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DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA TAYLOR, AN INDIVIDUAL Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD & DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendant.	Case No. A-17-761650-C Dep't No. XVI **NOTICE OF APPEAL**

Please take notice that defendant Smith's Food & Drug Centers, Inc. d/b/a Smith's Food and Drug hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;

2. "Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees," filed January 20, 2021, notice of entry of which was served electronically on January 21, 2021 (Exhibit A);

Docket 84049 Document 2022-00861

Case Number: A-17-761650-C

3. "Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer to Liability and Damages, Motion for Stay Pending Resolutions by the Nevada Supreme Court and Motion for Clarification on Order Shortening Time," filed April 12, 2021, notice of entry of which was served electronically on April 15, 2021 (Exhibit B);

4. "Order Denying Defendant's Motion for Reconsideration or, in the Alternative, to Alter or Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on Order Shortening Time," filed November 30, 2021, notice of entry of which was served electronically on December 1, 2021 (Exhibit C); and

5. All judgments, rulings and interlocutory orders made appealable by the foregoing.

Dated this 3rd day of January, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Joel D. Henriod*

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Attorneys for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of January, 2022, a true and correct copy of the foregoing "Notice of Appeal" was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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Jared B. Anderson
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Attorneys for Plaintiff

/s/Jessie M. Helm
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EXHIBIT A

EXHIBIT A

Electronically Filed
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DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES**

NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES

PLEASE TAKE NOTICE that the Order Granting Plaintiff's Renewed Motion To Strike Defendant's Answer, Motion For Sanctions And Attorney Fees was entered by the above

entitled Court on the 20th day of January, 2021, a copy of which is attached hereto and made a part hereof.

DATED this 21 day of January, 2021.

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of TANNER CHURCHILL ANDERSON LAW FIRM and that on the 21 day of January, 2021, I served the above and foregoing **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES** by Electronic Service to the following:

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Courtney McNeman
An Employee with Tanner Churchill Anderson

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OGM
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DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. DEFENDANT FOOD & DRUG CENTERS, INC. d/b/a DEFENDANT FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES** Date of Hearing: November 5, 2020 Time of Hearing: 9:00 a.m.

ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES

Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees ("Motion to Strike"), having come on for hearing on November 5, 2020, the Court having read and considered the Motion, the Opposition, and Reply to the same; and being fully advised on the premises, and good cause appearing therefore,

FINDINGS

THE COURT FINDS there exists substantial evidence to support Ms. Taylor's allegations that Defendant had actual notice that the West automatic entry doors[1] were malfunctioning, unsafe and in need of substantial repair approximately seven (7) weeks before the West Doors caused injury to Ms. Taylor.

THE COURT FURTHER FINDS that there exists substantial evidence to support Ms. Taylor's allegation that Defendant's failure to fix the West Doors prior to Ms. Taylor's injury constitutes a conscious disregard of public safety. Prior to Ms. Taylor's injury, Defendant ignored nine (9) communications from its third-party vendor requesting authorization to fix the West Doors including replacing the unsafe sensors.

THE COURT FURTHER FINDS that from the time the West Doors injured Ms. Taylor, Defendant engaged in a scheme to halt the adversarial process. The scheme included intentionally destroying vital evidence which would support Ms. Taylor's allegations of actual notice and conscious disregard such as the destruction of the West Doors' sensors, destruction of work quotes from its third-party vendor to replace the unsafe sensors, destruction of emails from Defendant's third-party vendor following up on the request to replace the unsafe sensors, emails from Defendant to the third party vendor approving the replacement of the sensors three (3) week after Ms. Taylor was injured, and the actual repair invoice from the third-party vendor to Defendant. This COURT FINDS that during the approximately two and one half (2.5) years the parties engaged in discovery, Defendant repeatedly engaged in serious discovery abuses which indeed halted the adversarial process including willfully providing blatantly false testimony under oath, ignoring its discovery obligations, submitting false and/or misleading documents, and exhibiting a lack of candor to this COURT. These actions show a willful and deliberate attempt to defeat Ms. Taylor's claims by engaging in repetitive, abusive, and recalcitrant actions before

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[1] The store has two sets of doors, both located on the west side of the store. The doors at issue in this case are the furthest west doors and are referred to as the "West Doors." The documents produced by the Defendant are confusing because they do not always reference certain doors and sometimes just reference the "front doors."

and during discovery which resulted in many years of misguided litigation. Further, these actions demonstrate repeated, brazen, ongoing refusal to follow Nevada Rules of Civil Procedure related to discovery, all in an attempt to hide the truth and wrongfully prevail in this litigation.

THE COURT FURTHER FINDS that Defendant intended the consequences of its repetitive, abusive, and recalcitrant actions and that striking the Defendant's Answer as to both liability and damages is necessary to prevent similar abuses and act as a deterrent to other litigants.

FINDINGS OF FACTS

The following is timeline of relevant facts in this case. Importantly, this timeline is in chronological order. The timeline, however, does not reflect the timing as to when Ms. Taylor actually discovered many salient facts in this case.

1. **October 14, 2016:** Defendant's employee Travis Childers[2] creates a Work Order[3] where it is noted, "front doors in entrance ... running very poorly ..." Defendant's internal maintenance personnel asked: "Please dispatch ASSA ABLOY to repair auto entrance doors."

This fact is significant as it establishes that Defendant's employees actually accessed and created Work Orders in the Service Hub Program. This is contrary to representations made by Defendant which asserted only ASSA ABLOY is responsible for maintaining the Service Hub Program.

2. **October 17, 2016:** ASSA ABLOY Technician is "on site" at Defendant's store to evaluate the West Doors.

3. **October 17, 2016:** ASSA ABLOY Technician fills out the Inspection Form for Power Operated Doors: Sliding Doors ("Inspection Form") where he notes that the West Doors' safety systems are not operational and the West Doors do not comply with the applicable standards. Defendant's employee, Gilbert Alvarado signs this Inspection Form. ASSA ABLOY also

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[2] Travis Childers is the Employee that created the Work Order in the Service Hub Program. He is also the employee that signed the documents on December 21, 2016 noting that ASSA ABLOY fixed the doors and brought them into compliance with the applicable standards.

[3] A Work Order is created when information is input into the Service Hub, an internal program maintained by Defendant.

created a Worksheet ("Worksheet") showing work performed on site and Gilbert Alvarado signed the Worksheet.

This fact is significant for several reasons. First, this fact supports Ms. Taylor's claims that Defendant had actual notice that the West Doors were malfunctioning and unsafe as the Inspection Form is signed by Defendant's employee, Gilbert Alvarado. Second, this fact is significant because Defendant withheld this Inspection Form from its initial NRCP 16.1 production of documents and specific requests for production of documents. This document was produced by ASSA ABLOY in response to subpoena near the close of discovery after Defendant denied, under oath, any issue with the West Doors necessitating repair.

4. **October 18, 2016:** ASSA ABLOY prepares two quotes for Defendant related to the West Doors and e-mails them to Defendant. One quote is to bring the West Doors into compliance with the applicable ANSI standards ("Compliance Quote"), and the other quote is to repair the West Doors (the "Repair Quote"). Regarding the Repair Quote, ASSA ABLOY's e-mail states: "Please find the attached quotes. The repair quote … will need to be approved to get the West Doors up and running." These quotes were sent to Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and starts timeframe wherein Defendant should take steps to repair unsafe condition. As Defendant is notified about necessary repairs forty-three (43) days before Ms. Taylor's injury, this would be supportive of Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld these Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. These Quotes, in redacted form, were produced by ASSA ABLOY in response to subpoena after ordered to do so by order of this COURT after the close of discovery. Again, under oath on several occasions, Defendant denied any issue with the West Doors necessitating repair or updates. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

5. **October 25, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached quote from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

6. **October 28, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

7. **November 1, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

8. **November 8, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

9. **November 15, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

10. **November 23, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

11. **November 29, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

12. **November 30, 2016:** Ms. Taylor is knocked down when the West Doors close in on her hitting her as she attempts to enter Defendant's store.

This fact is significant because Defendant is notified of Ms. Taylor's injury caused by unsafe West Doors' sensors which Defendant knew were defective and needed to be replaced. At this point Defendant is on notice of potential litigation. The injury occurred forty-seven (47) days after Defendant was first put on notice of the unsafe doors which supports Ms. Taylor's conscious disregard claim against Defendant. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

13. **December 6, 2016:** ASSA ABLOY sends an e-mail to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald asking about the status of the Quotes.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

14. **December 7, 2016:** Preservation of evidence letter indicating intent to sue is sent from Ms. Taylor's attorney to Defendant.

This fact is significant as it provides Defendant with actual notice of Ms. Taylor's intent to sue and the specific request to preserve evidence. Defendant was on notice of intent to sue within one (1) week of Ms. Taylor's injury. Despite having actual notice of Ms. Taylor's intent to sue and demand to preserve evidence, this COURT finds that Defendant intentionally destroyed vital evidence including the West Doors' Inspection Form which found safety systems were not operating properly, the Worksheet, Repair and Replacement Quotes, and emails from ASSA ABLOY to Defendant. This fact supports a finding of willfulness as Defendant had actual notice of Ms. Taylor's intent to sue but Defendant decided to destroy this crucial evidence anyway.

15. **December 7, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

16. **December 20, 2016:** Defendant's employee and NRCP 30(b)(6) corporate representative, Dieter Thurnwald, approves repair and replacement on West Doors in an e-mail.

This COURT finds this is one of the most significant facts in this case. First, Defendant destroyed the e-mail confirmation from Mr. Thurnwald to ASSA ABLOY wherein Defendant approves ASSA ABLOY's Repair and Replacement Quotes. This e-mail was destroyed despite Defendant having received Ms. Taylor's December 7, 2016 preservation letter two (2) weeks earlier. Neither the e-mail approval of the Quote nor the Quote were produced by Defendant in

NRCP 16.1 productions or in subsequent responses to requests for production. This fact supports Ms. Taylor's contention that Defendant acted willfully in destroying important evidence after being put on notice of pending litigation. Defendant's approval of the Repair and Replacement Quotes gives context to Ms. Taylor's conscious disregard claim against Defendant. Finally, as will be indicated hereafter, Dieter Thurnwald will later be one of Defendant's 30(b)(6) representatives who is identified as Defendant's corporate representative most knowledgeable regarding the West Doors. Despite having personally approved the Repair and Replacement Quotes, Mr. Thurnwald will falsely testify under oath that the West Doors' sensors were never repaired. This evidence supports Ms. Taylor's allegations that Defendant destroyed evidence with the intent to harm her case. This evidence also supports Ms. Taylor's contention that Defendant's false testimony and destruction of evidence was done with the intent to halt the adversarial process.

> 17. **<u>December 21, 2016:</u>** ASSA ABLOY comes to repair and replace the West Doors[4] which consist of replacing the sensors, motor, gearbox, wiring, and other component parts. The ASSA ABLOY technician fills out the Inspection Form for Power Operated Doors: Sliding Doors ("Second Inspection Form"). Defendant employee, Travis Childers, signs the Second Inspection Form. ASSA ABLOY also creates a Worksheet ("Second Worksheet"), and Travis Childers signs the Second Worksheet noting that the work has been performed.

This fact is significant for several reasons. First, Defendant was aware of pending litigation; yet Defendant failed to inform Ms. Taylor that Defendant was going to materially alter and replace important evidence and failed to provide Ms. Taylor an opportunity to inspect the West Doors prior to replacing the sensors, motor, gearbox, wiring, and other component parts. Second, Defendant destroyed the sensors, motor, gearbox, wiring, and other component parts which were repaired and replaced. At no time has Defendant come forward with any evidence that Defendant took any steps to preserve this evidence even though Defendant knew of pending

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[4] Throughout the Order the West Doors were repaired and many component parts such as the sensors, motor gearbox, wiring, other component parts were replaced. This event might be referred to herein as the replacement of the West Doors or a similar description.

litigation. The failure to provide a pre-repair inspection and the destruction of crucial evidence supports Ms. Taylor's allegations that Defendant destroyed the evidence with the intention to harm her case.

Next, Defendant failed to disclose the Second Inspection Form and Second Worksheet in its NRCP 16.1 disclosures and in response to specific requests for production of documents. These documents demonstrate that Defendant had actual knowledge that the repairs were made on December 21, 2016 as Defendant's employee Travis Childers signed off on the work being performed. This is significant because throughout litigation Defendant denied under oath any component parts were replaced. Later, after Ms. Taylor proved components were replace on the West Doors, Defendant denied having any knowledge of ASSA ABLOY having repaired and replaced sensors, motor, gearbox, wiring, and other component parts. This evidence supports Ms. Taylor's allegation that Defendant intentionally withheld this evidence with the intention of halting the adversarial process and gaining an advantage in the lawsuit.

18. **December 28, 2016:** ASSA ABLOY sends Defendant an invoice to get paid for the repair work done on December 21, 2016 to the West Doors.

This evidence is significant because Defendant failed to disclose the invoice in its NRCP 16.1 disclosures and in response to specific requests for production of documents. In fact, as will be discussed in more detail below, Defendant denied ASSA ABLOY ever sent Defendant an invoice for the repairs. Defendant's destruction of the repair invoice which was sent to Defendant by ASSA ABLOY three (3) weeks after Defendant received Ms. Taylor's December 7, 2016 preservation letter supports Ms. Taylor's allegation that Defendant destroyed this evidence with the intent to harm her case and to gain an advantage in the lawsuit. As will be discussed in more detail below, Defendant's false denial of having never received the repair invoice supports Ms. Taylor's allegation that Defendant willfully withheld this evidence with the intention of halting the adversarial process and to gain an advantage in the lawsuit.

19. **February 8, 2017:** Defendant completes its investigation of Ms. Taylor's fall, and then denies the claim stating: "After

careful review of the facts regarding the incident, our investigation has revealed no negligence on behalf of the store and therefore we must respectfully deny your client's claim for damages."

This fact is significant because it demonstrates Defendant's pre-litigation intention of denying Ms. Taylor claim. It also shows that Defendant conducted an investigation, but ignored evidence showing safety issues with the West Doors.

20. **September 18, 2017:** Ms. Taylor files her Complaint. Discovery begins shortly thereafter.

21. **October 15, 2017:** Defendant files Answer to Complaint.

22. **January 31, 2018:** Defendant's fails to produce significant documents, emails, etc. related to the unsafe West doors. Defendant identifies and produces contract for wrong door vendor.

This is significant because Defendant had the following in its custody, possession and control: (1) the West Doors' sensors, motor, gearbox, wiring, and other component parts; (2) the October 17, 2016 Inspection Form wherein ASSA ABLOY noted that the West Doors' safety systems were not operational; (3) the October 17, 2016 Worksheet; (4) the October 18, 2016 Quotes sent to Defendant; (5) the October 18, 2016 e-mail where ASSA ABLOY sent the Quotes to Defendant; (6) the correspondence wherein the Quotes was resubmitted to Defendant on October 25 and 28, as well as on November 1, 8, 15, 23, 29; (7) the December 6, 2016 e-mail from ASSA ABLOY asking about the status of the Quotes; (8) the correspondence wherein the Quotes were resubmitted to Defendant on December 7, 2016; (9) the December 20, 2016 e-mail where Defendant employee, Dieter Thurnwald approved the Repair and Replacement Quotes; (10) the December 21, 2016 Second Inspection Form signed by Defendant's employee, Travis Childers; (11) the October 17, 2016 Second Worksheet signed by Defendant's employee, Travis Childers; (12) the December 28, 2016 invoice for repairs completed by ASSA ABLOY. The failure to disclose these documents in Defendants initial production of documents supports Ms.

Taylor's allegation that Defendant withheld crucial evidence with the intention of harming Ms. Taylor's case and halting the adversarial process.

Additionally, Defendant disclosed the wrong door vendor to Ms. Taylor. Defendant did not disclose the contract it had with ASSA ABLOY, the door vendor at the time Ms. Taylor was injured. Rather, Defendant produced an old, outdated contract it had with Stanley Access Technologies, a company that had not provided any door maintenance, repairs, or upgrades for many years. This supports Ms. Taylor's allegation that Defendant intentionally thwarted the adversarial process by disclosing the wrong door vendor who had not performed work at the subject location for years prior to Ms. Taylor's injury. Clearly, at the time of this production, Defendant was well aware that ASSA ABLOY was the correct door vendor.

> 23. **August 8, 2018:** Ms. Taylor's expert, Michael Panish, attends first site inspection of doors at Defendant's store. Mr. Panish flew from New Hampshire to Las Vegas to attend site inspection. Defendant failed to inform Ms. Taylor that the subject doors which Mr. Panish inspected were replaced twenty (20) months before the site inspection.

This fact is significant because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, Defendant leads Ms. Taylor to believe that the West Doors are in the identical condition as at the time of her injury. Defendant knew that the West Doors' sensors, motor, gearbox, wiring, and other component parts were replaced. Yet, Defendant failed to inform Ms. Taylor of the changes before Ms. Taylor committed to time and expense of sending an expert to investigate.

> 24. **October 4, 2018:** Defendant responds to requests for production. Plaintiff's First Request for Production Nos. 27 and 28 requested all service records for the West Doors. Defendant failed to produce e-mails about the West Doors, Quotes from ASSA ABLOY, or many other documents. In fact, during discovery Defendant only produced documents for the wrong door and failed to produce any documents (other than the Work Order) for the West Doors.

This fact is significant as it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, Defendant was clearly aware that the injury happened at the **West** doors. Yet, Defendant chose to provide Ms. Taylor the service records for the **East** Doors. Again, Defendant had the opportunity to be forthright, but again, Defendant failed to provide Ms. Taylor the Inspection Forms, Worksheets, Repair and Replacement Quotes, e-mails, invoice, etc. Again, Defendant withheld vital documents which would support Ms. Taylor's allegations that Defendant had actual knowledge that the West Doors were unsafe and Defendant's failure to timely remedy the unsafe doors was a conscious disregard of her safety.

> 25. **February 25, 2019:** Ms. Taylor's expert, Michael Panish, attends second site inspection. Again, Mr. Panish flew from New Hampshire to Las Vegas to attend the second site inspection. Again, Defendant fails to inform Ms. Taylor that the West Doors' sensors, motor, gearbox, wiring, and other component parts were actually replaced on December 21, 2016.

This fact is significant because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, again, Defendant fails to inform Ms. Taylor that the West doors' sensors, motor, gearbox, wiring, and other component parts were replaced **twenty-six (26) months prior to the second site inspection.** Again, Ms. Taylor undertook the time and expense of a second site inspection based on the false pretenses.

> 26. **March 1, 2019:** Defendant's 30(b)(6) representative, Ms. Trisha Tamiko Kozlowski is deposed. She falsely testified that the only problem with the West Doors were them coming off the tracks.

This is significant because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, Ms. Kozlowski minimizes the breadth of issues which necessitated repair and replacement of the West Doors' sensors, motor, gearbox, wiring, and other component parts.

> 27. **June 27, 2019:** Plaintiff subpoenas ASSA ABLOY requesting any and all documents related to the West Doors.

This fact is significant because it gives context to when and how Ms. Taylor actually discovered Defendant had destroyed crucial evidence including the West Doors' sensors, motor, gearbox, wiring, component parts, inspection forms, quotes, numerous emails, Worksheets and invoice for work performed at the West Doors which all took place around the time Defendant received Ms. Taylor's preservation letter.

28. **July 2, 2019:** Ms. Taylor files motion for sanctions related to spoliation of evidence.

As mentioned above, on October 4, 2018, Defendant provided documents in response to requests for production of documents. While Ms. Taylor's request asked for documents related to the West Doors, Defendant provided documents related to the East doors. Based on Defendant's representation that the documents provided were for the West Doors, it appeared that Defendant failed to preserve certain evidence. Importantly, the hearing for this motion while originally set for August 2, 2019 was rescheduled to accommodate schedules including taking the deposition of Defendant's 30(b)(6) representative, Mr. Dieter Thurnwald which occurred on August 7, 2019.

29. **August 7, 2019:** Defendant's 30(b)(6) representative, Mr. Dieter Thurnwald is deposed. Mr. Thurnwald testifies that Defendant accidently provided records for the East doors in response to request for production of documents instead of the West Doors. Thereafter, when questioned regarding the West Doors, he falsely testified as follows:

> "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]
>
> Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]
>
> That no documentation existed about the west doors. [Thurnwald depo., pp. 73 - 75]

> That the last time the west doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]
>
> The door mechanisms for the west doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]
>
> Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]
>
> Finally, he testified that only in an "imaginary world" was the subject door ever worked on or replaced. [Thurnwald depo., pp. 115 and 118]

The depositions of Defendant's NRCP 30(b)(6) corporate representatives strongly supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. As mentioned above, on October 15, 2016 ASSA ABLOY Technician fills out the Inspection Form wherein he notes that the West Doors' safety systems are not operational, and the West Doors do not comply with the applicable standards. Mr. Thurnwald received all the quotes from ASSA ABLOY regarding the repair and replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts. These repairs would make the West Doors' safety system operation through replacement of the faulty sensors. Mr. Thurnwald is the employee who actually approved ASSA ABLOY to perform the work to replace the faulty sensors et al.

Mr. Thurnwald's binding testimony as Defendant's NRCP 30(b)(6) designee is shocking to this COURT. Mr. Thurnwald was fully aware that the West Doors' safety systems were not operational, and that significant work was required to make the safety systems operational. Mr. Thurnwald was aware of this safety issue approximately forty-four (44) days before the West Doors closed on Mr. Taylor causing injury. Mr. Thurnwald knew he approved ASSA ABLOY's quote for the replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts on December 20, 2016. Yet, Mr. Thurnwald provided blatantly false testimony which, if true, would dispute Ms. Taylor's allegations of actual notice related to liability and conscious disregard of safety related to punitive damages. The blatantly false testimony of Dieter Thurnwald provides strong indicia of Defendant's intent to halt the adversarial process.

30. **August 8, 2019:** Defendant supplements responses to Ms. Taylor's requests for production No. 34. Defendant indicated that the sensors and component parts were in fact still on the West Doors.

This fact is significant because it further supports Ms. Taylor's allegation that Defendant is providing false information to halt the adversarial process. Defendant knew the parts were replaced on December 21, 2016 as its employee, Travis Childers, signed off on ASSA ABLOY's Second Worksheet.

31. **August 9, 2019:** Defendant threatened Ms. Taylor's attorney, David Tanner, Esq., of violating NRCP Rule 11 for filing motion for sanctions related to destroyed or missing evidence.

First, it must be made clear that Ms. Taylor's July 2, 2019 motion for sanctions regarding lost or destroyed evidence related to the West Doors was in fact meritorious. While Ms. Taylor relied upon Defendant's production of documents which disclosed records of the wrong door, it turns out the destruction of evidence related to the West Doors was for more severe than that of the East doors. As such, Plaintiff's motion for sanction was indeed meritorious. The fact that Defendant threatened Plaintiff's counsel with Rule 11 sanctions for alleging Defendant lost or destroyed evidence related to the West Doors when in fact Defendant was fully aware that it failed to preserve nearly all substantive evidence related to the West Doors supports Ms. Taylor's contention that Defendant intended to halt the adversarial process through intimidation of counsel.

32. **August 15, 2019:** ASSA ABLOY sends Defendant a letter (and copies Jerry Busby, Esq., Defendant's counsel of record in this matter) asking for permission to disclose all relevant documents in response to Ms. Taylor's June 27, 2019 subpoena. Neither Defendant nor Jerry Busby, Esq. respond to ASSA ABLOY's letter.

The fact that Defendant never responded to ASSA ABLOY's letter requesting permission to fully disclose all responsive records related to the West Doors supports Ms. Taylor's contention that Defendant intended to halt the adversarial process. Here, ASSA ABLOY was prevented by contract with Defendant from disclosing the Quotes, invoice, and other documents without

Defendant's express permission. Defendant's refusal to grant ASSA ABLOY permission to disclose the very documents which would have supported Ms. Taylor's claims of actual notice in regards to liability and conscious disregard as it relates to punitive damages is further indicia of Defendant's intent harm Ms. Taylor and halt the adversarial process.

33. **September 5, 2019:** The parties enter into a stipulation and order to withdraw Ms. Taylor's July 2, 2019 motion for sanctions related to spoliation of evidence.

This fact is significant because it demonstrates that the blatantly false testimony of Defendant's NRCP 30(b)(6) designee, Dieter Thurnwald, combined with threats of NRCP Rule 11 sanctions intimidated Ms. Taylor's counsel into withdrawing a meritorious motion. Defendant knew Mr. Thurnwald's testimony was blatantly false, yet relied on the testimony to prevent this COURT from ruling on what was in fact a meritorious motion as it related to the West Doors. This supports Ms. Taylor's contention that Defendant intended to halt the adversarial process through false testimony and the destruction of evidence.

34. **September 13, 2019:** ASSA ABLOY produces selected documents in response to a Subpoena. It notes that it cannot provide additional documents because Defendant refused to respond to its August 15, 2019 letter.

This fact is highly significant because it represents the first time in exactly two (2) years of actual litigation that Ms. Taylor is provided actual documentation of service records, albeit incomplete, of the West Doors. While the information provided was incomplete, there was strong indications that the service history of West Doors was far more encompassing than indicated by the Defendant's 16.1 Disclosures, written discovery responses, and testimony under oath of its 30(b)(6) designees (including Dieter Thurnwald). As stated above, Dieter Thurnwald testified that the last time the West Doors were serviced was on October 16, 2016. This supports Ms. Taylor's allegation that Defendant intentionally gave false testimony under oath and intentionally destroyed evidence in an effort to halt the adversarial process.

35. **September 27, 2019:** Defendant provides second supplemental response to Interrogatory No. 13. Defendant's response indicates that there has been no work done to the West Doors and there was never any recommendation for work to be done on the West Doors.

Like the testimony of Defendant's NRCP 30(b)(6) designee, Dieter Thurnwald, Defendant's interrogatory responses are blatantly false declarations made under oath. Defendant's representations after two (2) years of litigation that no work was done on the West Doors and there was never any recommendation for work to be done on the West doors is shocking to this COURT. These false declarations under oath support Ms. Taylor allegations that Defendant intended to halt the adversarial process.

36. **October 14, 2019:** Ms. Taylor files Motion to Strike Defendant's Answer. Ms. Taylor's Motion to Strike Defendant's Answer is based on documents produced by ASSA ABLOY on September 13, 2019. While the response to the subpoena was incomplete, the records produced provided strong indications that ASSA ABLOY indeed serviced and replaced the West Doors after Ms. Taylor's injury.

This hearing was held on November 21, 2019. This COURT considered the motion on the merits; however, this COURT still did not have the full production of documents from ASSA ABLOY. Ms. Taylor indicated that she would file a motion for an evidentiary hearing to perhaps assist this COURT in determining whether striking the answer would be appropriate remedy in this case. Defendant indicated that they would file a motion to re-open discovery.

37. **November 15, 2019:** Discovery closes. The discovery deadline was extended four times.

38. **December 5, 2019:** Plaintiff files Motion for Evidentiary Hearing on an Order Shortening Time.

39. **December 20, 2019:** Defendant files Opposition to Motion for Evidentiary Hearing.

In its Opposition to having an evidentiary hearing, Defendant relied on three affidavits from its employees. None of the three affiants were disclosed by Defendant as witnesses in their NRCP 16.1 disclosures. Discovery in the case closed on November 15, 2019. Defendant, however, submitted an affidavit from Defendant's employee Courtney Shepherd. Ms. Shepherd's affidavit represented that "it appears ASSA ABLOY made a quote for repairs to the West Doors on October 17, 2016. The quote was submitted but it was not approved. However, it appears that the ASSA ABLOY technician that put together the quote on October 17, 2016, without approval, went to the store and performed the repair work." This is significant because for the first time, Defendant acknowledged that a quote for repairs to the West Doors was submitted. This is in stark contrast to Defendant's September 27, 2019 answers to Interrogatories and its 30(b)(6) representatives' testimony, which stated there was never any recommendation for work to be done on the West Doors. This COURT also made note of Ms. Shepherd's testimony that work was completed by ASSA ABLOY "without approval" from Defendant. This is significant because Defendant is opposing an evidentiary hearing which would allow Defendant to clarify on the record any prior testimony or discovery responses by Defendant. In opposing an evidentiary hearing, Defendant had received ASSA ABLOY's response to Ms. Taylor's subpoena yet continued to provide this COURT blatantly false testimony.

40. **January 22, 2020:** Hearing on Plaintiff's Motion for Evidentiary Hearing on Order Shortening Time. Defendant tells Court evidentiary hearing is not necessary because it will rely on affidavits submitted in its Opposition to Motion for Evidentiary Hearing.

Defendant's attorney represented to this COURT:

> The only topic of their nine that they say they want to be addressed – which, by the way, we've answered every single one of their nine topics, questions, inquiries, whatever they say requires an evidentiary hearing requires this Court to make another special time and hearing for this. The only one of those nine that deals with spoliation, I want to make sure I get this accurate, is the No. 5. What happened to the door mechanism, the sensors, the gearbox, the electric and mechanical components?

> The only person that could answer that question is the technician at Assa Abloy that performed the upgraded work that, contrary to what Mr. Tanner represented to the Court, was never authorized by Smith's. That's why Smith's never had a record of it from Assa Abloy. And that wasn't because of sloppy record keeping. He submitted a quote. It danced around for a month because it was another (sic?) approved. Then he went out to the store, unauthorized, quote, "was never approved", work never authorized, performed the work.
>
> Now here's the kicker, your Honor. We don't know if he performed the work. He's saying he did on his work -- work sheet that Assa Abloy has. It was never submitted to Smith's. No documents whatsoever submitted to Smith's regarding it.
>
> [See pages 17:12 to 18:12 of January 22, 2020 hearing transcript]

Here, Defendant is making very specific representations to this COURT which require candor. It is clear that defense counsel for Defendant is relying upon information given to him by Defendant. As such, the COURT does not hold these representations against Counsel. That being said, these representations are blatantly false.

Thereafter, defense counsel represented to this COURT that an evidentiary hearing would not be necessary because Defendant was not going to change its testimony from information provided in affidavits. Counsel stated:

> No one mislead anybody, your Honor. We went by the information that we had. We didn't have that record. There is absolutely no evidence that we did, because we didn't. We have affidavits from multiple employees that set forth answers to every one of their questions, inquiries, whatever you want to call them, their topics. They're answered. They're answered. **We will have a witness come here and just repeat everything they said in an affidavit.**
>
> [See page 69:14-23 January 22, 2020 hearing transcript]
>
> **You would get the answers that you can got today. That would be it. It would just be -- everything that's contained in the affidavits....**
>
> [See page 78:18-23 of January 22, 2020 hearing transcript]

Here, defense counsel clearly indicates that Defendant's witnesses at an evidentiary hearing would not offer any new testimony but rather simply repeat everything the Defendant's employees had already said their affidavits.

This COURT took ruling on the evidentiary hearing under advisement. Specifically, at the hearing this COURT verbally ordered a full production from ASSA ABLOY before making any decision.

> 41. **February 7, 2020:** This COURT signs orders to ASSA ABLOY to fully disclose all records, documents and emails which are responsive to June 27, 2019 subpoena.
>
> 42. **March 4, 2020:** ASSA ABLOY responds to February 7, 2020 Order and is able to fully comply with the June 27, 2019 subpoena and discloses emails, work orders, and bids. For the first time, Ms. Taylor learns that on December 20, 2016 Dieter Thurnwald approved the replacement of the West Doors. Dieter Thurnwald is the same gentleman who testified that only in an "imaginary world" were the West Doors ever worked on or replaced.

The full response from ASSA ABLOY to the June 27, 2019 subpoena undeniably proves that Defendant intentionally misguided litigation. Defendant never objected to the authenticity of ASSA ABLOY business records. These records prove that Defendant received numerous Quotes for the repair and replacement of sensors at the West Doors. These records demonstrate that Smith's had actual notice that the safety features at the West Doors were not operational forty-four (44) days before Ms. Taylor was injured by the West Doors. These records conclusively demonstrated that Defendant's NRCP 30(b)(6) witnesses bore false testimony under oath. These records conclusively demonstrated that Defendant's employees' affidavits bore false witness under oath to this COURT. These records conclusively demonstrated that Defendant wasted nearly two and half years (2.5) of litigation by misleading the Ms. Taylor in nearly every material aspect of this case. **This COURT is hard pressed to find any material, substantive evidence wherein Defendant was forthright.** This supports Ms. Taylor's allegation that Defendant's conduct throughout litigation was done with the intent to halt the adversarial process

and that Defendant destroyed, hid, and attempted to stop others from producing evidence. This shows the Defendant acted willfully and with intent.

43. **May 21, 2020:** This COURT issues an Order denying Motion for Evidentiary Hearing.

In denying an evidentiary hearing, this COURT has sufficient evidence to proceed forward in striking Defendant's Answer as to liability and damages based on Defendant's brazen misconduct throughout litigation and lack of candor with the COURT. Based on Defendant's two and half year (2.5) history of false and misleading testimony as well as Defendant's attorney's representation that Defendant's employees would simply repeat the same false answers that they gave in their affidavits at an evidentiary hearing, this COURT doubts an evidentiary hearing would be useful in obtaining any true testimony from Defendant.

A. Defendant's Failures And Breaches Of Its Duties During The Pre-Litigation Phase

THE COURT FURTHER FINDS that Defendant had a duty to preserve relevant evidence due to the December 7, 2016 preservation letter sent from Ms. Taylor's attorney and its legal obligations to preserve evidence. This preservation letter put Defendant on notice Ms. Taylor's intent to sue, and placed Defendant on notice that it had a duty to preserve all relevant evidence pertaining to the West Doors. See, e.g., Fire Ins. Exchange v. Zenith Radio Corp., 103 Nev. 648, 651, 747 P.2d 911 (1987). Even absent a preservation letter, Defendant had a duty under Nevada law to preserve relevant evidence. In Nevada, there is a common-law duty to preserve evidence and a potential party to a lawsuit is required to preserve documents, tangible items, and information relevant to litigation or that is reasonably calculated to lead to the discovery of admissible evidence. E.g., Banks v. Sunrise Hospital, 120 Nev. 822, 102 P.3d 52 (2004); Fire Ins. Exchange., 103 Nev. at 651; Bass-Davis v. Davis, 122 Nev. 442, 134 P.3d 103 (2006); Stubli v. Big D. Int'l Trucks, Inc., 107 Nev. 309, 810 P.2d 785 (1991). Nevada law holds that "even where an action has not been commenced and there is only a potential for litigation, the litigant is under a duty to preserve evidence which it knows or reasonably should know is relevant to the action." Fire Ins. Exch., 103 Nev. at 651. A party is not free to destroy or let be destroyed crucial evidence

simply because a court order was not issued to preserve the evidence. Stubli, 107 Nev. at 313-314.

THE COURT FURTHER FINDS that Defendant had significant and extensive evidence (from both before and after this incident) in its possession that it failed to preserve in contradiction to its legal duty to preserve, and which disregarded the December 7, 2016 preservation letter. This evidence included (1) the West Doors' sensors, motor, gearbox, wiring, and other component parts; (2) the October 17, 2016 Inspection Form wherein ASSA ABLOY noted that the door safety systems were not operational; (3) the October 17, 2016 Worksheet; (4) the October 18, 2016 quotes sent to Defendant; (5) the October 18, 2016 e-mail where ASSA ABLOY sent the Quotes to Defendant; (6) the correspondence wherein the quotes was resubmitted to Defendant on October 25 and 28, as well as on November 1, 8, 15, 23, 29; (7) the December 6, 2016 e-mail from ASSA ABLOY asking about the status of the Quotes; (8) the correspondence wherein the Quotes were resubmitted to Defendant on December 7, 2016; (9) the Dec. 20, 2016 e-mail where Defendant employee, Dieter Thurnwald approved the quotes; (10) the December 21, 2016 Second Inspection Form signed by Defendant's employee, Travis Childers; and (11) the October 17, 2016 Second Worksheet signed by Defendant's employee, Travis Childers.

THE COURT FURTHER FINDS that even if Defendant did not keep a copy of (1) the October 17, 2016 Inspection Form; (2) the October 17, 2016 Worksheet; (3) the December 21, 2016 Second Inspection Form; and (4) the October 21, 2016 Second Worksheet; that Defendant had the ability to obtain these documents from its vendor because these documents were within Defendant's control.

THE COURT FURTHER FINDS that Defendant attempted to eliminate, destroy, and spoliate virtually all evidence showing that it knew the West Doors were in disrepair, unsafe, not in compliance with the standards, and hazardous to customers. Further, Defendant attempted to eliminate, destroy, and spoliate all evidence showing that ASSA ABLOY repeatedly asked Defendant for approval to repair the West Doors, so they were safe and in compliance with applicable standards.

THE COURT FURTHER FINDS that these actions by Defendant demonstrated a conscious disregard for customers' safety. These actions also showed a disregard for its duty to preserve relevant evidence. Finally, these actions showed that Defendant acted willfully to gain an advantage in this litigation in its efforts to defeat Ms. Taylor's claims.

THE COURT FURTHER FINDS that Defendant sent a pre-litigation letter to Ms. Taylor on February 8, 2017 wherein it told Ms. Taylor that it investigated her fall that "our investigation has revealed no negligence on behalf of the store and therefore we must respectfully deny your client's claim..." These findings in this letter are directly contradicted by the evidence available to Defendant including, but not limited to: (1) the Work Order entry by Defendant's employee, Travis Childers, noting that the West Doors were not operating correctly and were running very poorly; (2) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (3) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (4) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (5) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (6) the December 21, 2016 Second Inspection Form; (7) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment.

THE COURT FURTHER FINDS that Defendant sending the February 8, 2017 pre-litigation letter that directly contradicted significant evidence which Defendant later destroyed showing an intent to deter Ms. Taylor from pursuing her claims, and a willfulness to destroy evidence for the purpose of gaining an advantage in the litigation.

THE COURT FURTHER FINDS that Defendant's failure to provide Ms. Taylor an opportunity to inspect the West Doors prior to effectuating repairs combined with the destruction of all material evidence relating to the repair and replacement of the West Doors' sensors, motor,

gearbox, wiring, and other component parts demonstrates Defendant's intention to halt the adversarial process.

B. Defendant's Failures And Breaches Of Its Duties During The Discovery Phase

THE COURT FURTHER FINDS that after Ms. Taylor filed her lawsuit, Defendant had duties when discovery began and while discovery was ongoing in this case. These duties included a duty to ensure that its discovery responses were complete and accurate, and a duty to timely supplement documents, discovery answers, and disclosures. See, NRCP 26(e) (holding that a "party who has made a disclosure under Rule 16.1 ... or responded to a request for discovery with a disclosure or response – is under a duty to timely supplement or correct the disclosure or response ..."); and NRCP 26(g) (holding that when a party or attorney signs a 16.1 Disclosure or discovery response, that signature indicates that to the "best of the person's knowledge, information, and belief formed after a reasonable inquiry: (A) with respect to a disclosure, it is complete and correct as of the time it is made"). Additionally, discovery duties included a duty to timely supplement disclosures and discovery as required by NRCP 26(e), its duty to properly prepare its 30(b)(6) representatives.[5] Defendant failure to meet its duties resulted in incomplete, inaccurate, misleading, and untimely disclosures and discovery responses.

THE COURT FURTHER FINDS that even if Defendant did not preserve evidence on its own internal systems, that evidence was still within its control because it was maintained by ASSA ABLOY. NRCP 16.1 requires a party to voluntarily produce "all documents, ... and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses ..." See, NRCP 16.1 (a)(1)(A)(ii). NRCP 34 has a similar duty that a party must produce the requested items that are in its possession, custody, or control. See, NRCP 34 (a)(1). Finally, Defendant had a duty to ensure that its disclosures were complete and accurate, and a duty to timely supplement documents, discovery answers, and disclosures. See, e.g., NRCP 26(e) and NRCP 26(g). Defendant did not obtain evidence from ASSA ABLOY, even though that evidence was within its control and Defendant was thus required to obtain and

[5] NRCP 30(b)(6) requires a party to prepare its representative to testify about information "known or reasonably available to the organization."

produce it. Defendant was required to ensure that all documents in its control were produced which included a requirement to check with its agents. Specifically, when making its Rule 16.1 Disclosures and responding to discovery, Defendant had a duty to conduct a "reasonable inquiry" to ensure that its disclosure and discovery responses were complete and accurate. See, e.g., NRCP 26(g); see also, Kristensen v. Credit Payment Services, Inc., 2014 WL 6675748, 6 (D. Nev. 2014); A. Farber and Partners, Inc. v. Garber, 234 F.R.D. 186, 189 (C. D. Cal. 2006). The reasonable inquiry duty requires a party to obtain information reasonably available to it from its employees, agents, or others subject to its control. A. Farber and Partners, Inc., at 189. (quoting Gray v. Faulkner, 148 F.R.D. 220, 223, N. D. Ind. 1992) ("A party responding to a Rule 34 production request ... 'is under an affirmative duty to seek that information reasonably available to [it] from [its] employees, agents, or others subject to [its] control.")). Defendant failed to meet its discovery and disclosure duties.

THE COURT FURTHER FINDS that Defendant written discovery answers were false, misleading, and incomplete. For example,

- In its Response to Plaintiff's Second Request for Production, No. 34, Defendant stated that the West Doors' component parts were replaced in June 2017 and were discarded and not available for use in this case. Yet, this response and the documents produced by Defendant in its Response pertained to the east doors, not the West Doors that caused Mr. Taylor's fall. Later, in its Supplemental Response to Plaintiff's Second Request for Production, No. 34, Defendant said that the component parts for the West Doors that caused Ms. Taylor's fall were still on the West Doors.

- In its Response to Plaintiff's First Request for Production Nos. 27 and 28 that asked for all service records for the West Doors, Defendant only produced the Work Order. It did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice. In fact, during discovery Defendant only produced documents for the wrong doors and failed to produce any documents (other than the Work Order) for the West Doors.

- In its Response to Plaintiff's First Request for Production No. 4, asking for documents showing a dangerous condition with the West Doors, Defendant stated that no such documents exist. Defendant did not produce It did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice, all of which showed the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be repaired.

- In its Supplemental Answer to Interrogatory No. 13, Defendant stated that there has been no work, and there was never any recommendation for work to be done, on the West Doors.

THE COURT FURTHER FINDS that Defendant 16.1 Disclosures were not accurate and complete, and that information was not timely supplemented, which breached various discovery duties. Examples of these failures are as follows:

- Defendant did not produce any e-mails with ASSA ABLOY, even though those e-mails addressed the West Doors' problems, transmitted bids to fix the West Doors to get them "up and running" and to upgrade them, and an authorization to repair and upgrade the West Doors.

- Defendant did not disclose the contract it had with ASSA ABLOY, the entity that Defendant used to evaluate the West Doors and perform repair and maintenance to them. Instead, Defendant produced an old, outdated contract it had with Stanley Access Technologies, a company that had not provided any door maintenance, repairs, or upgrades for many years.

- Defendant did not disclose the names of the employees that communicated with ASSA ABLOY about the Subject Doors in its Initial Disclosure, namely Dieter Thurnwald, Travis Childers, and Gilbert Alvarado.

- Discovery ended on August 27, 2019. The parties entered a limited stipulation to allow certain depositions to be done by November 15, 2019, but discovery remained closed for all other purposes. Despite this, on November 7, 2019 – months after discovery ended – Defendant disclosed Mr. Radcliffe and Mr. Osborn as witnesses. These are witnesses Defendant was aware of from the inception of this case and they were disclosed after discovery ended and thus too late for Ms. Taylor to conduct any discovery from them or about them.

- Defendant never disclosed the names of any of the employees who signed Affidavits.

THE COURT FURTHER FINDS that Defendant 30(b)(6) representative, Dieter Thurnwald, was not properly prepared for his deposition and did not testify accurately. At his deposition, he wrongfully testified that the West Doors were never repaired or replaced, that ASSA ABLOY did not come to Defendant store, that there were no documents related to the West Doors, and other matters:

1. "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]

2. Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the West Doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]

3. That no documentation existed about the West Doors. [Thurnwald depo., pp. 73 - 75]

4. That the last time the West Doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]

5. The door mechanisms for the West Doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]

6. Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]

THE COURT FURTHER FINDS that Mr. Thurnwald even testified that only in an "imaginary world" were the West Doors repaired and replaced.

THE COURT FURTHER FINDS that Defendant 30(b)(6) representative, Mr. Thurnwald provided this testimony even though it was his e-mail on December 20, 2016 that authorized the repair and replacement of component parts to the West Doors. So, he had first-hand knowledge about the repairs and replacement of the West Doors but testified to the exact opposite facts at the 30(b)(6) deposition.

THE COURT FURTHER FINDS that Defendant other 30(b)(6) representative, Ms. Trisha Tamiko Kozlowski, was also not properly prepared for her deposition and thus she provided inaccurate testimony. For example, she testified that the West Doors had no problems other than coming off their tracks.

THE COURT FURTHER FINDS that Defendant disclosed witnesses after expert disclosures were past, and witnesses that Defendant anticipated that would provide expert

opinions and analysis. These witnesses were known to Defendant from the date of the fall, but Defendant waited until November, 2019 – three years after the fall – to disclose these witnesses. Thus, Defendant did not timely disclose these witnesses nor did it timely supplement its disclosures, thereby further breaching its discovery duties.

