context, but still
24 regarding an accident reconstructionist. And they've determined there
25 doesn't need to be an expert to testify that this is what happened. An

1 accident reconstructionist is there to see is this -- is this physically
2 humanly possible. And so I think ultimately his testimony would be of
3 assistance. And I think ultimately the arguments that defense raises,
4 while they could be convincing to a jury that's issue ultimately of weight
5 not admissibility.

6 So when I apply the *Hallmark* factors, I do find that both of
7 their experts are qualified and so the motion is denied in its entirety.

8 Ms. Payne Hunt to prepare the order.

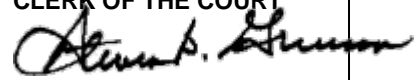
9 MS. PAYNE HUNT: Thank you, Your Honor.

10 THE COURT: Thank you everyone.

11 [Hearing concluded at 10:15 a.m.]
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23 
24 Jessica Kirkpatrick
25 Court Recorder/Transcriber



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DISTRICT COURT
CLARK COUNTY, NEVADA

ALANA BARTON, both Individually and as
Special Administrator of the Estate of YVONNE
SUGGS,

Plaintiff,

v.

SHAIA SCHUCHMACHER; BEVERLY
SCHUCHMACHER, DOES I through X and
ROE CORPORATIONS I through X, inclusive,

Defendants.

SHAIA SCHUCHMACHER; BEVERLY
SCHUCHMACHER,

Counterclaimants,

vs.

ALANA BARTON,

Counter-defendant.

SHAIA SCHUCHMACHER; BEVERLY
SCHUCHMACHER,

Third-Party Plaintiffs,

Case No. A-19-802489-C

DEPT.: 2

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS' MOTION
TO STRIKE PLAINTIFF'S EXPERTS
AND MOTION FOR SUMMARY
JUDGEMENT**

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vs.
BH BARTON; ALEXANDER MENDIA,
Third-Party Defendants.

PLEASE TAKE NOTICE that the Order Denying Defendants’ Motion to Strike Plaintiff’s Expert and Motion for Summary Judgment was entered on August 11, 2021. A copy of the document is attached.

DATED this 10th day of August, 2021.

RESNICK & LOUIS, P.C.

/s/ Carissa Yuhas

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S EXPERTS AND MOTION FOR SUMMARY JUDGEMENT** was served this 10th day of August, 2021, by:

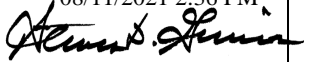
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/s/ Brittany Willis
By: _____
An Employee of Resnick & Louis, P.C.


CLERK OF THE COURT

ORDR

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DISTRICT COURT

CLARK COUNTY, NEVADA

ALANA BARTON, both Individually and as
Special Administrator of the Estate of YVONNE
SUGGS,

Plaintiff,

v.

SHAIA SCHUCHMACHER; BEVERLY
SCHUCHMACHER, DOES I through X and
ROE CORPORATIONS I through X, inclusive,

Defendants.

SHAIA SCHUCHMACHER; BEVERLY
SCHUCHMACHER,

Counterclaimants,

vs.

ALANA BARTON,

Counter-defendant.

SHAIA SCHUCHMACHER; BEVERLY
SCHUCHMACHER,

Third-Party Plaintiffs,

) Case No. A-19-802489-C

) DEPT.: 2

) **ORDER DENYING DEFENDANTS'**
) **MOTION TO STRIKE PLAINTIFF'S**
) **EXPERTS AND MOTION FOR**
) **SUMMARY JUDGEMENT**

1 vs.)
2 BH BARTON; ALEXANDER MENDIA,)
3 Third-Party Defendants.)
4 _____)

5 Defendants, SHAIA AND BEVERLY SCHUCHMACHER, by and through their
6 counsel, Carissa Yuhas, Esq. of Resnick & Louis, P.C., filed their Motion to Strike Plaintiff's
7 Experts and Motion for Summary Judgment on April 14, 2021. Third-Party Defendant, BH
8 BARTON, and Counter-defendant, ALANA BARTON, by and through their counsel, Elizabeth
9 B. Lowell, Esq. of Kring & Chung, filed an opposition to the motions on April 29, 2021.
10 Plaintiff, ALANA BARTON, both Individually and as Special Administrator of the Estate of
11 YVONNE SUGGS, by and through her counsel, Laura Payne-Hunt, Esq., of the Law Offices of
12 Laura Payne-Hunt, P.C., filed a joinder to the opposition on May 13, 2021.

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15 The Motion was originally set for hearing on May 26, 2021, before the Honorable Judge
16 MICHAEL CHERRY, who was substituting for the sitting Honorable Judge CARLI KIERNY.
17 The Court continued the matter so that it could be heard by the Honorable Judge CARLI
18 KIERNY. The hearing on the motions was held on July 28, 2021.

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20 At both hearings, ALANA BARTON appeared by and through her counsel, Laura Payne-
21 Hunt, Esq. of the Law Offices of Laura Payne-Hunt, P.C., (representing her in her capacity as
22 Plaintiff) and Elizabeth B. Lowell, Esq. of Kring & Chung (representing her in her capacity as
23 Counter-defendant). SHAIA AND BEVERLY SCHUCHMACHER appeared by and through
24 their counsel, Carissa Yuhas, Esq. of Resnick & Louis, P.C. Third-Party Defendant, BH
25 BARTON, also appeared through his counsel Elizabeth B. Lowell, Esq. of Kring & Chung.

26
27 The Court having heard the arguments of counsel on Defendants' Motion to Strike
28 Plaintiff's Experts and Motion for Summary Judgment, and having reviewed the papers and

1 pleadings on file herein, the Court hereby makes the following findings of fact and conclusions
2 of law:

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

4 **THE COURT FINDS** that there are genuine issues of material fact regarding the dispute
5 of the causation element of Plaintiff's claims;

6 **THE COURT FURTHER FINDS** that Plaintiffs' experts, Neil Opfer and Dr. Kathy
7 Raven, meet the standard set forth in *Hallmark v. Eldridge* (2008) 124 Nev. 492 in their
8 qualifications and ability to provide assistance to the trier of fact. The arguments raised by
9 Defendants regarding the reliability of the methodology of the experts' opinions reflect the
10 weight of the evidence rather than the admissibility.

11 **THE COURT FURTHER FINDS** that the arguments raised by Defendants in their
12 Reply brief regarding the Opposition and the timing of the Joinder to Opposition are technical
13 issues and since the motion was continued to a later hearing date, it would be unfair to disregard
14 the Opposition and Joinder based on untimeliness at this time. Therefore, the issues are moot;

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IT IS HEREBY ORDERED that DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S EXPERTS AND MOTION FOR SUMMARY JUDGEMENT ARE DENIED.

Dated this 11th day of August, 2021

Carri Kung

DISTRICT COURT JUDGE
888 49D 5F7D C941
Carli Kierny
District Court Judge

Submitted by:

RESNICK & LOUIS, P.C.

/s/ Carissa Yuhás

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Nevada Bar No. 6522
CARISSA YUHAS, ESQ.
Nevada Bar No. 14692
8925 W. Russell Road Suite 220
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Approved as to form:
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*Attorney for Plaintiffs and
Third-Party Defendant,
Alexander Mendia*

Approved as to form:
KRING & CHUNG

Refused to sign
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Barton and Third-Party Defendant,
BH Barton*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Alana Barton, Plaintiff(s)

CASE NO: A-19-802489-C

7 vs.

DEPT. NO. Department 2

8 Shaia Schuchmacher,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/11/2021

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