THE COURT FURTHER FINDS that Defendant breached its duties related to discovery, disclosure, and 30(b)(6) representative testimony and attempted to defeat this case by destroying evidence, hiding evidence, and denying the truth. These actions further showed that Defendant was engaged in a deliberate and willful attempt to prevail in this case by hiding the truth, destroying evidence, and misleading Ms. Taylor.

C. <u>Defendant Blocked ASSA ABLOY From Producing Documents</u>

THE COURT FURTHER FINDS that in addition to Defendant breaches of its discovery duties, that it blocked ASSA ABLOY from disclosing documents. Defendant knew that these documents would contradict the Defendant's position, and that the ASSA ABLOY documents would show that the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be replaced and repaired. These documents would further show the Defendant's refusal to have the West Doors replaced and repaired, and that it had a conscious disregard for Ms. Taylor's safety. These documents would further show that West Doors were replaced and repaired.

THE COURT FURTHER FINDS that during discovery Ms. Taylor subpoenaed ASSA ABLOY to provide documents pertinent to this matter and the West Doors. ASSA ABLOY attempted to fully respond to Plaintiff's Subpoena but needed written permission from Defendant and/or its parent company, Kroger, because many of the documents requested in Ms. Taylor's subpoena were confidential pursuant to the contract between ASSA ABLOY and Defendant. Thus, on August 15, 2019 ASSA ABLOY sent a letter to Defendant/Kroger (with a copy to Defendant's counsel, Jerry S. Busby, Esq.) asking permission to disclose all relevant documents related to Ms. Taylor's Subpoena, including the Agreement and work authorizations:

> The Agreement and related work authorizations are responsive to the Subpoena but are considered Confidential Information pursuant

> to Section 5 of the Agreement. Enclosed as Exhibit B are copies of the Confidential Information that ASSA ABLOY must produce in response to the Subpoena. ASSA ABLOY, therefore, requests Kroger's written permission to produce these documents.
>
> Please provide a response to this request by August 23, 2019. If we do not receive a response by that date, we will inform Plaintiff's counsel that Kroger has not provided the required permission for ASSA ABLOY to produce the Confidential Information.

THE COURT FURTHER FINDS that Defendant did not respond to this letter. Thus, ASSA ABLOY disclosed only limited documents responsive to Ms. Taylor's Subpoena. When disclosing these limited documents, ASSA ABLOY prepared an Affidavit of Custodian of Records noting the numerous documents were not disclosed because Defendant would not give permission:

> On August 15, 2019, ASSA ABLOY sent a letter to the Kroger Company ("Kroger"), via first class mail (certified mail) and overnight UPS delivery requesting written authorization to produce certain other documents in its possession that are also responsive to the Subpoena. ASSA ABLOY is contractually obligated to obtain written approval from Kroger prior to producing the documents referenced in its letter. To date Kroger has not responded to the letter.

THE COURT FURTHER FINDS that even after the Custodian of Records Affidavit Defendant still did not respond to ASSA ABLOY's letter or this Affidavit. This continued to block ASSA ABLOY from producing all documents responsive to Ms. Taylor's Subpoena.

THE COURT FURTHER FINDS that this Court had to enter an Order, which it signed on February 7, 2020, to finally allow ASSA ABLOY to produce all documents responsive to Ms. Taylor' Subpoena. This Order required (1) Defendant and Kroger were not to contact any person, employee, or agent for ASSA ABLOY about this case, Ms. Taylor's Subpoena, the West Doors, or any documents or work in this case; and (2) that Ms. Taylor's counsel was to send a copy of the Order to ASSA ABLOY; and (3) that ASSA ABLOY was to produce all documents and information relevant to the West Doors to Ms. Taylor's counsel for production and use in this case. [See, Order Signed Feb. 7, 2020]

THE COURT FURTHER FINDS that Defendant's efforts to block discovery and to put forth a false narrative in its attempt to defeat Ms. Taylor's claims were so extensive that documents could only be produced after the Court ordered Defendant not to block discovery by requiring that it not communicate with ASSA ABLOY. This is another example of Defendant's discovery actions and spoliation efforts being so deliberate and willful that it would do anything to gain an advantage in this litigation and the extent of Defendant's actions that halted the adversarial process.

D. <u>Defendant's Lack Of Candor</u>

THE COURT FURTHER FINDS that Defendant had a duty of candor with this Court and with opposing counsel, which it breached on numerous occasions. This lack of candor is most prevalent in Defendant's pre-litigation and discovery failures, examples of which have been detailed above. Nevertheless, this lack of candor continued at various hearings.

THE COURT FURTHER FINDS that when Defendant did not produce the West Door's component parts, Ms. Taylor filed a Motion for Sanctions for Spoliation of Evidence. Prior to that hearing, the 30(b)(6) representative, Mr. Dieter Thurnwald provided his false testimony that the West Doors had no work done on them and that ASSA ABLOY never came to the Defendant store. Defendant attorney's then engaged actions intended to threaten and intimidate Ms. Taylor's attorney saying in an August 9, 2019 e-mail that Ms. Taylor's attorney had violated NRCP 11, and Professional Rules of Conduct 3.1, 3.2, and 3.3 alleging he made misrepresentations to the Court and claiming that Defendant would "seek all fees and costs for having to defend this frivolous motion." These threats came even though Defendant was aware that the West Door's component parts had been replaced and then lost or destroyed.

THE COURT FURTHER FINDS that at the August 13, 2019 hearing for the Motion for Sanctions for Spoliation of Evidence, Defendant represented to the Court that the West Doors had no repairs or work done at any time. Further, at that hearing, Defendant told this Court that all documents related to the West Doors had been produced and there were no prior problems with the West Doors. These representations were wrong.

THE COURT FURTHER FINDS that at a hearing held on March 10, 2020 that Defendant attempted to explain its position, (that the West Doors were never repaired or replaced), considering the recently disclosed ASSA ABLOY documents. Defendant told this Court that ASSA ABLOY may have done the work to replace the West Doors component parts, but that Defendant did not authorize that work to be done and Defendant had no idea that the work was done. These representations were wrong.

THE COURT FURTHER FINDS that when it was pointed out to Defendant that documents showed the West Doors were repaired and replaced, that the Defendant then claimed that it did not know the work was done because ASSA ABLOY did not send it an invoice for that work. The representation at that hearing included: "We [Defendant] never got an invoice for the work;" "ASSA ABLOY never sent an invoice, was never paid for it;" and "The reason why they were never paid, they never sent an invoice ..." These representations, and others like them, are false because the evidence in this case shows that on December 28, 2016 ASSA ABLOY sent an invoice to Defendant for the work performed replacing the unsafe West Doors and related parts.

THE COURT FURTHER FINDS that these misrepresentations to the Court show that Defendant's actions were continuous, deliberate, and willful, and that Defendant was now misleading this COURT in an attempt to justify its actions and to prevail in this litigation.

E. <u>An Extensive Record Has Been Created</u>

THE COURT FURTHER FINDS that under Nevada law, a Court, when faced with the request to strike pleadings should only do so after "thoughtful consideration of all the factors involved." Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243, 252, 235 P.3d 592, 598 (2010) (quoting Young v. Johnny Ribeiro Building, Inc., 106 Nev. 88, 92, 787 P.2d 777, 780 (1990)). A district court does not abuse its discretion when it provides more than one meaningful opportunity to present evidence and arguments regarding misconduct. See, N. Am. Properties v. McCarran Int'l Airport, No. 61997, 2016 WL 699846, at *5, 132 Nev. 1011 (Nev. Feb. 19, 2016) (Unpublished).

THE COURT FURTHER FINDS that there has been an extensive record created in this case. This is the result of numerous Motions, Briefs, and Orders. The Motions and Briefs[6] previously filed related to Defendant's discovery failures and sanctionable conduct are:

1. Motion for Sanctions for Spoliation of Evidence filed on July 3, 2019;
2. Motion to Strike "Quasi Expert" Chad Crapo as a Witness filed on September 20, 2019;
3. Motion to Strike Defendant's Answer filed on October 14, 2019;
4. Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and to Continue the Trial Date on OST filed on December 4, 2019;
5. Motion for an Evidentiary Hearing filed on December 5, 2019;
6. Motion to Continue Hearings and Pre-Trial Conference on an OST filed on December 27, 2019;
7. Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order filed on December 19, 2019;
8. Motion to Amend Complaint to Allege Punitive Damages filed on January 30, 2020;
9. Defendant's Motion to Strike/Exclude Plaintiff's Damages for Her Cervical Fusion Surgery and Future Medical Care filed on April 8, 2020;
10. Motion to Limit Dr. Sanders, M.D.'s Expert Testimony filed on April 21, 2020;
11. Defendant's Motion for Leave to File Third-Party Complaint filed on May 15, 2020;
12. Defendant's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration of the Court's Order Denying Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence filed on June 9, 2020;
13. Supplemental Brief in Advance of March 24, 2020 Hearing filed on March 19, 2020;

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[6] All referenced Motions and Briefs include the Oppositions and Replies associated with those Motions and Briefs.

14. Supplemental Brief Timeline of Relevant Events filed on April 2, 2020; and

15. Renewed Motion to Strike Defendant's Answer, For Sanctions and Attorney's fees;

Additionally, this Court has issued numerous Orders related to the above Motions and Briefs, and in an attempt to discover the truth. Those Orders are:

1. Order Withdrawing Motion for Spoliation of Evidence;

2. Discovery Commissioner's Report & Recommendations regarding Motion to Strike "Quasi Expert" Chad Crapo as a Witness filed November 8, 2019;

3. Order Granting Motion to Continue Evidentiary Hearing; Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence; and Pretrial Conference filed on January 30, 2020;

4. Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All other Pending Motions filed on February 14, 2020;

5. Order Granting Plaintiff's Motion to Amend Complaint filed on April 17, 2020;

6. Order Denying Defendant's Motion to Continue Discovery Based Upon Newly Discovered Evidence and Order Granting Plaintiff's Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order filed on May 22, 2020;

7. Order Denying Plaintiff's Motion for an Evidentiary Hearing on an OST filed on June 18, 2020;

8. Order Denying Plaintiff's Motion to Limit Dr. Sanders, M.D.'s Expert Testimony filed on June 22, 2020;

9. Order Denying Defendant's Motion to Strike/Exclude Plaintiff's Damages for her Cervical Fusion Surgery and Future Medical Care filed on June 22, 2020;

10. Order Denying Defendant's Motion for Leave to File Third-Party Complaint filed on July 10, 2020.

THE COURT FURTHER FINDS that there have been numerous hearings arguing and discussing matters in these pleadings. These hearings have been held on August 13, 2019;

November 21, 2019; January 22, 2020; March 10, 2020; March 24, 2020; March 31, 2020; April 30, 2020; May 21, 2020; June 18, 2020; and November 5, 2020. These hearings generally lasted well over an hour, and some lasted for multiple hours.

THE COURT FURTHER FINDS that an adequate record has been developed based upon pleadings that have been filed, orders that have been entered, briefs that have been submitted, and hearings that have been held. These pleadings, orders, briefs, and hearings have occurred over the past year. These is no additional information or evidence that would be available to this Court if it held additional hearings, or even an evidentiary hearing. The Court has been fully apprised of the issues in this case.

THE COURT FURTHER FINDS that Defendant argued against an evidentiary hearing representing to the COURT that an evidentiary hearing would be of no value because its employees would simply repeat the testimony in their sworn affidavits. These arguments, coupled with the lack of candor shown by the Defendant, give this COURT the understanding that an evidentiary hearing would provide it with no additional information.

THE COURT FURTHER FINDS that when a Court considers imposing case terminating sanctions, it should consider certain factors such as (1) the degree of willfulness of the offending party; (2) the extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been irreparably lost; (5) the feasibility and fairness of alternative, less severe sanctions ... (6) the policy favoring adjudication on the merits; (7) whether sanctions unfairly operative to penalize a party for the misconduct of his or her attorney; and (8) the need to deter both the parties and future litigations from similar abuses. Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

F. Consideration of Defendant's Evidence

THE COURT FURTHER FINDS that after careful consideration of all Defendant's evidence in support of either no judicial sanction or a lesser judicial sanction that the evidence is largely inadmissible, contradictory, and severely lacking evidentiary content. This Court sets forth the key defense evidence as follows:

1. **Affidavit of Courtney Shephard**

Despite over two years of discovery in this case, Ms. Shephard was never identified by Defendant as a witness. Ms. Shephard provided an affidavit in opposition to Plaintiff's Motion for an Evidentiary Hearing. Ms. Shepherd's affidavit represented that "it appears ASSA ABLOY made a quote for repairs to the West Doors on October 17, 2016. The quote was submitted but it was not approved. However, it appears that the ASSA ABLOY technician that put together the quote on October 17, 2016, without approval, went to the store and performed the repair work." The documents produced by ASSA ABLOY clearly demonstrate that Ms. Shephard was not honest with this COURT. Importantly, Defendant never objected to the documents' authenticity from ASSA ABLOY. The documents produced by ASSA ABLOY establish that Defendant indeed approved ASSA ABLOY to repair and replace the West Doors. The Worksheet produced by ASSA ABLOY establish very clearly that Defendant knew the work was performed on December 21, 2016 as a Smith's employee, Travis Childers, signed off on both the Second Inspection Form and Second Worksheet. While Defendant included the affidavit from Ms. Shephard in its Opposition to Plaintiff's Motion for an Evidentiary Hearing, Defendant omitted Ms. Shephard's affidavit from its Opposition to Plaintiff's Motion to Strike Defendant's Answer. As such, this Court has considered Ms. Shephard's affidavit but is not persuaded that her statements are truthful or mitigating.

Ms. Shephard failed to disclose how, when, or why significant evidence including but not limited to (1) the Work Order entry by Defendant's employee, Travis Childers, noting that the West Doors were not operating correctly and were running very poorly; (2) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (3) the October 18, 2016 e-mail submitting the two ASSA ABLOY quotes to Defendant which included the Repair quote that needed to be approved to "get the doors up and running"; (4) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (5) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (6) the December 21, 2016 Second Inspection Form; (7) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the

West Doors' component parts; (8) the West door sensors, motor, and competent parts; and (9) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

2. Affidavit of Venessa Wickline Gribble

Despite over two years of discovery in this case, Ms. Gribble was never identified by Defendant as a witness in this case. Ms. Gribble is a paralegal in Defendant's litigation division. Defendant submitted Ms. Gribble's affidavit in both its Opposition to Plaintiff's Motion for an Evidentiary Hearing and in Opposition to Plaintiff's Motion to Strike Defendant's Answer. Ms. Gribble testified that she is the person who performed two searches for documents related to the doors in this case. Ms. Gribble testified in her first search for documents that she limited her search period from October 30, 2016 to December 2, 2016. These were the document first disclosed by Defendant. The initial search specifically excluded the October 17, 2016 Inspection Form, the October 18, 2016 Quotes, the October 25, 2016 email and re-submission of Quotes, the October 28, 2016 email and re-submission of Quotes, the December 7, 2016 email and re-submission of Quotes, the December 20, 2016 email approving repair and replacement of West Doors. The December 21, 2016 Inspection Form and Worksheet both of which were signed by Defendant's employee, Travis Childers. The December 28, 2016 invoice from ASSA ABLOY to Defendant. Ms. Gribble provides no rationale for why she was asked to perform such a limited scope. More importantly, however, is that the search period from October 30, 2016 to December 2, 2016 does include significant documents which were not disclosed by Ms. Gribble. For example, Ms. Gribble failed disclose the November 8, 2016 e-mail and re-submittal of Quotes, the November 15, 2016 e-mail and re-submittal of Quotes, the November 23, 2016 e-mail and re-submittal of Quotes, and the November 29, 2016 e-mail and re-submittal of Quotes.

Next, Ms. Gribble testified that she performed a second, more extensive search related to the replacement of door sensors. Ms. Gribble states that in September 2018, she provided to defense counsel. This Court finds that the September 2018 documents and subsequent disclosure were also problematic in that Ms. Gribble provided documents related to the wrong door.

Specifically, Ms. Gribble provided documentation related to the East doors not the West Doors where Ms. Taylor was injured.

In carefully considering the affidavit of Ms. Gribble this Court finds that Ms. Gribble testimony does not support mitigation of Defendant's conduct. It is clear from the records produced by ASSA ABLOY that Defendant was fully aware that the West Doors' safety features were not operation as of October 14, 2016. It is also clear that Defendant undertook to have the West Doors safety system including door sensors repaired on December 21, 2016. Additionally, Defendant was fully aware that the injury took place at the West Doors, yet Ms. Gribble provided evidence of the East doors. Ms. Gribble failed to disclose how, when, or why significant evidence including but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West door sensors, motor, and competent parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

3. <u>Affidavit of Ronald K. Radcliffe, Jr.</u>

Like Ms. Shephard and Ms. Gribble, Mr. Radcliffe was not identified as a witness in this litigation. Mr. Radcliffe's affidavit was submitted in both Defendant's Opposition to Plaintiff's Motion for an Evidentiary Hearing and Plaintiff's Motion to Strike Defendant's Answer. Mr. Radcliffe was asked to review certain maintenance records from Defendant's Service Hub and from ASSA ABLOY. Mr. Radcliffe's affidavit is dated October 30, 2019. As such, this Court finds that Mr. Radcliffe did not review the full set of records produced by ASSA ABLOY on March 4, 2020, approximately four months after Mr. Radcliffe prepared the subject affidavit. In reviewing records, Mr. Radcliffe offers expert testimony regarding the mechanisms, safety

features, and operation of the subject doors. As Mr. Radcliffe was not identified as a lay or expert witness, this COURT does not consider Mr. Radcliffe's opinion testimony. As such, the portion of Mr. Radcliffe's affidavit that this COURT does consider deals with his personal involvement in the procurement and production of evidence. Mr. Radcliffe states that in September 2018, he went to find out if or when the sensors were replaced on the doors at Smith's Store No. 347. He states that he went to the store to get the numbers from the doors so that he could identify them. He then called ASSA ABLOY and asked if any of the sensors at the store had been replaced in the last two years. He states that they sent him records. Mr. Radcliffe then states that records ASSA ABLOY sent him that the East doors had sensors replaced on June 15, 2017 and the West Doors do not show ASSA ABLOY replacing the West Doors sensors in the past two years.

This COURT finds that Mr. Radcliffe's testimony does not mitigate Defendant's conduct. First, it is clear that Mr. Radcliffe did not see the full production of documents from ASSA ABLOY which directly contradicts his statements under oath. According to Mr. Radcliffe, ASSA ABLOY told him that the West Doors sensors were not replace between September 2016 to September 2018. The documents from ASSA ABLOY prove otherwise. Additionally, Mr. Radcliffe failed to disclose how, when, or why significant evidence including but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West Doors sensors, motor, and competent parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated. Given the totality of the completeness of the records from ASSA ABLOY and totality of the evidence, this COURT finds that Mr. Radcliffe's affidavit regarding his phone conversation from an unknown employee from

ASSA ABLOY is not credible and is not admissible on an evidentiary basis. Mr. Radcliffe's testimony regarding what an unidentified employee of ASSA ABLOY told him is hearsay. The actual records from ASSA ABLOY have evidentiary value as they are found to be authentic and admissible evidence. Even if Mr. Radcliffe's testimony had evidentiary value, this Court finds that it would be insufficient to mitigate Defendant's extensive spoliation of evidence, lack of candor to this Court, and years of halting the adversarial process.

4. Argument That ASSA ABLOY Failed To Update Service Hub

This Court also considered Defendant's argument that ASSA ABLOY failed to update the service hub with quotes, work orders, inspections forms, authorization, repair invoice, etc. which violate its contractual obligations with Defendant. This Court finds this argument uncompelling. First, Ms. Taylor's preservation letter dated December 7, 2016 was sent to Defendant, not ASSA ABLOY. As such, Defendant was fully aware of Ms. Taylor's intent to sue. Defendant, therefore, had a duty to preserve evidence. Second, this COURT finds that Defendant has a non-delegable duty to update its service hub inasmuch as the service repairs relate to public safety of its patrons. For example, this COURT finds that Defendant's employee, Travis Childers, created the October 14, 2016 Work Order and entered the Work Order into the service hub. The Work Order was properly inputted by Defendant's employee into the service hub as the malfunctioning West Doors were a safety hazard. Yet, despite receiving Ms. Taylor's intent to sue letter dated December 7, 2016, Defendant failed to take any reasonable steps to preserve crucial evidence in this case.

ORDER

THE COURT HEREBY ORDERS that under the Young factors, Ms. Taylor is entitled to an Order striking Defendant's answer as to liability and damages.

THE COURT FURTHER ORDERS sanctions for numerous failures and breaches of duty. The failures include (1) spoliation of evidence; (2) numerous breaches of discovery duties including violations of NRCP 16.1, NRCP 26, and NRCP 37(c); (3) lack of candor with the Court and opposing counsel; and (4) halting the adversarial process. All of these actions were part of an extensive scheme by the Defendant to deter Ms. Taylor from pursuing her claims, and once

she was not deterred, to hide the truth, mislead Ms. Taylor and this COURT, and to willfully destroy evidence in an attempt to prevail in this litigation. These failures and breaches of duty also show repetitive, abusive, and recalcitrant discovery abuses which resulted in many years of misguided litigation. Based on the cumulative, extensive, and blatantly false representations made by Defendant to this COURT, this COURT finds Defendant acted with intent to halt the adversarial process.

THE COURT FURTHER ORDERS that a case involving spoliation could merit significant sanctions. See, e.g., Stubli v. Big D. Int'l Trucks, Inc., 107 Nev. 309, 810 P.2d 785 (1991) and Fire Ins. Exchange v. Zenith Radio Corp., 103 Nev 648, 747 P.2d 911 (1987). A case involving discovery abuses and failures to meet discovery duties could merit significant sanctions. See, e.g., NRCP 37; Foster v. Dingwald, 126 Nev. 56, 227 P.3d 1042, (2010) and Bahena v. Goodyear Tire & Rubber Co., 126 Nev 243, 258, 235 P.3d 592, 602 (2010) and Young v. Johnny Ribeiro Bldg., Inc., 106 Nev 88, 95, 787 P.2d 777, 782 (1990). A case involving lack of candor with the Court cold merit significant sanctions. **This is a unique case where Defendant engaged in all three failures and actions. In fact, this COURT can find no time when the Defendant put forth an honest defense, or when the Defendant was fully candid with the COURT.** The sanction, therefore, must be significant to address the Defendant's extensive, repetitive, ongoing, and brazen actions, deceit, and failures.

THE COURT FURTHER ORDERS sanctions for extensive spoliation of evidence by the Defendant. Physical evidence is at the heart of this case which includes the West Doors' sensors, motor, gearbox, wiring, and other component parts. That physical evidence was in the Defendant's possession when the fall occurred and was later removed at the Defendant's instruction. That evidence has not been produced in this case and the failure to produce it will greatly affect Ms. Taylor's ability to prove her claims. In Stubli v. Big D. Int'l Trucks, Inc., 107 Nev. 309, 810 P.2d 785 (1991), a product was central to that case which was destroyed by one of the parties. The Nevada Supreme Court upheld sanction of striking pleadings for the evidence destruction. Id. 107 Nev. at 314. Similarly, in Fire Ins. Exchange v. Zenith Radio Corp., 103 Nev 648, 747 P.2d 911 (1987) a product was central to that case which was not preserved by one of

the parties. The Nevada Supreme Court upheld sanction of striking an expert and then granting summary judgment. Id. 103 Nev. at 652.

THE COURT FURTHER ORDERS sanctions for Defendant's intentional destruction of e-mails and documents, including but not limited to the Invoice, Worksheets, Inspection Forms, and the Quotes. Further, the Court finds that the Defendant engaged in the evidence destruction and spoliation willfully and deliberately to gain an advantage in this litigation and to defeat Ms. Taylor's claims. Significant sanctions should result from this wrongdoing.

THE COURT FURTHER ORDERS sanctions for extensive discovery abuses which prevalent throughout discovery in this case. This included the failure to timely and properly disclose documents (including but not limited to the contract with ASSA ABLOY) and witnesses (including but not limited to Mr. Alvarado, Mr. Childress, and Mr. Thurnwald – witnesses who played vital roles in the events – and other witnesses who signed affidavits). The failure to timely disclose these items includes a failure to timely supplement disclosures pursuant to NRCP 26(e). Defendant failed to properly respond to request for production by failing to conduct a reasonable inquiry to ensure that the production responses were complete and accurate, and a failure to obtain documents in the Defendant's control, including documents in the possession of its vendor, ASSA ABLOY. The Defendant provided intentionally inaccurate discovery responses by providing documents for the wrong door in respond to request for production, and by providing interrogatory answers saying that the West Doors never had any changes to them. The Defendant further put forth two 30(b)(6) witnesses who testified in a manner that was untruthful and designed to mislead Ms. Taylor in a willful and intentional attempt to defeat Ms. Taylor's claims.

THIS COURT FURTHER ORDERS sanctions pursuant to NRCP 37 holds that an evasive or incomplete disclosure of discovery answer must be treated as a failure to disclose, answer, or respond. NRCP 37(a)(4). Further, if a party fails to provide a disclosure, then the court may impose sanctions including those in Rule 37(b)(1) which include striking pleadings, dismissing the action, or rendering default judgment. NRCP 37(c)(1)(C) (citing NRCP 37(b)(1)(C, E, and F)). A party that fails to serve answers or a response to an interrogatory or a request for production the court may impose sanctions including those in Rule 37(b)(1) which include striking pleadings,

dismissing the action, or rendering default judgment. NRCP 37(d)(1)(A)(ii) and 37(d)(3) (citing NRCP 37(b)(1)(C, E, and F)). In this case, Defendant provided evasive or incomplete disclosures and responses to written discovery. Even worse, Defendant provided written discovery responses that were designed to mislead Ms. Taylor and hide the truth. Defendant put forth inaccurate, misleading, and untruthful 30(b)(6) deposition testimony. Significant sanctions should result from this wrongdoing.

THE COURT FURTHER ORDERS sanctions for Defendant's repetitive, abusive, or recalcitrant discovery abuses. When a party puts forth deliberately inaccurate discovery responses in an attempt to mislead the other party, that significant sanctions should result such as striking pleadings and entering default judgement. Foster v. Dingwald, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010) (upholding the sanctions or striking the pleadings and entering default judgment when a party engaged in discovery abuses such as failing to attend depositions and failed to comply with the court's orders); Bahena v. Goodyear Tire & Rubber Co., 126 Nev 243, 258, 235 P.3d 592, 602 (2010) (upholding the sanction of striking the answer as to liability for repeated discovery abuses); Young v. Johnny Ribeiro Bldg., Inc., 106 Nev 88, 95, 787 P.2d 777, 782 (1990) (striking pleadings and entering default judgment when a party put forth known false and misleading documents and providing misleading deposition testimony about the evidence). Defendant, in this case, engaged in repeated discovery abuses and failures, all in an attempt to mislead Ms. Taylor and gain an advantage in this litigation. The Defendant's discovery failures and abuses were repetitive and wide-reaching (meaning that in every aspect of discovery from disclosures to written discovery to depositions the Defendant's deliberate scheme to hide the truth was shown). Even worse, the Defendant blocked proper discovery by a third-party ASSA ABLOY which showed that it would do anything to hide the truth and halt the adversarial process.

THE COURT FURTHER ORDERS sanctions for Defendant's breach of its duty of candor with the COURT. Defendant was untruthful with the COURT during various hearings including affidavit testimony from its witnesses. Clearly, the duty of candor was violated. Further, numerous documents were not obtained until this COURT ordered production of documents from

ASSA ABLOY when those documents were in the custody, possession, and control of Defendant. The lack of candor must result in significant sanctions.

THE COURT FURTHER ORDERS sanctions for Defendants repeated recalcitrant efforts to halt the adversarial process. Generally, sanctions including the striking of pleadings may only be imposed where there has been willful noncompliance with a court order or **where the adversary process has been halted by the actions of the unresponsive party** (emphasis added)." GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869, 900 P.2d 323, 325 (1995). Here, Defendant has undertaken to halt the adversarial process. Defendant destroyed nearly all physical evidence in this case despite having received Ms. Taylor's intent to sue letter with demand to preserve evidence. Defendant orchestrated over two years of misguided litigation. Defendant's repeated attempts to misguide litigation includes the following reprehensible conduct: (1) falsely disclosing Stanley Access Technology as the third party door vendor; (2) failure to disclose ASSA ABLOY as the correct third party door vendor; (3) two site inspections under false pretense that the West Doors, sensors, etc. were identical to door systems at the time of injury; (4) egregiously false testimony under oath from Defendants NRCP 30(b)(6) witnesses regarding the need for West Doors to be repaired, the repair of the West Doors, and the alleged lack of knowledge and/or authorization for the repair of the West Doors; (5) blocking production of documents from ASSA ABLOY to Ms. Taylor's subpoena; (6) blatantly false testimony in interrogatories which falsely testify that the West Doors' sensors and component parts are identical to the doors at the time of injury; (7) threats of Rule 11 sanctions against Ms. Taylor's counsel for filing a valid motion; (8) knowingly disclosing records and documents related to the wrong doors (East doors) and (9) attempts to mislead this COURT regarding the true nature of the authorization and repair of the West Doors.

THE COURT FURTHER ORDERS that this case involved extensive failures from (1) spoliation to (2) discovery abuses and failures and to (3) a lack of candor. All three combined in this case show that the Defendant should be severely sanctioned to the extent that the Defendant's answer as to liability and damages should be stricken. This Order comes only after the COURT

has considered each of the factors in the Young v. Johnny Ribeiro Bldg., Inc., 106 Nev 88, 93, 787 P.2d 777, 780 (1990) as shown below.

1. The Degree of Willfulness of The Offending Party

This COURT finds that willfulness is demonstrated by the Defendant's actions. Those actions began after the Defendant allowed evidence to be destroyed after the December 7, 2016 preservation letter was received. The Defendant then sent a letter to Ms. Taylor on February 8, 2017 denying the claim. Then throughout discovery, the Defendant continued to engage in actions that were designed to deceive and mislead Ms. Taylor. The Defendant blocked ASSA ABLOY from producing vital documents, and the only way to get those documents was for this COURT to order production and order Defendant not to obstruct discovery. Finally, the Defendant was not forthright with the COURT in an attempt to avoid sanctions and to further hide the truth. The only result from these actions is that the Defendant was engaged in a willful and deliberate scheme to avoid liability for its actions which resulted in an unsafe, unrepaired, and non-standard-complaint door striking Ms. Taylor.

2. The Degree to Which Ms. Taylor Would Be Prejudiced by a Lesser Sanction

This COURT has considered lesser sanctions such as an inference, presumption, striking the answer as to liability only, and other lesser sanctions. All these sanctions would not be appropriate and would fail to make the sanction meet the spoliation, the discovery abuse, and the lack of candor with the COURT. First, the product at issue is known to wear over time, and getting an exemplar product is not an option because an exemplar product cannot be aged in the same manner and method that the product at issue in this case aged and failed. There is no way to use an exemplar product. Second, the sanction must meet the Defendant's discovery failures and abuses. Spoliation of the product is only part of the Defendant's deliberate, willful wrong doings. As shown above, the Defendant engaged in actions that violated every discovery rule and tenant, and even produced evidence for the wrong door. The failure to be truthful, complete, and forthright in discovery, the failure to provide complete and timely disclosures and supplements, and the failure to conduct a reasonable inquiry into discovery responses is significant. Further,

the Defendant had the person who approved the repair and replacement of the doors act as its 30(b)(6) representative, and it had that person provide untruthful testimony that contradicted his actions early in this case. Third and finally, the Defendant's actions before this COURT showing a lack of candor demonstrates that it will engage in any tactic in an attempt to prevail in this case, even in dereliction of the COURT's proceedings. This COURT recognized that from the time this fall occurred the Defendant knew that it had failed to repair a broken and unsafe doors that did not comply with the applicable standards. The Defendant recognized that it has been reminded numerous times of the need to repair this dangerous door. Thus, the Defendant chose to hide the truth, destroy evidence, and fail to properly conduct discovery. The Defendant knew that if it provided complete and accurate disclosures and discovery responses that liability would be found against it. By only striking the Defendant's answer as to liability, the COURT would be putting the Defendant in the same position it would have been in if it had properly engaged in discovery. Thus, striking the answer as to liability only was no sanctions and would not deter such actions in the future by this Defendant or by other defendants. Again, a lesser sanction is not appropriate, although other sanctions were considered. The only appropriate sanction is that of striking the answer as to liability and damages.

3. <u>The Severity of The Sanction of Dismissal Relative to the Discovery Abuse</u>

The spoliation, the discovery abuses, and failures, the deceitful 30(b)(6) testimony, and the lack of candor with the COURT show that at no time was the Defendant attempting to honestly defend this case. From the moment of the fall, Defendant engaged in a deliberate scheme to hide the truth at all costs. The Defendant's actions and abuses have been repetitive and ongoing, and the sanction of striking the answer as to liability and damages fits the Defendant's actions. Because Defendant has thumbed its nose at its duties and the judicial process, a fair trial on the merits is now impossible. Therefore, the only adequate remedy, which restores fairness to the Ms. Taylor, is to strike Defendant's Answer.

4. <u>Whether the Evidence Has Been Irreparably Lost</u>

It is clear that the central piece of evidence is irreparably lost. The complete nature of this case would have changed if that evidence was preserved and it could thus be adequately inspected

and tested. Other evidence remains lost including the Quotes sent to the Defendant. The permanent loss of this evidence supports significant sanctions.

5. <u>The Feasibility and Fairness of Alternative Less Severe Sanctions</u>

As demonstrated under sections 2 and 3 above, striking Defendant's answer is the only fair and feasible sanction to remedy the extensive abuses, evidence destruction, and lack of candor to the COURT. While lesser sanctions were considered, they would not properly address the extensive scheme to destroy, deceive, and mislead that the Defendant engaged in from the time of the fall up through the hearings on various Motions.

This COURT has carefully considered any and all lesser sanctions and finds that any lesser sanction under these circumstances would encourage defendants to destroy evidence, commit perjury, falsify evidence, lie to judicial officers, and take any other action which would have the effect of halting the adversarial process.

This COURT considered the following sanctions: (1) adverse inference; (2) rebuttable presumption; (3) striking Answer as to liability only; and (4) striking Answer as to liability and damages. This COURT finds that granting an adverse inference for all destroyed evidence is an insufficient sanction given the totality of the misconduct. An adverse inference is an appropriate remedy when evidence is negligently lost or destroyed. Here, however, this COURT finds that Defendant received an intent to sue letter which demanded Defendant preserve evidence. Defendant was aware of Ms. Taylor's intent to sue yet decided to destroy crucial evidence AFTER Defendant knew it was likely going to involved in litigation. The evidence destroyed clearly would have supported Ms. Taylor's case on liability and punitive damages as Defendant had actual notice that the safety systems were non-operational based on the October 17, 2016 Inspection Form. The knowledge that the safety systems were not operation combined with repeated requests from ASSA ABLOY to make the repair from October 17, 2016 until November 30, 2016 when Ms. Taylor sustained injury due to the unsafe doors supports Ms. Taylor's allegation that in failing to promptly repair the doors that Defendant acted with a conscious disregard for her safety. Additionally, an adverse inference does not cure years of misguided litigation including the producing records for the East doors and presenting the false narrative that

those records pertained to the West Doors. An adverse inference does not cure two years of misguided litigation including Plaintiff's expert witness conducting two site inspections under the false pretense that the West Doors' sensors, and component parts were unchanged from the time of injury. Finally, an adverse inference would unfairly enable the Defendant to present evidence to the jury regarding the operation of the West Doors at the time of Ms. Taylor's injury which could not be rebutted by Ms. Taylor as Defendant destroyed the West Doors before any site inspection could be performed by Ms. Taylor's expert. Like Stubli and Zenith, Defendant would be reserving to itself all testimony regarding the operation of the vary article Ms. Taylor alleges to be defective.

This COURT considered a rebuttable presumption against Defendant. A rebuttable presumption is an appropriate remedy when evidence is intentionally destroyed with the intent to harm. Here, the COURT finds that Defendant acted with the intent to harm Ms. Taylor's case. Intent to harm is the logical conclusion when Defendant destroyed nearly all physical evidence despite having received a demand to preserve evidence before such evidence was destroyed. As stated above, the evidence destroyed clearly would have supported Ms. Taylor's case on liability and punitive damages as Defendant had actual notice that the safety systems were non-operational based on the October 17, 2016 Inspection Form. The knowledge that the safety systems were not operation combined with repeated requests from ASSA ABLOY to make the repair from October 17, 2016 until November 30, 2016 when Ms. Taylor sustained injury due to the unsafe West Doors supports Plaintiff allegation that in failing to promptly repair the West Doors that Defendant acted with a conscious disregard for her safety. Additionally, a rebuttable presumption does not cure years of misguided litigation including the producing records for the East doors and presenting those records as though they pertain to the West Doors. A rebuttable presumption does not cure two years of misguided litigation including Ms. Taylor's expert witness conducting two site inspections under the false pretense that the West Doors' sensors, and component parts were unchanged from the time of injury. Finally, a rebuttable presumption would unfairly enable the Defendant to present evidence to the jury regarding the operation of the West Doors at the time of Ms. Taylor's injury which could not be rebutted by Ms. Taylor as Defendant destroyed the

West Doors before any site inspection could be performed by Ms. Taylor's expert. Like Stubli and Zenith, Defendant would be reserving to itself all testimony regarding the operation of the vary article Ms. Taylor alleges to be defective.

Next, this COURT considered striking Defendant's Answer as to liability only or whether to strike the Answer as to liability and damages. Here, under these circumstances, this COURT finds that striking the Answer as to liability only would encourage such misconduct from future litigants. Here, this COURT recognizes the delicate balance between striking the Answer as to liability and striking the Answer as to liability and damages. This COURT also considered whether an evidentiary hearing was necessary to strike the Answer as to liability and damages.

Ultimately, the evidence destroyed clearly would have supported Ms. Taylor's case on liability and punitive damages. This by itself would support striking the Answer as to liability only. Here, however, this COURT must consider the time and expense of litigating this matter through the COURT system for over two (2) years. This COURT must consider judicial economy and a litigants right to a fair and speedy trial pursuant to NRCP 1. This COURT must consider the extreme abuses undertaken by Defendant as fully set forth herein. This COURT finds that as it relates to this Defendant that if Defendant had properly disclosed the initial October 17, 2016 Inspection Form, the October 17, 2016 Worksheet, the October 18, 2016 repair Quotes, the eight (8) e-mails and re-submitted Quotes from October 18, 2016 to November 29, 2016, the December 21, 2016 second Inspection Form, the December 21, 2016 Second Worksheet, the repair invoice that Defendant could have fairly litigated this case as a damages only case. Instead, Defendant decided to go a different route and completely undermined the adversarial process and lacked candor to this COURT.

Here, Defendant destroyed crucial evidence after it received Plaintiff's preservation letter. Next, Defendant falsely disclosed the wrong door vendor. Next, Defendant falsely disclosed service documents related to the wrong door. Next, Defendant permitted two site inspections under the guise that the West Doors were unchanged from the time of Ms. Taylor's injury. Next, and perhaps most egregious, Defendant's NRCP 30(b)(6) witness continued the guise by testifying that only in an "imaginary world" were the West Doors' sensors repaired or replaced.

This testimony under oath is particularly egregious as it was offered by Dieter Thurnwald. Mr. Thurnwald is the same gentleman who approved the repair and replacement at the West Doors. Next, Defendant thwarted document production from ASSA ABLOY which records clearly brought to light the extent of Defendant's false representations. Next, Defendant submitted false affidavits to this Court alleging that ASSA ABLOY never had permission to replace the subject doors and did so without Defendant's knowledge. This Court finds that at a certain point a litigant, through its own severe, recalcitrant abuses of the adversarial process, loses its right to present its case to a jury on liability and damages pursuant to NRCP 37(c). This Court finds that for over two (2) years Defendant has engaged in such abusive, recalcitrant behavior. Merely striking the Answer as to liability would have the effect of rewarding Defendant for its abuses because it places Defendant in the same position it would have been in if Defendant properly disclosed all evidence from the beginning while ignoring the facts that Defendant attempted to deceitfully defend this case rather than on the merits. The question, therefore, must be asked: What if Defendant's tactic succeeded? What would stop Defendant or any other defendant from doing the same conduct again? By striking the Answer as to liability and damages, this COURT upholds its directive to deter future litigants from engaging in the same or similar conduct.

6. <u>The Policy of Favoring Adjudication on the Merits</u>

Defendant's flagrant discovery abuses have made a fair trial on the merits impossible. Therefore, striking its answer is the only way to properly address the egregiousness and widespread nature of the abuse. While public policy and the preference that claims should be resolved on their merits whenever possible may be a factor against dismissal, it is not dispositive. Given the extent and egregiousness of the misconduct and the prejudice to the Ms. Taylor, it is nigh impossible to adjudicate this matter on the merits and the fault for this lies directly at the feet of the Defendant.

7. Whether Sanctions Unfairly Operate to Penalize A Party for Attorney Misconduct, and the Need To Deter Both the Parties and Future Litigants from Similar Abuses

This COURT does not believe that the spoliation, discovery failures, and lack of candor were the result of Defendant's attorneys. In fact, the Defendant's scheme to destroy and deceive began well before litigation started. The deceptive practices continued during discovery during the deposition testimony of Defendant's NRCP 30(b)(6) corporate representative, Dieter Thurnwald. In fact, defense counsel even questioned Mr. Thurnwald during the deposition regarding whether the West Doors were repaired. It's clear that Defendant's attorney was seeking information and it was the corporate representative who insisted upon providing false testimony. As mentioned above, this is particularly egregious as it was Mr. Thurnwald who approved the replacement of the door sensors and component parts. The deceptive practices continued after the close of discovery when Defendant's employee, Courtney Shephard, falsely represented to this COURT that ASSA ABLOY effectuated the replacement of the West Doors' sensors without authorization from Defendant, that Defendant did not know the repair was made, and Defendant was never invoiced for the repair. All of these representations are blatantly false. The sanction is not the result of the attorneys in this case.

8. The Need To Deter This Defendant And Others From Similar Misconduct

This COURT finds that deterrence is an important factor. If the sanction is not severe and extensive, then this Defendant, and others, might try to avoid liability by deceit and deception believing that the worst sanction is striking the answer as to liability, a result that would occur if the Defendant had been honest and met its discovery obligations. Thus, to deter such actions and the temptations to engaged in such action in the future, the sanction of striking the answer as to liability and damages is the appropriate sanction in this case.

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THE COURT FURTHER ORDERS that, based upon the foregoing, the Defendant's Answer is stricken as to liability and damages.

THE COURT FURTHER ORDERS that when a default is entered as a result of a discovery sanction, the non-offending party need only establish a prima facie case in order to obtain the default judgment. Foster v. Dingwall, 126 Nev. 56, 67, 227 P.3d 1042, 1049 (2010) (citing Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 94, 787 P.2d 777, 781 (1990)). Defendant's Answer is stricken as to liability and damages as a result of numerous failings including spoliation of evidence, discovery abuses, and lack of candor. These failings and actions amount to a discovery sanction. Thus, Ms. Taylor need only establish a prima facie case to obtain default judgment.

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HEARING DATE(S) ENTERED IN ODYSSEY

THE COURT FURTHER ORDERS that a prove-up hearing to determine the exact amount of damages is hereby scheduled to occur on February 18, 2021, at 9:05 AM.

January 20, 2021 ZJ

Respectfully Submitted by:

Dated: DEC. 18, 2020
TANNER CHURCHILL ANDERSON

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Approved as to form and content by:

Dated: _____
COOPER LEVENSON, P.A.

WILL NOT SIGN

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Courtney McMenamy

From: Kraemer, Gregory A. <GKRAEMER@cooperlevenson.com>
Sent: Friday, December 18, 2020 9:25 AM
To: Courtney McMenamy
Cc: David Tanner; Busby Jerry S.; Rutkowski Theresa H.
Subject: Taylor v. Smith's
Attachments: 6098022_1.docx

We will not be signing the Order prepared by your office. Instead, we propose submitting the following order. Please let me know if you have any proposed changes.

Thanks

EXHIBIT B

EXHIBIT B

Electronically Filed
4/15/2021 4:52 PM
Steven D. Grierson
CLERK OF THE COURT

NEO
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DISTRICT COURT
CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME**

NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME

PLEASE TAKE NOTICE that the Order Denying Defendant's Motion For Reconsideration Of The Court's Order Granting Ms. Taylor's Motion To Strike Defendant's

Answer To Liability And Damages, Motion For Stay Pending Resolution By The Nevada Supreme Court And Motion For Clarification On Order Shortening Time was entered by the above entitled Court on the 12th day of April, 2021, a copy of which is attached hereto and made a part hereof.

DATED this 15 day of April, 2021.

By: _____

DAVID A. TANNER, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of TANNER CHURCHILL ANDERSON LAW FIRM and that on the 15 day of April, 2021, I served the above and foregoing **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME** by Electronic Service to the following:

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Courtney McNeway
An Employee with Tanner Churchill Anderson

ELECTRONICALLY SERVED
4/12/2021 9:28 PM

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04/12/2021 9:27 PM
CLERK OF THE COURT

ODM
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DISTRICT COURT
CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME** Date of Hearings: February 16, 2021; and March 18, 2021 Time of Hearing: 9:05 a.m.

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME

Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification on Order Shortening Time ("Motion"), having come on for hearing on February 16, 2021 and on March 18, 2021; David A. Tanner, Esq.; David Churchill, Esq.; and Micah Echols, Esq. appeared on behalf of Plaintiff, Patricia A. Taylor; Gregory A. Kraemer, Esq. appearing on behalf of Defendant Smith's Food & Drug Centers, Inc.

The Court having read and considered the Motion, the Opposition, and Reply to the same; having entertained oral argument, and being fully advised on the premises, and good cause appearing therefore,

FINDINGS

THE COURT FINDS that this matter was on calendar to resolve Defendant's Motion.

THE COURT FURTHER FINDS that the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees was a significant, thorough, and lengthy Order which considered all relevant factors including those outlined in Young v. Johnny Ribeiro Building, Inc., 106 Nev. 88, 92, 787 P.2d 777, 780 (1990). [See, Jan. 21, 2021 Order]

THE COURT FURTHER FINDS that deterrence is an important factor in determining the sanctions for Defendant's abuses and failures which include discovery failures, spoliation of evidence, and lack of veracity and candor.

THE COURT FURTHER FINDS that at the February 16, 2021 hearing, the Court denied the Motion, but the Minute Order issued after that Hearing was vague regarding whether the Court would uphold the entirety of the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees, specifically the portion related to striking Defendant's damages. At that hearing, the COURT set another hearing for March 18, 2021.

THE COURT FURTHER FINDS that at the March 18, 2021 hearing, the ambiguity in the Minute Order from the February 16, 2021 hearing was addressed and the COURT

acknowledged that the ambiguity existed. The COURT heard further arguments from counsel and clarified that it was denying the Motion in its entirety. The COURT moved the prove up hearing to April 7, 2021 at 1:30 pm. The COURT and Parties confirmed that at the March 18, 2021 hearing that Ms. Taylor and her medical expert Dr. Garber would testify at the April 7, 2021 prove up hearing and that Defendant could appropriately cross-examine them if desired. The COURT and Parties also confirmed that various Trial Briefs had been filed by both Ms. Taylor (three Briefs) and Defendant (one Brief). The COURT and Parties also confirmed that Ms. Taylor's exhibits she intended to use at the April 7, 2021 hearing had been provided to the COURT and Defendant.

THE COURT FURTHER FINDS that Defendant has repeatedly shown that it has not been honest throughout this case. The COURT has grave concerns as to Defendant's lack of veracity and candor including (1) the veracity of the NRCP 30(b)(6) designee's Dieter Thurnwald and Trish Kozlowski as it relates to the performance problems for the door at issue, (2) veracity and candor failings in responses to written discovery and Rule 16.1 Disclosures, and (3) the failure to retain and produce documents and emails between Defendant and ASSA ABLOY as to the doors function and maintenance. The COURT's concerns are heightened considering that Defendant was placed on actual notice when it received the December 7, 2016 evidence preservation letter shortly after Ms. Taylor's November 30, 2016 fall.

THE COURT FURTHER FINDS that the lack of veracity and candor permeated this entire action as more fully set forth below.

A. <u>Defendant's Lack Of Veracity And Candor In Its Prelitigation Actions</u>

THE COURT FURTHER FINDS that Ms. Taylor's fall occurred on November 30, 2016. Only a week later on December 7, 2016, Defendant was served with a preservation letter from Ms. Taylor's attorney. This preservation letter put Defendant on notice to preserver all relevant evidence.

THE COURT FURTHER FINDS that Defendant received the December 7, 2016 preservation letter because it disclosed the same in its Initial Rule 16.1 Disclosures.

THE COURT FURTHER FINDS that despite receiving the December 7, 2016 preservation letter, Defendant intentionally destroyed, let be destroyed, and failed to preserve vital evidence in this case. This evidence included: (1) the West Doors' sensors, motor, gearbox, wiring, and other component parts; (2) the October 17, 2016 Inspection Form wherein ASSA ABLOY noted that the West Doors' safety systems were not operational; (3) the October 17, 2016 Worksheet; (4) the October 18, 2016 Quotes sent to Defendant; (5) the October 18, 2016 e-mail where ASSA ABLOY sent the Quotes to Defendant; (6) the correspondence wherein the Quotes was resubmitted to Defendant on October 25 and 28, 2016, as well as on November 1, 8, 15, 23, 29, 2016; (7) the December 6, 2016 e-mail from ASSA ABLOY asking about the status of the Quotes; (8) the correspondence wherein the Quotes were resubmitted to Defendant on December 7, 2016; (9) the December 20, 2016 e-mail where Defendant employee, Dieter Thurnwald approved the Repair and Replacement Quotes; (10) the December 21, 2016 Second Inspection Form signed by Defendant's employee, Travis Childers; (11) the October 17, 2016 Second Worksheet signed by Defendant's employee, Travis Childers; (12) the December 28, 2016 invoice for repairs completed by ASSA ABLOY.

THE COURT FURTHER FINDS that the failure to preserve this evidence and documents was intentional and showed a lack of veracity and candor related to the litigation process that Defendant had notice would occur.

B. <u>Defendant's Lack of Veracity And Candor In Rule 16.1 Disclosures</u>

THE COURT FURTHER FINDS that when litigation began Defendant had already intentionally destroyed, let be destroyed, and failed to preserve vital evidence in this case as shown above.

THE COURT FURTHER FINDS that despite Defendant's destruction of evidence and failure to preserve evidence, Defendant still had knowledge of its door vendor, ASSA ABLOY and the Contract it had with this vendor. Despite this, in its Rule 16.1 Disclosures, Defendant never disclosed the identity of its door vendor and never disclosed the Contract it had with this door vendor. Rather, Defendant disclosed the wrong door vendor to Ms. Taylor. Defendant also

produced an old, outdated contract it had with Stanley Access Technologies, a company that had not provided any door maintenance, repairs, or upgrades for many years.

THE COURT FURTHER FINDS that Defendant did not disclose the identity of various individuals who played a role in the subject door's repair and replacement including Gilbert Alverado and Brad Childress. Further, it was not until the end of discovery that ASSA ABLOY disclosed the identity of the person that approved the door replacement and repair, Dieter Thurnwald.

THE COURT FURTHER FINDS that in its Rule 16.1 Disclosures and written discovery responses, Defendant actually produced documents related to the wrong door – the East door not the West Door.

THE COURT FURTHER FINDS that in its Rule 16.1 Disclosures, Defendant failed to disclose vital witnesses. For example, Defendant did not disclose the names of the employees that communicated with ASSA ABLOY about the Subject Doors in its Initial Rule 16.1 Disclosure, namely Dieter Thurnwald, Travis Childers, and Gilbert Alvarado.

THE COURT FURTHER FINDS that Defendant failed to disclose certain witnesses until after discovery ended even though it knew the identify of these witnesses from before the lawsuit was filed. Specifically, discovery ended on August 27, 2019. The parties entered a limited stipulation to allow certain depositions to be done by November 15, 2019, but discovery remained closed for all other purposes. Despite this, on November 7, 2019 – months after discovery ended – Defendant disclosed Mr. Radcliffe and Mr. Osborn as witnesses. These are witnesses Defendant was aware of from the inception of this case and they were disclosed after discovery ended and thus too late for Ms. Taylor to conduct any discovery from them or about them.

THE COURT FURTHER FINDS that Defendant never disclosed the identity of the employees who signed Affidavits that the Defendant relied upon to argue that an evidentiary hearing was not necessary.

THE COURT FURTHER FINDS that Defendant's lack of veracity and candor was evident through its failure to disclosure (and timely disclose) information, entities, contracts, and witnesses in its Rule 16.1 Disclosures.

C. Defendant's Lack Of Veracity And Candor In Its Written Discovery Responses

THE COURT FURTHER FINDS that as noted above, in its Rule 16.1 Disclosures and written discovery responses, Defendant actually produced documents related to the wrong door – the East door not the West Door.

THE COURT FURTHER FINDS that on October 4, 2018, Defendant responded to requests for production. Plaintiff's First Request for Production Nos. 27 and 28 requested all service records for the West Doors. Defendant failed to produce e-mails about the West Doors, Quotes from ASSA ABLOY, or many other documents. In fact, during discovery Defendant only produced documents for the wrong door and failed to produce any documents (other than the Work Order) for the West Doors.

THE COURT FURTHER FINDS that on August 8, 2019, Defendant supplemented its responses to Ms. Taylor's Request for Production No. 34 and wrongfully indicated that the sensors and component parts were still on the West Doors.

THE COURT FURTHER FINDS that Defendant's written discovery answers were false, misleading, and incomplete. For example, in its Response to Plaintiff's Second Request for Production, No. 34, Defendant stated that the West Doors' component parts were replaced in June 2017 and were discarded and not available for use in this case. Yet, this response and the documents produced by Defendant in its Response pertained to the East Doors, not the West Doors that caused Mr. Taylor's fall. Later, in its Supplemental Response to Plaintiff's Second Request for Production, No. 34, Defendant said that the component parts for the West Doors that caused Ms. Taylor's fall were still on the West Doors.

THE COURT FURTHER FINDS that in its Response to Plaintiff's First Request for Production Nos. 27 and 28 that asked for all service records for the West Doors, Defendant only produced the Work Order. It did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice.

THE COURT FURTHER FINDS that in its Response to Plaintiff's First Request for Production No. 4, asking for documents showing a dangerous condition with the West Doors, Defendant stated that no such documents exist. Defendant did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice, all of which showed the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be repaired.

THE COURT FURTHER FINDS that in its Supplemental Answer to Interrogatory No. 13, Defendant stated that there has been no work, and there was never any recommendation for work to be done, on the West Doors.

THE COURT FURTHER FINDS that the Defendant's blatantly false written discovery responses was intentional and showed a lack of veracity and candor.

D. <u>Defendant's Lack Of Veracity And Candor In Its 30(b)(6) Deposition Testimony</u>

THE COURT FURTHER FINDS that on March 1, 2019 Defendant's first 30(b)(6) representative, Ms. Trisha Kozlowski was deposed. She falsely testified that the only problem with the West Doors were them coming off the tracks.

THE COURT FURTHER FINDS that on August 7, 2019 Defendant's second 30(b)(6) representative, Mr. Dieter Thurnwald was deposed. He falsely testified as follows:

> "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]
>
> Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]
>
> That no documentation existed about the west doors. [Thurnwald depo., pp. 73 - 75]
>
> That the last time the west doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]
>
> The door mechanisms for the west doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]

> Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]
>
> Finally, he testified that only in an "imaginary world" was the subject door ever worked on or replaced. [Thurnwald depo., pp. 115 and 118]

The depositions of Defendant's NRCP 30(b)(6) corporate representatives show Defendant's lack of veracity and candor throughout discovery.

THE COURT FURTHER FINDS that the ASSA ABLOY Technician filled out the Inspection Form wherein he notes that the West Doors' safety systems are not operational, and the West Doors do not comply with the applicable standards. Mr. Thurnwald received all the quotes from ASSA ABLOY regarding the repair and replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts. These repairs would make the West Doors' safety system operation through replacement of the faulty sensors. Mr. Thurnwald is the employee who actually approved ASSA ABLOY to perform the work to replace the faulty sensors et al.

THE COURT FURTHER FINDS that Mr. Thurnwald's binding testimony as Defendant's NRCP 30(b)(6) designee is shocking to this COURT. Mr. Thurnwald was fully aware that the West Doors' safety systems were not operational, and that significant work was required to make the safety systems operational. Mr. Thurnwald was aware of this safety issue approximately forty-four (44) days before the West Doors closed on Mr. Taylor causing injury. Mr. Thurnwald knew he approved ASSA ABLOY's quote for the replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts on December 20, 2016. Yet, Mr. Thurnwald provided blatantly false testimony which, if true, would dispute Ms. Taylor's allegations of actual notice related to liability and conscious disregard of safety related to punitive damages.

THE COURT FURTHER FINDS that the blatantly false testimony of Trisha Kozlowski and Dieter Thurnwald, the 30(b)(6) representatives, provide strong indicia that Defendant's lack

of veracity and candor was intentional because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process.

E. <u>Defendant Blocked Discovery From A Third Party</u>

THE COURT FURTHER FINDS that in addition to Defendant's lack of candor in its Rule 16.1 Disclosures, its written discovery responses, and its 30(b)(6) deposition testimony, Defendant also blocked a third party, ASSA ABLOY, from producing evidence. These actions showed a lack of veracity and candor that and that Defendant would go to any lengths to hide the truth because Defendant knew that these documents would contradict the Defendant's position, and that the ASSA ABLOY documents would show that the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be replaced and repaired. These documents would further show the Defendant's refusal to have the West Doors replaced and repaired, and that it had a conscious disregard for Ms. Taylor's safety. These documents would further show that West Doors were replaced and repaired and that Defendant was invoiced for that work.

THE COURT FURTHER FINDS that during discovery Ms. Taylor subpoenaed ASSA ABLOY to provide documents pertinent to this matter and the West Doors. ASSA ABLOY attempted to fully respond to Ms. Taylor's Subpoena but needed written permission from Defendant and/or its parent company, Kroger, because many of the documents requested in Ms. Taylor's subpoena were confidential pursuant to the contract between ASSA ABLOY and Defendant. Thus, on August 15, 2019 ASSA ABLOY sent a letter to Defendant/Kroger (with a copy to Defendant's counsel, Jerry S. Busby, Esq.) asking permission to disclose all relevant documents related to Ms. Taylor's Subpoena, including the Agreement and work authorizations:

> The Agreement and related work authorizations are responsive to the Subpoena but are considered Confidential Information pursuant to Section 5 of the Agreement. Enclosed as Exhibit B are copies of the Confidential Information that ASSA ABLOY must produce in response to the Subpoena. ASSA ABLOY, therefore, requests Kroger's written permission to produce these documents.
>
> Please provide a response to this request by August 23, 2019. If we do not receive a response by that date, we will inform Plaintiff's

> counsel that Kroger has not provided the required permission for ASSA ABLOY to produce the Confidential Information.

THE COURT FURTHER FINDS that Defendant did not respond to this letter. Thus, ASSA ABLOY disclosed only limited documents responsive to Ms. Taylor's Subpoena. When disclosing these limited documents, ASSA ABLOY prepared an Affidavit of Custodian of Records noting the numerous documents were not disclosed because Defendant would not give permission:

> On August 15, 2019, ASSA ABLOY sent a letter to the Kroger Company ("Kroger"), via first class mail (certified mail) and overnight UPS delivery requesting written authorization to produce certain other documents in its possession that are also responsive to the Subpoena. ASSA ABLOY is contractually obligated to obtain written approval from Kroger prior to producing the documents referenced in its letter. To date Kroger has not responded to the letter.

THE COURT FURTHER FINDS that even after the Custodian of Records Affidavit Defendant still did not respond to ASSA ABLOY's letter or this Affidavit. This continued to block ASSA ABLOY from producing all documents responsive to Ms. Taylor's Subpoena.

THE COURT FURTHER FINDS that this Court had to enter an Order, which it signed on February 7, 2020, to finally allow ASSA ABLOY to produce all documents responsive to Ms. Taylor' Subpoena. This Order required (1) Defendant and Kroger were not to contact any person, employee, or agent for ASSA ABLOY about this case, Ms. Taylor's Subpoena, the West Doors, or any documents or work in this case; and (2) that Ms. Taylor's counsel was to send a copy of the Order to ASSA ABLOY; and (3) that ASSA ABLOY was to produce all documents and information relevant to the West Doors to Ms. Taylor's counsel for production and use in this case. [See, Order Signed Feb. 7, 2020]

THE COURT FURTHER FINDS that Defendant's efforts to block discovery and to put forth a false narrative in its attempt to defeat Ms. Taylor's claims were so extensive that documents could only be produced after the Court ordered Defendant not to block discovery by requiring that it not communicate with ASSA ABLOY.

THE COURT FURTHER FINDS that this is another example of Defendant's lack of veracity and candor to hide the truth and to put forth a false narrative in this case. The Defendant's actions are so brazen and far reaching that it can only conclude that Defendant's lack of veracity and candor are intentional.

F. Defendant's Lack Of Veracity And Candor In Affidavits

THE COURT FURTHER FINDS that Defendant presented three Affidavits of people and Defendant argued that these Affidavits showed that an evidentiary hearing was not necessary. This COURT closely examined these Affidavits and found they contained numerous false statements.

1. Affidavit of Courtney Shephard

Despite over two years of discovery in this case, Ms. Shephard was never identified by Defendant as a witness. Ms. Shephard provided an affidavit in opposition to Plaintiff's Motion for an Evidentiary Hearing. Ms. Shepherd's affidavit represented that "it appears ASSA ABLOY made a quote for repairs to the West Doors on October 17, 2016. The quote was submitted but it was not approved. However, it appears that the ASSA ABLOY technician that put together the quote on October 17, 2016, without approval, went to the store and performed the repair work." The documents produced by ASSA ABLOY clearly demonstrate that Ms. Shephard was not honest with this COURT. Importantly, Defendant never objected to the documents' authenticity from ASSA ABLOY. The documents produced by ASSA ABLOY establish that Defendant indeed approved ASSA ABLOY to repair and replace the West Doors. The Worksheet produced by ASSA ABLOY establish very clearly that Defendant knew the work was performed on December 21, 2016 as a Defendant employee, Travis Childers, signed off on both the Second Inspection Form and Second Worksheet. While Defendant included the affidavit from Ms. Shephard in its Opposition to Plaintiff's Motion for an Evidentiary Hearing, Defendant omitted Ms. Shephard's affidavit from its Opposition to Plaintiff's Motion to Strike Defendant's Answer. As such, this COURT has considered Ms. Shephard's affidavit but is not persuaded that her statements are truthful or mitigating.

Ms. Shephard failed to disclose how, when, or why significant evidence including but not limited to (1) the Work Order entry by Defendant's employee, Travis Childers, noting that the West Doors were not operating correctly and were running very poorly; (2) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (3) the October 18, 2016 e-mail submitting the two ASSA ABLOY quotes to Defendant which included the Repair quote that needed to be approved to "get the doors up and running"; (4) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant multiple times before Ms. Taylor's fall; (5) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (6) the December 21, 2016 Second Inspection Form; (7) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (8) the West door sensors, motor, and competent parts; and (9) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

2. <u>Affidavit of Venessa Wickline Gribble</u>

Despite over two years of discovery in this case, Ms. Gribble was never identified by Defendant as a witness in this case. Ms. Gribble is a paralegal in Defendant's litigation division. Defendant submitted Ms. Gribble's affidavit in both its Opposition to Plaintiff's Motion for an Evidentiary Hearing and in Opposition to Plaintiff's Motion to Strike Defendant's Answer. Ms. Gribble testified that she is the person who performed two searches for documents related to the doors in this case. Ms. Gribble testified in her first search for documents that she limited her search period from October 30, 2016 to December 2, 2016. These were the document first disclosed by Defendant. The initial search specifically excluded the October 17, 2016 Inspection Form, the October 18, 2016 Quotes, the October 25, 2016 email and re-submission of Quotes, the October 28, 2016 email and re-submission of Quotes, the December 7, 2016 email and re-submission of Quotes, the December 20, 2016 email approving repair and replacement of West Doors. The December 21, 2016 Inspection Form and Worksheet both of which were signed by Defendant's employee, Travis Childers. The December 28, 2016 invoice from ASSA ABLOY to Defendant. Ms. Gribble provides no rationale for why she was asked to

perform such a limited scope. More importantly, however, is that the search period from October 30, 2016 to December 2, 2016 does include significant documents which were not disclosed by Ms. Gribble. For example, Ms. Gribble failed disclose the November 8, 2016 e-mail and re-submittal of Quotes, the November 15, 2016 e-mail and re-submittal of Quotes, the November 23, 2016 e-mail and re-submittal of Quotes, and the November 29, 2016 e-mail and re-submittal of Quotes.

Next, Ms. Gribble testified that she performed a second, more extensive search related to the replacement of door sensors. Ms. Gribble states that in September 2018, she provided to defense counsel. This COURT finds that the September 2018 documents and subsequent disclosure were also problematic in that Ms. Gribble provided documents related to the wrong door. Specifically, Ms. Gribble provided documentation related to the East Doors not the West Doors where Ms. Taylor was injured.

In carefully considering the affidavit of Ms. Gribble this COURT finds that Ms. Gribble testimony does not support mitigation of Defendant's conduct. It is clear from the records produced by ASSA ABLOY that Defendant was fully aware that the West Doors' safety features were not operation as of October 14, 2016. It is also clear that Defendant undertook to have the West Doors safety system including door sensors repaired on December 21, 2016. Additionally, Defendant was fully aware that the injury took place at the West Doors, yet Ms. Gribble provided evidence of the East Doors. Ms. Gribble failed to disclose how, when, or why significant evidence including but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West door sensors, motor, and competent parts; and

(8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

3. **Affidavit of Ronald K. Radcliffe, Jr.**

Like Ms. Shephard and Ms. Gribble, Mr. Radcliffe was not identified as a witness in this litigation. Mr. Radcliffe's affidavit was submitted in both Defendant's Opposition to Plaintiff's Motion for an Evidentiary Hearing and Plaintiff's Motion to Strike Defendant's Answer. Mr. Radcliffe was asked to review certain maintenance records from Defendant's Service Hub and from ASSA ABLOY. Mr. Radcliffe's affidavit is dated October 30, 2019. As such, this Court finds that Mr. Radcliffe did not review the full set of records produced by ASSA ABLOY on March 4, 2020, approximately four months after Mr. Radcliffe prepared the subject affidavit. In reviewing records, Mr. Radcliffe offers expert testimony regarding the mechanisms, safety features, and operation of the subject doors. As Mr. Radcliffe was not identified as a lay or expert witness, this COURT does not consider Mr. Radcliffe's opinion testimony. As such, the portion of Mr. Radcliffe's affidavit that this COURT does consider deals with his personal involvement in the procurement and production of evidence. Mr. Radcliffe states that in September 2018, he went to find out if or when the sensors were replaced on the doors at Defendant Store No. 347. He states that he went to the store to get the numbers from the doors so that he could identify them. He then called ASSA ABLOY and asked if any of the sensors at the store had been replaced in the last two years. He states that they sent him records. Mr. Radcliffe then states that records ASSA ABLOY sent him that the East Doors had sensors replaced on June 15, 2017 and the West Doors do not show ASSA ABLOY replacing the West Doors' sensors in the past two years.

This COURT finds that Mr. Radcliffe's testimony does not mitigate Defendant's conduct. First, it is clear that Mr. Radcliffe did not see the full production of documents from ASSA ABLOY which directly contradicts his statements under oath. According to Mr. Radcliffe, ASSA ABLOY told him that the West Doors' sensors were not replace between September 2016 to September 2018. The documents from ASSA ABLOY prove otherwise. Additionally, Mr. Radcliffe failed to disclose how, when, or why significant evidence including

but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant multiple times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West Doors sensors, motor, and competent parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated. Given the totality of the completeness of the records from ASSA ABLOY and totality of the evidence, this COURT finds that Mr. Radcliffe's affidavit regarding his phone conversation from an unknown employee from ASSA ABLOY is not credible and is not admissible on an evidentiary basis. Mr. Radcliffe's testimony regarding what an unidentified employee of ASSA ABLOY told him is hearsay. The actual records from ASSA ABLOY have evidentiary value as they are found to be authentic and admissible evidence. Even if Mr. Radcliffe's testimony had evidentiary value, this COURT finds that it would be insufficient to mitigate Defendant's extensive spoliation of evidence, lack of candor to this COURT, and years of halting the adversarial process. Finally, this COURT finds that Mr. Radcliffe's testimony regarding his inspection of the subject doors is remarkable in that he alleges to have provided to corporate Defendant the exact serial numbers of the subject doors; yet corporate Defendant failed to provided records for the subject doors. Rather, corporate Defendant chose to the records for the East Doors which Defendant attempted to pass off as records for the West Doors.

THE COURT FURTHER FINDS that presenting these false Affidavits shows the extent and breadth of Defendant's lack of veracity and candor.

G. Defendant's Lack Of Veracity And Candor When Interacting With The COURT

1. Defendant's Lack Of Veracity And Candor At Hearings

THE COURT FURTHER FINDS that Defendant exhibited a general lack of candor with this Court and opposing counsel. This lack of candor is most prevalent in Defendant discovery failures, examples of which have been detailed above. Nevertheless, this lack of candor continued at various hearings.

THE COURT FURTHER FINDS that at the August 13, 2019 hearing for the Motion for Sanctions for Spoliation of Evidence, Defendant represented to the Court that the subject door had no repairs or work done at any time. Further, at that hearing, Defendant told this Court that all documents related to the subject door had been produced and there were no prior problems with the door. These representations were wrong.

THE COURT FURTHER FINDS that at a later hearing held on March 10, 2020 that Defendant attempted to explain its position in light of the recently disclosed ASSA ABLOY documents. Defendant told this Court that ASSA ABLOY may have done the work to replace the door's component parts, but that Defendant did not authorize that work to be done and Defendant had no idea that the work was done. When considering Defendant new arguments, this COURT recognized that Defendant was still blocking ASSA ABLOY for producing all relevant documents. Thus, this COURT entered and Order that Defendant was not to communicate with ASSA ABLOY, that all documents ASSA ABLOY was withholding were to be produced, and that Ms. Taylor was to furnish ASSA ABLOY with a copy of this Court's Order for production of all relevant documents. Another hearing was scheduled for March 31, 2020.

THE COURT FURTHER FINDS that ASSA ABLOY produced the documents pursuant to the Court Order. These documents showed that Defendant prior representations that ASSA ABLOY was not authorized to do work on the subject door's component parts was false. In fact, these new documents produced by ASSA ABLOY included e-mails between ASSA ABLOY and Defendant representatives showing (1) that the subject doors were unsafe, in disrepair, and in need of upgrading before Ms. Taylor's incident; and (2) that Defendant

approved ASSA ABLOY to perform work to the door's component parts. Even worse, it was Defendant own 30(b)(6) representative Mr. Dieter Thurnwald that send the e-mail approving the work to be done on the subject doors.

THE COURT FURTHER FINDS that at the March 31, 2020 hearing, Defendant attempted to blame ASSA ABLOY for Defendant repeated, ongoing discovery failures and misrepresentations to this Court. Defendant claimed that ASSA ABLOY did not properly document its work in Defendant service hub program, and that Defendant had no e-mails because it destroys all e-mails after 30 days. Yet, these representations rang hollow because they were contradicted by the evidence and did not alleviate Defendant from its disclosure and discovery duties.

THE COURT FURTHER FINDS that at the March 31, 2020 hearing, Defendant was attempting to explain why it did not have various documents related to the subject doors. Defendant represented to the COURT at that hearing that ASSA ABLOY never sent an invoice for the work performed on the subject doors. [See, March 31, 2020 hearing, pp. 25 and 33] This was false because ASSA ABLOY produced the invoice it sent to Defendant as part of the documents it disclosed (which Defendant initially blocked from being produced) after being ordered by the COURT.

THE COURT FURTHER FINDS that Defendant representations to this Court during numerous hearings were wrong. Its representations were contradicted by other documents. And its representations did not explain why Defendant breached every duty it had (duty to preserve, duty of candor, discovery duties, disclosure duties, and duty to prepare 30(b)(6) witnesses) which led to almost three years of misguided litigation.

2. Defendant's Lack Of Veracity And Candor Submitting Incorrect Orders

THE COURT FURTHER FINDS that Defendant has presented this COURT with Orders that it knows are false and incorrect. This shows a lack of veracity and candor with the COURT.

THE COURT FURTHER FINDS that at the November 5, 2021 hearing on the renewed Motion to Strike Defendant's Answer, this COURT ruled that Defendant's Answer was stricken as to liability and damages. This ruling was clarified by Defendant's counsel:

> MR. KRAEMER: Your Honor, just for clarification, does that apply to liability only or is it damages as well? ...
>
> THE COURT: We did have – we did – there was two and a half years or so of litigation that was – I think I termed it "misguided" in this case. So what I'm going to do is this: I'm going to go ahead, it goes to both the liability and damages. ...
>
> MR. KRAEMER: Fine, your Honor. Have a good day, sir.

[See, November 5, 2021 Hearing Transcript, pp. 102 – 104]

THE COURT FURTHER FINDS that despite obtaining clarification from this COURT about the extent of the COURT's ruling, Defendant nevertheless submitted a proposed order that it knew was false. On December 18, 2020, Defendant submitted to this COURT a proposed order saying, in part: "THE COURT HERBY ORDERS that Plaintiff's Motion to Strike Defendant's Answer as to liability only is HEREBY GRANTED."

THE COURT FURTHER FINDS that at a later hearing related to the instant Motion (Defendant's Motion for Reconsideration) the COURT had denied that Motion. Nevertheless, Defendant submitted a knowingly false order which stated, in part: "Motion for Reconsideration as it pertains to the Striking of Defendant's Answer on Damages is HEREBY GRANTED." Again, this proposed order is knowingly false.

THE COURT FURTHER FINDS that after the Defendant's Motion for Reconsideration was heard, the COURT told the parties that it was denying that Motion although there was some inherit confusion in the hearing transcript and Minute Order. Nevertheless, Defendant submitted a proposed Order which stated that the COURT granted the Motion for Reconsideration. Again, this proposed Order was not what this COURT ruled and was contradicted by the COURT's comments and the Minute Order.

THE COURT FURTHER FINDS that Defendant's actions of submitting knowingly false proposed order to this COURT shows the Defendant's ongoing actions of lack of veracity and candor.

H. <u>Defendant Argued That An Evidentiary Hearing Was Not Necessary</u>

THE COURT FURTHER FINDS that on December 5, 2019, Ms. Taylor filed Ms. Taylor's motion for an Evidentiary Hearing on an Order Shortening Time, which the Defendant opposed. In Defendant's Opposition it included three Affidavits which were discussed above. Defendant then represented to the COURT that the Affidavits were the only evidence it needed to resolve the issues. For example, Defendant stated:

> An evidentiary hearing of a DEFENDANT witness (Courtney Shepherd) would result in the same testimony provided in her attached affidavit. The hearing, therefore, would only serve to have Ms. Shepard state her affidavit testimony in open Court. This hearing would serve no legitimate purpose whatsoever.

Similarly, about Ms. Gribble's Affidavit:

> ... Ms. Gribble has already explained in an affidavit when she initially requested maintenance records related to this case, who requested them (Sedgwick) and when she requested additional requests to respond to Ms. Taylor's Second Set of Requests for Production of Documents. Ms. Gribble's affidavit testimony speaks for itself and there is no evidence that is in anyway inaccurate or needs further explanation.

Defendant again reiterated that "All of the so called issues or "matters" that Ms. Taylor states requires evidentiary hearing can easily be addressed by existing testimony (affidavits). ..."

THE COURT FURTHER FINDS that oral argument was held on Ms. Taylor's Motion for an Evidentiary Hearing. At that hearing, Defendant continued to argue that an evidentiary hearing was not necessary because it has submitted Affidavits which were all the evidence that the COURT needed to address the issues.

> MR. KRAEMER: ... We have affidavits from multiple employees that they set forth answers to every one of their questions, inquiries, whatever you want to call them, their topics. They're

> answered. They're answered. We will have a witness come here and just repeat everything they said in an affidavit.

[See, Jan. 22, 2020 hearing, p. 69]

THE COURT FURTHER FINDS that after the hearing, this Court issued an Order wherein it agreed with Defendant's arguments and denied the request for an Evidentiary Hearing.

THE COURT FURTHER FINDS that in the instant Motion, the Defendant has presented no new evidence or law that would show that the COURT's initial ruling was legally or factually in error. Further, this COURT fully considered the evidence Defendant submitted in the form of Affidavits.

I. Defendant's Lack Of Veracity And Candor Is Intentional

THE COURT FURTHER FINDS that there is no time when the Defendant put forth an honest defense or when it was fully candid with the COURT. The spoliation, the discovery abuses, and failures, the spoliation, the deceitful 30(b)(6) testimony, and the lack of candor with the COURT and other failures by Defendant show that at no time was the Defendant attempting to honestly defend this case. From the moment of the fall, Defendant engaged in a deliberate scheme to hide the truth at all costs. Given the extensive, repeated, and ongoing lack of veracity and candor, this COURT reaches the obvious conclusion that Defendant's lack of veracity and candor are intentional.

J. Defendant Choose To Forgo Evidentiary Hearing

THE COURT FURTHER FINDS that Defendant had an opportunity to have an evidentiary hearing in this matter. Defendant chose to oppose an evidentiary hearing and instead chose to rely upon the Affidavits submitted. As shown above, these Affidavits contained blatantly false and misleading testimony. Defendant's explanation for opposing evidentiary hearing was that Defendant did not believe this Court would grant Plaintiff's Motion to Strike Defendant's Answer. [See, Feb. 16, 2021 Hearing Transcript, p. 7] Defendant clearly understood the nature of Ms. Taylor's Motion to Strike because that Motion requested that Defendant's Answer be stricken as to liability and damages. It bewilders this COURT that Defendant's assumed this COURT would not carefully analyze all factors and consider all

relevant testimony and simply find in Defendant's favor. Defendant's assumption is mistaken as this COURT would have entertained an evidentiary hearing. Given Defendant's opposition to the evidentiary hearing, this COURT carefully considered all evidence presented which overwhelming supports Ms. Taylor's position.

ORDER

THE COURT HEREBY ORDERS that Defendant's Motion is hereby DENIED in its entirety and the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees remains unchanged.

THE COURT FURTHER ORDERS that the COURT has considered all the Young factors and the necessity to deter future conducted related to the failure to preserve all evidence upon receipt of the preservation of evidence letter and the cascade of untruthful discovery responses. Notwithstanding the prior failures, once Ms. Taylor subpoena ASSA ABLOY for the actual maintenance records for the door at issue, ASSA ABLOY requested Defendant's permission to disclose all relevant maintenance records and documents fully. While Defendant had control of the maintenance records production, it never responded to ASSA ABLOY's request and thus production could not occur until this COURT ordered Defendant to stop thwarting and blocking production. This showed the extent and lengths Defendant would go to avoid the truth and thus further confirmed the COURT's concern about Defendant's lack of veracity and candor. It further established that the Defendant's lack of veracity and candor was intentional.

THE COURT FURTHER ORDERS that the record in this case is fully developed that the numerous filings, hearings, along with the Affidavits preserved by Defendant have provided this COURT with ample evidence and information to consider the issues at hand. Further, it was the Defendant that argued an evidentiary hearing was not necessary.

THE COURT FURTHER ORDERS that EDCR 2.24 provides:

> **Rule 2.24. Rehearing of motions.**
>
> (a) No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be

> reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.
>
> (b) A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, **must** file a motion for such relief **within 14 days after service of written notice of the order** or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed, and heard as is any other motion. A motion for reconsideration does not toll the period for filing a notice of appeal from a final order or judgment.
>
> (c) If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.
> Here, Defendant's Motion for Reconsideration seeks an evidentiary hearing with this Court.

This COURT's Order denying an evidentiary hearing was entered on June 22, 2020. Defendant's Motion for Reconsideration was not filed for over 6 (six) months. Further, Defendant never sought to enlarge the time to file for reconsideration. THE COURT ORDERS that Defendant's Motion for Reconsideration is untimely and jurisdictionally barred from reconsideration for failure to comply with EDCR 2.24.

THE COURT FURTHER ORDERS that Defendant initially opposed an evidentiary hearing. The Defendant is thus judicially estopped from taking inconsistent position with the COURT, which is another reason the Motion for Reconsideration is denied.

THE COURT FURTHER ORDERS that throughout this case, the Defendant has shown a lack of veracity and candor. This COURT has grave concerns that an evidentiary hearing would be of any benefit or that it would result in finding the truth. This is particularly an issue because Defendant's lack of veracity and candor is intentional. This is another reason that the Motion for Reconsideration is denied.

THE COURT FURTHER ORDERS that Defendant's conduct in this case merits striking the answer as an appropriate sanction to deter future litigants from halting the adversarial process or engaging in similar misconduct.

THE COURT FURTHER ORDERS that a prove up hearing for Ms. Taylor regarding damages will be held on April 7, 2021 at 1:30 pm., and will proceed as outlined above.

Dated this 12th day of April, 2021

DISTRICT COURT JUDGE
528 20C CAF2 AA22
Timothy C. Williams
District Court Judge

ZJ

Respectfully Submitted by:

Dated: 4/9/21

TANNER CHURCHILL ANDERSON

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Approved as to form and content by:

Dated: _____

COOPER LEVENSON, P.A.

- REFUSED TO SIGN -

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EXHIBIT C

EXHIBIT C

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DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME**

PLEASE TAKE NOTICE that the Order Denying Defendant's Motion For Reconsideration Or, In The Alternative, To Alter Or Amend The Court's Order Granting Plaintiff's Renewed Motion To Strike Defendant's Answer On Order Shortening Time was entered by the above entitled Court on the 30th day of November, 2021, a copy of which is

attached hereto and made a part hereof.

DATED this __1st___ day of December, 2021.

By: ___*/s/ David A. Tanner*_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of TANNER CHURCHILL ANDERSON LAW FIRM and that on the __1st___ day of December, 2021, I served the above and foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME** by Electronic Service to the following:

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/s/ Courtney McMenamy
An Employee with Tanner Churchill Anderson

EXHIBIT 1

EXHIBIT 1

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DISTRICT COURT
CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME** Date of Hearings: September 20, 2021; October 14, 2021; and October 22, 2021 Time of Hearing: 9:30 a.m.

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME

Case Number: A-17-761650-C

Defendant's Motion for Reconsideration or, in the Alternative, to Alter or Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on Order Shortening Time ("The Motion"), having come on for hearing on September 20, 2021; October 14, 2021; and October 22, 2021; David A. Tanner, Esq.; David J. Churchill, Esq.; E. Daniel Kidd, Esq.; and Micah S. Echols, Esq. appeared on behalf of Plaintiff, Patricia A. Taylor; Gregory A. Kraemer, Esq.; Jerry Busby, Esq.; Daniel F. Polsenberg, Esq.; and Joel D. Henriod, Esq. appeared on behalf of Defendant Smith's Food & Drug Centers, Inc.

The Court having read and considered The Motion, Opposition, and Reply to the same; having entertained oral argument, and being fully advised on the premises, and good cause appearing therefore,

FINDINGS

THE COURT FINDS that this matter was on calendar to resolve The Motion.

THE COURT FURTHER FINDS that its decision to issue sanctions striking Defendant's Answer as to liability and damages was not based upon one singular fact. This COURT'S decision to sanction Defendant was based upon Defendant's actions of spoliation of evidence, its breaches of discovery duties, its lack of candor to opposing counsel and the COURT, and its halting of the adversarial process. These actions occurred over a long time and cumulatively showed that Defendant's conduct was repetitive, abusive, and recalcitrant and, therefore, warranted sanctions.

THE COURT FURTHER FINDS that the basis for its decision to strike Defendant's Answer as to liability and damages was set forth in its prior Orders; namely, the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees (filed on January 20, 2021), and the Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time (filed on April 12, 2021).

THE COURT FURTHER FINDS that the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees was a significant, thorough, and lengthy Order which considered all relevant factors including those outlined in Young v. Johnny Ribeiro Building, Inc., 106 Nev. 88, 92, 787 P.2d 777, 780 (1990). [See, January 20, 2021 Order]

THE COURT FURTHER FINDS that The Motion is the second motion for reconsideration wherein the Defendant has asked that this COURT reconsider the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees.

THE COURT FURTHER FINDS that it denied the previous motion for reconsideration filed by the Defendant. The Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time was likewise a significant, thorough, and lengthy Order. [See, April 12, 2021 Order]

THE COURT FURTHER FINDS that there was not one fact that was more important than the other in issuing sanctions to the Defendant. That the Defendant never responded to ASSA ABLOY's August 15, 2019 letter asking to allow it to disclose all relevant documents was just one of the facts that the COURT considered when deciding to strike Defendant's Answer.

THE COURT FURTHER FINDS that the facts enumerated below provide additional reasons that the COURT hereby denies The Motion and upholds its prior Order Striking Defendant's Answer. [See, January 20, 2021 Order]

A. Defendant Destroyed Almost All Evidence In Its Possession After The Incident And After Receiving A Preservation Letter

THE COURT FURTHER FINDS that after the Defendant received a preservation letter on December 7, 2016, it subsequently destroyed almost all evidence related to this matter that was in its possession. This included the e-mails between it and ASSA ABLOY dated as late as

December 20, 2016, the quotes contained in the e-mails, the text messages sent to Defendant's internal maintenance personnel about the subject doors, the subject doors' sensors and component parts (including the motor, gearbox, and wiring), and the invoice dated December 28, 2016. This evidence was in the Defendant's possession and should have been preserved in light of the preservation letter. It also should have been preserved in light of Defendant's duty to preserve relevant evidence. All this evidence was destroyed by Defendant.

THE COURT FURTHER FINDS that there were numerous other documents available to the Defendant and that were maintained and preserved by the Defendant's door maintenance provider, ASSA ABLOY. Defendant did nothing to obtain documents from ASSA ABLOY and, as shown below, did not even disclose documents from or about ASSA ABLOY during discovery (including the contract Defendant had with ASSA ABLOY, the Master Services Agreement).

THE COURT FURTHER FINDS that Defendant preserved the Service Hub document, but its lack of candor related to that document resulted in that preservation being meaningless. To that end, Defendant's 30(b)(6) representative testified that Defendant did not know if the Service Hub document pertained to the subject doors:

> He did not know how to determine if the Service Hub document pertained to the west doors. [Thurnwald depo., p. 25]
>
> There was no way to determine if the Service Hub document pertained to the west doors. [Thurnwald depo., p. 27]
>
> He does not know if the west doors were serviced and does not know which doors the Service Hub document references. [Thurnwald depo., p. 29]
>
> He did not know what the entries in the Service Hub document meant or if the Service Hub document's entries pertain to the west doors. [Thurnwald depo., p. 49]
>
> Objection by Defendant's counsel that the Service Hub document did not reference east or west doors. [Thurnwald depo., p. 49]

THE COURT FURTHER FINDS that the 30(b)(6) representative then testified that the subject doors were never repaired or replaced:

> "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]
>
> Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]
>
> That no documentation existed about the west doors. [Thurnwald depo., pp. 73 - 75]
>
> That the last time the west doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]
>
> The door mechanisms for the west doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]
>
> Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]
>
> Only in an "imaginary world" was the subject door ever worked on or replaced. [Thurnwald depo., pp. 115 and 118]

THE COURT FURTHER FINDS that Defendant had its attorney represent to this COURT that there were no documents pertaining to the subject doors: "THE COURT: Have the documents been produced for the right door? MR. KRAEMER: Yes, your Honor. There are none." [August 13, 2019 Hearing, p. 22]

THE COURT FURTHER FINDS that the Defendant's 30(b)(6) representative's testimony about the Service Hub document, and its attorney's representations to this COURT that no documents exist pertaining to the subject doors show that the Defendant's position during discovery regarding the Service Hub document is that it was irrelevant and not related to the subject doors.

THE COURT FURTHER FINDS that in numerous hearings, Defendant's attorneys have pointed to the Service Hub document arguing that it contained information about the subject doors and that preserving other documents was not necessary because of the information contained in the Service Hub document. Defendant's attorneys have also represented that Ms. Taylor should have known about ASSA ABLOY's involvement in this case and other such matters because of the Service Hub document. For example, at the August 30, 2021 hearing, Defendant's attorney argued it did not need to preserve the e-mails between it and ASSA ABLOY that were ultimately destroyed by Defendant because: "Those e-mails were recorded essentially in the documents that we [Defendant] disclosed from the beginning of the case, the Service Hub record. ... So, while I appreciate, you know, this, you know, the importance of the e-mails, Your Honor, those e-mails were recorded in the Service Hub record." [August 30, 2021 Hearing, p. 45; see also, pp. 53 – 55 ("So Mr. Thurnwald's – if Mr. Thurnwald would have saved those e-mails, Your Honor, we would be at – we would be where we were at the deposition because, again, we had the Service Hub record that talked about the quotes being submitted. ... So even if we should have preserved those e-mails, his testimony, arguably, would not have changed, Your Honor. ... Because we had the Service Hub record, he was asked questions ad nauseam about it, and he based his answers on the record.")] Later, at the September 20, 2021 hearing, Defendant argued: "Now, even if we had the e-mails, Your Honor – and I can't stress this point enough, let's say the emails were preserved. It would not have changed anything in this case. And the reason why it wouldn't have changed anything, Your Honor, is because they were substantively disclosed in the service hub record. The emails sent by Assa Abloy on October 28th, 2016, with the quotes for the additional upgrade work, it's there in the service hub record." [September 20, 2021 Hearing, pp. 30 - 31] At that same hearing, Defendant argued that documents were not needed to be preserved due to the disclosure of the Service Hub record. [September 20, 2021 Hearing, pp. 49 – 50]

THE COURT FURTHER FINDS that these inconsistent positions by the Defendant show that it was willing to go to any lengths to hide the truth from Ms. Taylor. It further shows that the Defendant lacked candor during discovery and in hearings with this COURT.

B. ASSA ABLOY Attempted To Produce Evidence

THE COURT FURTHER FINDS that the Defendant's attempts to place blame on ASSA ABLOY for the Defendant's failure to preserve evidence is misplaced. It was the Defendant that had significant evidence (it had the Service Hub document, e-mails, text messages, the subject doors sensors and component parts, and the Master Services Agreement) in its possession that it destroyed, failed to produce, or that it claimed in discovery did not apply to the subject doors.

THE COURT FURTHER FINDS that there is no indication that Defendant attempted to contact ASSA ABLOY to obtain and retrieve relevant documents.

THE COURT FURTHER FINDS that ASSA ABLOY was subpoenaed in June, 2019 and attempted to produce relevant documents. To that end, it sent documents to Ms. Taylor's counsel on about August 8, 2019, and a week later, on August 15, 2019, sent a letter to Defendant asking for permission to disclose all relevant documents. Defendant never responded to the August 15, 2019 letter and thus ASSA ABLOY was unable to produce all relevant documents.

THE COURT FURTHER FINDS that the Defendant was not fully candid with this COURT about ASSA ABLOY's August 15, 2019 letter and its lack of a response. At various hearings, the Defendant, through its counsel, made the following representations about Defendant's failure to respond to the August 15, 2019 letter:

> "This was approved by Kroger. Again, that's their letter. We can't control if they want to send a letter to counsel before they disclose records pertinent to another party, but it was approved, and there's absolutely no evidence to suggest otherwise. None." [November 21, 2019 Hearing, pp. 58 – 59]
>
> "They had no idea they had to. They didn't know that there was a requirement." [January 22, 2020 Hearing, p. 4; see also, January 20, 2020 Hearing, pp. 57 – 58]
>
> The letter was overlooked. [January 22, 2020 Hearing, pp. 57 – 58]

> "They didn't read the letter, your Honor." [January 22, 2020 Hearing, p. 63]
>
> The Defendant did not see the request to respond in the second paragraph of the letter. [April 30, 2020 Hearing, p. 31; see also, November 5, 2020 Hearing, p. 42]
>
> There was no response because there was confusion about who was going to respond. [Sept. 20, 2021 Hearing, p. 22]

THE COURT FURTHER FINDS that the Defendant's inconsistent excuses for not responding to the August 15, 2019 letter shows a lack of candor and shows that the Defendant would make any excuse to justify its failure to respond so that full disclosures could be made.

C. Violating A Court Order

THE COURT FURTHER FINDS that when ASSA ABLOY was not able to produce all documents, that the COURT ordered that it produce all documents. This COURT further ordered that no party was to communicate with ASSA ABLOY:

> THE COURT FURTHER ORDERS that other than Plaintiff's counsel informing ASSA ABLOY about this Order and facilitating the receipt of the requested records, the parties are prohibited from contacting ASSA ABLOY. This specifically includes an Order that Smith's and Kroger are not to contact any person, employee, or agent at or for ASSA ABLOY about this case, Plaintiff's Subpoena, the subject door, or any documents or work in this case.
>
> THE COURT FURTHER ORDERS that Plaintiff's counsel is to bring a copy of the documents produced by ASSA ABLOY to the next hearing on these matters. These documents are to be disclosed only to the Court and to counsel for the parties.

(See, Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All Other Pending Motions (filed February 14, 2020)).

THE COURT FURTHER FINDS that at no time did Defendant ask that the Order filed February 14, 2020 be amended, rescinded, or modified to allow it to communicate with ASSA ABLOY. Despite this, Defendant communicated with ASSA ABLOY which allowed it to obtain the affidavit and declaration of Christine Shedrow, an employee of ASSA ABLOY.

D. False Discovery Responses

THE COURT FURTHER FINDS that on September 13, 2019, ASSA ABLOY signed a Custodian of Records Affidavit which noted that Defendant continued to block ASSA ABLOY from disclosing all relevant documents and records.

THE COURT FURTHER FINDS that ASSA ABLOY sent the Custodian of Records Affidavit along with just over 60 pages of documents to Ms. Taylor's counsel. Those documents were produced in a supplemental NRCP 16.1 Disclosure on September 30, 2019. Those documents affirmatively show that the subject doors' sensors and other component parts were repaired and replaced in December, 2016 after ASSA ABLOY informed Defendant that the sensors were broken, the subject doors were dangerous, and that the subject doors did not comply with the applicable standards.

THE COURT FURTHER FINDS that despite receiving the September 30, 2019 Supplemental NRCP 16.1 Disclosure, the following day, October 1, 2019, Defendant served a supplemental answer to Interrogatory No. 13 as follows:

> **INTERROGATORY NO. 13**
>
> Please state whether there have been any instances when service has been done to the automatic door at issue and additional equipment or upgrades have been suggested to improve the safety of the subject automatic door.
>
> **SUPPLEMENTAL ANSWER NO. 13:**
>
> None.

THE COURT FURTHER FINDS that this Supplemental Interrogatory Answer was false. Further, it was signed under oath by Mr. Thurnwald, Defendant's 30(b)(6) representative and the person who approved the repair and replacement of the subject doors' sensors and component parts.

THE COURT FURTHER FINDS that the Defendant's actions of serving a known false Interrogatory Answer after receiving documents the day before shows the lengths to which the

Defendant would go to hide the truth and deceive Ms. Taylor. This lack of candor was repetitive, abusive, and recalcitrant.

E. <u>Defendant Mislead Ms. Taylor Throughout Discovery</u>

THE COURT FURTHER FINDS that the Defendant chose to mislead Ms. Taylor throughout discovery. There are many instances of Defendant's deceptive discovery outlined in the COURT's prior Orders, specifically its Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees (filed on January 20, 2021), and the Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time (filed on April 12, 2021).

THE COURT FURTHER FINDS that during discovery the Defendant produced documents related to the wrong door – the East doors, not the West doors (the West doors are the subject doors). The Defendant did this even though it knew that the subject doors were the West doors. This is evidenced by the fact that the Defendant preserved surveillance video showing Ms. Taylor walking into the West doors, the subject doors, yet it decided to produce documents related to the East doors.

THE COURT FURTHER FINDS that the Defendant answered written discovery providing responses related to the East doors, not the West doors.

THE COURT FURTHER FINDS that in discovery Defendant disclosed its contract with Stanley Access Technologies. Thereafter, in a supplemental NRCP 16.1 Disclosure, Defendant disclosed Chad Crapo from Stanley Access Technologies as the person most knowledgeable regarding the "operation of the automatic-sliding glass doors at DEFENDANT store No. 347." Defendant made these disclosures even though it knew that ASSA ABLOY was its door vendor, that it had a contract with ASSA ABLOY, and that it was ASSA ABLOY that did the repair and replacement of the subject doors' sensors and component parts.

THE COURT FURTHER FINDS that at no time during discovery did Defendant name ASSA ABLOY in any of its 16.1 Disclosures, and at no time did Defendant produce its contract

with ASSA ABLOY. Defendant knew ASSA ABLOY was its door vendor and it had numerous interactions with ASSA ABLOY about the subject doors before and after Ms. Taylor's fall. Defendant's refusal to disclose ASSA ABLOY in any of its mandatory 16.1 Disclosures and its failure to disclose its contract with ASSA ABLOY shows an intent to deceive and mislead Ms. Taylor, and to halt the adversarial process.

F. <u>Untimely Affidavit</u>

THE COURT FURTHER FINDS that Defendant disclosed a declaration (later an affidavit) from Christine Shedrow at ASSA ABLOY. Ms. Shedrow's declaration/affidavit outlines events from 2019 and 2020. Notably, Ms. Shedrow (and her company ASSA ABLOY) existed in 2016 when the subject doors were dangerous, broken, and did not comply with the applicable standards; when the fall occurred; and when the subject doors' sensors and component parts were repaired and replaced. Ms. Shedrow (and her company ASSA ABLOY) existed in 2017 when the Complaint was filed. Ms. Shedrow (and her company ASSA ABLOY) existed for the almost two years that discovery was being conducted. Finally, Ms. Shedrow (and her company ASSA ABLOY) existed in August and September, 2019 when ASSA ABLOY sent a letter to Defendant asking for permission to produce all relevant documents, and when ASSA ABLOY provided a Custodian or Records Affidavit stating that it could not provide all relevant documents because it was not allowed by Defendant.

THE COURT FURTHER FINDS that therefore, Ms. Shedrow and her company ASSA ABLOY were not "new" evidence. The information held by Ms. Shedrow and her company ASSA ABLOY were readily available to Defendant at any time after this fall. It was the Defendant who chose to destroy or not disclose documents and evidence from ASSA ABLOY. The Defendant cannot be allowed to introduce evidence at this late stage when that evidence was available prior to and throughout discovery.

G. <u>Waiver of Evidentiary Hearing And A Fully Developed Record</u>

THE COURT FURTHER FINDS that the Defendant again asked that an evidentiary hearing be held to address this COURT's decision to strike its Answer as to liability and damages.

THE COURT FURTHER FINDS that Ms. Taylor filed her Motion to Strike Defendant's Answer on October 14, 2019. The hearing on that Motion occurred on November 21, 2019. At that hearing, Ms. Taylor asked for an evidentiary hearing. This COURT thus requested that a Motion be filed to address Ms. Taylor's request for an evidentiary hearing.

THE COURT FURTHER FINDS that Ms. Taylor filed Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time on December 5, 2019. The Defendant filed Defendant's Opposition to Plaintiff's Motion for An Evidentiary Hearing on December 20, 2019. In Defendant's Opposition to Plaintiff's Motion for An Evidentiary Hearing the Defendant attached three Affidavits. Multiple hearings were subsequently held on January 22, 2020; March 24, 2020; March 31, 2020; and April 30, 2020.

THE COURT FURTHER FINDS that Defendant argued against an evidentiary hearing representing to the COURT that an evidentiary hearing would be of no value because the witnesses would simply repeat the testimony contained in their three Affidavits that were attached to Defendant's Opposition to Plaintiff's Motion for An Evidentiary Hearing. These arguments, coupled with the lack of candor shown by the Defendant, give this COURT the understanding that an evidentiary hearing would not be helpful.

THE COURT FURTHER FINDS that in the Opposition and up to this COURT's Order, the Defendant's position remained the same – that it opposed an Evidentiary Hearing. This COURT, on June 18, 2020 prepared and filed an Order Denying Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time.

THE COURT FURTHER FINDS that the COURT has given all parties ample opportunity to address the matters at issue, Defendant has presented numerous declarations and affidavits, and all parties have been heard through oral argument as well as in various Motions and Briefs. Finally, the Defendant had Mr. Thurnwald testify at the prove up hearing.

THE COURT FURTHER FINDS that there has been an extensive record created in this case. This is the result of numerous Motions, Briefs, and Orders. Some of the Motions and

Briefs[1] previously filed that relate to Defendant's discovery failures and sanctionable conduct are:

1. Motion for Sanctions for Spoliation of Evidence filed on July 3, 2019;
2. Motion to Strike "Quasi Expert" Chad Crapo as a Witness filed on September 20, 2019;
3. Motion to Strike Defendant's Answer filed on October 14, 2019;
4. Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and to Continue the Trial Date on an Order Shortening Time filed on December 4, 2019;
5. Motion for an Evidentiary Hearing filed on December 5, 2019;
6. Motion to Continue Hearings and Pre-Trial Conference on an Order Shortening Time filed on December 27, 2019;
7. Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order filed on December 19, 2019;
8. Motion to Amend Complaint to Allege Punitive Damages filed on January 30, 2020;
9. Defendant's Motion to Strike/Exclude Plaintiff's Damages for Her Cervical Fusion Surgery and Future Medical Care filed on April 8, 2020;
10. Motion to Limit Dr. Sanders, M.D.'s Expert Testimony filed on April 21, 2020;
11. Defendant's Motion for Leave to File Third-Party Complaint filed on May 15, 2020;
12. Defendant's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration of the Court's Order Denying Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence filed on June 9, 2020;

[1] All referenced Motions and Briefs include the Oppositions and Replies associated with those Motions and Briefs.

13. Supplemental Brief in Advance of March 24, 2020 Hearing filed on March 19, 2020;
14. Supplemental Brief Timeline of Relevant Events filed on April 2, 2020; and
15. Renewed Motion to Strike Defendant's Answer, For Sanctions and Attorney's fees filed on September 15, 2020;
16. Plaintiff's Trial Brief on Guidelines for the Prove-up Hearing filed February 12, 2021;
17. Plaintiff's Supplemental Trial Brief on Guidelines for the Prove-up Hearing filed on March 10, 2021;
18. Defendant's Offer of Proof for Prove-up Hearing filed on March 16, 2021;
19. Ms. Taylor's Motion to Preclude Dieter Thurnwald from Providing Testimony at the Upcoming Prove Up Hearing and Strike the ANSI Standards on Order Shortening Time filed April 12, 2021;
20. Plaintiff's Supplemental Trial Brief on Burden of Proof For Prove-up Hearing filed on May 13, 2021;
21. Plaintiff's Second Supplemental Trial Brief on Guidelines for the Prove-up Hearing filed on August 2, 2021;
22. Plaintiff's Motion to Strike Dieter Thurnwald's Testimony at the May 17, 2021 Prove-up Hearing filed August 2, 2021;
23. Plaintiff's Motion to Strike Defendant's Fourth Supplemental to Initial Disclosure Statement (including the witness and Affidavit Produced Therein) and to Strike the Surveillance Video filed on August 2, 2021;
24. Defendant's Brief on Scope of Prove-up, Plaintiff's Failure to Establish a Prima Facie Case on Liability and Damages, and Punitive Damages filed on August 2, 2021;
25. Defendant's Motion for Reconsideration or, in the Alternative, to Alter of Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on Order Shortening Time filed on September 15, 2021;

26. Plaintiff's Trial Brief Prior to the Final Prove Up Hearing filed on September 16, 2021; and

27. Defendant's Brief in Support of its Argument that Punitive Damages are not Applicable in this Case filed on September 16, 2021.

THE COURT FURTHER FINDS that there have been numerous hearings arguing and discussing matters in these pleadings and briefs. These hearings have been held on various dates including, but not limited to, August 13, 2019; November 21, 2019; January 22, 2020; March 10, 2020; March 24, 2020; March 31, 2020; April 30, 2020; June 18, 2020; November 5, 2020; February 16, 2021; March 18, 2021; April 7, 2021; April 21, 2021; May 17, 2021; August 30, 2021; September 20, 2021; October 14, 2021; and October 22, 2021. These hearings generally lasted well over an hour, and some lasted for multiple hours.

THE COURT FURTHER FINDS that the Defendant has been given an opportunity to have witnesses testify via live testimony and through declarations and affidavits. Defendant has presented the affidavits or declarations of various witnesses including, but not limited to: Venessa Gribble, Courtney Shepherd, Ronald Radcliffe, Linda Snyder, and Christine Shedrow. Defendant has also presented testimony from its 30(b)(6) representative Mr. Thurnwald, and its expert witness, Dr. Sanders. This COURT has given Defendant multiple opportunities to present evidence in the form of affidavits, declarations, and live testimony.

THE COURT FURTHER FINDS that an adequate record has been developed based upon pleadings, briefs, orders, hearings, and other matters. The COURT has been fully apprised of the issues in this case.

ORDER

THE COURT HEREBY ORDERS that The Motion is denied in its entirety and the COURT'S prior Orders striking Defendant's Answer and denying Defendant's First Motion for Reconsideration remain. (See, Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees (filed on January 20, 2021), and the Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay

Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time (filed on April 12, 2021)).

THE COURT FURTHER ORDERS that its decision to issue sanctions striking Defendant's Answer as to liability and damages was not based upon one singular fact. This COURT'S decision to sanction Defendant was based upon Defendant's cumulative actions of spoliation of evidence, its breaches of discovery duties, its lack of candor to opposing counsel and the COURT, and its halting of the adversarial process. These actions showed that Defendant's conduct was repetitive, abusive, and recalcitrant and, therefore, warranted sanctions.

THE COURT FURTHER ORDERS that the Defendant only takes exception with one portion of its prior Order, that ASSA ABLOY provided documents to Ms. Taylor's counsel on about August 8, 2019. Yet, ASSA ABLOY asked Defendant permission to disclose all relevant documents by sending a letter to Defendant on August 15, 2019. Further, the reason ASSA ABLOY asked Defendant for permission to produce documents was because Ms. Taylor subpoenaed ASSA ABLOY in June, 2019. That Subpoena was only served after notifying Defendant and waiting the prescribed time period pursuant to NRCP 45. Thus, Defendant was aware in June, 2019 that ASSA ABLOY was going to produce documents; and it was aware that ASSA ABLOY had documents to produce and needed permission to produce them on August 15, 2019. Despite this, Defendant never allowed for ASSA ABLOY to produce all relevant documents.

THE COURT FURTHER ORDERS that Defendant's supposed reasons for not responding to the August 15, 2019 letter from ASSA ABLOY included that there was confusion who was going to respond, it was approved, the letter was overlooked, the letter was not read, Defendant did not see the second paragraph in the letter, and the Defendant did not know a response was needed. These inconsistent representations to this COURT about Defendant's failure to respond to the August 15, 2019 letter shows a lack of candor. It also demonstrates a failure to properly engage in discovery.

THE COURT FURTHER ORDERS that after Defendant refused to respond to ASSA ABLOY's August 15, 2019 letter, ASSA ABLOY produced certain, limited documents. Those documents were produced, along with a Custodian of Records Affidavit, on about September 13, 2019. The documents were then disclosed by Ms. Taylor about two weeks later, on September 30, 2019. There were just over 60 pages of documents disclosed by ASSA ABLOY at that time.

THE COURT FURTHER ORDERS that after this COURT signed an Order on February 7, 2020 ordering ASSA ABLOY to disclose all documents and that Defendant could not interfere with ASSA ABLOY's disclosure of documents (See, Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All Other Pending Motions (filed February 14, 2020)) that ASSA ABLOY produced almost 200 additional pages of documents. This shows that ASSA ABLOY was willing to produce documents and Defendant was not allowing that production.

THE COURT FURTHER ORDERS that ASSA ABLOY's production two months before the discovery cutoff does not pardon Defendant's efforts to halt the adversarial process and commit numerous discovery violations during the nearly two-year discovery period. Defendant had a duty pursuant to NRCP 16.1 to disclose all relevant documents and witnesses. Despite this, Defendant never named ASSA ABLOY as a witness in any of its 16.1 Disclosures and never produced a document from ASSA ABLOY in any of its 16.1 Disclosures. Rather, Defendant chose to provide documents and discovery for the wrong doors and the wrong door vendor.

THE COURT FURTHER ORDERS that in the Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All Other Pending Motions (filed February 14, 2020) this COURT ordered that no party was to contact ASSA ABLOY. Defendant violated that Order when it contacted ASSA ABLOY to obtain the declaration and affidavit of Christine Shedrow.

THE COURT FURTHER ORDERS that "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is

clearly erroneous." Masonry & Tile Contrs. v. Jolley, Urga & Wirth Ass'n, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (citing Little Earth of United Tribes v. Department of Housing, 807 F.2d 1433, 1441 (8th Cir. 1986); see also Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted."). Further, NRCP 61 holds that: "Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."

THIS COURT FURTHER ORDERS that when considering whether there was harmless error, "[t]he record must be considered as a whole." Truckee-Carson Irrigation Dist. v. Wyatt, 84 Nev. 662, 668, 448 P.2d 46, 50 (1968). The Court "do[es] not presume prejudice from the occurrence of error in a civil case." Boyd v. Pernicano, 79 Nev. 356, 359, 385 P.2d 342, 343 (1963); Cook v. Sunrise Hosp. & Med. Ctr., LLC, 124 Nev. 997, 1006, 194 P.3d 1214, 1219 (2008) (confirming that the appealing party must establish "by providing record evidence ... that, but for the error, a different result might have been reached"). Defendant has not presented sufficient evidence and arguments to overcome the harmless error standard. It was the Defendant that halted the adversarial process, exhibited a lack of candor to this COURT and with opposing counsel, and destroyed evidence. The Defendant's substantial rights have not been affected by this COURT's findings in its prior Orders.

THIS COURT FURTHER ORDERS that NRCP 59(a)(1)(D) holds that "The court may, on motion, grant a new trial on all or some of the issues—and to any party—for any of the following causes or grounds materially affecting the substantial rights of the moving party: ... newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial...." (see also, Pinschower v. Hanks, 18 Nev. 99, 107-08, 1 P. 454, 458 (1883) ("The law demands of the parties all reasonable diligence and caution in preparing for trial, and furnishes no relief for the hardships

resulting from inexcusable negligence or want of diligence. When, therefore, a new trial is sought because of newly-discovered evidence, it should most certainly be shown by the party making the application that his failure to produce such evidence at the first trial was not the result of any negligence upon his part. Of that fact the court should be perfectly satisfied. To grant new trials upon this ground, where no such showing is made, would simply be giving encouragement to negligence, and judicial approval to inexcusable carelessness.") (citation omitted). Defendant presented the declaration and affidavit of Ms. Shedrow from ASSA ABLOY. Yet, ASSA ABLOY was known to the Defendant from the inception of problems with the subject door in October, 2016 and throughout discovery. Thus, ASSA ABLOY and its employees were not "new" evidence. Defendant chose not to disclose ASSA ABLOY as a witness and Defendant chose not to disclose ASSA ABLOY's documents in this case. Defendant cannot now present a declaration and affidavit from a company that was known to Defendant from the inception of this case.

THE COURT FURTHER ORDERS that Defendant attempts to use the Service Hub document to argue that it did not need to preserve evidence or that the evidence it did destroy or failed to produce was harmless because the Service Hub contained adequate information. It also uses the Service Hub document to argue that Ms. Taylor had knowledge about the subject doors and persons or entities who were involved with inspecting or repairing the subject doors. Yet, the Defendant's 30(b)(6) representative testified that the Service Hub document did not apply in this case by providing testimony that there was no way to know if the Service Hub document pertained to the subject doors and that he did not know what the entries in the Service Hub document meant. [Thurnwald depo., pp. 25, 27, 29, and 49] The 30(b)(6) representative then testified that there was never any work done to the subject doors and that ASSA ABLOY never came to the store. [Thurnwald depo., pp. 29, 44, 73 – 75, 101 – 102, 115, 118, and 120 – 121] Finally, Defendant represented to this COURT that no documents exist pertaining to the subject doors.

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THE COURT FURTHER ORDERS that the Defendant cannot have it both ways: it cannot testify during discovery that the Service Hub document does not apply, that no work was done to the subject doors, and that no documents pertain to the subject doors; and then argue after a Motion was filed to sanction Defendant that the Service Hub document effectively gave Ms. Taylor all the information she needed about the subject doors, in an attempt to justify its spoliation of evidence, failure to disclose documents and witnesses, and its false discovery responses and representations. These inconsistent positions show a lack of candor and intent to deceive Ms. Taylor and this COURT.

THE COURT FURTHER ORDERS that an extensive record has been developed. There have been dozens of pleadings and briefs filed addressing pertinent issues including Defendant's spoliation of evidence, discovery abuses, lack of candor, and halting the adversarial process. Defendant has presented numerous affidavits and declarations. Defendant has had multiple witnesses provide testimony, and there have been extensive hearings held. Finally, Defendant opposed an evidentiary hearing.

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THE COURT FURTHER ORDERS that an evidentiary hearing is thus not necessary in this case.

Dated this 30th day of November, 2021

A5A 296 B6F2 785A
Timothy C. Williams
District Court Judge

MH

Respectfully Submitted by:

Dated: 11/16/21

TANNER CHURCHILL ANDERSON

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Attorneys for Plaintiff, Patricia A. Taylor

Approved as to form and content by:

Dated: _____

COOPER LEVENSON, P.A.

Refused to Sign

JERRY S. BUSBY, Esq.
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Las Vegas, NV 89102
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Facsimile: (702) 366-1857
Attorneys for Defendant, Smith's Food & Drug Centers, Inc.

Courtney McMenamy

From: Courtney McMenamy
Sent: Tuesday, November 9, 2021 11:00 AM
To: Busby Jerry S.; Kraemer, Gregory A.; Rutkowski Theresa H.; amarques@cooperlevenson.com
Cc: ekapolnai@lewisroca.com; ckelley@lewisroca.com; Polsenberg, Daniel F. (DPolsenberg@lewisroca.com); Henriod, Joel D. (JHenriod@lewisroca.com); asmith@lewisroca.com; jhelm@lewisroca.com
Subject: Taylor v. Smith's / ODM / A-17-761650-C
Attachments: TAYLOR Order Denying Defs Motion for Reconsideration.pdf

Good morning,

Please find attached the drafted Order Denying Defendant's Motion for Reconsideration or, In the Alternative, to Alter or Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on OST for your review. Please let me know of any changes that need to be made. If agreeable, please let me know if I may a-fix the attorney's e-signature.

Thank you,

Courtney McMenamy
Paralegal to David A. Tanner

TANNER LAW FIRM

Address: 7895 West Sunset Road, Ste. 115, Las Vegas, NV 89113
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Patricia Taylor, Plaintiff(s) vs. Smith's Food and Drug Centers Inc, Defendant(s)	CASE NO: A-17-761650-C DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

Service Date: 11/30/2021

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1/3/2022 10:47 PM
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Smith's Food & Drug Centers, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA TAYLOR, AN INDIVIDUAL Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD & DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendant.	Case No. A-17-761650-C Dep't No. XVI **CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:

   Defendant Smith's Food & Drug Centers, Inc. d/b/a Smith's Food and Drug

2. Identify the judge issuing the decision, judgment, or order appealed from:

   The Honorable Timothy C. Williams

3. Identify each appellant and the name and address of counsel for each appellant:

Attorneys for Appellant Smith's Food & Drug Centers, Inc. d/b/a Smith's Food and Drug

DANIEL F. POLSENBERG
JOEL D. HENRIOD
ABRAHAM G. SMITH
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4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Attorneys for Plaintiff Patricia A. Taylor

DAVID A. TANNER
DAVID J. CHURCHILL
JARED B. ANDERSON
TANNER CHURCHILL ANDERSON
4001 Meadows Lane
Las Vegas, Nevada 89107
(702) 868-8888

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court, *e.g.*, date complaint, indictment, information, or petition was filed:

"Complaint," filed September 18, 2017

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This action stems from injuries allegedly sustained from a sliding door on defendant's premises. The district court struck defendant's answer as to liability and damages for purported discovery abuses. Defendant appeals from that decision, including the denial of subsequent motions for reconsideration.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

N/A

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Undersigned counsel is not aware of any circumstances that make settlement impossible.

Dated this 3rd day of January, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Joel D. Henriod*

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of January, 2022, a true and correct copy of the foregoing "Case Appeal Statement" was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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Jared B. Anderson
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Attorneys for Plaintiff

/s/Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-17-761650-C

Patricia Taylor, Plaintiff(s)	§	Location:	**Department 16**
vs.	§	Judicial Officer:	**Williams, Timothy C.**
Smith's Food and Drug Centers Inc, Defendant(s)	§	Filed on:	**09/18/2017**
	§	Cross-Reference Case Number:	**A761650**
	§		

CASE INFORMATION

Case Type: **Negligence - Premises Liability**

Case Status: **09/18/2017 Open**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-17-761650-C
Court	Department 16
Date Assigned	09/18/2017
Judicial Officer	Williams, Timothy C.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Taylor, Patricia A**	**Echols, Micah S.** *Retained* 702-655-2346(W)
Defendant	**Smith's Food and Drug Centers Inc**	**Busby, Jerry S.** *Retained* 702-366-1125(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

EVENTS

09/18/2017 Complaint
Filed By: Plaintiff Taylor, Patricia A
[1] Complaint

09/18/2017 Initial Appearance Fee Disclosure
[2] Initial Appearance Fee Disclosure

10/10/2017 Summons
[3] Summons

10/15/2017 Answer to Complaint
Filed by: Defendant Smith's Food and Drug Centers Inc
[4] Defendant Smith's Food & Drug Centers, Inc.'s Answer to Plaintiff's Complaint

10/15/2017 Initial Appearance Fee Disclosure
Filed By: Defendant Smith's Food and Drug Centers Inc
[5] Defendant Smith's Food & Drug Centers, Inc.'s Initial Appearance Fee Disclosure

10/27/2017 Statement
Filed by: Defendant Smith's Food and Drug Centers Inc
[6] Defendant Smith's Food & Drug Centers, Inc.'s Disclosure Statement Pursuant to NRCP

7.1

11/13/2017 Commissioners Decision on Request for Exemption - Granted
[7] Commissioner's Decision on Request for Exemption - Granted

11/15/2017 Motion to Disqualify Attorney
Filed By: Defendant Smith's Food and Drug Centers Inc
[8] Defendant's Motion to Disqualify Counsel

11/30/2017 Opposition to Motion
Filed By: Plaintiff Taylor, Patricia A
[9] Plaintiffs Opposition to Defendants Motion to Disqualify Counsel

12/01/2017 Motion to Continue
Filed By: Defendant Smith's Food and Drug Centers Inc
[10] Motion to Continue the Early Case Conference and Filing of the Joint Case Conference Report Pending a Decision on Defendant's Motion to Disqualify Counsel on an Order Shortening Time

12/01/2017 Certificate of Service
Filed by: Defendant Smith's Food and Drug Centers Inc
[11] Certificate of Service

12/05/2017 Opposition to Motion
Filed By: Plaintiff Taylor, Patricia A
[12] Plaintiff's Opposition to Defendant's Motion to Continue the Early Case Conference and filing of the Joint Case Conference Report Pending a Decision on Defendant's Motion to Disqualify Counsel on an Order Shortening Time

12/05/2017 Reply to Opposition
Filed by: Defendant Smith's Food and Drug Centers Inc
[13] Reply to Plaintiff's Opposition to Defendant's Opposition to Continue the Early Case Conference and Filing of the Joint Case Conference Report

12/20/2017 Order Granting Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[14] Order Granting Defendant's Motion to Continue the Early Case Conference

12/20/2017 Notice of Entry of Order
Filed By: Defendant Smith's Food and Drug Centers Inc
[15] Notice of Entry of Order

12/22/2017 Reply to Opposition
Filed by: Defendant Smith's Food and Drug Centers Inc
[16] Reply to Plaintiff's Opposition to Defendant's Motion to Disqualify Counsel

12/29/2017 Errata
Filed By: Plaintiff Taylor, Patricia A
[17] Errata To Plaintiff s Opposition To Defendant s Motion To Disqualify Counsel

01/23/2018 Order Denying Motion
Filed By: Plaintiff Taylor, Patricia A
[18] Order Denying Defendant s Motion To Disqualify Plaintiff s Counsel

01/23/2018

Notice of Entry of Order
Filed By: Plaintiff Taylor, Patricia A
[19] Notice of Entry of Order

01/31/2018 Demand for Jury Trial
Filed By: Defendant Smith's Food and Drug Centers Inc
[20] Demand for Jury Trial

02/02/2018 Joint Case Conference Report
Filed By: Plaintiff Taylor, Patricia A
[21] JOINT CASE CONFERENCE REPORT

03/23/2018 Scheduling Order
[22] Scheduling Order

03/26/2018 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call
[23] Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call

07/19/2018 Substitution of Attorney
Filed by: Plaintiff Taylor, Patricia A
[24] Substitution of Attorney

09/19/2018 Stipulation and Order
[25] Stipulation and Order to Extend Discovery Deadlines (First Request)

10/02/2018 Amended Order Setting Jury Trial
[26] Amended Order Setting Jury Trial

10/18/2018 Notice of Entry
Filed By: Plaintiff Taylor, Patricia A
[27] Notice of Entry of Order on Stipulation and Order to Extend Discovery (First Request)

11/20/2018 Substitution of Attorney
[28] Substitution of Attorneys

01/02/2019 Stipulation and Order
Filed by: Plaintiff Taylor, Patricia A
[29] Stipulation and Order to Extend Discovery Deadlines and Continue Trial (Second Request)

01/07/2019 Amended Order Setting Jury Trial
[31] 2nd Amended Order Setting Civil Jury Trial, Pre-Trial Calendar Call

01/08/2019 Notice of Entry of Stipulation and Order
Filed By: Plaintiff Taylor, Patricia A
[30] Notice of Entry of Stipulation and Order to Extend Discovery Deadlines and Continue Trial

01/25/2019 Notice of Rescheduling
Filed By: Plaintiff Taylor, Patricia A
[32] Notice of Rescheduling Hearing

02/11/2019 Stipulation and Order to Amend

[33] Stipulation and Order to Amend Complaint and File First Amended Complaint

02/14/2019 Notice of Entry of Stipulation and Order
[34] Notice of Entry of Stipulation and Order to Amend Complaint and File First Amended Complaint

02/20/2019 First Amended Complaint
[35] First Amended Complaint

04/16/2019 Stipulation and Order
[36] Stipulation and Order to Extend Discovery Deadlines and Continue Trial (Third Request)

04/17/2019 Amended Order Setting Jury Trial
[37] Amended Order Setting Jury Trial

04/19/2019 Notice of Entry of Stipulation and Order
[38] Notice of Entry of Stipulation and Order to Extend Discovery Deadlines and Continue Trial (Third Request)

06/25/2019 Motion to Amend Complaint
[39] Motion to Amend Complaint

06/25/2019 Clerk's Notice of Hearing
[40] Notice of Hearing

06/28/2019 Certificate of Service
[41] Certificate of Service of Motion to Amend Complaint

07/02/2019 Motion
[42] (Withdrawn 9/5/19) Motion for Sanction

07/03/2019 Clerk's Notice of Hearing
[43] Notice of Hearing

07/08/2019 Certificate of Service
[44] Certificate of Service

07/12/2019 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[45] Defendant's Opposition to Plaintiff's Motion to Amend Complaint

07/17/2019 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[46] Defendant's Opposition to Plaintiff's Motion for Sanctions

07/25/2019 Reply to Opposition
Filed by: Plaintiff Taylor, Patricia A
[47] Plaintiff's Reply to Defendant Smith's Food & Drug Centers, Inc. d/b/a Smith's Food and Drug's Oppositon to Motion to Amend Complaint

07/25/2019 Reply to Opposition
Filed by: Plaintiff Taylor, Patricia A
[48] Plaintiff's Reply to Defendant Smith's Food & Drug Centers, Inc. d/b/a Smith's Food and

Drug's Oppositon to Plaintiff's Motion for Sanctions for Spoliation of Evidence

08/01/2019 Stipulation and Order
Filed by: Defendant Smith's Food and Drug Centers Inc
[49] Stipulation and Order to Consolidate Court Hearings

08/01/2019 Notice of Entry of Stipulation and Order
Filed By: Defendant Smith's Food and Drug Centers Inc
[50] Notice of Entry of Stipulation and Order

08/13/2019 Notice of Rescheduling
[51] Notice of Rescheduling

09/04/2019 Order
Filed By: Defendant Smith's Food and Drug Centers Inc
[52] Order on Plaintiff's Motion to Amend and Motion for Sanctions for Spoliation of Evidence

09/05/2019 Notice of Entry of Order
Filed By: Defendant Smith's Food and Drug Centers Inc
[53] Notice of Entry of Order on Plaintiff's Motion to Amend and Motion for Sanctins for Spoliation of Evidence

09/05/2019 Stipulation and Order
[54] Stipulation and Order to Withdraw Motion for Sanctions

09/09/2019 Notice of Entry of Stipulation and Order
[55] Notice of Entry of Stipulation and Order to Withdraw Motion for Sanctions

09/19/2019 Motion to Strike
Filed By: Plaintiff Taylor, Patricia A
[56] Motion to Strike "Quasi Expert" Chad Crapo as A Witness

09/19/2019 Stipulation and Order
[57] Stipulatoin and Order for A Limited Discovery Extension (Fourth Request)

09/20/2019 Clerk's Notice of Hearing
[58] Notice of Hearing

09/23/2019 Certificate of Service
[59] Certificate of Service of Motion to Strike "Quasi Expert" Chad Crapo as A Witness

09/23/2019 Notice of Entry of Stipulation and Order
[60] Notice of Entry of Stipulation and Order for A Limited Discovery Extension (Fourth Request)

10/04/2019 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[61] Defendant's Opposition to Plaintiff's Motion to Strike Chad Crapo as a Witness

10/14/2019 Motion to Strike
[62] Motion to Strike Defendant's Answer

10/15/2019 Clerk's Notice of Hearing
[63] Notice of Hearing

10/16/2019 Reply to Opposition
[64] Reply to Opposition to Motion to Strike "Quasi Expert" Chad Crapo as a Witness

10/17/2019 Certificate of Service
[65] Certificate of Service of Motion to Strike Defendant's Answer

10/29/2019 Notice
Filed By: Defendant Smith's Food and Drug Centers Inc
[66] Notice of Delayed Filing of Deft's Opposition to Pltf's Motion to Strike Deft's Answer

11/01/2019 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[67] Defendant's Opposition to Plaintiff's Motion to Strike Defendant's Answer and Motion to Extend Discovery (Fifth Request)

11/08/2019 Discovery Commissioners Report and Recommendations
[68] Discovery Commissioner s Report and Recommendations -Originals

11/14/2019 Opposition
Filed By: Plaintiff Taylor, Patricia A
[69] Opposition to Countermotion to Extend Discovery

11/14/2019 Reply to Opposition
[70] Reply to Defendant Smith's Food & Drug Centers, Inc. d/b/a Smith's Food and Drug's Oppositon to Plaintiff's Motion to Strike Defendant's Answer

12/04/2019 Motion to Continue Trial
Filed By: Defendant Smith's Food and Drug Centers Inc
[71] Defendant's Motion to Continue Discovery and to Continue the Trial Date on Order Shortening Time

12/04/2019 Order
[72] Order

12/05/2019 Motion
[73] Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time

12/06/2019 Notice of Entry of Order
[74] Notice of Entry of Order

12/13/2019 Receipt of Copy
[75] Receipt of Copy

12/17/2019 Opposition to Motion
[76] Opposition to Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and Non-Opposition to Defendant's Motion to Continue the Trial date

12/19/2019 Motion to Strike
[77] Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance With Order

12/19/2019 Clerk's Notice of Hearing
[78] Clerk's Noticce of Hearing

12/20/2019 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[79] Defendant's Opposition to Plaintiff's Motion for an Evidentiary Hearing

12/27/2019 Pre-Trial Disclosure
Party: Defendant Smith's Food and Drug Centers Inc
[80] Defendant's Pre-Trial Disclosure

12/27/2019 Motion to Continue
Filed By: Plaintiff Taylor, Patricia A
[81] Plaintiff's Motion to Continue Hearings and Pre-Trial Conference on an Order Shortening Time

12/30/2019 Reply to Opposition
Filed by: Plaintiff Taylor, Patricia A
[82] Reply to Defendant's Opposition to Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time

12/31/2019 Reply to Opposition
Filed by: Defendant Smith's Food and Drug Centers Inc
[83] Defendant's Reply to Plaintiff's Opposition to Motion to Continue Discovery Based on Newly Discovered Evidence

01/02/2020 Receipt of Copy
Filed by: Plaintiff Taylor, Patricia A
[84] Receipt of Copy

01/02/2020 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[85] Defendant's Opposition to Plaintiff's Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order

01/03/2020 Opposition to Motion
[86] Defendant's Opposition to Plaintiff's Motion to Continue Hearings

01/17/2020 Reply
Filed by: Plaintiff Taylor, Patricia A
[87] REPLY TO OPPOSITION TO MOTION TO STRIKE LATE DISCLOSURE OF QUASI EXPERT WITNESSES AND REPLY TO OPPOSITION TO MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER

01/21/2020 Notice of Change of Address
Filed By: Defendant Smith's Food and Drug Centers Inc
[88] NOTICE OF CHANGE OF ADDRESS

01/30/2020 Motion to Amend Complaint
Filed By: Plaintiff Taylor, Patricia A
[89] Motion to Amend Complaint

01/30/2020 Order Granting Motion

Filed By: Plaintiff Taylor, Patricia A
[90] Order Granting Plaintiff's Motion to Continue Evidentiary Hearing Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and to Continue the Trial Date on Order Shortening Time; and Pretrial Conference

01/30/2020 Clerk's Notice of Hearing
[91] Notice of Hearing

02/04/2020 Notice of Entry of Order
Filed By: Plaintiff Taylor, Patricia A
[92] Notice of Entry of Order Granting Plaintiff's Motion to Continue Evidentiary Hearing; Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and to Continue the Trial Date on Order Shortening Time; and Pretrial Conference

02/14/2020 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[93] Defendant's Opposition to Plaintiff's Motion to Amend Complaint

02/14/2020 Order Granting Motion
Filed By: Plaintiff Taylor, Patricia A
[94] Order on Plaintiff's Motion for An Evidentiary Hearing & Order to Continue Hearing on All other Pending Motions

02/14/2020 Notice of Entry of Order
Filed By: Plaintiff Taylor, Patricia A
[95] Notice of Entry of Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All Other Pending Motions

03/06/2020 Reply to Opposition
Filed by: Plaintiff Taylor, Patricia A
[96] Reply to Defendant's Opposition to Motion to Amend Complaint

03/19/2020 Supplemental Brief
Filed By: Plaintiff Taylor, Patricia A
[97] Supplemental Brief in Advance of March 24, 2020 Hearing

04/02/2020 Supplemental Brief
Filed By: Plaintiff Taylor, Patricia A
[98] Supplemental Brief Showing Timeline of Relevant Events

04/06/2020 Miscellaneous Filing
Filed by: Defendant Smith's Food and Drug Centers Inc
[99] Defendant's Timeline

04/08/2020 Motion to Strike
Filed By: Defendant Smith's Food and Drug Centers Inc
[100] Defendant's Motion to Strike/Exclude Plaintiff's Damages for her Cervical Fusion Surgery and Future Medical Care

04/08/2020 Clerk's Notice of Hearing
[101] Notice of Hearing

04/17/2020 Order Granting Motion
Filed By: Plaintiff Taylor, Patricia A
[102] Order Granting Plaintiff's Motion to Amend Complaint

04/20/2020 Notice of Entry of Order
Filed By: Plaintiff Taylor, Patricia A
[103] Notice of Entry of Order Granting Plaintiff's Motion to Amend Complaint

04/21/2020 Opposition to Motion
Filed By: Plaintiff Taylor, Patricia A
[104] Opposition to Defendant's Motion to Strike/Exclude Plaintiff's Damages for Her Cervical Fusion Surgery and Future Medical Care

04/21/2020 Notice of Hearing
[105] Notice of Hearing

04/21/2020 Motion
Filed By: Plaintiff Taylor, Patricia A
[106] Motion to Limit Dr. Steven M. Sanders, M.D.'s Expert Testimony

04/22/2020 Errata
Filed By: Plaintiff Taylor, Patricia A
[107] Errata to Plaintiff's Motion to Limit Dr. Steven M. Sanders, M.D.'s Expert Testimony

04/28/2020 Clerk's Notice of Hearing
[108] Notice of Hearing

04/30/2020 Second Amended Complaint
Filed By: Plaintiff Taylor, Patricia A
[109] Second Amended Complaint

05/05/2020 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[110] Defendant's Opposition to Limit Dr. Steven M. Sanders, M.D.'s Expert Testimony

05/15/2020 Motion for Leave to File
[111] Defendant Smith's Food & Drug Centers, Inc.'s Motion for Leave to File Third-Party Complaint

05/15/2020 Clerk's Notice of Hearing
[112] Notice of Hearing

05/22/2020 Order
Filed By: Plaintiff Taylor, Patricia A
[113] Order Denying Defendant's Motion to Continue Discovery Based Upon Newly Discovered Evidence and to Continue the Trial Date on OST and Order Granting Plaintiff's Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order

05/26/2020 Notice of Entry of Order
Filed By: Plaintiff Taylor, Patricia A
[114] NOTICE OF ENTRY OF ORDER DENYING DEFENDANT S MOTION TO CONTINUE DISCOVERY BASED UPON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE THE TRIAL DATE ON ORDER SHORTENTING TIME AND ORDER GRANTING PLAINTIFF S MOTION TO STRIKE LATE DISCLOSURE OF QUASI EXPERT WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER

05/26/2020 Opposition to Motion

Filed By: Plaintiff Taylor, Patricia A
[115] Opposition to Defendant's Motion for Leave to File Third-Party Complaint

05/28/2020 Reply to Opposition
Filed by: Plaintiff Taylor, Patricia A
[116] Reply to Defendant's Opposition to Plaintiff's Motion to Limit Dr. Sanders' Expert Testimony

06/01/2020 Amended Order Setting Jury Trial
[117] 4th Amended Order Setting Jury Trial

06/02/2020 Reply to Opposition
Filed by: Defendant Smith's Food and Drug Centers Inc
[118] Defendnt's Reply to Plaintiff's Opposition to Its Motion to Strike/Exclude Plaintiff's Damages for Her Cervical Fusion Surgery and Future Medical Care

06/09/2020 Motion for Leave to File
[119] Defendant's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration of the Court's Order Denying Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence Entered on May 26, 2020

06/11/2020 Clerk's Notice of Hearing
[120] Notice of Hearing

06/11/2020 Reply to Opposition
Filed by: Defendant Smith's Food and Drug Centers Inc
[121] Defendant's Reply to Plaintiff's Opposition to Its Motion for Leave to File Third-Party Complaint

06/18/2020 Order Denying Motion
[122] ORDER DENYING PLAINTIFF S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME

06/22/2020 Notice of Entry
Filed By: Plaintiff Taylor, Patricia A
[123] Notice of Entry of Order Denying Plaintiff's Motion for an Evidentiary Hearing on an OST

06/22/2020 Order Denying Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[124] Order Denying Plaintiff's Motion to Limit Dr. Steven M. Sanders, M.D.'s Expert Testimony

06/22/2020 Order Denying Motion
Filed By: Plaintiff Taylor, Patricia A
[125] Order Denying Defendant's Motion to Strike/Exclude Plaintiff's Damages for her Cervical Fusion Surgery and Future Medical Care

06/22/2020 Order Denying Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[126] Order Denying Plaintiff's Motion to Limit Dr. Steven M. Sanders, M.D.'s Expert Testimony

06/22/2020 Notice of Entry of Order
Filed By: Defendant Smith's Food and Drug Centers Inc

[127] Notice of Entry of Order Denying Plaintiff's Motion to Limit Dr. Steven Sanders, M.D.'s Expert Testimony

06/22/2020 Notice of Entry
Filed By: Plaintiff Taylor, Patricia A
[128] Notice of Entry of Order Denying Defendant s Motion To Strike/Exclude Plaintiff s Damages For Her Cervical Fusion Surgery And Future Medical Care

07/02/2020 Stipulation and Order
Filed by: Defendant Smith's Food and Drug Centers Inc
[130] Stipulation and Order to Continue Hearing Date and Briefing Schedule For Defendant's Motion for Leave to File a Motion for Reconsideration

07/03/2020 Stipulation and Order
Filed by: Defendant Smith's Food and Drug Centers Inc
[129] Stipulation and Order to Continue Hearing Date and Briefing Schedule for Defendant's Motion for Leave to File a Motion for Reconsideration

07/06/2020 Notice of Entry of Stipulation and Order
Filed By: Defendant Smith's Food and Drug Centers Inc
[131] Notice of Entry of Stipulation and Order to Continue Hearing Date and Briefing Schedule for Defendant's Motion for Leave to File a Motion for Reconsideration

07/10/2020 Order Denying Motion
Filed By: Plaintiff Taylor, Patricia A
[132] Order Denying Defendant Smith's Food & Drug Centers, Inc.'s Motion for Leave to File Third-Party Complaint

07/13/2020 Notice of Entry
Filed By: Plaintiff Taylor, Patricia A
[133] Notice of Entry of Order Denying Defendant's Motion for Leave to File Third-Party Complaint

07/17/2020 Opposition
Filed By: Plaintiff Taylor, Patricia A
[134] Opposition to Defendant's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration of the Court's Order Denying Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence Entered on May 26, 2020

07/29/2020 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[135] Defendant's Reply to Plaintiff's Opposition to Its Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration of the Court's Order Denying Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence Entered on May 26, 2020

08/17/2020 Notice of Change of Firm Name
Filed By: Plaintiff Taylor, Patricia A
[136] Notice of Change of Firm Name and Association of Counsel

08/19/2020 Errata
Filed By: Plaintiff Taylor, Patricia A
[137] Errata to Notice of Change of Firm Name and Association of Counsel

09/02/2020 Order Denying Motion
Filed By: Plaintiff Taylor, Patricia A
[138] Order Denying Defendant's Motion to Reconsider the Order Denying Defendant's

Motion to Continue Discovery Based Upon Newly discovered Evidence and to Continue Discovery Based Upon Newly Discovered Evidence and to Continue the Trial Date on Order Shortening Time and the Order Granting Plaintiff's Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crap or Compel Compliance with Order

09/15/2020 Motion to Strike
Filed By: Plaintiff Taylor, Patricia A
[139] Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees

09/16/2020 Clerk's Notice of Hearing
[140] Notice of Hearing

09/21/2020 Stipulation and Order
Filed by: Defendant Smith's Food and Drug Centers Inc
[141] Stipulation and Order to Extend Discovery for the Limited Purpose of taking the Depositions of Yevgeny Khavkin, MD and Steven Sanders, MD (5th Request)

09/21/2020 Notice of Entry of Stipulation and Order
Filed By: Defendant Smith's Food and Drug Centers Inc
[142] Notice of Entry of Stipulation and Order to Extend Discovery

09/29/2020 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[143] Defendant's Opposition to Plaintiff's Renewed Motion to Strike Defendant's Answer

10/13/2020 Reply to Opposition
Filed by: Plaintiff Taylor, Patricia A
[144] Plaintiff's Reply to Defendant's Opposition to Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees

10/16/2020 Stipulation and Order
[145] Stipulation and Order to Continue Hearing Date for Plaintiff's Motion to Strike

10/17/2020 Stipulation and Order
Filed by: Defendant Smith's Food and Drug Centers Inc
[146] Stipulation and Order to Continue Hearing on Plaintiff's Motion to Strike

10/19/2020 Notice of Entry of Stipulation and Order
Filed By: Defendant Smith's Food and Drug Centers Inc
[147] Notice of Entry of Stipulation and Order to Continue Hearing for Plaintiff's Motion to Strike

01/20/2021 Order Granting Motion
[148] Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees

01/21/2021 Notice of Entry of Order
Filed By: Plaintiff Taylor, Patricia A
[149] Notice of Entry of Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees

01/29/2021 Motion to Reconsider
[150] Defendant's Motion for Reconsideration of the Court's Order Granting Plaintiff's Motion to Strike Defendant's Answer to Liability and Damages, Motion for Stay Pending

Resolution by the Nevada Supreme Court and Motion for Clarification on Order Shortening Time

02/12/2021 Brief
Filed By: Plaintiff Taylor, Patricia A
[151] Plaintiff's Trial Brief on Guidelines for the Prove-Up Hearing

02/12/2021 Opposition to Motion
Filed By: Plaintiff Taylor, Patricia A
[152] Ms. Taylor's Opposition to Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification on Order Shortening Time

02/12/2021 Brief
Filed By: Plaintiff Taylor, Patricia A
[153] Plaintiff's Trial Brief re: Judicial Notice of Defendant's Financial Condition as Shown Through Its Recent SEC Filings

02/16/2021 Notice of Appearance
Party: Plaintiff Taylor, Patricia A
[154] Notice of Appearance

03/10/2021 Supplemental Brief
Filed By: Plaintiff Taylor, Patricia A
[155] Plaintiff's Supplemental Trial Brief on Guidelines for the Prove-Up Hearing

03/16/2021 Miscellaneous Filing
Filed by: Defendant Smith's Food and Drug Centers Inc
[156] Defendant's Offer of Proof for Prove-Up Hearing

04/12/2021 Order Denying Motion
Filed By: Plaintiff Taylor, Patricia A
[157] Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification on Order Shortening Time

04/12/2021 Order Shortening Time
Filed By: Plaintiff Taylor, Patricia A
[158] Ms. Taylor's Motion to Preclude Dieter Thurnwald From Providing Testimony at the Upcoming Prove-up Hearing and Strike the ANSI Standards on Order Shortening Time

04/15/2021 Notice of Entry of Order
Filed By: Plaintiff Taylor, Patricia A
[159] Notice of Entry of Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's ANswer to Liability and Damages, Motion for Stay Pending Resolution By the Nevada Supreme Court and Motion for Clarification on an Order Shortening Time

04/19/2021 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[160] Defendant's Opposition to Plaintiff's Motion to Preclude Dieter Thurnwald from Providing Testimony

04/20/2021 Reply to Opposition

Filed by: Plaintiff Taylor, Patricia A
[161] Reply to Opposition to Plaintiff's Motion to Preclude Dieter Thurnwald From Providing Testimony at the Upcoming Prove Up Hearing and Strike the ANSI Standards on Order Shortening Time

05/06/2021 Notice of Rescheduling of Hearing
[162] Notice of Rescheduling Hearing

05/13/2021 Supplemental Brief
Filed By: Plaintiff Taylor, Patricia A
[163] Plaintiff's Supplemental Trial Brief on Burden of Proof For Prove-Up Hearing

07/02/2021 Order
Filed By: Plaintiff Taylor, Patricia A
[164] Order Regarding the Status Check About the Recontinued Prove-Up Hearing

07/08/2021 Notice of Entry
Filed By: Plaintiff Taylor, Patricia A
[165] Notice of Entry of Order Regarding the Status Check About the Recontinued Prove Up Hearing

07/26/2021 Stipulation and Order
Filed by: Defendant Smith's Food and Drug Centers Inc
[166] Stipulation and Order to Continue Briefing Schedule

07/30/2021 Notice of Entry of Stipulation and Order
Filed By: Defendant Smith's Food and Drug Centers Inc
[167] Notice of Entry of Stipulation and Order to Continue Briefing Schedule

08/02/2021 Supplemental Brief
Filed By: Plaintiff Taylor, Patricia A
[168] Plaintiff's Second Supplemental Trial Brief on Guidelines for the Prove-Up Hearing

08/02/2021 Motion to Strike
Filed By: Plaintiff Taylor, Patricia A
[169] Plaintiff's Motion to Strike Defendant's Fourth Supplement To Initial Disclosure Statement (Including The Witness and Affidavit Produced Therein) and To Strike the Surveillance Video

08/02/2021 Motion to Strike
Filed By: Plaintiff Taylor, Patricia A
[170] Plaintiff's Motion to Strike Dieter Thurnwald's Testimony at the May 17, 2021 Prove-Up Hearing

08/02/2021 Brief
Filed By: Defendant Smith's Food and Drug Centers Inc
[171] Defendant's Brief on Scope of Prove- Up, Plaintiff's Failure to Establish a Prima Facie Case on Liability and Damages, And Punitive Damages

08/03/2021 Clerk's Notice of Hearing
[172] Notice of Hearing

08/12/2021 Opposition
Filed By: Plaintiff Taylor, Patricia A
[173] Plaintiff's Opposition to Defendant's Brief on Scope of Prove-Up , Plaintiff's Failure to

Establish a Prima Facie Case on Liability and Damages, and Punitive Damages

08/12/2021 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[174] Defendant's Opposition to Plaintiff's Motion to Strike Dieter Thurnwald's Testimony

08/12/2021 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[175] Defendant's Opposition to Plaintiff's Motion to Strike Defendant's Fourth Supplement

08/17/2021 Reply to Opposition
Filed by: Plaintiff Taylor, Patricia A
[176] Plaintiff's Reply to Defendant's Opposition to Motion to Strike Defendant's Fourth Supplement to Initial Disclosure Statement (Including the Witness and Affidavit Produced Therein) and To Strike the Surveillance Video

08/17/2021 Reply
Filed by: Plaintiff Taylor, Patricia A
[177] Plaintiff's Reply to Defendant's Opposition to Motion to Strike Dieter Thurnwald's Testimony at the May 17, 2021 Prove-up Hearing

08/17/2021 Reply
Filed by: Defendant Smith's Food and Drug Centers Inc
[178] Defendant's Reply Brief on Scope of Prove-Up, Plaintiff's Failure to Establish a Prima Facie Case on Liability and Damages, and Punitive Damages

08/20/2021 Notice of Association of Counsel
Filed By: Defendant Smith's Food and Drug Centers Inc
[179] Notice of Association of Counsel

08/20/2021 Motion to Continue
Filed By: Defendant Smith's Food and Drug Centers Inc
[180] Defendant's Motion to Continue August 23, 2021 Prove-Up Hearing on Order Shortening Time

09/14/2021 Recorders Transcript of Hearing
Party: Defendant Smith's Food and Drug Centers Inc
[181] Recorders Transcript of Hearing Re: 08.30.21 - All Pending Motions

09/15/2021 Order Shortening Time
Filed By: Defendant Smith's Food and Drug Centers Inc
[182] Defendant's Motion for Reconsideration or in the Alternative to Alter or Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on Order Shortening Time (Hearing Date Requested)

09/15/2021 Order Shortening Time
Filed By: Defendant Smith's Food and Drug Centers Inc
[183] Defendant's Motion to Continue September 20, 2021 Prove-up Hearing on Order Shortening Time (Hearing Date Requested)

09/16/2021 Reply in Support
Filed By: Defendant Smith's Food and Drug Centers Inc
[184] Defendant's Reply Brief in Support of its Argument that Punitive Damages are not Applicable in this Case

09/16/2021

Brief
Filed By: Plaintiff Taylor, Patricia A
[185] Plaintiff's Trial Brief Prior to The Final Prove Up Hearing

09/17/2021 Order Denying Motion
Filed By: Plaintiff Taylor, Patricia A
[186] Order Granting In Part and Denying In Part Plaintiff's Motion to Strike Defendant's Fourth Supplement to initial Disclosure Statement (Including the Witness and Affidavit Produced Thereon) and to Strike the Surveillance Video

09/17/2021 Opposition
Filed By: Plaintiff Taylor, Patricia A
[187] Plaintiff's Opposition to Defendant's Motion to Continue September 20, 2021 Prove-Up Hearing on Order Shortening Time

09/23/2021 Notice of Entry
Filed By: Plaintiff Taylor, Patricia A
[188] Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion to Strike Defendant's Fourth Supplement to Initial Disclosure Statement (Including the Witness and Affidavit Produced Therein) And to Strike the Surveillance Video

09/27/2021 Motion to Amend
Filed By: Defendant Smith's Food and Drug Centers Inc
[189] Defendant's Motion to Alter or Amend the Court's Order Granting in Part and Denying in Part Plaintiff's Motion to Strike Defendant's Fourth Supplement to Initial disclosure Statement and to Strike the Surveillance Video on Order Shortening time

09/29/2021 Opposition and Countermotion
Filed By: Plaintiff Taylor, Patricia A
[190] Plaintiff's Opposition to Defendants Motion for Reconsideration or, In The Alternative, To Alter or Amend The Court s Order Granting Plaintiff's Renewed Motion to Strike Defendants Answer On Order Shortening Time; and Countermotion to Strike Affidavit of Christine Shedrow

10/04/2021 Order Shortening Time
Filed By: Plaintiff Taylor, Patricia A
[191] Plaintiff's Motion to Preclude Arguments of No Prior Incidents on Order Shortening Time (Hearing Date Requested)

10/07/2021 Reply to Opposition
Filed by: Defendant Smith's Food and Drug Centers Inc
[192] Defendant's Reply to Plaintiff's Opposition to Motion for Reconsideration

10/08/2021 Opposition to Motion
Filed By: Plaintiff Taylor, Patricia A
[193] Plaintiff's Opposition to Defendant's Motion to Alter or Amend the Court's Order Granting In Part and Denying in Part Plaintiff's Motion to Strike Defendant's Fourth Supplement to Initial Disclosure Statement (Including the Witness and Affidavit Produced Therein) And to Strike the Surveillance Video on Order Shortening Time

10/11/2021 Reply to Opposition
Filed by: Defendant Smith's Food and Drug Centers Inc
[194] Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Alter or Amend the Court's Order Granting in Part and Denying in Part Plaintiff's Motion to Strike Defendant's Fourth Supplement to Initial Disclosure Statement (Including the Witness and Affidavit Produced Therein) and to Strike the Surveillance Video

10/12/2021 Opposition to Motion
Filed By: Defendant Smith's Food and Drug Centers Inc
[195] Defendant's Opposition to Plaintiff's Motion to Preclude Arguments of No Prior Incidents on Order Shortening Time

10/13/2021 Supplement
Filed by: Defendant Smith's Food and Drug Centers Inc
[196] Defendant's Supplement to Its Opposition to Plaintiff's Motion to Preclude Arguments of no Prior Incidents on Order Shortening Time

10/18/2021 Recorders Transcript of Hearing
[197] Transcript of Proceedings: All Motions, October 14, 2021

11/01/2021 Notice of Rescheduling
[198] Notice of Change of Time of Hearing

11/30/2021 Order Denying Motion
Filed By: Plaintiff Taylor, Patricia A
[199] Order Denying Defendant's Motion for Reconsideration or in the Alternative, to Alter or Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer to Order Shortening Time

12/01/2021 Notice of Entry of Order
Filed By: Plaintiff Taylor, Patricia A
[200] Notice of Entry of Order Denying Defendant s Motion For Reconsideration Or, In The Alternative, To Alter Or Amend The Court s Order Granting Plaintiff s Renewed Motion To Strike Defendant s Answer On Order Shortening Time

12/02/2021 Notice of Rescheduling of Hearing
[201] Notice of Rescheduling Hearing

01/03/2022 Notice of Appeal
Filed By: Defendant Smith's Food and Drug Centers Inc
[202] Notice of Appeal

01/03/2022 Case Appeal Statement
[203] Case Appeal Statement

HEARINGS

12/07/2017 **Motion to Continue** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Motion to Continue the Early Case Conference and Filing of the Joint Case Conference Report Pending a Decision on Defendant's Motion to Disqualify Counsel on an Order Shortening Time

MINUTES
Motion Granted;
Journal Entry Details:
Mr. Busby informed there is an Early Case Conference and requested to delay 30 days after the Motion to Disqualify is heard. Court advised at Defendant's Motion to Disqualify Counsel hearing, the Early Case Conference date would be set, and ORDERED, Motion GRANTED.;

01/04/2018 **Motion to Disqualify Attorney** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Defendant's Motion to Disqualify Counsel
Motion Denied;
Journal Entry Details:
David Korrey, Esq. also present on behalf of Plaintiff, and Ty Maynarich, Esq. also present on behalf of Defendant. Mr. Busby argued Ms. Mandello had access to confidential information in

documents at his office while employed by Cooper Levenson, creating a conflict. Court stated this is a premise liability case and issues would be whether there was a hazardous condition and whether the store had notice of those conditions; reviewed statutory law regarding potential conflict of interest. Court inquired regarding what type of confidence existed that would not be present in the public realm. Mr. Busby argued he knew for a fact that Ms. Mandello had access to privileged and confidential information. Court noted it has to be the same matter or substantially related matter, and stated "substantially related matter" is a broad term. COURT ORDERED, Motion DENIED, and stated findings.;

04/10/2019 *CANCELED* **Status Check** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Vacated - per Stipulation and Order

05/16/2019 *CANCELED* **Pretrial/Calendar Call** (10:30 AM) (Judicial Officer: Williams, Timothy C.)
Vacated - per Stipulation and Order

06/03/2019 *CANCELED* **Jury Trial** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
Vacated - per Stipulation and Order

07/11/2019 *CANCELED* **Pretrial/Calendar Call** (10:30 AM) (Judicial Officer: Williams, Timothy C.)
Vacated - per Stipulation and Order

07/18/2019 *CANCELED* **Status Check: Trial Readiness** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Vacated - per Stipulation and Order

07/22/2019 *CANCELED* **Jury Trial** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
Vacated - per Stipulation and Order

08/13/2019 **Motion to Amend Complaint** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Motion to Amend Complaint
Denied;

08/13/2019 **Motion for Sanctions** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Plaintiff's Motion for Sanctions for Spoliation of Evidence
To be heard by Judge Williams/DC16
Matter Continued;

08/13/2019 **All Pending Motions** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
APPEARANCES CONTINUED: Gregory Kraemer, Esq. for Deft. MOTION TO AMEND COMPLAINT Arguments by counsel. Court FINDS if evidence supports res ipsa loquitur instruction based on general negligence principles, would give the instruction; otherwise, would not. Therefore, Court ORDERED, Motion to Amend DENIED as MOOT. There being agreement, Mr. Kraemer to prepare the order. PLAINTIFF'S MOTION FOR SANCTIONS FOR SPOLIATION OF EVIDENCE Mr. Tanner presented documents for Court to review. Arguments by counsel and colloquy regarding possible continuance of matter for opportunity to withdraw and possible Rule 11 motion by Defense. COURT ORDERED, Motion for Sanctions CONTINUED 30 days. CONTINUED TO: 9/11/19 9:00 AM PLAINTIFF'S MOTION FOR SANCTIONS FOR SPOLIATION OF EVIDENCE;

09/11/2019 **Status Check: Trial Readiness** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
APPEARANCES CONTINUED: Gregory Kraemer, Esq. present for Deft. Matter of Status Check: Trial Readiness. Mr. Tanner advised trial ready. Mr. Kraemer advised issue of deposition of expert not available until November and his opinions are incomplete. Court stated will not make decision to continue trial at this time; however, counsel may file appropriate motion.;

10/01/2019 *CANCELED* **Pretrial/Calendar Call** (10:30 AM) (Judicial Officer: Williams, Timothy C.)

Vacated - per Stipulation and Order

10/14/2019 *CANCELED* **Jury Trial** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
Vacated - per Stipulation and Order

10/23/2019 **Motion to Strike** (9:00 AM) (Judicial Officer: Truman, Erin)
Plaintiff's Motion to Strike "Quasi Expert" Chad Crapo as A Witness
Granted in Part; Plaintiff's Motion to Strike "Quasi Expert" Chad Crapo as A Witness
Journal Entry Details:
Arguments by counsel. Mr. Kraemer took over the file a few months ago, and he will be moving to continue discovery. Mr. Kraemer addressed the substance of Chad Crapo's testimony, and Mr. Crapo's specialized knowledge. Mr. Kraemer requested Commissioner hold off ruling on this Motion, or deny the Motion. COMMISSIONER RECOMMENDED, motion is GRANTED IN PART and DENIED IN PART; the lay witness will only testify about specific knowledge, personal knowledge, and knowledge of policies and procedures how the door worked, or should have worked at that store; no expert opinions, and no testimony on duties and standards; IDENTIFY WHEN Mr. Crapo was at the store, and Commissioner can address issues if the Court grants the Motion to Continue Discovery. Mr. Tanner to prepare the Report and Recommendations, and Mr. Kraemer to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.;

11/21/2019 *CANCELED* **Status Check** (3:00 AM) (Judicial Officer: Truman, Erin)
Vacated
Status Check: Compliance / 10-23-19 DCRR

11/21/2019 **Motion to Strike** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Plaintiff Motion to Strike Defendant's Answer
Decision Made;
Journal Entry Details:
APPEARANCES CONTINUED: Benjamin Cloward, Esq. present for Pltf. Arguments by counsel as to Pltf's Motion to Strike Deft's Answer. As to matter ripeness, COURT ORDERED, Mr. Cloward to submit a request for evidentiary hearing as to spoliation issue immediately on order shortened time; Mr. Kraemer may submit a formal motion to reopen discovery with analysis.;

01/07/2020 **Motion to Continue** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Plaintiff's Motion to Continue Hearings and Pre-Trial Conference on an Order Shortening Time
Motion Granted;
Journal Entry Details:
Arguments by counsel. COURT ORDERED, Plaintiff's Motion to Continue Hearings and Pre-Trial Conference GRANTED; hearings previously set 1/8/20 and 1/23/20 RESET to 1/22/20. FURTHER ORDERED, Trial CONTINUED; will discuss trial scheduling issues at the reset hearing. Mr. Tanner advised will prepare today's order including new dates. CONTINUED TO: 1/22/20 1:15 PM PLTF'S MOTION FOR AN EVIDENTIARY HEARING...DEFT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERY EVIDENCE AND TO CONTINUE TRIAL DATE...PLTF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER ;

01/09/2020 *CANCELED* **Pretrial/Calendar Call** (10:30 AM) (Judicial Officer: Williams, Timothy C.)
Vacated

01/22/2020 **Motion to Continue** (1:15 PM) (Judicial Officer: Williams, Timothy C.)
01/22/2020, 03/10/2020, 03/24/2020, 03/31/2020
Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and to Continue Trial Date on Order Shortening Time
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;

Under Advisement;
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;
Under Advisement;
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;
Under Advisement;
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;
Under Advisement;

01/22/2020 **Motion** (1:15 PM) (Judicial Officer: Williams, Timothy C.)
01/22/2020, 03/10/2020, 03/24/2020, 03/31/2020
Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;
Under Advisement;
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;
Under Advisement;
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;
Under Advisement;
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;
Under Advisement;

01/22/2020 **Motion to Strike** (1:15 PM) (Judicial Officer: Williams, Timothy C.)
01/22/2020, 03/10/2020, 03/24/2020, 03/31/2020
Plaintiff's Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;
Under Advisement;
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;
Under Advisement;
See 1/7/20 Minutes
Matter Continued;
Matter Continued;
Matter Continued;
Under Advisement;
See 1/7/20 Minutes
Matter Continued;

Matter Continued;
Matter Continued;
Under Advisement;

01/22/2020 **All Pending Motions** (1:15 PM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
APPEARANCES CONTINUED: David Churchill, Esq. present for Pltf. PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER Arguments by Mr. Tanner and Mr. Kraemer. Mr. Tanner presented documents to Court for review. Court directed Mr. Tanner to prepare a direct Court order for corporate counsel to produce documents related to work authorizations at issue or other documents withheld pursuant to confidentiality. Court further instructed order to state production is for Court and eyes of counsel only. Court admonished there is to be no contact by either party to corporate counsel. Colloquy regarding rescheduling today's matters in light of anticipated production. There being agreement, COURT ORDERED, today's matters CONTINUED to 3/10/20 at 1:15 p.m. CONTINUED TO: 3/10/20 1:15 PM PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER;

01/27/2020 *CANCELED* **Jury Trial** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
Vacated

02/18/2020 **Minute Order** (8:02 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order to Strike Document
Minute Order - No Hearing Held;
Journal Entry Details:
On February 14, 2020, Cooper Levenson Law Firm electronically filed an Arbitration Selection List into Case No. A-17-761650-C. This was incorrectly filed as it should have been filed into Case No. A-19-807051-C. It is hereby ORDERED that the Arbitration Selection List filed on 2/14/20 into case No. A-17-761650-C is hereby stricken from the record due to a filing error.;

03/10/2020 **All Pending Motions** (1:15 PM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:

APPEARANCES CONTINUED: David Churchill, Esq. present for Pltf. DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER Mr. Tanner presented email correspondence for Court's review. Mr. Tanner advised there was exchange with Assa Abloy regarding subpoena response and anticipates receiving same by end of this week. Colloquy regarding the subpoena response with respect to today's matters. Mr. Kraemer requested disclosure of the subject documents once received. Mr. Tanner agreed to immediate disclosure of same. Further colloquy regarding potential discovery related to the subpoena response. Colloquy regarding rescheduling today's matters. There being agreement, COURT ORDERED, today's matters CONTINUED to 3/24/20 at 10:30 a.m.; Motion to Amend Complaint RESET from 3/24/20 9:00 a.m. to 10:30 a.m. FURTHER ORDERED, Status Check SET 3/24/20 at 10:30 a.m. regarding subpoena response and related discovery, and scheduling pending matters including trial. CONTINUED TO: 3/24/20 10:30 AM DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER

SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER 3/24/20 10:30 AM STATUS CHECK: SUBPOENA RESPONSE FROM ASSA ABLOY AND RELATED DISCOVERY ISSUES/SCHEDULING PENDING MATTERS AND TRIAL;

03/24/2020 *CANCELED* **Status Check** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Vacated - On in Error
Status Check re Discover/Rescheduling Trial

03/24/2020 **Motion to Amend Complaint** (10:30 AM) (Judicial Officer: Williams, Timothy C.)
Plaintiff's Motion to Amend Complaint
Motion Granted;

03/24/2020 **Status Check** (10:30 AM) (Judicial Officer: Williams, Timothy C.)
Status Check: Subpoena Response from Assa Abloy and Related Discovery/Scheduling Pending Matters and Trial
Matter Heard;

03/24/2020 **All Pending Motions** (10:30 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
APPEARANCES: David Tanner, Esq. and David Churchill, Esq. present via CourtCall for Pltf. Gregory Kraemer, Esq. present telephonically for Deft. PLAINTIFF'S MOTION TO AMEND COMPLAINT...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER...STATUS CHECK: SUBPOENA RESPONSE FROM ASSA ABLOY AND RELATED DISCOVERY/SCHEDULING PENDING MATTERS AND TRIAL Colloquy regarding rescheduling certain matters. COURT ORDERED, matters other than Motion to Amend and Status Check CONTINUED to 3/31/20. Arguments by Mr. Tanner and Mr. Kraemer regarding the Motion to Amend. Court stated ITS FINDINGS and ORDERED, Motion GRANTED. Court directed Mr. Tanner to prepare findings of fact and conclusions of law to include what was considered; if parties cannot agree on form and content, may submit competing orders and do so electronically. CONTINUED TO: 3/31/20 9:00 AM DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER;

03/25/2020 **Minute Order** (10:17 AM) (Judicial Officer: Williams, Timothy C.)
re: 3/31/20 Hearing
Minute Order - No Hearing Held;
Journal Entry Details:

Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court offers two methods of appearance: telephonic conference through BlueJeans or CourtCall. As CourtCall involves a cost, the use of BlueJeans is strongly favored given the number of people the system can accommodate. If you prefer to use BlueJeans, please call in prior to your hearing to appear. The call-in number is: Dial the following number: 1-888-748-9073 Meeting ID: 720 112 055 To connect, dial the telephone number then enter the meeting ID and passcode followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing If you prefer to use CourtCall, please contact CourtCall to schedule your appearance. They can be reached toll-free at 1-888-882-6878 and/or on-line at www.courtcall.com. CLERK S NOTE: Minute Order

amended to provide new call-in information as reflected above. This Minute Order has been electronically served to counsel through Odyssey eFile. /cd 3-30-20/;

03/30/2020 *CANCELED* **Minute Order** (7:30 AM) (Judicial Officer: Williams, Timothy C.)
Vacated - On in Error
re: 3/31/20 Hearing

03/31/2020 **All Pending Motions** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
APPEARANCES: David Tanner, Esq. and David Churchill, Esq. present telephonically for Pltf. Gregory Kraemer, Esq. present telephonically for Deft. PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME Arguments by counsel regarding Motion to Strike and Motion for Evidentiary Hearing. COURT ORDERED, supplemental timeline of 1-2 pages to be filed within one week referencing the record with respect to the preservation of evidence letter, emails, and the like. Colloquy regarding impact of anticipated decision on the pending Motion to Continue Discovery. Mr. Tanner requested opportunity to argue issue of discovery. COURT ORDERED, Chambers Decision SET 4/14/20 regarding Motion to Strike and Motion for Evidentiary Hearing; will incorporate Motion to Continue Discovery in the decision. 4/14/20 CHAMBERS DECISION: PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME;

04/08/2020 **Status Check** (3:00 AM) (Judicial Officer: Williams, Timothy C.)
Internal Status Check: Supplemental Timelines re: Motion to Strike and Motion for Evidentiary Hearing (UA thereafter)
Confirmed;
Journal Entry Details:
Department notes receipt of supplemental briefing. Matter confirmed.;

04/23/2020 **Minute Order** (12:17 PM) (Judicial Officer: Williams, Timothy C.)
re: Pending Decisions
Minute Order - No Hearing Held;
Journal Entry Details:
Pending matters originally set for in-chambers decision on 4/14/20 are hereby RESET by this Court to 4/30/20 at 11:00 a.m. to coincide with the status check matter regarding related supplemental timelines. CONTINUED TO: 4/30/20 11:00 AM CHAMBERS DECISION: PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME 4/30/20 11:00 AM STATUS CHECK RE DISCUSSION OF THE PARTIES SUBMITTED SUPPLEMENTAL TIMELINES REFERENCING THE RECORD AS TO THE PRESERVATION OF EVIDENCE, LETTER, EMAILS, RELATED DOCUMENTS. CLERK'S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile.;

04/30/2020 **Motion** (11:00 AM) (Judicial Officer: Williams, Timothy C.)
Plaintiff's Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order
See 4/23/20 Minute Order
Matter Resolved;

04/30/2020

Motion (11:00 AM) (Judicial Officer: Williams, Timothy C.)
Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time
See 4/23/20 Minute Order
Motion Denied; See 5/21/20 Minute Order

04/30/2020 **Motion** (11:00 AM) (Judicial Officer: Williams, Timothy C.)
Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and to Continue Trial Date on Order Shortening Time
See 4/23/20 Minute Order
Motion Denied;

04/30/2020 **Status Check** (11:00 AM) (Judicial Officer: Williams, Timothy C.)
Status check re discussion of the parties submitted supplemental timelines referencing the record as to the preservation of evidence, letter, emails, related documents.
Matter Heard;

04/30/2020 **All Pending Motions** (11:00 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
APPEARANCES: David Tanner, Esq. and David Churchill, Esq. present telephonically for Pltf. Gregory Kraemer, Esq. present telephonically for Deft. STATUS CHECK RE DISCUSSION OF THE PARTIES SUBMITTED SUPPLEMENTAL TIMELINES REFERENCING THE RECORD AS TO THE PRESERVATION OF EVIDENCE, LETTER, EMAILS, RELATED DOCUMENTS...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER Arguments by Mr. Kraemer and Mr. Tanner. Court stated ITS FINDINGS and ORDERED, Motion to Continue Discovery DENIED; will review Motion for Evidentiary Hearing and issue minute order decision; Motion to Strike Late Disclosure RESOLVED by today's ruling and additional witnesses stricken as discussed. Colloquy regarding posture of case, certain depositions, and trial setting. FURTHER ORDERED, proposed deposition of Mr. Panish not permitted; whether additional discovery can be done from medical perspective is to be determined after two pending motions. ORDERED, 5/12/20 Motion to Strike before Discovery Commissioner to be heard before this Court and RESET from 5/12/20 to 6/9/20 to be heard with 6/9/20 Motion to Limit. ORDERED, Status Check SET 5/21/20 regarding trial setting. Court directed Mr. Tanner to prepare today's order 5/21/20 9:00 AM STATUS CHECK: TRIAL SETTING 6/9/20 9:00 AM DEFT'S MOTION TO STRIKE/EXCLUDE PLTF'S DAMAGES FOR HER CERVICAL FUSION SURGERY AND FUTURE MEDICAL...MOTION TO LIMIT DR. STEVEN M. SANDERS, M.D.'S EXPERT TESTIMONY;

05/12/2020 **Minute Order** (8:00 AM) (Judicial Officer: Williams, Timothy C.)
re: 5/21/20 Hearing
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is: Dial the following number: 1-408-419-1715 Meeting ID: 897 197 013 To connect, dial the telephone number then enter the meeting ID followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile.;

05/21/2020 **Status Check: Trial Setting** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Trial Date Set;
Journal Entry Details:
APPEARANCES: David Tanner, Esq. and David Churchill, Esq. present telephonically for

Pltf. Gregory Kraemer, Esq. present telephonically for Deft. Colloquy regarding jury trial setting in light of public health crisis. There being agreement, COURT ORDERED, Trial SET 2/22/21. Department to issue amended trial order. Mr. Kraemer advised order denying motion to reopen discovery is pending and requested anticipated motion for reconsider to be heard on order shortening time (OST). Court stated the OST may be filed and set with at least ten (10) days for opposition. Court further stated pending minute order on motion for evidentiary hearing is anticipated today or tomorrow. 2/11/21 10:30 AM PRETRIAL/CALENDAR CALL 2/22/21 9:30 AM JURY TRIAL;

05/21/2020 **Minute Order** (12:48 PM) (Judicial Officer: Williams, Timothy C.)

re: Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time
Minute Order - No Hearing Held;
Journal Entry Details:
*After a review and consideration of the record, the points and authorities on file herein, and oral argument of counsel, the Court determined as follows: Under Nevada law, when a court does not impose the ultimate discovery sanctions of striking an answer as to liability and damages, the court should, at its discretion, hold such hearing as it reasonably deems necessary to consider matters that are pertinent to the imposition of appropriate sanctions. Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243, 256, 235 P.3d 592, 600 01 (2010). The length and nature of the hearing for non-case concluding sanctions shall be left to the district court s sound discretion. Id. In determining the nature of [the] hearing, the district court should exercise its discretion to ensure that there is sufficient information presented to support [any] sanctions ordered. Id. A district court does not abuse its discretion when it provides more than one meaningful opportunity to present evidence and arguments regarding misconduct. See N. Am. Properties v. McCarran Int l Airport, No. 61997, 2016 WL 699864, at *5, 132 Nev. 1011 (Nev. Feb. 19, 2016) (Unpublished). The Plaintiff s Motion For An Evidentiary Hearing was based on her 10/14/19, request to strike the Defendant s answer. At the hearing for Plaintiff s Motion To Strike Defendant s Answer, this Court found that the request was premature. The Court found that further development of the underlying facts that led up to the motion to strike was required. In response to the Court s ripeness decision, Plaintiff filed her Motion For An Evidentiary Hearing on 11/27/19. Since that November filing, the Court has held multiple hearings that specifically dealt with Smiths conduct as related to, and among other things: Disregard of its duty to preserve evidence that it knew or should have known was relevant to this litigation, which was mandated by the Plaintiff s December 7, 2016, preservation letter; Company record-retention policies that resulted in the destruction or lack of preservation of maintenance records that were vital to Plaintiff s case in chief: Assa Abloy s inspection notes, safety assessments, AAADM compliance assessment, service and repair recommendations, repair estimates, and Smiths subsequent approval; Inaccurate discovery responses that contradicted or refuted Abloy s actual involvement in the case, the actual service and repair history of the door, and Smiths actions; Inaccurate testimony from multiple Smiths 30(b)(6) witnesses that contradicted or refuted Abloy s actual involvement in the case, the actual service and repair history of the door, and Smiths actions; Smiths disregard of Abloy s August 15, 2019, communication request for permission to disclose records that dealt with maintenance, recommendations, and repair; and the absence of diligence, good faith, and/or candor by Smiths over the course this disputes litigation history as it pertains to the door at issue. Additionally, since October 2019, both parties have provided written supplements, additional briefing, Smiths Motion to Re-Open Discovery, and oral argument that gave the Court relevant context and substantive background to the nature of conduct mentioned above. In light of the additional briefing and hearings, the Court finds that it has sufficiently reflected on the facts and procedural history of this case. Therefore, with the substantial amount of evidence and argument this Court has already considered, the Court finds that an evidentiary hearing is not required to fully evaluate the import of the parties conduct, as well as the tremendous burden of roughly three years of misguided litigation. The Court finds that it is now able to render a decision on a properly brought motion for sanctions. Consequently, the Plaintiff s Motion for an Evidentiary Hearing is DENIED. Plaintiff shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature. CLERK S NOTE: This Minute Order has been served to counsel electronically through Odyssey eFile;*

05/29/2020 **Minute Order** (8:00 AM) (Judicial Officer: Williams, Timothy C.)

Minute Order re: Hearing on 6/9/20 at 9:00 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:

Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is: Dial the following number: 1-408-419-1715 Meeting ID: 948 657 904 To connect, dial the telephone number then enter the meeting ID followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile.;

06/09/2020 **Motion to Strike** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Defendant's Motion to Strike/Exclude Plaintiff's Damages for her Cervical Fusion Surgery and Future Medical Care
See 4/30/20 Minutes
Motion Denied;

06/09/2020 **Motion** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Motion to Limit Dr. Steven M. Sanders, M.D.'s Expert Testimony
Motion Denied;

06/09/2020 **All Pending Motions** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
APPEARANCES CONTINUED: David Churchill, Esq. present telephonically for Pltf. DEFENDANT'S MOTION TO STRIKE/EXCLUDE PLAINTIFF'S DAMAGES FOR HER CERVICAL FUSION SURGERY AND FUTURE MEDICAL CARE...MOTION TO LIMIT DR. STEVEN M. SANDERS, M.D.'S EXPERT TESTIMONY All counsel present telephonically. Arguments by counsel. Court stated ITS FINDINGS and ORDERED, Motion to Strike DENIED; Motion to Limit DENIED; as to cost issue, will allow supplement if not done so, otherwise case will stay in current posture. Court directed Mr. Tanner to prepare the Motion to Strike order; Mr. Kraemer to prepare the Motion to Limit order. Proposed orders to be submitted electronically to DC16Inbox@clarkcountycourts.us.;

06/12/2020 **Minute Order** (8:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 6/18/20 at 9:00 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is: Dial the following number: 1-408-419-1715 Meeting ID: 948 657 904 To connect, dial the telephone number then enter the meeting ID followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile.;

06/18/2020 **Motion for Leave** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Defendant Smith's Food & Drug Centers, Inc.'s Motion for Leave to File Third-Party Complaint
Motion Denied;
Journal Entry Details:
Counsel present telephonically. Arguments by counsel. Court FINDS cannot make good cause determination for leave; therefore, ORDERED, Motion for Leave to File Third-Party Complaint DENIED, notwithstanding, other remedies available as discussed. Mr. Tanner advised will prepare and circulate the order. Court stated if parties do not agree on form and content, may submit competing orders. Proposed order(s) to be submitted electronically to DC16Inbox@clarkcountycourts.us.;

07/30/2020

Minute Order (8:00 AM) (Judicial Officer: Williams, Timothy C.)

Minute Order re: Hearing on 8/6/20 at 10:00 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is: Dial the following number: 1-408-419-1715 Meeting ID: 301 745 453 To connect, dial the telephone number then enter the meeting ID followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile.;

08/06/2020

Motion for Leave (10:00 AM) (Judicial Officer: Williams, Timothy C.)

Defendant's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration of the Court's Order Denying Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence Entered on May 26, 2020
Per 7/2/20 Stipulation and Order
Motion Denied;
Journal Entry Details:
APPEARANCES CONTINUED: David Churchill, Esq. present for Pltf. Court Reporter, Michael Bouley, present. All parties present telephonically. Arguments by counsel. COURT FINDS no new facts, change in law, or that prior decision erroneous. Therefore, COURT ORDERED, Motion for Reconsideration DENIED with exception to deposition of Dr. Khavkin and Mr. Sanders within 30 days of entry of today's order. Mr. Tanner to prepare and circulate the order; if parties cannot agree on form and content, may submit competing orders. Colloquy regarding status of determination of prior Motion to Strike. Court directed counsel refile the motion for a hearing in approximately 45 days. Mr. Tanner advised he will refile all the briefing and renotice hearing.;

10/14/2020

Minute Order (8:00 AM) (Judicial Officer: Williams, Timothy C.)

Minute Order re: Hearing on 10/20/20 at 9:00 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is: Dial the following number: 1-408-419-1715 Meeting ID: 458 575 421 To connect, dial the telephone number then enter the meeting ID followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: A copy of this Minute Order was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

10/29/2020

Minute Order (8:00 AM) (Judicial Officer: Williams, Timothy C.)

Minute Order re: Hearing on 11/5/20 at 9:00 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:

Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is: Dial the following number: 1-408-419-1715 Meeting ID: 458 575 421 To connect, dial the telephone number then enter the meeting ID followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your

matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: A copy of this Minute Order was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

11/05/2020 **Motion to Strike** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees
Motion Granted;
Journal Entry Details:
Hearing held telephonically. Arguments by Mr. Tanner and Mr. Kramer. Court FINDS failure to preserve and over 2 years of misguided litigation. Therefore, COURT ORDERED, Motion to Strike GRANTED as to both liability and damages. Court directed Mr. Tanner to prepare and circulate detailed findings of fact and conclusions of law; if parties cannot agree on form and content, may submit competing orders. Proposed order(s) to be submitted electronically to DC16Inbox@clarkcountycourts.us.;

02/10/2021 **Minute Order** (8:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 2/16/21 at 9:05 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Orders 20-10 and 20-24, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conferences through BlueJeans conferencing, wherein you dial in prior to your hearing to appear. Also, please check in with the Courtroom Clerk by 8:55 a.m. The call-in number is: Dial the following number: 1-408-419-1715 Meeting ID: 552 243 859 To connect, dial the telephone number then enter the meeting ID followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System. ;

02/11/2021 **Minute Order** (8:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 2/18/21 at 9:05 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Orders 20-10 and 20-24, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conferences through BlueJeans conferencing, wherein you dial in prior to your hearing to appear. Also, please check in with the Courtroom Clerk by 8:55 a.m. The call-in number is: Dial the following number: 1-408-419-1715 Meeting ID: 552 243 859 To connect, dial the telephone number then enter the meeting ID followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

02/11/2021 *CANCELED* **Pretrial/Calendar Call** (10:30 AM) (Judicial Officer: Williams, Timothy C.)
Vacated

02/16/2021 **Motion For Reconsideration** (9:05 AM) (Judicial Officer: Williams, Timothy C.)
Defendant's Motion for Reconsideration of the Court's Order Granting Plaintiff's Motion to Strike Defendant's Answer to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for clarification on OST
Decision Made; See 3/31/21 Minute Order

Journal Entry Details:
APPEARANCES CONTINUED: Micah Echols, Esq. present for Pltf. Arguments by Mr. Kraemer and Mr. Tanner. Court stated ITS FINDINGS and ORDERED, Motion for Reconsideration DENIED; Motion for Stay DENIED; will review issue of damages before decision. COURT FURTHER ORDERED, 2/18/21 Prove Up Hearing regarding damages CONTINUED to 3/18/21. Prevailing party to prepare today s order. Proposed order(s) to be submitted electronically to DC16Inbox@clarkcountycourts.us. CONTINUED TO: 3/18/21 9:05 AM PROVE UP RE PLAINTIFF S DAMAGES (DFT S ANSWER STRICKEN) ;

02/22/2021 *CANCELED* **Jury Trial** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
Vacated

03/18/2021 **Prove Up/Default** (9:05 AM) (Judicial Officer: Williams, Timothy C.)
03/18/2021, 04/07/2021, 04/21/2021, 05/17/2021, 08/23/2021, 08/30/2021, 09/20/2021, 10/14/2021, 10/22/2021, 11/02/2021, 01/11/2022
Prove Up re Plaintiff's Damages (Dft's Answer Stricken)
Matter Continued;
Matter Continued;
Matter Continued;

Matter Continued;
Matter Continued;
Matter Continued;
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Matter Continued;
Matter Continued;
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Journal Entry Details:
APPEARANCES CONTINUED: Anthony Gordon, Representative of Smith's, present. Colloquy regarding the Motion to Continue submitted Friday, Pltf's preference to proceed today, Deft's preference for Mr. Polsenberg participation, and impact of pending 9/14/21 Motions on the instant matter. Further colloquy regarding rescheduling all matters. COURT ORDERED, Motions RESET from 9/14/21 to 8/30/21 at 9:30 a.m. and instant matter arguments to be heard thereafter; instant matter FURTHER CONTINUED to 9/20/21 at 9:30 a.m.; Status Check SET 8/26/21 at 9:00 a.m. regarding availability of counsel to proceed as set; 8/24/21 Motion to Continue VACATED. 8/26/21 9:00 AM STATUS CHECK: AVAILABILITY OF COUNSEL TO PROCEED 8/30/21 AND/OR 9/20/21 8/30/21 9:30 AM PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN) 9/20/21 9:30 AM PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN) CLERK'S NOTE: Subsequent to proceedings, Court vacated the 8/24/21 Motion to Continue in light of today's proceedings, as reflected above. /8-23-2021/;

Matter Continued;
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Matter Continued;
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Journal Entry Details:
Hearing held by BlueJeans remote conference. Colloquy regarding whether or not Pltf's anticipated witness today is re-opening case in chief and issue of response to Pltf's recent trial brief. Court stated will allow points and authorities response from Defense to trial brief; notes Pltf's case in chief closed, however, will proceed with direct examination of today's witness by Defense and cross-examination by Pltf. thereafter as part of case in chief. Testimony and exhibits presented. (See worksheets.) Colloquy regarding setting status check in 45 days as to offer of proof documents as well as further briefing and argument after a certain medical procedure by Pltf. with records and bills. COURT ORDERED, status check SET 7/1/21 regarding production of offer of proof documents, setting briefing schedule, and setting time for continued prove-up hearing. 7/1/21 9:00 AM STATUS CHECK: OFFER OF PROOF DOCUMENTS/BRIEFING SCHEDULE/SETTING CONTINUED PROVE-UP HEARING;

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Journal Entry Details:
Hearing held by BlueJeans remote conferencing. Opening statements by counsel. Dr. Jason Garber sworn and testified. Mr. Tanner moved for default judgment. Following arguments by counsel regarding the oral motion, COURT ORDERED, testimony of Dr. Sanders will proceed. Dr. Steven Sanders sworn and testified. Colloquy regarding available session to continue matter. COURT ORDERED, matter CONTINUED to 4/21/21 at 1:30 p.m. CONTINUED TO: 4/21/21 1:30 PM PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN);

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Journal Entry Details:
Hearing held by BlueJeans remote conferencing. Discussion and argument by counsel regarding results of hearing on 2/16/21 and whether appellate issue may exist with respect to the record. Further colloquy regarding matter continuance and availability of the parties for same. COURT ORDERED, matter CONTINUED to 4/7/21 at 1:30 p.m. COURT DIRECTED Mr. Churchill to prepare order on the standing issue. Court stated it will submit a minute order as to the decision set forth at the 2/16/21 hearing and address inconsistency in minute entry. CONTINUED TO: 4/7/21 1:30 PM PROVE UP RE PLAINTIFF S DAMAGES (DFT S ANSWER STRICKEN) ;

03/31/2021 **Minute Order** (8:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order: Motion for Reconsideration
Minute Order - No Hearing Held;
Journal Entry Details:

After review and consideration of the points and authorities on file herein, and oral argument of counsel, the Court determined as follows: Of paramount significance, the Court recognizes that in general, when the record is undeveloped, that before the issuance of possible case terminating sanctions, the Court should consider an evidentiary hearing with testimony. However, the record in the instant action is well developed based upon the deposition testimony and affidavits presented for the Court's consideration. In addition, the Court relied on Defendant Smiths' representations that an evidentiary hearing wasn't necessary as set forth in the June 18, 2020 Order of the Court. Moreover, the Court has grave concerns as to 1) the veracity of the NRCP 30(b)(6) designee's Dieter Thurnwald and Trish Kozlowski as it relates to the performance problems for the door at issue, 2) veracity failings in responses to written discovery, and 3) the failure to retain and produce emails between Smiths' employees and Assa Abloy as to the doors function maintenance. The Court's concerns heightened considering that Defendant Smiths was placed on actual notice when it received evidence letter preservation shortly after the event at issue. Ultimately, this Court has considered all the Young factors and the necessity to deter future conduct related to the failure to preserve all evidence upon receipt of the preservation of evidence letter and the cascade of untruthful discovery responses. Notwithstanding the prior failures, once Plaintiff subpoenaed Assa Abloy for the actual maintenance records for the door at issue, Assa Abloy requested Defendant Smiths' permission to disclose all relevant maintenance records and documents fully. Notwithstanding controlling the maintenance records production, Defendant Smiths never responded, and this Court was required to order production. Defendant Smiths failure to respond to Assa Abloy's request to produce maintenance records within its control and in light of the evidentiary hearing and

procedural history of this case was of grave concern to this Court resulting in the Court's determination that the conduct of Defendant Smiths was intentional. This type of conduct must be deterred. Thus, based upon the uncontroverted evidence in the record and the failure to meet the requirements under EDCR 2.24, Defendant Smith's Motion for Reconsideration shall be DENIED. Counsel on behalf of Plaintiff, Patricia Taylor, shall prepare a Findings of Fact, Conclusions of Law and Order based not only on the Court's minute order but the pleadings on file herein, argument of counsel, and the entire record. Lastly, counsel is to circulate the order prior to submission to the Court to adverse counsel. If the counsel can't agree on the contents, the parties are to submit competing orders. CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

04/01/2021 **Minute Order** (8:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 4/7/21 at 1:30 p.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Orders 21-03, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. The call-in number or website is: Dial the following number: 1-408-419-1715 Meeting ID: 552 243 859 Online: https://bluejeans.com/552243859 To connect by phone, dial the telephone number, then the meeting ID, followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

04/14/2021 **Minute Order** (8:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 4/21/21 at 1:30 p.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Orders 21-03, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. The call-in number or website is: Dial the following number: 1-408-419-1715 Meeting ID: 552 243 859 Online: https://bluejeans.com/552243859 To connect by phone, dial the telephone number, then the meeting ID, followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System. ;

04/21/2021 **Motion** (1:30 PM) (Judicial Officer: Williams, Timothy C.)
Ms. Taylor's Motion to Preclude Dieter Thurnwald From Providing Testimony at the Upcoming Prove-up Hearing and Strike the ANSI Standards on Order Shortening Time
Decision Made;

04/21/2021 **All Pending Motions** (1:30 PM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:

MS. TAYLOR'S MOTION TO PRECLUDE DIETER THURNWALD FROM PROVIDING TESTIMONY AT THE UPCOMING PROVE-UP HEARING AND STRIKE THE ANSI STANDARDS ON ORDER SHORTENING TIME...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN) Hearing held by BlueJeans remote conferencing. Arguments by counsel regarding Motion to Preclude. COURT ORDERED, will allow the testimony limited to punitive damages. Testimony presented. (See worksheet.) Colloquy regarding availability to continue and anticipated testimony and argument. There being agreement, COURT

ORDERED, Prove-Up CONTINUED to 5/10/21 at 10:00 a.m. Court stated examination of next witness anticipated in the morning with arguments in the afternoon. CONTINUED TO: 5/10/21 10:00 AM PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN) ;

05/03/2021 **Minute Order** (8:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 5/10/21 at 10:00 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Orders 21-03, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. The call-in number or website is: Dial the following number: 1-408-419-1715 Meeting ID: 552 243 859 Online: https://bluejeans.com/552243859 To connect by phone, dial the telephone number, then the meeting ID, followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

05/11/2021 **Minute Order** (8:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 5/17/21 at 9:30 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Orders 21-03, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. The call-in number or website is: Dial the following number: 1-408-419-1715 Meeting ID: 552 243 859 Online: https://bluejeans.com/552243859 To connect by phone, dial the telephone number, then the meeting ID, followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

06/28/2021 **Minute Order** (3:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 7/1/21 at 9:00 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. Also, please check in with the Courtroom Clerk by 8:55 a.m. The call-in number or website is: Dial the following number: 1-408-419-1715 Meeting ID: 552 243 859 Online: https://bluejeans.com/552243859 To connect by phone, dial the telephone number, then the meeting ID, followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

07/01/2021 **Status Check** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Status Check: Offer of Proof Documents/Briefing Schedule/Setting Continued Prove-Up Hearing
Hearing Set;

Journal Entry Details:
Hearing held by BlueJeans remote conferencing. Court noted instant status check title should properly reflect burden of proof. Colloquy regarding recent surgery with subsequent disclosure of records and bills; briefing areas of concern the parties deem appropriate; setting full-day continued hearing. There being agreement, COURT ORDERED, briefing and continued hearing as follows: briefs DUE 7/26/21; responsive/opposing briefs DUE 10 days thereafter; reply brief in normal course; full-day continued hearing SET 8/23/21 at 9:30 a.m. Court directed counsel prepare non-substantive scheduling order with hearing date. Mr. Tanner advised he will prepare and circulate the order. CONTINUED TO: 8/23/21 9:30 AM PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN);

08/16/2021 **Minute Order** (3:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 8/23/21 at 9:30 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. The call-in number or website is: Dial the following number: 1-408-419-1715 Meeting ID: 305 354 001 Participant Passcode: 2258 Online: https://bluejeans.com/305354001/2258 To connect by phone, dial the telephone number, then the meeting ID, followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

08/24/2021 **Minute Order** (3:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearings on 8/26/21 and 8/30/21
Minute Order - No Hearing Held;
Journal Entry Details:
Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. The call-in number or website is: Dial the following number: 1-408-419-1715 Meeting ID: 305 354 001 Participant Passcode: 2258 Online: https://bluejeans.com/305354001/2258 To connect by phone, dial the telephone number, then the meeting ID, followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

08/24/2021 *CANCELED* **Motion to Continue** (9:05 AM) (Judicial Officer: Williams, Timothy C.)
Vacated
Defendant's Motion to Continue August 23, 2021 Prove-Up Hearing on Order Shortening Time

08/26/2021 **Status Check** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Status Check: Availability of Counsel to Proceed 8/30/21 and/or 9/20/21
Matter Heard;
Journal Entry Details:
Hearing held by BlueJeans remote conferencing. Colloquy regarding pending motions and prove-up scheduling in light of availability of counsel and court. COURT ORDERED, will proceed 8/30/21 with the motions and limit future arguments on prove-up to half-day; DIRECTED, counsel to meet and confer in the interim to arrive upon a setting for arguments.;

08/30/2021 **Motion to Strike** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
Plaintiff's Motion to Strike Defendant's Fourth Supplement To Initial Disclosure Statement

(Including The Witness and Affidavit Produced Therein) and To Strike the Surveillance Video
Granted in Part;

08/30/2021 **Motion to Strike** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
Plaintiff's Motion to Strike Dieter Thurnwald's Testimony at the May 17, 2021 Prove-Up Hearing
Motion Denied; See 9/20/21 Minutes

08/30/2021 **All Pending Motions** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S FOURTH SUPPLEMENT TO INITIAL DISCLOSURE STATEMENT (INCLUDING THE WITNESS AND AFFIDAVIT PRODUCED THEREIN) AND TO STRIKE THE SURVEILLANCE VIDEO Arguments by Mr. Tanner and Mr. Busby. COURT ORDERED, Motion GRANTED IN PART and DENIED IN PART; GRANTED as to being used for any purpose as pertains to liability; will permit for limited purpose as to damages. Court directed Mr. Tanner to prepare the order. PLAINTIFF'S MOTION TO STRIKE DIETER THURNWALD'S TESTIMONY AT THE MAY 17, 2021 PROVE-UP HEARING Arguments by Mr. Tanner, Mr. Kraemer, and Mr. Busby. Court stated will review proposed portions of the transcript Pltf. requests be stricken; will issue decision on each item. PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN) Colloquy regarding conflicts of counsel and court regarding scheduling arguments, whether or not to set apart punitive and compensatory arguments, and briefing issue of conscious disregard. COURT ORDERED, hearing on 9/20/21 at 9:30 a.m. STANDS; will give three hours argument per side; briefing regarding conscious disregard DUE 9/16/21 from the parties.;

09/13/2021 **Minute Order** (3:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 9/20/21 at 9:30 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
*Department 16 Formal Request to Appear Remotely Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters be heard remotely. The court utilizes BlueJeans for remote conferencing wherein you appear and participate by phone or through an internet enabled device. Please be sure to check in with the Courtroom Clerk at 8:55 a.m. on the date of your hearing. The call-in number or website to connect is: Telephone: Dial: 1-408-419-1715 Meeting ID: 305 354 001 Participant Passcode: 2258 Smartphone/Computer: Website: https://bluejeans.com/305354001/2258 If you appear by phone, please bear in mind: first, dial the telephone number, then meeting ID followed by #, and finally the participate passcode followed by #; secondly, dial *4 to unmute when you are ready to do so. If you appear by smartphone or computer, please bear in mind: enter the website address in your device s browser exactly as show above and follow the instructions on screen; optionally, download the BlueJeans app as indicated on this same website. If you wish to test your audio/video in advance of the hearing, please visit https://bluejeans.com/111. Protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Wait for the line to clear before speaking as the conference audio is one-way. Be mindful of background noises and echoing from using multiple devices. BlueJeans chat will not be available while court is in session. If you need to report an issue affecting your ability to appear, please send an email marked urgent to the following addresses: JEA, Lynn Berkheimer [Dept16EA@clarkcountycourts.us]; Law Clerk, Michael Holthus [Dept16LC@clarkcountycourts.us]; Court Clerk, Chris CJ Darling [DarlingC@clarkcountycourts.us] CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;*

09/20/2021 **Motion to Continue** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
09/20/2021, 10/14/2021, 10/22/2021, 11/02/2021, 01/11/2022
Motion to Continue September 20, 2021 Prove-up Hearing
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;

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09/20/2021 **All Pending Motions** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
MOTION TO CONTINUE September 20, 2021 PROVE-UP HEARING...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN) Arguments by counsel. Regarding pending Plaintiff's Motion to Strike Dieter Thurnwald's Testimony, COURT ORDERED, will not strike him; will consider all the evidence as far as he is concerned. Further arguments by counsel. Colloquy regarding potential exclusionary counter-motion from Pltf. and related timelines. COURT FURTHER ORDERED, deadline for countermotion is 9/29/21; reply or opposition is 10/11/21; matters to be heard on 10/14/21. Court stated it will determine status of proceeding with final arguments at the 10/14/21 hearing.;

10/11/2021 **Minute Order** (3:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 10/14/21 at 9:05 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
*Department 16 Formal Request to Appear Remotely Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters be heard remotely. The court utilizes BlueJeans for remote conferencing wherein you appear and participate by phone or through an internet enabled device. Please be sure to check in with the Courtroom Clerk at 8:55 a.m. on the date of your hearing. The call-in number or website to connect is: Telephone: Dial: 1-408-419-1715 Meeting ID: 305 354 001 Participant Passcode: 2258 Smartphone/Computer: Website: https://bluejeans.com/305354001/2258 If you appear by phone, please bear in mind: first, dial the telephone number, then meeting ID followed by #, and finally the participate passcode followed by #; secondly, dial *4 to unmute when you are ready to do so. If you appear by smartphone or computer, please bear in mind: enter the website address in your device s browser exactly as show above and follow the instructions on screen; optionally, download the BlueJeans app as indicated on this same website. If you wish to test your audio/video in advance of the hearing, please visit https://bluejeans.com/111. Protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Wait for the line to clear before speaking as the conference audio is one-way. Be mindful of background noises and echoing from using multiple devices. BlueJeans chat will not be available while court is in session. If you need to report an issue affecting your ability to appear, please send an email marked urgent to the following addresses: JEA, Lynn Berkheimer [Dept16EA@clarkcountycourts.us]; Law Clerk, Michael Holthus [Dept16LC@clarkcountycourts.us]; Court Clerk, Chris CJ Darling [DarlingC@clarkcountycourts.us] CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System. ;*

10/14/2021 **Motion For Reconsideration** (9:05 AM) (Judicial Officer: Williams, Timothy C.)
10/14/2021, 10/22/2021
Defendant's Motion for Reconsideration or in the Alternative to Alter or Amend the Court's Order Granting Plaitiff's Renewed Motion to Strike Defendant's Answer on OST
Matter Continued;
Motion Denied; See 10/25/21 Minute Order
Matter Continued;

Motion Denied; See 10/25/21 Minute Order

10/14/2021 **Motion to Amend** (9:05 AM) (Judicial Officer: Williams, Timothy C.)
10/14/2021, 10/22/2021, 11/02/2021, 01/11/2022
Defendant's Motion to Alter or Amend the Court's Order Granting in Part and Denying in Part Plaintiff's Motion to Strike Defendant's Fourth Supplement to Initial disclosure Statement and to Strike the Surveillance Video on Order Shortening time
Matter Continued;
Matter Continued;
Matter Continued;

Matter Continued;
Matter Continued;
Matter Continued;

Matter Continued;
Matter Continued;
Matter Continued;

10/14/2021 **Motion** (9:05 AM) (Judicial Officer: Williams, Timothy C.)
10/14/2021, 10/22/2021, 11/02/2021, 01/11/2022
Plaintiff's Motion to Preclude Arguments of No Prior Incidents on OST
Matter Continued;
Matter Continued;
Matter Continued;

Matter Continued;
Matter Continued;
Matter Continued;

Matter Continued;
Matter Continued;
Matter Continued;

10/14/2021 **Opposition and Countermotion** (9:05 AM) (Judicial Officer: Williams, Timothy C.)
10/14/2021, 10/22/2021, 11/02/2021, 01/11/2022
[190] Plaintiff's Opposition to Defendants Motion for Reconsideration or, In The Alternative, To Alter or Amend The Court s Order Granting Plaintiff's Renewed Motion to Strike Defendants Answer On Order Shortening Time; and Countermotion to Strike Affidavit of Christine Shedrow
Matter Continued;
Matter Continued;
Matter Continued;

Matter Continued;
Matter Continued;
Matter Continued;

Matter Continued;
Matter Continued;
Matter Continued;

10/14/2021 **All Pending Motions** (9:05 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
Hearing held by BlueJeans remote conferencing. DEFENDANT'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAITIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON OST Arguments by counsel. Colloquy regarding continuance due to certain time conflict today. There being agreement, COURT ORDERED, instant and pending matters CONTINUED to 10/22/21 at 9:30 a.m. CONTINUED TO: 10/22/21 9:30 AM DEFENDANT'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAITIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON OST...MOTION TO CONTINUE September 20, 2021 PROVE-UP HEARING...DEFENDANT'S MOTION TO ALTER OR AMEND THE COURT'S ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S FOURTH SUPPLEMENT TO INITIAL DISCLOSURE STATEMENT AND TO

STRIKE THE SURVEILLANCE VIDEO ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO PRECLUDE ARGUMENTS OF NO PRIOR INCIDENTS ON OST...[190] PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANTS ANSWER ON ORDER SHORTENING TIME; AND COUNTERMOTION TO STRIKE AFFIDAVIT OF CHRISTINE SHEDROW...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN);

10/22/2021 **All Pending Motions** (9:30 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
APPEARANCES CONTINUED: Daniel Kidd, Esq. present for Pltf. DEFENDANT'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAITIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON OST Arguments by counsel. Court stated will review matter; decision will issue by Monday, October 25, 2021. Colloquy regarding status check to address status of remaining matters. There being agreement, COURT ORDERED, status check SET 11/2/21 at 8:45 a.m. 11/2/21 8:45 AM STATUS CHECK: RESETTING PENDING MATTERS...MOTION TO CONTINUE September 20, 2021 PROVE-UP HEARING...DEFENDANT'S MOTION TO ALTER OR AMEND THE COURT'S ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S FOURTH SUPPLEMENT TO INITIAL DISCLOSURE STATEMENT AND TO STRIKE THE SURVEILLANCE VIDEO ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO PRECLUDE ARGUMENTS OF NO PRIOR INCIDENTS ON OST...[190] PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANTS ANSWER ON ORDER SHORTENING TIME; AND COUNTERMOTION TO STRIKE AFFIDAVIT OF CHRISTINE SHEDROW...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN);

10/25/2021 **Minute Order** (3:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 11/2/21 at 8:45 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:
*Department 16 Formal Request to Appear Remotely Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters be heard remotely. The court utilizes BlueJeans for remote conferencing wherein you appear and participate by phone or through an internet enabled device. The call-in number or website to connect is: Telephone: Dial: 1-408-419-1715 Meeting ID: 305 354 001 Participant Passcode: 2258 Smartphone/Computer: Website: https://bluejeans.com/305354001/2258 If you appear by phone, please bear in mind: first, dial the telephone number, then meeting ID followed by #, and finally the participate passcode followed by #; secondly, dial *4 to unmute when you are ready to do so. If you appear by smartphone or computer, please bear in mind: enter the website address in your device s browser exactly as show above and follow the instructions on screen; optionally, download the BlueJeans app as indicated on this same website. If you wish to test your audio/video in advance of the hearing, please visit https://bluejeans.com/111. Protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Wait for the line to clear before speaking as the conference audio is one-way. Be mindful of background noises and echoing from using multiple devices. BlueJeans chat will not be available while court is in session. If you need to report an issue affecting your ability to appear, please send an email marked urgent to the following addresses: JEA, Lynn Berkheimer [Dept16EA@clarkcountycourts.us]; Law Clerk, Michael Holthus [Dept16LC@clarkcountycourts.us]; Court Clerk, Chris CJ Darling [DarlingC@clarkcountycourts.us] CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;*

10/25/2021 **Minute Order** (3:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order: Defendant's Motion for Reconsideration or in the Alternative to Alter or Amend the Court's Order Granting Plaitiff's Renewed Motion to Strike Defendant's Answer on OST
Minute Order - No Hearing Held;
Journal Entry Details:

After review and consideration of the points and authorities on file herein, and oral argument of counsel, the Court determined as follows: The Court's decision to issue sanctions was not based solely on Defendant Smith's actions to prevent Assa Abloy from producing the maintenance records. Of greater significance to the Court was Defendant Smith's failure to respond at all to Assa Abloy's letter dated August 15th, 2019. This fact, in combination with the spoliation of evidence, breaches of discovery duties, lack of candor to the Court, and halting of the adversarial process, demonstrate that Defendant Smith's conduct was repetitive, abusive, and recalcitrant and, therefore, warranted sanctions. In addition, after countless hearings, this Court feels that there is enough evidence and information to support its decision. Accordingly, Defendant Smith's Motion for Reconsideration shall be DENIED. Counsel on behalf of Plaintiff, Patricia Taylor, shall prepare a Findings of Fact, Conclusions of Law and Order based not only on the Court's minute order but the pleadings on file herein, argument of counsel, and the entire record. Lastly, counsel is to circulate the order prior to submission to the Court to adverse counsel. If counsel can't agree on the contents, the parties are to submit competing orders. CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;

11/02/2021 **Status Check** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Status Check: Resetting Pending Matters
Matter Heard;

11/02/2021 **All Pending Motions** (9:00 AM) (Judicial Officer: Williams, Timothy C.)
Matter Heard;
Journal Entry Details:
APPEARANCES CONTINUED: Daniel Kidd, Esq. present for Pltf. STATUS CHECK: RESETTING PENDING MATTERS Hearing held by live and by BlueJeans remote conferencing. Colloquy regarding resetting matters in light of limited availability of Court due to pending trials and law and motion as well as availability of counsel. There being agreement, pending matters CONTINUED to 12/8/21 at 9:15 a.m. and 12/13/21 at 9:15; motion matters to be heard before argument; setting subject to whether or not current trial in unrelated case is vacated. CONTINUED TO: 12/8/21 9:15 AM MOTION TO CONTINUE September 20, 2021 PROVE-UP HEARING...DEFENDANT'S MOTION TO ALTER OR AMEND THE COURT'S ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S FOURTH SUPPLEMENT TO INITIAL DISCLOSURE STATEMENT AND TO STRIKE THE SURVEILLANCE VIDEO ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO PRECLUDE ARGUMENTS OF NO PRIOR INCIDENTS ON OST...[190] PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANTS ANSWER ON ORDER SHORTENING TIME; AND COUNTERMOTION TO STRIKE AFFIDAVIT OF CHRISTINE SHEDROW...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN) CONTINUED TO: 12/13/21 9:15 AM MOTION TO CONTINUE September 20, 2021 PROVE-UP HEARING...DEFENDANT'S MOTION TO ALTER OR AMEND THE COURT'S ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S FOURTH SUPPLEMENT TO INITIAL DISCLOSURE STATEMENT AND TO STRIKE THE SURVEILLANCE VIDEO ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO PRECLUDE ARGUMENTS OF NO PRIOR INCIDENTS ON OST...190] PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANTS ANSWER ON ORDER SHORTENING TIME; AND COUNTERMOTION TO STRIKE AFFIDAVIT OF CHRISTINE SHEDROW...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN);

12/01/2021 **Minute Order** (3:00 AM) (Judicial Officer: Williams, Timothy C.)
Minute Order re: Hearing on 12/8/21 at 9:15 a.m.
Minute Order - No Hearing Held;
Journal Entry Details:

Department 16 Formal Request to Appear Remotely Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters be heard remotely. The court utilizes BlueJeans for remote conferencing wherein you appear and participate by phone or through an internet enabled device. The call-in number or website to connect is: Telephone: Dial: 1-408-419-1715 Meeting ID: 305 354 001 Participant Passcode:

*2258 Smartphone/Computer: Website: https://bluejeans.com/305354001/2258 If you appear by phone, please bear in mind: first, dial the telephone number, then meeting ID followed by #, and finally the participate passcode followed by #; secondly, dial *4 to unmute when you are ready to do so. If you appear by smartphone or computer, please bear in mind: enter the website address in your device s browser exactly as show above and follow the instructions on screen; optionally, download the BlueJeans app as indicated on this same website. If you wish to test your audio/video in advance of the hearing, please visit https://bluejeans.com/111. Protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Wait for the line to clear before speaking as the conference audio is one-way. Be mindful of background noises and echoing from using multiple devices. BlueJeans chat will not be available while court is in session. If you need to report an issue affecting your ability to appear, please send an email marked urgent to the following addresses: JEA, Lynn Berkheimer [Dept16EA@clarkcountycourts.us]; Law Clerk, Michael Holthus [Dept16LC@clarkcountycourts.us]; Court Clerk, Chris CJ Darling [DarlingC@clarkcountycourts.us] CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.;*

DATE	FINANCIAL INFORMATION	
	Defendant Smith's Food and Drug Centers Inc	
	Total Charges	450.00
	Total Payments and Credits	450.00
	Balance Due as of 1/5/2022	**0.00**
	Plaintiff Taylor, Patricia A	
	Total Charges	270.00
	Total Payments and Credits	270.00
	Balance Due as of 1/5/2022	**0.00**

DISTRICT COURT CIVIL COVER SHEET

A-17-761650-C

County, Nevada

Department 16

Case No. .....
(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Patrisha Taylor	SMITH'S FOOD & DRUG CENTERS, INC.
10005 Dove Ridge Drive	d/b/a SMITH'S FOOD AND DRUG
Las Vegas, NV 89117	2215 B Renaissance Drive
Phone: 702.755.1542	Las Vegas, NV 89119, Phone: 800.576.4377
Attorney (name/address/phone):	Attorney (name/address/phone):
Nadia von Magdenko, Esq.	Unknown
von Magdenko & Associates, PLLC	
624 S. 9th St.	
Las Vegas, NV 89101 Phone: 702.385.1600	

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant	**Negligence**	**Other Torts**
☐ Unlawful Detainer	☐ Auto	☐ Product Liability
☐ Other Landlord/Tenant	■ Premises Liability	☐ Intentional Misconduct
Title to Property	☐ Other Negligence	☐ Employment Tort
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort
☐ Other Title to Property	☐ Medical/Dental	☐ Other Tort
Other Real Property	☐ Legal	
☐ Condemnation/Eminent Domain	☐ Accounting	
☐ Other Real Property	☐ Other Malpractice	

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	☐ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☐ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
☐ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		☐ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

September 18, 2017
Date

Signature of initiating party or representative

See other side for family-related case filings.

Nevada AOC - Research Statistics Unit
Pursuant to NRS 3.275

Form PA 201
Rev 3.1

Electronically Filed
1/20/2021 3:39 PM
Steven D. Grierson
CLERK OF THE COURT

OGM
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. DEFENDANT FOOD & DRUG CENTERS, INC. d/b/a DEFENDANT FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES** Date of Hearing: November 5, 2020 Time of Hearing: 9:00 a.m.

ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES

Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees ("Motion to Strike"), having come on for hearing on November 5, 2020, the Court having read and considered the Motion, the Opposition, and Reply to the same; and being fully advised on the premises, and good cause appearing therefore,

FINDINGS

THE COURT FINDS there exists substantial evidence to support Ms. Taylor's allegations that Defendant had actual notice that the West automatic entry doors[1] were malfunctioning, unsafe and in need of substantial repair approximately seven (7) weeks before the West Doors caused injury to Ms. Taylor.

THE COURT FURTHER FINDS that there exists substantial evidence to support Ms. Taylor's allegation that Defendant's failure to fix the West Doors prior to Ms. Taylor's injury constitutes a conscious disregard of public safety. Prior to Ms. Taylor's injury, Defendant ignored nine (9) communications from its third-party vendor requesting authorization to fix the West Doors including replacing the unsafe sensors.

THE COURT FURTHER FINDS that from the time the West Doors injured Ms. Taylor, Defendant engaged in a scheme to halt the adversarial process. The scheme included intentionally destroying vital evidence which would support Ms. Taylor's allegations of actual notice and conscious disregard such as the destruction of the West Doors' sensors, destruction of work quotes from its third-party vendor to replace the unsafe sensors, destruction of emails from Defendant's third-party vendor following up on the request to replace the unsafe sensors, emails from Defendant to the third party vendor approving the replacement of the sensors three (3) week after Ms. Taylor was injured, and the actual repair invoice from the third-party vendor to Defendant. This COURT FINDS that during the approximately two and one half (2.5) years the parties engaged in discovery, Defendant repeatedly engaged in serious discovery abuses which indeed halted the adversarial process including willfully providing blatantly false testimony under oath, ignoring its discovery obligations, submitting false and/or misleading documents, and exhibiting a lack of candor to this COURT. These actions show a willful and deliberate attempt to defeat Ms. Taylor's claims by engaging in repetitive, abusive, and recalcitrant actions before

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[1] The store has two sets of doors, both located on the west side of the store. The doors at issue in this case are the furthest west doors and are referred to as the "West Doors." The documents produced by the Defendant are confusing because they do not always reference certain doors and sometimes just reference the "front doors."

and during discovery which resulted in many years of misguided litigation. Further, these actions demonstrate repeated, brazen, ongoing refusal to follow Nevada Rules of Civil Procedure related to discovery, all in an attempt to hide the truth and wrongfully prevail in this litigation.

THE COURT FURTHER FINDS that Defendant intended the consequences of its repetitive, abusive, and recalcitrant actions and that striking the Defendant's Answer as to both liability and damages is necessary to prevent similar abuses and act as a deterrent to other litigants.

FINDINGS OF FACTS

The following is timeline of relevant facts in this case. Importantly, this timeline is in chronological order. The timeline, however, does not reflect the timing as to when Ms. Taylor actually discovered many salient facts in this case.

1. **October 14, 2016:** Defendant's employee Travis Childers[2] creates a Work Order[3] where it is noted, "front doors in entrance ... running very poorly ..." Defendant's internal maintenance personnel asked: "Please dispatch ASSA ABLOY to repair auto entrance doors."

This fact is significant as it establishes that Defendant's employees actually accessed and created Work Orders in the Service Hub Program. This is contrary to representations made by Defendant which asserted only ASSA ABLOY is responsible for maintaining the Service Hub Program.

2. **October 17, 2016:** ASSA ABLOY Technician is "on site" at Defendant's store to evaluate the West Doors.

3. **October 17, 2016:** ASSA ABLOY Technician fills out the Inspection Form for Power Operated Doors: Sliding Doors ("Inspection Form") where he notes that the West Doors' safety systems are not operational and the West Doors do not comply with the applicable standards. Defendant's employee, Gilbert Alvarado signs this Inspection Form. ASSA ABLOY also

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[2] Travis Childers is the Employee that created the Work Order in the Service Hub Program. He is also the employee that signed the documents on December 21, 2016 noting that ASSA ABLOY fixed the doors and brought them into compliance with the applicable standards.

[3] A Work Order is created when information is input into the Service Hub, an internal program maintained by Defendant.

created a Worksheet ("Worksheet") showing work performed on site and Gilbert Alvarado signed the Worksheet.

This fact is significant for several reasons. First, this fact supports Ms. Taylor's claims that Defendant had actual notice that the West Doors were malfunctioning and unsafe as the Inspection Form is signed by Defendant's employee, Gilbert Alvarado. Second, this fact is significant because Defendant withheld this Inspection Form from its initial NRCP 16.1 production of documents and specific requests for production of documents. This document was produced by ASSA ABLOY in response to subpoena near the close of discovery after Defendant denied, under oath, any issue with the West Doors necessitating repair.

4. **October 18, 2016:** ASSA ABLOY prepares two quotes for Defendant related to the West Doors and e-mails them to Defendant. One quote is to bring the West Doors into compliance with the applicable ANSI standards ("Compliance Quote"), and the other quote is to repair the West Doors (the "Repair Quote"). Regarding the Repair Quote, ASSA ABLOY's e-mail states: "Please find the attached quotes. The repair quote … will need to be approved to get the West Doors up and running." These quotes were sent to Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and starts timeframe wherein Defendant should take steps to repair unsafe condition. As Defendant is notified about necessary repairs forty-three (43) days before Ms. Taylor's injury, this would be supportive of Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld these Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. These Quotes, in redacted form, were produced by ASSA ABLOY in response to subpoena after ordered to do so by order of this COURT after the close of discovery. Again, under oath on several occasions, Defendant denied any issue with the West Doors necessitating repair or updates. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

5. **October 25, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached quote from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

6. **October 28, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

7. **November 1, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

8. **November 8, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

9. **November 15, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

10. **November 23, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

11. **November 29, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

12. **November 30, 2016:** Ms. Taylor is knocked down when the West Doors close in on her hitting her as she attempts to enter Defendant's store.

This fact is significant because Defendant is notified of Ms. Taylor's injury caused by unsafe West Doors' sensors which Defendant knew were defective and needed to be replaced. At this point Defendant is on notice of potential litigation. The injury occurred forty-seven (47) days after Defendant was first put on notice of the unsafe doors which supports Ms. Taylor's conscious disregard claim against Defendant. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

13. **December 6, 2016:** ASSA ABLOY sends an e-mail to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald asking about the status of the Quotes.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

14. **December 7, 2016:** Preservation of evidence letter indicating intent to sue is sent from Ms. Taylor's attorney to Defendant.

This fact is significant as it provides Defendant with actual notice of Ms. Taylor's intent to sue and the specific request to preserve evidence. Defendant was on notice of intent to sue within one (1) week of Ms. Taylor's injury. Despite having actual notice of Ms. Taylor's intent to sue and demand to preserve evidence, this COURT finds that Defendant intentionally destroyed vital evidence including the West Doors' Inspection Form which found safety systems were not operating properly, the Worksheet, Repair and Replacement Quotes, and emails from ASSA ABLOY to Defendant. This fact supports a finding of willfulness as Defendant had actual notice of Ms. Taylor's intent to sue but Defendant decided to destroy this crucial evidence anyway.

15. **December 7, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

16. **December 20, 2016:** Defendant's employee and NRCP 30(b)(6) corporate representative, Dieter Thurnwald, approves repair and replacement on West Doors in an e-mail.

This COURT finds this is one of the most significant facts in this case. First, Defendant destroyed the e-mail confirmation from Mr. Thurnwald to ASSA ABLOY wherein Defendant approves ASSA ABLOY's Repair and Replacement Quotes. This e-mail was destroyed despite Defendant having received Ms. Taylor's December 7, 2016 preservation letter two (2) weeks earlier. Neither the e-mail approval of the Quote nor the Quote were produced by Defendant in

NRCP 16.1 productions or in subsequent responses to requests for production. This fact supports Ms. Taylor's contention that Defendant acted willfully in destroying important evidence after being put on notice of pending litigation. Defendant's approval of the Repair and Replacement Quotes gives context to Ms. Taylor's conscious disregard claim against Defendant. Finally, as will be indicated hereafter, Dieter Thurnwald will later be one of Defendant's 30(b)(6) representatives who is identified as Defendant's corporate representative most knowledgeable regarding the West Doors. Despite having personally approved the Repair and Replacement Quotes, Mr. Thurnwald will falsely testify under oath that the West Doors' sensors were never repaired. This evidence supports Ms. Taylor's allegations that Defendant destroyed evidence with the intent to harm her case. This evidence also supports Ms. Taylor's contention that Defendant's false testimony and destruction of evidence was done with the intent to halt the adversarial process.

> 17. **<u>December 21, 2016:</u>** ASSA ABLOY comes to repair and replace the West Doors[4] which consist of replacing the sensors, motor, gearbox, wiring, and other component parts. The ASSA ABLOY technician fills out the Inspection Form for Power Operated Doors: Sliding Doors ("Second Inspection Form"). Defendant employee, Travis Childers, signs the Second Inspection Form. ASSA ABLOY also creates a Worksheet ("Second Worksheet"), and Travis Childers signs the Second Worksheet noting that the work has been performed.

This fact is significant for several reasons. First, Defendant was aware of pending litigation; yet Defendant failed to inform Ms. Taylor that Defendant was going to materially alter and replace important evidence and failed to provide Ms. Taylor an opportunity to inspect the West Doors prior to replacing the sensors, motor, gearbox, wiring, and other component parts. Second, Defendant destroyed the sensors, motor, gearbox, wiring, and other component parts which were repaired and replaced. At no time has Defendant come forward with any evidence that Defendant took any steps to preserve this evidence even though Defendant knew of pending

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[4] Throughout the Order the West Doors were repaired and many component parts such as the sensors, motor gearbox, wiring, other component parts were replaced. This event might be referred to herein as the replacement of the West Doors or a similar description.

litigation. The failure to provide a pre-repair inspection and the destruction of crucial evidence supports Ms. Taylor's allegations that Defendant destroyed the evidence with the intention to harm her case.

Next, Defendant failed to disclose the Second Inspection Form and Second Worksheet in its NRCP 16.1 disclosures and in response to specific requests for production of documents. These documents demonstrate that Defendant had actual knowledge that the repairs were made on December 21, 2016 as Defendant's employee Travis Childers signed off on the work being performed. This is significant because throughout litigation Defendant denied under oath any component parts were replaced. Later, after Ms. Taylor proved components were replace on the West Doors, Defendant denied having any knowledge of ASSA ABLOY having repaired and replaced sensors, motor, gearbox, wiring, and other component parts. This evidence supports Ms. Taylor's allegation that Defendant intentionally withheld this evidence with the intention of halting the adversarial process and gaining an advantage in the lawsuit.

18. **December 28, 2016:** ASSA ABLOY sends Defendant an invoice to get paid for the repair work done on December 21, 2016 to the West Doors.

This evidence is significant because Defendant failed to disclose the invoice in its NRCP 16.1 disclosures and in response to specific requests for production of documents. In fact, as will be discussed in more detail below, Defendant denied ASSA ABLOY ever sent Defendant an invoice for the repairs. Defendant's destruction of the repair invoice which was sent to Defendant by ASSA ABLOY three (3) weeks after Defendant received Ms. Taylor's December 7, 2016 preservation letter supports Ms. Taylor's allegation that Defendant destroyed this evidence with the intent to harm her case and to gain an advantage in the lawsuit. As will be discussed in more detail below, Defendant's false denial of having never received the repair invoice supports Ms. Taylor's allegation that Defendant willfully withheld this evidence with the intention of halting the adversarial process and to gain an advantage in the lawsuit.

19. **February 8, 2017:** Defendant completes its investigation of Ms. Taylor's fall, and then denies the claim stating: "After

careful review of the facts regarding the incident, our investigation has revealed no negligence on behalf of the store and therefore we must respectfully deny your client's claim for damages."

This fact is significant because it demonstrates Defendant's pre-litigation intention of denying Ms. Taylor claim. It also shows that Defendant conducted an investigation, but ignored evidence showing safety issues with the West Doors.

20. **September 18, 2017:** Ms. Taylor files her Complaint. Discovery begins shortly thereafter.

21. **October 15, 2017:** Defendant files Answer to Complaint.

22. **January 31, 2018:** Defendant's fails to produce significant documents, emails, etc. related to the unsafe West doors. Defendant identifies and produces contract for wrong door vendor.

This is significant because Defendant had the following in its custody, possession and control: (1) the West Doors' sensors, motor, gearbox, wiring, and other component parts; (2) the October 17, 2016 Inspection Form wherein ASSA ABLOY noted that the West Doors' safety systems were not operational; (3) the October 17, 2016 Worksheet; (4) the October 18, 2016 Quotes sent to Defendant; (5) the October 18, 2016 e-mail where ASSA ABLOY sent the Quotes to Defendant; (6) the correspondence wherein the Quotes was resubmitted to Defendant on October 25 and 28, as well as on November 1, 8, 15, 23, 29; (7) the December 6, 2016 e-mail from ASSA ABLOY asking about the status of the Quotes; (8) the correspondence wherein the Quotes were resubmitted to Defendant on December 7, 2016; (9) the December 20, 2016 e-mail where Defendant employee, Dieter Thurnwald approved the Repair and Replacement Quotes; (10) the December 21, 2016 Second Inspection Form signed by Defendant's employee, Travis Childers; (11) the October 17, 2016 Second Worksheet signed by Defendant's employee, Travis Childers; (12) the December 28, 2016 invoice for repairs completed by ASSA ABLOY. The failure to disclose these documents in Defendants initial production of documents supports Ms.

Taylor's allegation that Defendant withheld crucial evidence with the intention of harming Ms. Taylor's case and halting the adversarial process.

Additionally, Defendant disclosed the wrong door vendor to Ms. Taylor. Defendant did not disclose the contract it had with ASSA ABLOY, the door vendor at the time Ms. Taylor was injured. Rather, Defendant produced an old, outdated contract it had with Stanley Access Technologies, a company that had not provided any door maintenance, repairs, or upgrades for many years. This supports Ms. Taylor's allegation that Defendant intentionally thwarted the adversarial process by disclosing the wrong door vendor who had not performed work at the subject location for years prior to Ms. Taylor's injury. Clearly, at the time of this production, Defendant was well aware that ASSA ABLOY was the correct door vendor.

> 23. **August 8, 2018:** Ms. Taylor's expert, Michael Panish, attends first site inspection of doors at Defendant's store. Mr. Panish flew from New Hampshire to Las Vegas to attend site inspection. Defendant failed to inform Ms. Taylor that the subject doors which Mr. Panish inspected were replaced twenty (20) months before the site inspection.

This fact is significant because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, Defendant leads Ms. Taylor to believe that the West Doors are in the identical condition as at the time of her injury. Defendant knew that the West Doors' sensors, motor, gearbox, wiring, and other component parts were replaced. Yet, Defendant failed to inform Ms. Taylor of the changes before Ms. Taylor committed to time and expense of sending an expert to investigate.

> 24. **October 4, 2018:** Defendant responds to requests for production. Plaintiff's First Request for Production Nos. 27 and 28 requested all service records for the West Doors. Defendant failed to produce e-mails about the West Doors, Quotes from ASSA ABLOY, or many other documents. In fact, during discovery Defendant only produced documents for the wrong door and failed to produce any documents (other than the Work Order) for the West Doors.

This fact is significant as it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, Defendant was clearly aware that the injury happened at the **West** doors. Yet, Defendant chose to provide Ms. Taylor the service records for the **East** Doors. Again, Defendant had the opportunity to be forthright, but again, Defendant failed to provide Ms. Taylor the Inspection Forms, Worksheets, Repair and Replacement Quotes, e-mails, invoice, etc. Again, Defendant withheld vital documents which would support Ms. Taylor's allegations that Defendant had actual knowledge that the West Doors were unsafe and Defendant's failure to timely remedy the unsafe doors was a conscious disregard of her safety.

> 25. **February 25, 2019:** Ms. Taylor's expert, Michael Panish, attends second site inspection. Again, Mr. Panish flew from New Hampshire to Las Vegas to attend the second site inspection. Again, Defendant fails to inform Ms. Taylor that the West Doors' sensors, motor, gearbox, wiring, and other component parts were actually replaced on December 21, 2016.

This fact is significant because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, again, Defendant fails to inform Ms. Taylor that the West doors' sensors, motor, gearbox, wiring, and other component parts were replaced **twenty-six (26) months prior to the second site inspection.** Again, Ms. Taylor undertook the time and expense of a second site inspection based on the false pretenses.

> 26. **March 1, 2019:** Defendant's 30(b)(6) representative, Ms. Trisha Tamiko Kozlowski is deposed. She falsely testified that the only problem with the West Doors were them coming off the tracks.

This is significant because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, Ms. Kozlowski minimizes the breadth of issues which necessitated repair and replacement of the West Doors' sensors, motor, gearbox, wiring, and other component parts.

> 27. **June 27, 2019:** Plaintiff subpoenas ASSA ABLOY requesting any and all documents related to the West Doors.

This fact is significant because it gives context to when and how Ms. Taylor actually discovered Defendant had destroyed crucial evidence including the West Doors' sensors, motor, gearbox, wiring, component parts, inspection forms, quotes, numerous emails, Worksheets and invoice for work performed at the West Doors which all took place around the time Defendant received Ms. Taylor's preservation letter.

28. **July 2, 2019:** Ms. Taylor files motion for sanctions related to spoliation of evidence.

As mentioned above, on October 4, 2018, Defendant provided documents in response to requests for production of documents. While Ms. Taylor's request asked for documents related to the West Doors, Defendant provided documents related to the East doors. Based on Defendant's representation that the documents provided were for the West Doors, it appeared that Defendant failed to preserve certain evidence. Importantly, the hearing for this motion while originally set for August 2, 2019 was rescheduled to accommodate schedules including taking the deposition of Defendant's 30(b)(6) representative, Mr. Dieter Thurnwald which occurred on August 7, 2019.

29. **August 7, 2019:** Defendant's 30(b)(6) representative, Mr. Dieter Thurnwald is deposed. Mr. Thurnwald testifies that Defendant accidently provided records for the East doors in response to request for production of documents instead of the West Doors. Thereafter, when questioned regarding the West Doors, he falsely testified as follows:

> "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]
>
> Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]
>
> That no documentation existed about the west doors. [Thurnwald depo., pp. 73 - 75]

> That the last time the west doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]
>
> The door mechanisms for the west doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]
>
> Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]
>
> Finally, he testified that only in an "imaginary world" was the subject door ever worked on or replaced. [Thurnwald depo., pp. 115 and 118]

The depositions of Defendant's NRCP 30(b)(6) corporate representatives strongly supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. As mentioned above, on October 15, 2016 ASSA ABLOY Technician fills out the Inspection Form wherein he notes that the West Doors' safety systems are not operational, and the West Doors do not comply with the applicable standards. Mr. Thurnwald received all the quotes from ASSA ABLOY regarding the repair and replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts. These repairs would make the West Doors' safety system operation through replacement of the faulty sensors. Mr. Thurnwald is the employee who actually approved ASSA ABLOY to perform the work to replace the faulty sensors et al.

Mr. Thurnwald's binding testimony as Defendant's NRCP 30(b)(6) designee is shocking to this COURT. Mr. Thurnwald was fully aware that the West Doors' safety systems were not operational, and that significant work was required to make the safety systems operational. Mr. Thurnwald was aware of this safety issue approximately forty-four (44) days before the West Doors closed on Mr. Taylor causing injury. Mr. Thurnwald knew he approved ASSA ABLOY's quote for the replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts on December 20, 2016. Yet, Mr. Thurnwald provided blatantly false testimony which, if true, would dispute Ms. Taylor's allegations of actual notice related to liability and conscious disregard of safety related to punitive damages. The blatantly false testimony of Dieter Thurnwald provides strong indicia of Defendant's intent to halt the adversarial process.

30. **August 8, 2019:** Defendant supplements responses to Ms. Taylor's requests for production No. 34. Defendant indicated that the sensors and component parts were in fact still on the West Doors.

This fact is significant because it further supports Ms. Taylor's allegation that Defendant is providing false information to halt the adversarial process. Defendant knew the parts were replaced on December 21, 2016 as its employee, Travis Childers, signed off on ASSA ABLOY's Second Worksheet.

31. **August 9, 2019:** Defendant threatened Ms. Taylor's attorney, David Tanner, Esq., of violating NRCP Rule 11 for filing motion for sanctions related to destroyed or missing evidence.

First, it must be made clear that Ms. Taylor's July 2, 2019 motion for sanctions regarding lost or destroyed evidence related to the West Doors was in fact meritorious. While Ms. Taylor relied upon Defendant's production of documents which disclosed records of the wrong door, it turns out the destruction of evidence related to the West Doors was for more severe than that of the East doors. As such, Plaintiff's motion for sanction was indeed meritorious. The fact that Defendant threatened Plaintiff's counsel with Rule 11 sanctions for alleging Defendant lost or destroyed evidence related to the West Doors when in fact Defendant was fully aware that it failed to preserve nearly all substantive evidence related to the West Doors supports Ms. Taylor's contention that Defendant intended to halt the adversarial process through intimidation of counsel.

32. **August 15, 2019:** ASSA ABLOY sends Defendant a letter (and copies Jerry Busby, Esq., Defendant's counsel of record in this matter) asking for permission to disclose all relevant documents in response to Ms. Taylor's June 27, 2019 subpoena. Neither Defendant nor Jerry Busby, Esq. respond to ASSA ABLOY's letter.

The fact that Defendant never responded to ASSA ABLOY's letter requesting permission to fully disclose all responsive records related to the West Doors supports Ms. Taylor's contention that Defendant intended to halt the adversarial process. Here, ASSA ABLOY was prevented by contract with Defendant from disclosing the Quotes, invoice, and other documents without

Defendant's express permission. Defendant's refusal to grant ASSA ABLOY permission to disclose the very documents which would have supported Ms. Taylor's claims of actual notice in regards to liability and conscious disregard as it relates to punitive damages is further indicia of Defendant's intent harm Ms. Taylor and halt the adversarial process.

33. **September 5, 2019:** The parties enter into a stipulation and order to withdraw Ms. Taylor's July 2, 2019 motion for sanctions related to spoliation of evidence.

This fact is significant because it demonstrates that the blatantly false testimony of Defendant's NRCP 30(b)(6) designee, Dieter Thurnwald, combined with threats of NRCP Rule 11 sanctions intimidated Ms. Taylor's counsel into withdrawing a meritorious motion. Defendant knew Mr. Thurnwald's testimony was blatantly false, yet relied on the testimony to prevent this COURT from ruling on what was in fact a meritorious motion as it related to the West Doors. This supports Ms. Taylor's contention that Defendant intended to halt the adversarial process through false testimony and the destruction of evidence.

34. **September 13, 2019:** ASSA ABLOY produces selected documents in response to a Subpoena. It notes that it cannot provide additional documents because Defendant refused to respond to its August 15, 2019 letter.

This fact is highly significant because it represents the first time in exactly two (2) years of actual litigation that Ms. Taylor is provided actual documentation of service records, albeit incomplete, of the West Doors. While the information provided was incomplete, there was strong indications that the service history of West Doors was far more encompassing than indicated by the Defendant's 16.1 Disclosures, written discovery responses, and testimony under oath of its 30(b)(6) designees (including Dieter Thurnwald). As stated above, Dieter Thurnwald testified that the last time the West Doors were serviced was on October 16, 2016. This supports Ms. Taylor's allegation that Defendant intentionally gave false testimony under oath and intentionally destroyed evidence in an effort to halt the adversarial process.

35. **September 27, 2019:** Defendant provides second supplemental response to Interrogatory No. 13. Defendant's response indicates that there has been no work done to the West Doors and there was never any recommendation for work to be done on the West Doors.

Like the testimony of Defendant's NRCP 30(b)(6) designee, Dieter Thurnwald, Defendant's interrogatory responses are blatantly false declarations made under oath. Defendant's representations after two (2) years of litigation that no work was done on the West Doors and there was never any recommendation for work to be done on the West doors is shocking to this COURT. These false declarations under oath support Ms. Taylor allegations that Defendant intended to halt the adversarial process.

36. **October 14, 2019:** Ms. Taylor files Motion to Strike Defendant's Answer. Ms. Taylor's Motion to Strike Defendant's Answer is based on documents produced by ASSA ABLOY on September 13, 2019. While the response to the subpoena was incomplete, the records produced provided strong indications that ASSA ABLOY indeed serviced and replaced the West Doors after Ms. Taylor's injury.

This hearing was held on November 21, 2019. This COURT considered the motion on the merits; however, this COURT still did not have the full production of documents from ASSA ABLOY. Ms. Taylor indicated that she would file a motion for an evidentiary hearing to perhaps assist this COURT in determining whether striking the answer would be appropriate remedy in this case. Defendant indicated that they would file a motion to re-open discovery.

37. **November 15, 2019:** Discovery closes. The discovery deadline was extended four times.

38. **December 5, 2019:** Plaintiff files Motion for Evidentiary Hearing on an Order Shortening Time.

39. **December 20, 2019:** Defendant files Opposition to Motion for Evidentiary Hearing.

In its Opposition to having an evidentiary hearing, Defendant relied on three affidavits from its employees. None of the three affiants were disclosed by Defendant as witnesses in their NRCP 16.1 disclosures. Discovery in the case closed on November 15, 2019. Defendant, however, submitted an affidavit from Defendant's employee Courtney Shepherd. Ms. Shepherd's affidavit represented that "it appears ASSA ABLOY made a quote for repairs to the West Doors on October 17, 2016. The quote was submitted but it was not approved. However, it appears that the ASSA ABLOY technician that put together the quote on October 17, 2016, without approval, went to the store and performed the repair work." This is significant because for the first time, Defendant acknowledged that a quote for repairs to the West Doors was submitted. This is in stark contrast to Defendant's September 27, 2019 answers to Interrogatories and its 30(b)(6) representatives' testimony, which stated there was never any recommendation for work to be done on the West Doors. This COURT also made note of Ms. Shepherd's testimony that work was completed by ASSA ABLOY "without approval" from Defendant. This is significant because Defendant is opposing an evidentiary hearing which would allow Defendant to clarify on the record any prior testimony or discovery responses by Defendant. In opposing an evidentiary hearing, Defendant had received ASSA ABLOY's response to Ms. Taylor's subpoena yet continued to provide this COURT blatantly false testimony.

40. **January 22, 2020:** Hearing on Plaintiff's Motion for Evidentiary Hearing on Order Shortening Time. Defendant tells Court evidentiary hearing is not necessary because it will rely on affidavits submitted in its Opposition to Motion for Evidentiary Hearing.

Defendant's attorney represented to this COURT:

> The only topic of their nine that they say they want to be addressed – which, by the way, we've answered every single one of their nine topics, questions, inquiries, whatever they say requires an evidentiary hearing requires this Court to make another special time and hearing for this. The only one of those nine that deals with spoliation, I want to make sure I get this accurate, is the No. 5. What happened to the door mechanism, the sensors, the gearbox, the electric and mechanical components?

> The only person that could answer that question is the technician at Assa Abloy that performed the upgraded work that, contrary to what Mr. Tanner represented to the Court, was never authorized by Smith's. That's why Smith's never had a record of it from Assa Abloy. And that wasn't because of sloppy record keeping. He submitted a quote. It danced around for a month because it was another (sic?) approved. Then he went out to the store, unauthorized, quote, "was never approved", work never authorized, performed the work.
>
> Now here's the kicker, your Honor. We don't know if he performed the work. He's saying he did on his work -- work sheet that Assa Abloy has. It was never submitted to Smith's. No documents whatsoever submitted to Smith's regarding it.
>
> [See pages 17:12 to 18:12 of January 22, 2020 hearing transcript]

Here, Defendant is making very specific representations to this COURT which require candor. It is clear that defense counsel for Defendant is relying upon information given to him by Defendant. As such, the COURT does not hold these representations against Counsel. That being said, these representations are blatantly false.

Thereafter, defense counsel represented to this COURT that an evidentiary hearing would not be necessary because Defendant was not going to change its testimony from information provided in affidavits. Counsel stated:

> No one mislead anybody, your Honor. We went by the information that we had. We didn't have that record. There is absolutely no evidence that we did, because we didn't. We have affidavits from multiple employees that set forth answers to every one of their questions, inquiries, whatever you want to call them, their topics. They're answered. They're answered. **We will have a witness come here and just repeat everything they said in an affidavit.**
>
> [See page 69:14-23 January 22, 2020 hearing transcript]
>
> **You would get the answers that you can got today. That would be it. It would just be -- everything that's contained in the affidavits....**
>
> [See page 78:18-23 of January 22, 2020 hearing transcript]

Here, defense counsel clearly indicates that Defendant's witnesses at an evidentiary hearing would not offer any new testimony but rather simply repeat everything the Defendant's employees had already said their affidavits.

This COURT took ruling on the evidentiary hearing under advisement. Specifically, at the hearing this COURT verbally ordered a full production from ASSA ABLOY before making any decision.

> 41. **February 7, 2020:** This COURT signs orders to ASSA ABLOY to fully disclose all records, documents and emails which are responsive to June 27, 2019 subpoena.
>
> 42. **March 4, 2020:** ASSA ABLOY responds to February 7, 2020 Order and is able to fully comply with the June 27, 2019 subpoena and discloses emails, work orders, and bids. For the first time, Ms. Taylor learns that on December 20, 2016 Dieter Thurnwald approved the replacement of the West Doors. Dieter Thurnwald is the same gentleman who testified that only in an "imaginary world" were the West Doors ever worked on or replaced.

The full response from ASSA ABLOY to the June 27, 2019 subpoena undeniably proves that Defendant intentionally misguided litigation. Defendant never objected to the authenticity of ASSA ABLOY business records. These records prove that Defendant received numerous Quotes for the repair and replacement of sensors at the West Doors. These records demonstrate that Smith's had actual notice that the safety features at the West Doors were not operational forty-four (44) days before Ms. Taylor was injured by the West Doors. These records conclusively demonstrated that Defendant's NRCP 30(b)(6) witnesses bore false testimony under oath. These records conclusively demonstrated that Defendant's employees' affidavits bore false witness under oath to this COURT. These records conclusively demonstrated that Defendant wasted nearly two and half years (2.5) of litigation by misleading the Ms. Taylor in nearly every material aspect of this case. **This COURT is hard pressed to find any material, substantive evidence wherein Defendant was forthright.** This supports Ms. Taylor's allegation that Defendant's conduct throughout litigation was done with the intent to halt the adversarial process

and that Defendant destroyed, hid, and attempted to stop others from producing evidence. This shows the Defendant acted willfully and with intent.

43. **May 21, 2020:** This COURT issues an Order denying Motion for Evidentiary Hearing.

In denying an evidentiary hearing, this COURT has sufficient evidence to proceed forward in striking Defendant's Answer as to liability and damages based on Defendant's brazen misconduct throughout litigation and lack of candor with the COURT. Based on Defendant's two and half year (2.5) history of false and misleading testimony as well as Defendant's attorney's representation that Defendant's employees would simply repeat the same false answers that they gave in their affidavits at an evidentiary hearing, this COURT doubts an evidentiary hearing would be useful in obtaining any true testimony from Defendant.

A. Defendant's Failures And Breaches Of Its Duties During The Pre-Litigation Phase

THE COURT FURTHER FINDS that Defendant had a duty to preserve relevant evidence due to the December 7, 2016 preservation letter sent from Ms. Taylor's attorney and its legal obligations to preserve evidence. This preservation letter put Defendant on notice Ms. Taylor's intent to sue, and placed Defendant on notice that it had a duty to preserve all relevant evidence pertaining to the West Doors. See, e.g., Fire Ins. Exchange v. Zenith Radio Corp., 103 Nev. 648, 651, 747 P.2d 911 (1987). Even absent a preservation letter, Defendant had a duty under Nevada law to preserve relevant evidence. In Nevada, there is a common-law duty to preserve evidence and a potential party to a lawsuit is required to preserve documents, tangible items, and information relevant to litigation or that is reasonably calculated to lead to the discovery of admissible evidence. E.g., Banks v. Sunrise Hospital, 120 Nev. 822, 102 P.3d 52 (2004); Fire Ins. Exchange., 103 Nev. at 651; Bass-Davis v. Davis, 122 Nev. 442, 134 P.3d 103 (2006); Stubli v. Big D. Int'l Trucks, Inc., 107 Nev. 309, 810 P.2d 785 (1991). Nevada law holds that "even where an action has not been commenced and there is only a potential for litigation, the litigant is under a duty to preserve evidence which it knows or reasonably should know is relevant to the action." Fire Ins. Exch., 103 Nev. at 651. A party is not free to destroy or let be destroyed crucial evidence

simply because a court order was not issued to preserve the evidence. Stubli, 107 Nev. at 313-314.

THE COURT FURTHER FINDS that Defendant had significant and extensive evidence (from both before and after this incident) in its possession that it failed to preserve in contradiction to its legal duty to preserve, and which disregarded the December 7, 2016 preservation letter. This evidence included (1) the West Doors' sensors, motor, gearbox, wiring, and other component parts; (2) the October 17, 2016 Inspection Form wherein ASSA ABLOY noted that the door safety systems were not operational; (3) the October 17, 2016 Worksheet; (4) the October 18, 2016 quotes sent to Defendant; (5) the October 18, 2016 e-mail where ASSA ABLOY sent the Quotes to Defendant; (6) the correspondence wherein the quotes was resubmitted to Defendant on October 25 and 28, as well as on November 1, 8, 15, 23, 29; (7) the December 6, 2016 e-mail from ASSA ABLOY asking about the status of the Quotes; (8) the correspondence wherein the Quotes were resubmitted to Defendant on December 7, 2016; (9) the Dec. 20, 2016 e-mail where Defendant employee, Dieter Thurnwald approved the quotes; (10) the December 21, 2016 Second Inspection Form signed by Defendant's employee, Travis Childers; and (11) the October 17, 2016 Second Worksheet signed by Defendant's employee, Travis Childers.

THE COURT FURTHER FINDS that even if Defendant did not keep a copy of (1) the October 17, 2016 Inspection Form; (2) the October 17, 2016 Worksheet; (3) the December 21, 2016 Second Inspection Form; and (4) the October 21, 2016 Second Worksheet; that Defendant had the ability to obtain these documents from its vendor because these documents were within Defendant's control.

THE COURT FURTHER FINDS that Defendant attempted to eliminate, destroy, and spoliate virtually all evidence showing that it knew the West Doors were in disrepair, unsafe, not in compliance with the standards, and hazardous to customers. Further, Defendant attempted to eliminate, destroy, and spoliate all evidence showing that ASSA ABLOY repeatedly asked Defendant for approval to repair the West Doors, so they were safe and in compliance with applicable standards.

THE COURT FURTHER FINDS that these actions by Defendant demonstrated a conscious disregard for customers' safety. These actions also showed a disregard for its duty to preserve relevant evidence. Finally, these actions showed that Defendant acted willfully to gain an advantage in this litigation in its efforts to defeat Ms. Taylor's claims.

THE COURT FURTHER FINDS that Defendant sent a pre-litigation letter to Ms. Taylor on February 8, 2017 wherein it told Ms. Taylor that it investigated her fall that "our investigation has revealed no negligence on behalf of the store and therefore we must respectfully deny your client's claim..." These findings in this letter are directly contradicted by the evidence available to Defendant including, but not limited to: (1) the Work Order entry by Defendant's employee, Travis Childers, noting that the West Doors were not operating correctly and were running very poorly; (2) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (3) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (4) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (5) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (6) the December 21, 2016 Second Inspection Form; (7) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment.

THE COURT FURTHER FINDS that Defendant sending the February 8, 2017 pre-litigation letter that directly contradicted significant evidence which Defendant later destroyed showing an intent to deter Ms. Taylor from pursuing her claims, and a willfulness to destroy evidence for the purpose of gaining an advantage in the litigation.

THE COURT FURTHER FINDS that Defendant's failure to provide Ms. Taylor an opportunity to inspect the West Doors prior to effectuating repairs combined with the destruction of all material evidence relating to the repair and replacement of the West Doors' sensors, motor,

gearbox, wiring, and other component parts demonstrates Defendant's intention to halt the adversarial process.

B. Defendant's Failures And Breaches Of Its Duties During The Discovery Phase

THE COURT FURTHER FINDS that after Ms. Taylor filed her lawsuit, Defendant had duties when discovery began and while discovery was ongoing in this case. These duties included a duty to ensure that its discovery responses were complete and accurate, and a duty to timely supplement documents, discovery answers, and disclosures. See, NRCP 26(e) (holding that a "party who has made a disclosure under Rule 16.1 ... or responded to a request for discovery with a disclosure or response – is under a duty to timely supplement or correct the disclosure or response ..."); and NRCP 26(g) (holding that when a party or attorney signs a 16.1 Disclosure or discovery response, that signature indicates that to the "best of the person's knowledge, information, and belief formed after a reasonable inquiry: (A) with respect to a disclosure, it is complete and correct as of the time it is made"). Additionally, discovery duties included a duty to timely supplement disclosures and discovery as required by NRCP 26(e), its duty to properly prepare its 30(b)(6) representatives.[5] Defendant failure to meet its duties resulted in incomplete, inaccurate, misleading, and untimely disclosures and discovery responses.

THE COURT FURTHER FINDS that even if Defendant did not preserve evidence on its own internal systems, that evidence was still within its control because it was maintained by ASSA ABLOY. NRCP 16.1 requires a party to voluntarily produce "all documents, ... and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses ..." See, NRCP 16.1 (a)(1)(A)(ii). NRCP 34 has a similar duty that a party must produce the requested items that are in its possession, custody, or control. See, NRCP 34 (a)(1). Finally, Defendant had a duty to ensure that its disclosures were complete and accurate, and a duty to timely supplement documents, discovery answers, and disclosures. See, e.g., NRCP 26(e) and NRCP 26(g). Defendant did not obtain evidence from ASSA ABLOY, even though that evidence was within its control and Defendant was thus required to obtain and

[5] NRCP 30(b)(6) requires a party to prepare its representative to testify about information "known or reasonably available to the organization."

produce it. Defendant was required to ensure that all documents in its control were produced which included a requirement to check with its agents. Specifically, when making its Rule 16.1 Disclosures and responding to discovery, Defendant had a duty to conduct a "reasonable inquiry" to ensure that its disclosure and discovery responses were complete and accurate. See, e.g., NRCP 26(g); see also, Kristensen v. Credit Payment Services, Inc., 2014 WL 6675748, 6 (D. Nev. 2014); A. Farber and Partners, Inc. v. Garber, 234 F.R.D. 186, 189 (C. D. Cal. 2006). The reasonable inquiry duty requires a party to obtain information reasonably available to it from its employees, agents, or others subject to its control. A. Farber and Partners, Inc., at 189. (quoting Gray v. Faulkner, 148 F.R.D. 220, 223, N. D. Ind. 1992) ("A party responding to a Rule 34 production request ... 'is under an affirmative duty to seek that information reasonably available to [it] from [its] employees, agents, or others subject to [its] control.")). Defendant failed to meet its discovery and disclosure duties.

THE COURT FURTHER FINDS that Defendant written discovery answers were false, misleading, and incomplete. For example,

- In its Response to Plaintiff's Second Request for Production, No. 34, Defendant stated that the West Doors' component parts were replaced in June 2017 and were discarded and not available for use in this case. Yet, this response and the documents produced by Defendant in its Response pertained to the east doors, not the West Doors that caused Mr. Taylor's fall. Later, in its Supplemental Response to Plaintiff's Second Request for Production, No. 34, Defendant said that the component parts for the West Doors that caused Ms. Taylor's fall were still on the West Doors.

- In its Response to Plaintiff's First Request for Production Nos. 27 and 28 that asked for all service records for the West Doors, Defendant only produced the Work Order. It did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice. In fact, during discovery Defendant only produced documents for the wrong doors and failed to produce any documents (other than the Work Order) for the West Doors.

- In its Response to Plaintiff's First Request for Production No. 4, asking for documents showing a dangerous condition with the West Doors, Defendant stated that no such documents exist. Defendant did not produce It did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice, all of which showed the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be repaired.

- In its Supplemental Answer to Interrogatory No. 13, Defendant stated that there has been no work, and there was never any recommendation for work to be done, on the West Doors.

THE COURT FURTHER FINDS that Defendant 16.1 Disclosures were not accurate and complete, and that information was not timely supplemented, which breached various discovery duties. Examples of these failures are as follows:

- Defendant did not produce any e-mails with ASSA ABLOY, even though those e-mails addressed the West Doors' problems, transmitted bids to fix the West Doors to get them "up and running" and to upgrade them, and an authorization to repair and upgrade the West Doors.

- Defendant did not disclose the contract it had with ASSA ABLOY, the entity that Defendant used to evaluate the West Doors and perform repair and maintenance to them. Instead, Defendant produced an old, outdated contract it had with Stanley Access Technologies, a company that had not provided any door maintenance, repairs, or upgrades for many years.

- Defendant did not disclose the names of the employees that communicated with ASSA ABLOY about the Subject Doors in its Initial Disclosure, namely Dieter Thurnwald, Travis Childers, and Gilbert Alvarado.

- Discovery ended on August 27, 2019. The parties entered a limited stipulation to allow certain depositions to be done by November 15, 2019, but discovery remained closed for all other purposes. Despite this, on November 7, 2019 – months after discovery ended – Defendant disclosed Mr. Radcliffe and Mr. Osborn as witnesses. These are witnesses Defendant was aware of from the inception of this case and they were disclosed after discovery ended and thus too late for Ms. Taylor to conduct any discovery from them or about them.

- Defendant never disclosed the names of any of the employees who signed Affidavits.

THE COURT FURTHER FINDS that Defendant 30(b)(6) representative, Dieter Thurnwald, was not properly prepared for his deposition and did not testify accurately. At his deposition, he wrongfully testified that the West Doors were never repaired or replaced, that ASSA ABLOY did not come to Defendant store, that there were no documents related to the West Doors, and other matters:

1. "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]

2. Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the West Doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]

3. That no documentation existed about the West Doors. [Thurnwald depo., pp. 73 - 75]

4. That the last time the West Doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]

5. The door mechanisms for the West Doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]

6. Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]

THE COURT FURTHER FINDS that Mr. Thurnwald even testified that only in an "imaginary world" were the West Doors repaired and replaced.

THE COURT FURTHER FINDS that Defendant 30(b)(6) representative, Mr. Thurnwald provided this testimony even though it was his e-mail on December 20, 2016 that authorized the repair and replacement of component parts to the West Doors. So, he had first-hand knowledge about the repairs and replacement of the West Doors but testified to the exact opposite facts at the 30(b)(6) deposition.

THE COURT FURTHER FINDS that Defendant other 30(b)(6) representative, Ms. Trisha Tamiko Kozlowski, was also not properly prepared for her deposition and thus she provided inaccurate testimony. For example, she testified that the West Doors had no problems other than coming off their tracks.

THE COURT FURTHER FINDS that Defendant disclosed witnesses after expert disclosures were past, and witnesses that Defendant anticipated that would provide expert

opinions and analysis. These witnesses were known to Defendant from the date of the fall, but Defendant waited until November, 2019 – three years after the fall – to disclose these witnesses. Thus, Defendant did not timely disclose these witnesses nor did it timely supplement its disclosures, thereby further breaching its discovery duties.

THE COURT FURTHER FINDS that Defendant breached its duties related to discovery, disclosure, and 30(b)(6) representative testimony and attempted to defeat this case by destroying evidence, hiding evidence, and denying the truth. These actions further showed that Defendant was engaged in a deliberate and willful attempt to prevail in this case by hiding the truth, destroying evidence, and misleading Ms. Taylor.

C. <u>Defendant Blocked ASSA ABLOY From Producing Documents</u>

THE COURT FURTHER FINDS that in addition to Defendant breaches of its discovery duties, that it blocked ASSA ABLOY from disclosing documents. Defendant knew that these documents would contradict the Defendant's position, and that the ASSA ABLOY documents would show that the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be replaced and repaired. These documents would further show the Defendant's refusal to have the West Doors replaced and repaired, and that it had a conscious disregard for Ms. Taylor's safety. These documents would further show that West Doors were replaced and repaired.

THE COURT FURTHER FINDS that during discovery Ms. Taylor subpoenaed ASSA ABLOY to provide documents pertinent to this matter and the West Doors. ASSA ABLOY attempted to fully respond to Plaintiff's Subpoena but needed written permission from Defendant and/or its parent company, Kroger, because many of the documents requested in Ms. Taylor's subpoena were confidential pursuant to the contract between ASSA ABLOY and Defendant. Thus, on August 15, 2019 ASSA ABLOY sent a letter to Defendant/Kroger (with a copy to Defendant's counsel, Jerry S. Busby, Esq.) asking permission to disclose all relevant documents related to Ms. Taylor's Subpoena, including the Agreement and work authorizations:

> The Agreement and related work authorizations are responsive to the Subpoena but are considered Confidential Information pursuant

> to Section 5 of the Agreement. Enclosed as Exhibit B are copies of the Confidential Information that ASSA ABLOY must produce in response to the Subpoena. ASSA ABLOY, therefore, requests Kroger's written permission to produce these documents.
>
> Please provide a response to this request by August 23, 2019. If we do not receive a response by that date, we will inform Plaintiff's counsel that Kroger has not provided the required permission for ASSA ABLOY to produce the Confidential Information.

THE COURT FURTHER FINDS that Defendant did not respond to this letter. Thus, ASSA ABLOY disclosed only limited documents responsive to Ms. Taylor's Subpoena. When disclosing these limited documents, ASSA ABLOY prepared an Affidavit of Custodian of Records noting the numerous documents were not disclosed because Defendant would not give permission:

> On August 15, 2019, ASSA ABLOY sent a letter to the Kroger Company ("Kroger"), via first class mail (certified mail) and overnight UPS delivery requesting written authorization to produce certain other documents in its possession that are also responsive to the Subpoena. ASSA ABLOY is contractually obligated to obtain written approval from Kroger prior to producing the documents referenced in its letter. To date Kroger has not responded to the letter.

THE COURT FURTHER FINDS that even after the Custodian of Records Affidavit Defendant still did not respond to ASSA ABLOY's letter or this Affidavit. This continued to block ASSA ABLOY from producing all documents responsive to Ms. Taylor's Subpoena.

THE COURT FURTHER FINDS that this Court had to enter an Order, which it signed on February 7, 2020, to finally allow ASSA ABLOY to produce all documents responsive to Ms. Taylor' Subpoena. This Order required (1) Defendant and Kroger were not to contact any person, employee, or agent for ASSA ABLOY about this case, Ms. Taylor's Subpoena, the West Doors, or any documents or work in this case; and (2) that Ms. Taylor's counsel was to send a copy of the Order to ASSA ABLOY; and (3) that ASSA ABLOY was to produce all documents and information relevant to the West Doors to Ms. Taylor's counsel for production and use in this case. [See, Order Signed Feb. 7, 2020]

THE COURT FURTHER FINDS that Defendant's efforts to block discovery and to put forth a false narrative in its attempt to defeat Ms. Taylor's claims were so extensive that documents could only be produced after the Court ordered Defendant not to block discovery by requiring that it not communicate with ASSA ABLOY. This is another example of Defendant's discovery actions and spoliation efforts being so deliberate and willful that it would do anything to gain an advantage in this litigation and the extent of Defendant's actions that halted the adversarial process.

D. <u>Defendant's Lack Of Candor</u>

THE COURT FURTHER FINDS that Defendant had a duty of candor with this Court and with opposing counsel, which it breached on numerous occasions. This lack of candor is most prevalent in Defendant's pre-litigation and discovery failures, examples of which have been detailed above. Nevertheless, this lack of candor continued at various hearings.

THE COURT FURTHER FINDS that when Defendant did not produce the West Door's component parts, Ms. Taylor filed a Motion for Sanctions for Spoliation of Evidence. Prior to that hearing, the 30(b)(6) representative, Mr. Dieter Thurnwald provided his false testimony that the West Doors had no work done on them and that ASSA ABLOY never came to the Defendant store. Defendant attorney's then engaged actions intended to threaten and intimidate Ms. Taylor's attorney saying in an August 9, 2019 e-mail that Ms. Taylor's attorney had violated NRCP 11, and Professional Rules of Conduct 3.1, 3.2, and 3.3 alleging he made misrepresentations to the Court and claiming that Defendant would "seek all fees and costs for having to defend this frivolous motion." These threats came even though Defendant was aware that the West Door's component parts had been replaced and then lost or destroyed.

THE COURT FURTHER FINDS that at the August 13, 2019 hearing for the Motion for Sanctions for Spoliation of Evidence, Defendant represented to the Court that the West Doors had no repairs or work done at any time. Further, at that hearing, Defendant told this Court that all documents related to the West Doors had been produced and there were no prior problems with the West Doors. These representations were wrong.

THE COURT FURTHER FINDS that at a hearing held on March 10, 2020 that Defendant attempted to explain its position, (that the West Doors were never repaired or replaced), considering the recently disclosed ASSA ABLOY documents. Defendant told this Court that ASSA ABLOY may have done the work to replace the West Doors component parts, but that Defendant did not authorize that work to be done and Defendant had no idea that the work was done. These representations were wrong.

THE COURT FURTHER FINDS that when it was pointed out to Defendant that documents showed the West Doors were repaired and replaced, that the Defendant then claimed that it did not know the work was done because ASSA ABLOY did not send it an invoice for that work. The representation at that hearing included: "We [Defendant] never got an invoice for the work;" "ASSA ABLOY never sent an invoice, was never paid for it;" and "The reason why they were never paid, they never sent an invoice ..." These representations, and others like them, are false because the evidence in this case shows that on December 28, 2016 ASSA ABLOY sent an invoice to Defendant for the work performed replacing the unsafe West Doors and related parts.

THE COURT FURTHER FINDS that these misrepresentations to the Court show that Defendant's actions were continuous, deliberate, and willful, and that Defendant was now misleading this COURT in an attempt to justify its actions and to prevail in this litigation.

E. <u>An Extensive Record Has Been Created</u>

THE COURT FURTHER FINDS that under Nevada law, a Court, when faced with the request to strike pleadings should only do so after "thoughtful consideration of all the factors involved." Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243, 252, 235 P.3d 592, 598 (2010) (quoting Young v. Johnny Ribeiro Building, Inc., 106 Nev. 88, 92, 787 P.2d 777, 780 (1990)). A district court does not abuse its discretion when it provides more than one meaningful opportunity to present evidence and arguments regarding misconduct. See, N. Am. Properties v. McCarran Int'l Airport, No. 61997, 2016 WL 699846, at *5, 132 Nev. 1011 (Nev. Feb. 19, 2016) (Unpublished).

THE COURT FURTHER FINDS that there has been an extensive record created in this case. This is the result of numerous Motions, Briefs, and Orders. The Motions and Briefs[6] previously filed related to Defendant's discovery failures and sanctionable conduct are:

1. Motion for Sanctions for Spoliation of Evidence filed on July 3, 2019;
2. Motion to Strike "Quasi Expert" Chad Crapo as a Witness filed on September 20, 2019;
3. Motion to Strike Defendant's Answer filed on October 14, 2019;
4. Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and to Continue the Trial Date on OST filed on December 4, 2019;
5. Motion for an Evidentiary Hearing filed on December 5, 2019;
6. Motion to Continue Hearings and Pre-Trial Conference on an OST filed on December 27, 2019;
7. Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order filed on December 19, 2019;
8. Motion to Amend Complaint to Allege Punitive Damages filed on January 30, 2020;
9. Defendant's Motion to Strike/Exclude Plaintiff's Damages for Her Cervical Fusion Surgery and Future Medical Care filed on April 8, 2020;
10. Motion to Limit Dr. Sanders, M.D.'s Expert Testimony filed on April 21, 2020;
11. Defendant's Motion for Leave to File Third-Party Complaint filed on May 15, 2020;
12. Defendant's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration of the Court's Order Denying Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence filed on June 9, 2020;
13. Supplemental Brief in Advance of March 24, 2020 Hearing filed on March 19, 2020;

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[6] All referenced Motions and Briefs include the Oppositions and Replies associated with those Motions and Briefs.

14. Supplemental Brief Timeline of Relevant Events filed on April 2, 2020; and

15. Renewed Motion to Strike Defendant's Answer, For Sanctions and Attorney's fees;

Additionally, this Court has issued numerous Orders related to the above Motions and Briefs, and in an attempt to discover the truth. Those Orders are:

1. Order Withdrawing Motion for Spoliation of Evidence;

2. Discovery Commissioner's Report & Recommendations regarding Motion to Strike "Quasi Expert" Chad Crapo as a Witness filed November 8, 2019;

3. Order Granting Motion to Continue Evidentiary Hearing; Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence; and Pretrial Conference filed on January 30, 2020;

4. Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All other Pending Motions filed on February 14, 2020;

5. Order Granting Plaintiff's Motion to Amend Complaint filed on April 17, 2020;

6. Order Denying Defendant's Motion to Continue Discovery Based Upon Newly Discovered Evidence and Order Granting Plaintiff's Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order filed on May 22, 2020;

7. Order Denying Plaintiff's Motion for an Evidentiary Hearing on an OST filed on June 18, 2020;

8. Order Denying Plaintiff's Motion to Limit Dr. Sanders, M.D.'s Expert Testimony filed on June 22, 2020;

9. Order Denying Defendant's Motion to Strike/Exclude Plaintiff's Damages for her Cervical Fusion Surgery and Future Medical Care filed on June 22, 2020;

10. Order Denying Defendant's Motion for Leave to File Third-Party Complaint filed on July 10, 2020.

THE COURT FURTHER FINDS that there have been numerous hearings arguing and discussing matters in these pleadings. These hearings have been held on August 13, 2019;

November 21, 2019; January 22, 2020; March 10, 2020; March 24, 2020; March 31, 2020; April 30, 2020; May 21, 2020; June 18, 2020; and November 5, 2020. These hearings generally lasted well over an hour, and some lasted for multiple hours.

THE COURT FURTHER FINDS that an adequate record has been developed based upon pleadings that have been filed, orders that have been entered, briefs that have been submitted, and hearings that have been held. These pleadings, orders, briefs, and hearings have occurred over the past year. These is no additional information or evidence that would be available to this Court if it held additional hearings, or even an evidentiary hearing. The Court has been fully apprised of the issues in this case.

THE COURT FURTHER FINDS that Defendant argued against an evidentiary hearing representing to the COURT that an evidentiary hearing would be of no value because its employees would simply repeat the testimony in their sworn affidavits. These arguments, coupled with the lack of candor shown by the Defendant, give this COURT the understanding that an evidentiary hearing would provide it with no additional information.

THE COURT FURTHER FINDS that when a Court considers imposing case terminating sanctions, it should consider certain factors such as (1) the degree of willfulness of the offending party; (2) the extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been irreparably lost; (5) the feasibility and fairness of alternative, less severe sanctions ... (6) the policy favoring adjudication on the merits; (7) whether sanctions unfairly operative to penalize a party for the misconduct of his or her attorney; and (8) the need to deter both the parties and future litigations from similar abuses. Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

F. Consideration of Defendant's Evidence

THE COURT FURTHER FINDS that after careful consideration of all Defendant's evidence in support of either no judicial sanction or a lesser judicial sanction that the evidence is largely inadmissible, contradictory, and severely lacking evidentiary content. This Court sets forth the key defense evidence as follows:

1. **Affidavit of Courtney Shephard**

Despite over two years of discovery in this case, Ms. Shephard was never identified by Defendant as a witness. Ms. Shephard provided an affidavit in opposition to Plaintiff's Motion for an Evidentiary Hearing. Ms. Shepherd's affidavit represented that "it appears ASSA ABLOY made a quote for repairs to the West Doors on October 17, 2016. The quote was submitted but it was not approved. However, it appears that the ASSA ABLOY technician that put together the quote on October 17, 2016, without approval, went to the store and performed the repair work." The documents produced by ASSA ABLOY clearly demonstrate that Ms. Shephard was not honest with this COURT. Importantly, Defendant never objected to the documents' authenticity from ASSA ABLOY. The documents produced by ASSA ABLOY establish that Defendant indeed approved ASSA ABLOY to repair and replace the West Doors. The Worksheet produced by ASSA ABLOY establish very clearly that Defendant knew the work was performed on December 21, 2016 as a Smith's employee, Travis Childers, signed off on both the Second Inspection Form and Second Worksheet. While Defendant included the affidavit from Ms. Shephard in its Opposition to Plaintiff's Motion for an Evidentiary Hearing, Defendant omitted Ms. Shephard's affidavit from its Opposition to Plaintiff's Motion to Strike Defendant's Answer. As such, this Court has considered Ms. Shephard's affidavit but is not persuaded that her statements are truthful or mitigating.

Ms. Shephard failed to disclose how, when, or why significant evidence including but not limited to (1) the Work Order entry by Defendant's employee, Travis Childers, noting that the West Doors were not operating correctly and were running very poorly; (2) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (3) the October 18, 2016 e-mail submitting the two ASSA ABLOY quotes to Defendant which included the Repair quote that needed to be approved to "get the doors up and running"; (4) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (5) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (6) the December 21, 2016 Second Inspection Form; (7) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the

West Doors' component parts; (8) the West door sensors, motor, and competent parts; and (9) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

2. Affidavit of Venessa Wickline Gribble

Despite over two years of discovery in this case, Ms. Gribble was never identified by Defendant as a witness in this case. Ms. Gribble is a paralegal in Defendant's litigation division. Defendant submitted Ms. Gribble's affidavit in both its Opposition to Plaintiff's Motion for an Evidentiary Hearing and in Opposition to Plaintiff's Motion to Strike Defendant's Answer. Ms. Gribble testified that she is the person who performed two searches for documents related to the doors in this case. Ms. Gribble testified in her first search for documents that she limited her search period from October 30, 2016 to December 2, 2016. These were the document first disclosed by Defendant. The initial search specifically excluded the October 17, 2016 Inspection Form, the October 18, 2016 Quotes, the October 25, 2016 email and re-submission of Quotes, the October 28, 2016 email and re-submission of Quotes, the December 7, 2016 email and re-submission of Quotes, the December 20, 2016 email approving repair and replacement of West Doors. The December 21, 2016 Inspection Form and Worksheet both of which were signed by Defendant's employee, Travis Childers. The December 28, 2016 invoice from ASSA ABLOY to Defendant. Ms. Gribble provides no rationale for why she was asked to perform such a limited scope. More importantly, however, is that the search period from October 30, 2016 to December 2, 2016 does include significant documents which were not disclosed by Ms. Gribble. For example, Ms. Gribble failed disclose the November 8, 2016 e-mail and re-submittal of Quotes, the November 15, 2016 e-mail and re-submittal of Quotes, the November 23, 2016 e-mail and re-submittal of Quotes, and the November 29, 2016 e-mail and re-submittal of Quotes.

Next, Ms. Gribble testified that she performed a second, more extensive search related to the replacement of door sensors. Ms. Gribble states that in September 2018, she provided to defense counsel. This Court finds that the September 2018 documents and subsequent disclosure were also problematic in that Ms. Gribble provided documents related to the wrong door.

Specifically, Ms. Gribble provided documentation related to the East doors not the West Doors where Ms. Taylor was injured.

In carefully considering the affidavit of Ms. Gribble this Court finds that Ms. Gribble testimony does not support mitigation of Defendant's conduct. It is clear from the records produced by ASSA ABLOY that Defendant was fully aware that the West Doors' safety features were not operation as of October 14, 2016. It is also clear that Defendant undertook to have the West Doors safety system including door sensors repaired on December 21, 2016. Additionally, Defendant was fully aware that the injury took place at the West Doors, yet Ms. Gribble provided evidence of the East doors. Ms. Gribble failed to disclose how, when, or why significant evidence including but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West door sensors, motor, and competent parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

3. <u>Affidavit of Ronald K. Radcliffe, Jr.</u>

Like Ms. Shephard and Ms. Gribble, Mr. Radcliffe was not identified as a witness in this litigation. Mr. Radcliffe's affidavit was submitted in both Defendant's Opposition to Plaintiff's Motion for an Evidentiary Hearing and Plaintiff's Motion to Strike Defendant's Answer. Mr. Radcliffe was asked to review certain maintenance records from Defendant's Service Hub and from ASSA ABLOY. Mr. Radcliffe's affidavit is dated October 30, 2019. As such, this Court finds that Mr. Radcliffe did not review the full set of records produced by ASSA ABLOY on March 4, 2020, approximately four months after Mr. Radcliffe prepared the subject affidavit. In reviewing records, Mr. Radcliffe offers expert testimony regarding the mechanisms, safety

features, and operation of the subject doors. As Mr. Radcliffe was not identified as a lay or expert witness, this COURT does not consider Mr. Radcliffe's opinion testimony. As such, the portion of Mr. Radcliffe's affidavit that this COURT does consider deals with his personal involvement in the procurement and production of evidence. Mr. Radcliffe states that in September 2018, he went to find out if or when the sensors were replaced on the doors at Smith's Store No. 347. He states that he went to the store to get the numbers from the doors so that he could identify them. He then called ASSA ABLOY and asked if any of the sensors at the store had been replaced in the last two years. He states that they sent him records. Mr. Radcliffe then states that records ASSA ABLOY sent him that the East doors had sensors replaced on June 15, 2017 and the West Doors do not show ASSA ABLOY replacing the West Doors sensors in the past two years.

This COURT finds that Mr. Radcliffe's testimony does not mitigate Defendant's conduct. First, it is clear that Mr. Radcliffe did not see the full production of documents from ASSA ABLOY which directly contradicts his statements under oath. According to Mr. Radcliffe, ASSA ABLOY told him that the West Doors sensors were not replace between September 2016 to September 2018. The documents from ASSA ABLOY prove otherwise. Additionally, Mr. Radcliffe failed to disclose how, when, or why significant evidence including but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West Doors sensors, motor, and competent parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated. Given the totality of the completeness of the records from ASSA ABLOY and totality of the evidence, this COURT finds that Mr. Radcliffe's affidavit regarding his phone conversation from an unknown employee from

ASSA ABLOY is not credible and is not admissible on an evidentiary basis. Mr. Radcliffe's testimony regarding what an unidentified employee of ASSA ABLOY told him is hearsay. The actual records from ASSA ABLOY have evidentiary value as they are found to be authentic and admissible evidence. Even if Mr. Radcliffe's testimony had evidentiary value, this Court finds that it would be insufficient to mitigate Defendant's extensive spoliation of evidence, lack of candor to this Court, and years of halting the adversarial process.

4. Argument That ASSA ABLOY Failed To Update Service Hub

This Court also considered Defendant's argument that ASSA ABLOY failed to update the service hub with quotes, work orders, inspections forms, authorization, repair invoice, etc. which violate its contractual obligations with Defendant. This Court finds this argument uncompelling. First, Ms. Taylor's preservation letter dated December 7, 2016 was sent to Defendant, not ASSA ABLOY. As such, Defendant was fully aware of Ms. Taylor's intent to sue. Defendant, therefore, had a duty to preserve evidence. Second, this COURT finds that Defendant has a non-delegable duty to update its service hub inasmuch as the service repairs relate to public safety of its patrons. For example, this COURT finds that Defendant's employee, Travis Childers, created the October 14, 2016 Work Order and entered the Work Order into the service hub. The Work Order was properly inputted by Defendant's employee into the service hub as the malfunctioning West Doors were a safety hazard. Yet, despite receiving Ms. Taylor's intent to sue letter dated December 7, 2016, Defendant failed to take any reasonable steps to preserve crucial evidence in this case.

ORDER

THE COURT HEREBY ORDERS that under the Young factors, Ms. Taylor is entitled to an Order striking Defendant's answer as to liability and damages.

THE COURT FURTHER ORDERS sanctions for numerous failures and breaches of duty. The failures include (1) spoliation of evidence; (2) numerous breaches of discovery duties including violations of NRCP 16.1, NRCP 26, and NRCP 37(c); (3) lack of candor with the Court and opposing counsel; and (4) halting the adversarial process. All of these actions were part of an extensive scheme by the Defendant to deter Ms. Taylor from pursuing her claims, and once

she was not deterred, to hide the truth, mislead Ms. Taylor and this COURT, and to willfully destroy evidence in an attempt to prevail in this litigation. These failures and breaches of duty also show repetitive, abusive, and recalcitrant discovery abuses which resulted in many years of misguided litigation. Based on the cumulative, extensive, and blatantly false representations made by Defendant to this COURT, this COURT finds Defendant acted with intent to halt the adversarial process.

THE COURT FURTHER ORDERS that a case involving spoliation could merit significant sanctions. See, e.g., Stubli v. Big D. Int'l Trucks, Inc., 107 Nev. 309, 810 P.2d 785 (1991) and Fire Ins. Exchange v. Zenith Radio Corp., 103 Nev 648, 747 P.2d 911 (1987). A case involving discovery abuses and failures to meet discovery duties could merit significant sanctions. See, e.g., NRCP 37; Foster v. Dingwald, 126 Nev. 56, 227 P.3d 1042, (2010) and Bahena v. Goodyear Tire & Rubber Co., 126 Nev 243, 258, 235 P.3d 592, 602 (2010) and Young v. Johnny Ribeiro Bldg., Inc., 106 Nev 88, 95, 787 P.2d 777, 782 (1990). A case involving lack of candor with the Court cold merit significant sanctions. **This is a unique case where Defendant engaged in all three failures and actions. In fact, this COURT can find no time when the Defendant put forth an honest defense, or when the Defendant was fully candid with the COURT.** The sanction, therefore, must be significant to address the Defendant's extensive, repetitive, ongoing, and brazen actions, deceit, and failures.

THE COURT FURTHER ORDERS sanctions for extensive spoliation of evidence by the Defendant. Physical evidence is at the heart of this case which includes the West Doors' sensors, motor, gearbox, wiring, and other component parts. That physical evidence was in the Defendant's possession when the fall occurred and was later removed at the Defendant's instruction. That evidence has not been produced in this case and the failure to produce it will greatly affect Ms. Taylor's ability to prove her claims. In Stubli v. Big D. Int'l Trucks, Inc., 107 Nev. 309, 810 P.2d 785 (1991), a product was central to that case which was destroyed by one of the parties. The Nevada Supreme Court upheld sanction of striking pleadings for the evidence destruction. Id. 107 Nev. at 314. Similarly, in Fire Ins. Exchange v. Zenith Radio Corp., 103 Nev 648, 747 P.2d 911 (1987) a product was central to that case which was not preserved by one of

the parties. The Nevada Supreme Court upheld sanction of striking an expert and then granting summary judgment. Id. 103 Nev. at 652.

THE COURT FURTHER ORDERS sanctions for Defendant's intentional destruction of e-mails and documents, including but not limited to the Invoice, Worksheets, Inspection Forms, and the Quotes. Further, the Court finds that the Defendant engaged in the evidence destruction and spoliation willfully and deliberately to gain an advantage in this litigation and to defeat Ms. Taylor's claims. Significant sanctions should result from this wrongdoing.

THE COURT FURTHER ORDERS sanctions for extensive discovery abuses which prevalent throughout discovery in this case. This included the failure to timely and properly disclose documents (including but not limited to the contract with ASSA ABLOY) and witnesses (including but not limited to Mr. Alvarado, Mr. Childress, and Mr. Thurnwald – witnesses who played vital roles in the events – and other witnesses who signed affidavits). The failure to timely disclose these items includes a failure to timely supplement disclosures pursuant to NRCP 26(e). Defendant failed to properly respond to request for production by failing to conduct a reasonable inquiry to ensure that the production responses were complete and accurate, and a failure to obtain documents in the Defendant's control, including documents in the possession of its vendor, ASSA ABLOY. The Defendant provided intentionally inaccurate discovery responses by providing documents for the wrong door in respond to request for production, and by providing interrogatory answers saying that the West Doors never had any changes to them. The Defendant further put forth two 30(b)(6) witnesses who testified in a manner that was untruthful and designed to mislead Ms. Taylor in a willful and intentional attempt to defeat Ms. Taylor's claims.

THIS COURT FURTHER ORDERS sanctions pursuant to NRCP 37 holds that an evasive or incomplete disclosure of discovery answer must be treated as a failure to disclose, answer, or respond. NRCP 37(a)(4). Further, if a party fails to provide a disclosure, then the court may impose sanctions including those in Rule 37(b)(1) which include striking pleadings, dismissing the action, or rendering default judgment. NRCP 37(c)(1)(C) (citing NRCP 37(b)(1)(C, E, and F)). A party that fails to serve answers or a response to an interrogatory or a request for production the court may impose sanctions including those in Rule 37(b)(1) which include striking pleadings,

dismissing the action, or rendering default judgment. NRCP 37(d)(1)(A)(ii) and 37(d)(3) (citing NRCP 37(b)(1)(C, E, and F)). In this case, Defendant provided evasive or incomplete disclosures and responses to written discovery. Even worse, Defendant provided written discovery responses that were designed to mislead Ms. Taylor and hide the truth. Defendant put forth inaccurate, misleading, and untruthful 30(b)(6) deposition testimony. Significant sanctions should result from this wrongdoing.

THE COURT FURTHER ORDERS sanctions for Defendant's repetitive, abusive, or recalcitrant discovery abuses. When a party puts forth deliberately inaccurate discovery responses in an attempt to mislead the other party, that significant sanctions should result such as striking pleadings and entering default judgement. Foster v. Dingwald, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010) (upholding the sanctions or striking the pleadings and entering default judgment when a party engaged in discovery abuses such as failing to attend depositions and failed to comply with the court's orders); Bahena v. Goodyear Tire & Rubber Co., 126 Nev 243, 258, 235 P.3d 592, 602 (2010) (upholding the sanction of striking the answer as to liability for repeated discovery abuses); Young v. Johnny Ribeiro Bldg., Inc., 106 Nev 88, 95, 787 P.2d 777, 782 (1990) (striking pleadings and entering default judgment when a party put forth known false and misleading documents and providing misleading deposition testimony about the evidence). Defendant, in this case, engaged in repeated discovery abuses and failures, all in an attempt to mislead Ms. Taylor and gain an advantage in this litigation. The Defendant's discovery failures and abuses were repetitive and wide-reaching (meaning that in every aspect of discovery from disclosures to written discovery to depositions the Defendant's deliberate scheme to hide the truth was shown). Even worse, the Defendant blocked proper discovery by a third-party ASSA ABLOY which showed that it would do anything to hide the truth and halt the adversarial process.

THE COURT FURTHER ORDERS sanctions for Defendant's breach of its duty of candor with the COURT. Defendant was untruthful with the COURT during various hearings including affidavit testimony from its witnesses. Clearly, the duty of candor was violated. Further, numerous documents were not obtained until this COURT ordered production of documents from

ASSA ABLOY when those documents were in the custody, possession, and control of Defendant. The lack of candor must result in significant sanctions.

THE COURT FURTHER ORDERS sanctions for Defendants repeated recalcitrant efforts to halt the adversarial process. Generally, sanctions including the striking of pleadings may only be imposed where there has been willful noncompliance with a court order or **where the adversary process has been halted by the actions of the unresponsive party** (emphasis added)." GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869, 900 P.2d 323, 325 (1995). Here, Defendant has undertaken to halt the adversarial process. Defendant destroyed nearly all physical evidence in this case despite having received Ms. Taylor's intent to sue letter with demand to preserve evidence. Defendant orchestrated over two years of misguided litigation. Defendant's repeated attempts to misguide litigation includes the following reprehensible conduct: (1) falsely disclosing Stanley Access Technology as the third party door vendor; (2) failure to disclose ASSA ABLOY as the correct third party door vendor; (3) two site inspections under false pretense that the West Doors, sensors, etc. were identical to door systems at the time of injury; (4) egregiously false testimony under oath from Defendants NRCP 30(b)(6) witnesses regarding the need for West Doors to be repaired, the repair of the West Doors, and the alleged lack of knowledge and/or authorization for the repair of the West Doors; (5) blocking production of documents from ASSA ABLOY to Ms. Taylor's subpoena; (6) blatantly false testimony in interrogatories which falsely testify that the West Doors' sensors and component parts are identical to the doors at the time of injury; (7) threats of Rule 11 sanctions against Ms. Taylor's counsel for filing a valid motion; (8) knowingly disclosing records and documents related to the wrong doors (East doors) and (9) attempts to mislead this COURT regarding the true nature of the authorization and repair of the West Doors.

THE COURT FURTHER ORDERS that this case involved extensive failures from (1) spoliation to (2) discovery abuses and failures and to (3) a lack of candor. All three combined in this case show that the Defendant should be severely sanctioned to the extent that the Defendant's answer as to liability and damages should be stricken. This Order comes only after the COURT

has considered each of the factors in the Young v. Johnny Ribeiro Bldg., Inc., 106 Nev 88, 93, 787 P.2d 777, 780 (1990) as shown below.

1. The Degree of Willfulness of The Offending Party

This COURT finds that willfulness is demonstrated by the Defendant's actions. Those actions began after the Defendant allowed evidence to be destroyed after the December 7, 2016 preservation letter was received. The Defendant then sent a letter to Ms. Taylor on February 8, 2017 denying the claim. Then throughout discovery, the Defendant continued to engage in actions that were designed to deceive and mislead Ms. Taylor. The Defendant blocked ASSA ABLOY from producing vital documents, and the only way to get those documents was for this COURT to order production and order Defendant not to obstruct discovery. Finally, the Defendant was not forthright with the COURT in an attempt to avoid sanctions and to further hide the truth. The only result from these actions is that the Defendant was engaged in a willful and deliberate scheme to avoid liability for its actions which resulted in an unsafe, unrepaired, and non-standard-complaint door striking Ms. Taylor.

2. The Degree to Which Ms. Taylor Would Be Prejudiced by a Lesser Sanction

This COURT has considered lesser sanctions such as an inference, presumption, striking the answer as to liability only, and other lesser sanctions. All these sanctions would not be appropriate and would fail to make the sanction meet the spoliation, the discovery abuse, and the lack of candor with the COURT. First, the product at issue is known to wear over time, and getting an exemplar product is not an option because an exemplar product cannot be aged in the same manner and method that the product at issue in this case aged and failed. There is no way to use an exemplar product. Second, the sanction must meet the Defendant's discovery failures and abuses. Spoliation of the product is only part of the Defendant's deliberate, willful wrong doings. As shown above, the Defendant engaged in actions that violated every discovery rule and tenant, and even produced evidence for the wrong door. The failure to be truthful, complete, and forthright in discovery, the failure to provide complete and timely disclosures and supplements, and the failure to conduct a reasonable inquiry into discovery responses is significant. Further,

the Defendant had the person who approved the repair and replacement of the doors act as its 30(b)(6) representative, and it had that person provide untruthful testimony that contradicted his actions early in this case. Third and finally, the Defendant's actions before this COURT showing a lack of candor demonstrates that it will engage in any tactic in an attempt to prevail in this case, even in dereliction of the COURT's proceedings. This COURT recognized that from the time this fall occurred the Defendant knew that it had failed to repair a broken and unsafe doors that did not comply with the applicable standards. The Defendant recognized that it has been reminded numerous times of the need to repair this dangerous door. Thus, the Defendant chose to hide the truth, destroy evidence, and fail to properly conduct discovery. The Defendant knew that if it provided complete and accurate disclosures and discovery responses that liability would be found against it. By only striking the Defendant's answer as to liability, the COURT would be putting the Defendant in the same position it would have been in if it had properly engaged in discovery. Thus, striking the answer as to liability only was no sanctions and would not deter such actions in the future by this Defendant or by other defendants. Again, a lesser sanction is not appropriate, although other sanctions were considered. The only appropriate sanction is that of striking the answer as to liability and damages.

3. <u>The Severity of The Sanction of Dismissal Relative to the Discovery Abuse</u>

The spoliation, the discovery abuses, and failures, the deceitful 30(b)(6) testimony, and the lack of candor with the COURT show that at no time was the Defendant attempting to honestly defend this case. From the moment of the fall, Defendant engaged in a deliberate scheme to hide the truth at all costs. The Defendant's actions and abuses have been repetitive and ongoing, and the sanction of striking the answer as to liability and damages fits the Defendant's actions. Because Defendant has thumbed its nose at its duties and the judicial process, a fair trial on the merits is now impossible. Therefore, the only adequate remedy, which restores fairness to the Ms. Taylor, is to strike Defendant's Answer.

4. <u>Whether the Evidence Has Been Irreparably Lost</u>

It is clear that the central piece of evidence is irreparably lost. The complete nature of this case would have changed if that evidence was preserved and it could thus be adequately inspected

and tested. Other evidence remains lost including the Quotes sent to the Defendant. The permanent loss of this evidence supports significant sanctions.

5. <u>The Feasibility and Fairness of Alternative Less Severe Sanctions</u>

As demonstrated under sections 2 and 3 above, striking Defendant's answer is the only fair and feasible sanction to remedy the extensive abuses, evidence destruction, and lack of candor to the COURT. While lesser sanctions were considered, they would not properly address the extensive scheme to destroy, deceive, and mislead that the Defendant engaged in from the time of the fall up through the hearings on various Motions.

This COURT has carefully considered any and all lesser sanctions and finds that any lesser sanction under these circumstances would encourage defendants to destroy evidence, commit perjury, falsify evidence, lie to judicial officers, and take any other action which would have the effect of halting the adversarial process.

This COURT considered the following sanctions: (1) adverse inference; (2) rebuttable presumption; (3) striking Answer as to liability only; and (4) striking Answer as to liability and damages. This COURT finds that granting an adverse inference for all destroyed evidence is an insufficient sanction given the totality of the misconduct. An adverse inference is an appropriate remedy when evidence is negligently lost or destroyed. Here, however, this COURT finds that Defendant received an intent to sue letter which demanded Defendant preserve evidence. Defendant was aware of Ms. Taylor's intent to sue yet decided to destroy crucial evidence AFTER Defendant knew it was likely going to involved in litigation. The evidence destroyed clearly would have supported Ms. Taylor's case on liability and punitive damages as Defendant had actual notice that the safety systems were non-operational based on the October 17, 2016 Inspection Form. The knowledge that the safety systems were not operation combined with repeated requests from ASSA ABLOY to make the repair from October 17, 2016 until November 30, 2016 when Ms. Taylor sustained injury due to the unsafe doors supports Ms. Taylor's allegation that in failing to promptly repair the doors that Defendant acted with a conscious disregard for her safety. Additionally, an adverse inference does not cure years of misguided litigation including the producing records for the East doors and presenting the false narrative that

those records pertained to the West Doors. An adverse inference does not cure two years of misguided litigation including Plaintiff's expert witness conducting two site inspections under the false pretense that the West Doors' sensors, and component parts were unchanged from the time of injury. Finally, an adverse inference would unfairly enable the Defendant to present evidence to the jury regarding the operation of the West Doors at the time of Ms. Taylor's injury which could not be rebutted by Ms. Taylor as Defendant destroyed the West Doors before any site inspection could be performed by Ms. Taylor's expert. Like Stubli and Zenith, Defendant would be reserving to itself all testimony regarding the operation of the vary article Ms. Taylor alleges to be defective.

This COURT considered a rebuttable presumption against Defendant. A rebuttable presumption is an appropriate remedy when evidence is intentionally destroyed with the intent to harm. Here, the COURT finds that Defendant acted with the intent to harm Ms. Taylor's case. Intent to harm is the logical conclusion when Defendant destroyed nearly all physical evidence despite having received a demand to preserve evidence before such evidence was destroyed. As stated above, the evidence destroyed clearly would have supported Ms. Taylor's case on liability and punitive damages as Defendant had actual notice that the safety systems were non-operational based on the October 17, 2016 Inspection Form. The knowledge that the safety systems were not operation combined with repeated requests from ASSA ABLOY to make the repair from October 17, 2016 until November 30, 2016 when Ms. Taylor sustained injury due to the unsafe West Doors supports Plaintiff allegation that in failing to promptly repair the West Doors that Defendant acted with a conscious disregard for her safety. Additionally, a rebuttable presumption does not cure years of misguided litigation including the producing records for the East doors and presenting those records as though they pertain to the West Doors. A rebuttable presumption does not cure two years of misguided litigation including Ms. Taylor's expert witness conducting two site inspections under the false pretense that the West Doors' sensors, and component parts were unchanged from the time of injury. Finally, a rebuttable presumption would unfairly enable the Defendant to present evidence to the jury regarding the operation of the West Doors at the time of Ms. Taylor's injury which could not be rebutted by Ms. Taylor as Defendant destroyed the

West Doors before any site inspection could be performed by Ms. Taylor's expert. Like Stubli and Zenith, Defendant would be reserving to itself all testimony regarding the operation of the vary article Ms. Taylor alleges to be defective.

Next, this COURT considered striking Defendant's Answer as to liability only or whether to strike the Answer as to liability and damages. Here, under these circumstances, this COURT finds that striking the Answer as to liability only would encourage such misconduct from future litigants. Here, this COURT recognizes the delicate balance between striking the Answer as to liability and striking the Answer as to liability and damages. This COURT also considered whether an evidentiary hearing was necessary to strike the Answer as to liability and damages.

Ultimately, the evidence destroyed clearly would have supported Ms. Taylor's case on liability and punitive damages. This by itself would support striking the Answer as to liability only. Here, however, this COURT must consider the time and expense of litigating this matter through the COURT system for over two (2) years. This COURT must consider judicial economy and a litigants right to a fair and speedy trial pursuant to NRCP 1. This COURT must consider the extreme abuses undertaken by Defendant as fully set forth herein. This COURT finds that as it relates to this Defendant that if Defendant had properly disclosed the initial October 17, 2016 Inspection Form, the October 17, 2016 Worksheet, the October 18, 2016 repair Quotes, the eight (8) e-mails and re-submitted Quotes from October 18, 2016 to November 29, 2016, the December 21, 2016 second Inspection Form, the December 21, 2016 Second Worksheet, the repair invoice that Defendant could have fairly litigated this case as a damages only case. Instead, Defendant decided to go a different route and completely undermined the adversarial process and lacked candor to this COURT.

Here, Defendant destroyed crucial evidence after it received Plaintiff's preservation letter. Next, Defendant falsely disclosed the wrong door vendor. Next, Defendant falsely disclosed service documents related to the wrong door. Next, Defendant permitted two site inspections under the guise that the West Doors were unchanged from the time of Ms. Taylor's injury. Next, and perhaps most egregious, Defendant's NRCP 30(b)(6) witness continued the guise by testifying that only in an "imaginary world" were the West Doors' sensors repaired or replaced.

This testimony under oath is particularly egregious as it was offered by Dieter Thurnwald. Mr. Thurnwald is the same gentleman who approved the repair and replacement at the West Doors. Next, Defendant thwarted document production from ASSA ABLOY which records clearly brought to light the extent of Defendant's false representations. Next, Defendant submitted false affidavits to this Court alleging that ASSA ABLOY never had permission to replace the subject doors and did so without Defendant's knowledge. This Court finds that at a certain point a litigant, through its own severe, recalcitrant abuses of the adversarial process, loses its right to present its case to a jury on liability and damages pursuant to NRCP 37(c). This Court finds that for over two (2) years Defendant has engaged in such abusive, recalcitrant behavior. Merely striking the Answer as to liability would have the effect of rewarding Defendant for its abuses because it places Defendant in the same position it would have been in if Defendant properly disclosed all evidence from the beginning while ignoring the facts that Defendant attempted to deceitfully defend this case rather than on the merits. The question, therefore, must be asked: What if Defendant's tactic succeeded? What would stop Defendant or any other defendant from doing the same conduct again? By striking the Answer as to liability and damages, this COURT upholds its directive to deter future litigants from engaging in the same or similar conduct.

6. <u>The Policy of Favoring Adjudication on the Merits</u>

Defendant's flagrant discovery abuses have made a fair trial on the merits impossible. Therefore, striking its answer is the only way to properly address the egregiousness and widespread nature of the abuse. While public policy and the preference that claims should be resolved on their merits whenever possible may be a factor against dismissal, it is not dispositive. Given the extent and egregiousness of the misconduct and the prejudice to the Ms. Taylor, it is nigh impossible to adjudicate this matter on the merits and the fault for this lies directly at the feet of the Defendant.

7. Whether Sanctions Unfairly Operate to Penalize A Party for Attorney Misconduct, and the Need To Deter Both the Parties and Future Litigants from Similar Abuses

This COURT does not believe that the spoliation, discovery failures, and lack of candor were the result of Defendant's attorneys. In fact, the Defendant's scheme to destroy and deceive began well before litigation started. The deceptive practices continued during discovery during the deposition testimony of Defendant's NRCP 30(b)(6) corporate representative, Dieter Thurnwald. In fact, defense counsel even questioned Mr. Thurnwald during the deposition regarding whether the West Doors were repaired. It's clear that Defendant's attorney was seeking information and it was the corporate representative who insisted upon providing false testimony. As mentioned above, this is particularly egregious as it was Mr. Thurnwald who approved the replacement of the door sensors and component parts. The deceptive practices continued after the close of discovery when Defendant's employee, Courtney Shephard, falsely represented to this COURT that ASSA ABLOY effectuated the replacement of the West Doors' sensors without authorization from Defendant, that Defendant did not know the repair was made, and Defendant was never invoiced for the repair. All of these representations are blatantly false. The sanction is not the result of the attorneys in this case.

8. The Need To Deter This Defendant And Others From Similar Misconduct

This COURT finds that deterrence is an important factor. If the sanction is not severe and extensive, then this Defendant, and others, might try to avoid liability by deceit and deception believing that the worst sanction is striking the answer as to liability, a result that would occur if the Defendant had been honest and met its discovery obligations. Thus, to deter such actions and the temptations to engaged in such action in the future, the sanction of striking the answer as to liability and damages is the appropriate sanction in this case.

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THE COURT FURTHER ORDERS that, based upon the foregoing, the Defendant's Answer is stricken as to liability and damages.

THE COURT FURTHER ORDERS that when a default is entered as a result of a discovery sanction, the non-offending party need only establish a prima facie case in order to obtain the default judgment. Foster v. Dingwall, 126 Nev. 56, 67, 227 P.3d 1042, 1049 (2010) (citing Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 94, 787 P.2d 777, 781 (1990)). Defendant's Answer is stricken as to liability and damages as a result of numerous failings including spoliation of evidence, discovery abuses, and lack of candor. These failings and actions amount to a discovery sanction. Thus, Ms. Taylor need only establish a prima facie case to obtain default judgment.

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HEARING DATE(S) ENTERED IN ODYSSEY

THE COURT FURTHER ORDERS that a prove-up hearing to determine the exact amount of damages is hereby scheduled to occur on February 18, 2021, at 9:05 AM.

January 20, 2021 ZJ

Respectfully Submitted by:

Dated: DEC. 18, 2020
TANNER CHURCHILL ANDERSON

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Approved as to form and content by:

Dated: _____
COOPER LEVENSON, P.A.

WILL NOT SIGN

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Courtney McMenamy

From: Kraemer, Gregory A. <GKRAEMER@cooperlevenson.com>
Sent: Friday, December 18, 2020 9:25 AM
To: Courtney McMenamy
Cc: David Tanner; Busby Jerry S.; Rutkowski Theresa H.
Subject: Taylor v. Smith's
Attachments: 6098022_1.docx

We will not be signing the Order prepared by your office. Instead, we propose submitting the following order. Please let me know if you have any proposed changes.

Thanks

Electronically Filed
1/21/2021 11:08 AM
Steven D. Grierson
CLERK OF THE COURT

NEO
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DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES**

NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES

PLEASE TAKE NOTICE that the Order Granting Plaintiff's Renewed Motion To Strike Defendant's Answer, Motion For Sanctions And Attorney Fees was entered by the above

entitled Court on the 20th day of January, 2021, a copy of which is attached hereto and made a part hereof.

DATED this 21 day of January, 2021.

By: _____

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of TANNER CHURCHILL ANDERSON LAW FIRM and that on the 21 day of January, 2021, I served the above and foregoing **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES** by Electronic Service to the following:

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Courtney McNeman
An Employee with Tanner Churchill Anderson

Electronically Filed
1/20/2021 3:39 PM
Steven D. Grierson
CLERK OF THE COURT

OGM
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DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. DEFENDANT FOOD & DRUG CENTERS, INC. d/b/a DEFENDANT FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES** Date of Hearing: November 5, 2020 Time of Hearing: 9:00 a.m.

ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES

Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees ("Motion to Strike"), having come on for hearing on November 5, 2020, the Court having read and considered the Motion, the Opposition, and Reply to the same; and being fully advised on the premises, and good cause appearing therefore,

FINDINGS

THE COURT FINDS there exists substantial evidence to support Ms. Taylor's allegations that Defendant had actual notice that the West automatic entry doors[1] were malfunctioning, unsafe and in need of substantial repair approximately seven (7) weeks before the West Doors caused injury to Ms. Taylor.

THE COURT FURTHER FINDS that there exists substantial evidence to support Ms. Taylor's allegation that Defendant's failure to fix the West Doors prior to Ms. Taylor's injury constitutes a conscious disregard of public safety. Prior to Ms. Taylor's injury, Defendant ignored nine (9) communications from its third-party vendor requesting authorization to fix the West Doors including replacing the unsafe sensors.

THE COURT FURTHER FINDS that from the time the West Doors injured Ms. Taylor, Defendant engaged in a scheme to halt the adversarial process. The scheme included intentionally destroying vital evidence which would support Ms. Taylor's allegations of actual notice and conscious disregard such as the destruction of the West Doors' sensors, destruction of work quotes from its third-party vendor to replace the unsafe sensors, destruction of emails from Defendant's third-party vendor following up on the request to replace the unsafe sensors, emails from Defendant to the third party vendor approving the replacement of the sensors three (3) week after Ms. Taylor was injured, and the actual repair invoice from the third-party vendor to Defendant. This COURT FINDS that during the approximately two and one half (2.5) years the parties engaged in discovery, Defendant repeatedly engaged in serious discovery abuses which indeed halted the adversarial process including willfully providing blatantly false testimony under oath, ignoring its discovery obligations, submitting false and/or misleading documents, and exhibiting a lack of candor to this COURT. These actions show a willful and deliberate attempt to defeat Ms. Taylor's claims by engaging in repetitive, abusive, and recalcitrant actions before

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[1] The store has two sets of doors, both located on the west side of the store. The doors at issue in this case are the furthest west doors and are referred to as the "West Doors." The documents produced by the Defendant are confusing because they do not always reference certain doors and sometimes just reference the "front doors."

and during discovery which resulted in many years of misguided litigation. Further, these actions demonstrate repeated, brazen, ongoing refusal to follow Nevada Rules of Civil Procedure related to discovery, all in an attempt to hide the truth and wrongfully prevail in this litigation.

THE COURT FURTHER FINDS that Defendant intended the consequences of its repetitive, abusive, and recalcitrant actions and that striking the Defendant's Answer as to both liability and damages is necessary to prevent similar abuses and act as a deterrent to other litigants.

FINDINGS OF FACTS

The following is timeline of relevant facts in this case. Importantly, this timeline is in chronological order. The timeline, however, does not reflect the timing as to when Ms. Taylor actually discovered many salient facts in this case.

1. **October 14, 2016:** Defendant's employee Travis Childers[2] creates a Work Order[3] where it is noted, "front doors in entrance ... running very poorly ..." Defendant's internal maintenance personnel asked: "Please dispatch ASSA ABLOY to repair auto entrance doors."

This fact is significant as it establishes that Defendant's employees actually accessed and created Work Orders in the Service Hub Program. This is contrary to representations made by Defendant which asserted only ASSA ABLOY is responsible for maintaining the Service Hub Program.

2. **October 17, 2016:** ASSA ABLOY Technician is "on site" at Defendant's store to evaluate the West Doors.

3. **October 17, 2016:** ASSA ABLOY Technician fills out the Inspection Form for Power Operated Doors: Sliding Doors ("Inspection Form") where he notes that the West Doors' safety systems are not operational and the West Doors do not comply with the applicable standards. Defendant's employee, Gilbert Alvarado signs this Inspection Form. ASSA ABLOY also

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[2] Travis Childers is the Employee that created the Work Order in the Service Hub Program. He is also the employee that signed the documents on December 21, 2016 noting that ASSA ABLOY fixed the doors and brought them into compliance with the applicable standards.

[3] A Work Order is created when information is input into the Service Hub, an internal program maintained by Defendant.

created a Worksheet ("Worksheet") showing work performed on site and Gilbert Alvarado signed the Worksheet.

This fact is significant for several reasons. First, this fact supports Ms. Taylor's claims that Defendant had actual notice that the West Doors were malfunctioning and unsafe as the Inspection Form is signed by Defendant's employee, Gilbert Alvarado. Second, this fact is significant because Defendant withheld this Inspection Form from its initial NRCP 16.1 production of documents and specific requests for production of documents. This document was produced by ASSA ABLOY in response to subpoena near the close of discovery after Defendant denied, under oath, any issue with the West Doors necessitating repair.

4. **October 18, 2016:** ASSA ABLOY prepares two quotes for Defendant related to the West Doors and e-mails them to Defendant. One quote is to bring the West Doors into compliance with the applicable ANSI standards ("Compliance Quote"), and the other quote is to repair the West Doors (the "Repair Quote"). Regarding the Repair Quote, ASSA ABLOY's e-mail states: "Please find the attached quotes. The repair quote … will need to be approved to get the West Doors up and running." These quotes were sent to Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and starts timeframe wherein Defendant should take steps to repair unsafe condition. As Defendant is notified about necessary repairs forty-three (43) days before Ms. Taylor's injury, this would be supportive of Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld these Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. These Quotes, in redacted form, were produced by ASSA ABLOY in response to subpoena after ordered to do so by order of this COURT after the close of discovery. Again, under oath on several occasions, Defendant denied any issue with the West Doors necessitating repair or updates. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

5. **October 25, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached quote from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

6. **October 28, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

7. **November 1, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

8. **November 8, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

9. **November 15, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

10. **November 23, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

11. **November 29, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

12. **November 30, 2016:** Ms. Taylor is knocked down when the West Doors close in on her hitting her as she attempts to enter Defendant's store.

This fact is significant because Defendant is notified of Ms. Taylor's injury caused by unsafe West Doors' sensors which Defendant knew were defective and needed to be replaced. At this point Defendant is on notice of potential litigation. The injury occurred forty-seven (47) days after Defendant was first put on notice of the unsafe doors which supports Ms. Taylor's conscious disregard claim against Defendant. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

13. **December 6, 2016:** ASSA ABLOY sends an e-mail to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald asking about the status of the Quotes.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

14. **December 7, 2016:** Preservation of evidence letter indicating intent to sue is sent from Ms. Taylor's attorney to Defendant.

This fact is significant as it provides Defendant with actual notice of Ms. Taylor's intent to sue and the specific request to preserve evidence. Defendant was on notice of intent to sue within one (1) week of Ms. Taylor's injury. Despite having actual notice of Ms. Taylor's intent to sue and demand to preserve evidence, this COURT finds that Defendant intentionally destroyed vital evidence including the West Doors' Inspection Form which found safety systems were not operating properly, the Worksheet, Repair and Replacement Quotes, and emails from ASSA ABLOY to Defendant. This fact supports a finding of willfulness as Defendant had actual notice of Ms. Taylor's intent to sue but Defendant decided to destroy this crucial evidence anyway.

15. **December 7, 2016:** ASSA ABLOY re-submits the Quotes to Defendant including Defendant's NRCP 30(b)(6) corporate representative Dieter Thurnwald.

This fact is significant as it supports Ms. Taylor's actual notice allegations against Defendant and provides context to Ms. Taylor's conscious disregard claim against Defendant. This fact is also significant because Defendant withheld both the email from ASSA ABLOY and attached Quotes from its initial NRCP 16.1 production of documents and specific requests for production of documents. This is significant because it supports Ms. Taylor's allegation that Defendant withheld material evidence in an attempt to halt the adversarial process.

16. **December 20, 2016:** Defendant's employee and NRCP 30(b)(6) corporate representative, Dieter Thurnwald, approves repair and replacement on West Doors in an e-mail.

This COURT finds this is one of the most significant facts in this case. First, Defendant destroyed the e-mail confirmation from Mr. Thurnwald to ASSA ABLOY wherein Defendant approves ASSA ABLOY's Repair and Replacement Quotes. This e-mail was destroyed despite Defendant having received Ms. Taylor's December 7, 2016 preservation letter two (2) weeks earlier. Neither the e-mail approval of the Quote nor the Quote were produced by Defendant in

NRCP 16.1 productions or in subsequent responses to requests for production. This fact supports Ms. Taylor's contention that Defendant acted willfully in destroying important evidence after being put on notice of pending litigation. Defendant's approval of the Repair and Replacement Quotes gives context to Ms. Taylor's conscious disregard claim against Defendant. Finally, as will be indicated hereafter, Dieter Thurnwald will later be one of Defendant's 30(b)(6) representatives who is identified as Defendant's corporate representative most knowledgeable regarding the West Doors. Despite having personally approved the Repair and Replacement Quotes, Mr. Thurnwald will falsely testify under oath that the West Doors' sensors were never repaired. This evidence supports Ms. Taylor's allegations that Defendant destroyed evidence with the intent to harm her case. This evidence also supports Ms. Taylor's contention that Defendant's false testimony and destruction of evidence was done with the intent to halt the adversarial process.

> 17. **<u>December 21, 2016:</u>** ASSA ABLOY comes to repair and replace the West Doors[4] which consist of replacing the sensors, motor, gearbox, wiring, and other component parts. The ASSA ABLOY technician fills out the Inspection Form for Power Operated Doors: Sliding Doors ("Second Inspection Form"). Defendant employee, Travis Childers, signs the Second Inspection Form. ASSA ABLOY also creates a Worksheet ("Second Worksheet"), and Travis Childers signs the Second Worksheet noting that the work has been performed.

This fact is significant for several reasons. First, Defendant was aware of pending litigation; yet Defendant failed to inform Ms. Taylor that Defendant was going to materially alter and replace important evidence and failed to provide Ms. Taylor an opportunity to inspect the West Doors prior to replacing the sensors, motor, gearbox, wiring, and other component parts. Second, Defendant destroyed the sensors, motor, gearbox, wiring, and other component parts which were repaired and replaced. At no time has Defendant come forward with any evidence that Defendant took any steps to preserve this evidence even though Defendant knew of pending

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[4] Throughout the Order the West Doors were repaired and many component parts such as the sensors, motor gearbox, wiring, other component parts were replaced. This event might be referred to herein as the replacement of the West Doors or a similar description.

litigation. The failure to provide a pre-repair inspection and the destruction of crucial evidence supports Ms. Taylor's allegations that Defendant destroyed the evidence with the intention to harm her case.

Next, Defendant failed to disclose the Second Inspection Form and Second Worksheet in its NRCP 16.1 disclosures and in response to specific requests for production of documents. These documents demonstrate that Defendant had actual knowledge that the repairs were made on December 21, 2016 as Defendant's employee Travis Childers signed off on the work being performed. This is significant because throughout litigation Defendant denied under oath any component parts were replaced. Later, after Ms. Taylor proved components were replace on the West Doors, Defendant denied having any knowledge of ASSA ABLOY having repaired and replaced sensors, motor, gearbox, wiring, and other component parts. This evidence supports Ms. Taylor's allegation that Defendant intentionally withheld this evidence with the intention of halting the adversarial process and gaining an advantage in the lawsuit.

18. **December 28, 2016:** ASSA ABLOY sends Defendant an invoice to get paid for the repair work done on December 21, 2016 to the West Doors.

This evidence is significant because Defendant failed to disclose the invoice in its NRCP 16.1 disclosures and in response to specific requests for production of documents. In fact, as will be discussed in more detail below, Defendant denied ASSA ABLOY ever sent Defendant an invoice for the repairs. Defendant's destruction of the repair invoice which was sent to Defendant by ASSA ABLOY three (3) weeks after Defendant received Ms. Taylor's December 7, 2016 preservation letter supports Ms. Taylor's allegation that Defendant destroyed this evidence with the intent to harm her case and to gain an advantage in the lawsuit. As will be discussed in more detail below, Defendant's false denial of having never received the repair invoice supports Ms. Taylor's allegation that Defendant willfully withheld this evidence with the intention of halting the adversarial process and to gain an advantage in the lawsuit.

19. **February 8, 2017:** Defendant completes its investigation of Ms. Taylor's fall, and then denies the claim stating: "After

careful review of the facts regarding the incident, our investigation has revealed no negligence on behalf of the store and therefore we must respectfully deny your client's claim for damages."

This fact is significant because it demonstrates Defendant's pre-litigation intention of denying Ms. Taylor claim. It also shows that Defendant conducted an investigation, but ignored evidence showing safety issues with the West Doors.

20. **September 18, 2017:** Ms. Taylor files her Complaint. Discovery begins shortly thereafter.

21. **October 15, 2017:** Defendant files Answer to Complaint.

22. **January 31, 2018:** Defendant's fails to produce significant documents, emails, etc. related to the unsafe West doors. Defendant identifies and produces contract for wrong door vendor.

This is significant because Defendant had the following in its custody, possession and control: (1) the West Doors' sensors, motor, gearbox, wiring, and other component parts; (2) the October 17, 2016 Inspection Form wherein ASSA ABLOY noted that the West Doors' safety systems were not operational; (3) the October 17, 2016 Worksheet; (4) the October 18, 2016 Quotes sent to Defendant; (5) the October 18, 2016 e-mail where ASSA ABLOY sent the Quotes to Defendant; (6) the correspondence wherein the Quotes was resubmitted to Defendant on October 25 and 28, as well as on November 1, 8, 15, 23, 29; (7) the December 6, 2016 e-mail from ASSA ABLOY asking about the status of the Quotes; (8) the correspondence wherein the Quotes were resubmitted to Defendant on December 7, 2016; (9) the December 20, 2016 e-mail where Defendant employee, Dieter Thurnwald approved the Repair and Replacement Quotes; (10) the December 21, 2016 Second Inspection Form signed by Defendant's employee, Travis Childers; (11) the October 17, 2016 Second Worksheet signed by Defendant's employee, Travis Childers; (12) the December 28, 2016 invoice for repairs completed by ASSA ABLOY. The failure to disclose these documents in Defendants initial production of documents supports Ms.

Taylor's allegation that Defendant withheld crucial evidence with the intention of harming Ms. Taylor's case and halting the adversarial process.

Additionally, Defendant disclosed the wrong door vendor to Ms. Taylor. Defendant did not disclose the contract it had with ASSA ABLOY, the door vendor at the time Ms. Taylor was injured. Rather, Defendant produced an old, outdated contract it had with Stanley Access Technologies, a company that had not provided any door maintenance, repairs, or upgrades for many years. This supports Ms. Taylor's allegation that Defendant intentionally thwarted the adversarial process by disclosing the wrong door vendor who had not performed work at the subject location for years prior to Ms. Taylor's injury. Clearly, at the time of this production, Defendant was well aware that ASSA ABLOY was the correct door vendor.

> 23. **August 8, 2018:** Ms. Taylor's expert, Michael Panish, attends first site inspection of doors at Defendant's store. Mr. Panish flew from New Hampshire to Las Vegas to attend site inspection. Defendant failed to inform Ms. Taylor that the subject doors which Mr. Panish inspected were replaced twenty (20) months before the site inspection.

This fact is significant because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, Defendant leads Ms. Taylor to believe that the West Doors are in the identical condition as at the time of her injury. Defendant knew that the West Doors' sensors, motor, gearbox, wiring, and other component parts were replaced. Yet, Defendant failed to inform Ms. Taylor of the changes before Ms. Taylor committed to time and expense of sending an expert to investigate.

> 24. **October 4, 2018:** Defendant responds to requests for production. Plaintiff's First Request for Production Nos. 27 and 28 requested all service records for the West Doors. Defendant failed to produce e-mails about the West Doors, Quotes from ASSA ABLOY, or many other documents. In fact, during discovery Defendant only produced documents for the wrong door and failed to produce any documents (other than the Work Order) for the West Doors.

This fact is significant as it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, Defendant was clearly aware that the injury happened at the **West** doors. Yet, Defendant chose to provide Ms. Taylor the service records for the **East** Doors. Again, Defendant had the opportunity to be forthright, but again, Defendant failed to provide Ms. Taylor the Inspection Forms, Worksheets, Repair and Replacement Quotes, e-mails, invoice, etc. Again, Defendant withheld vital documents which would support Ms. Taylor's allegations that Defendant had actual knowledge that the West Doors were unsafe and Defendant's failure to timely remedy the unsafe doors was a conscious disregard of her safety.

> 25. **February 25, 2019:** Ms. Taylor's expert, Michael Panish, attends second site inspection. Again, Mr. Panish flew from New Hampshire to Las Vegas to attend the second site inspection. Again, Defendant fails to inform Ms. Taylor that the West Doors' sensors, motor, gearbox, wiring, and other component parts were actually replaced on December 21, 2016.

This fact is significant because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, again, Defendant fails to inform Ms. Taylor that the West doors' sensors, motor, gearbox, wiring, and other component parts were replaced **twenty-six (26) months prior to the second site inspection.** Again, Ms. Taylor undertook the time and expense of a second site inspection based on the false pretenses.

> 26. **March 1, 2019:** Defendant's 30(b)(6) representative, Ms. Trisha Tamiko Kozlowski is deposed. She falsely testified that the only problem with the West Doors were them coming off the tracks.

This is significant because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. Here, Ms. Kozlowski minimizes the breadth of issues which necessitated repair and replacement of the West Doors' sensors, motor, gearbox, wiring, and other component parts.

> 27. **June 27, 2019:** Plaintiff subpoenas ASSA ABLOY requesting any and all documents related to the West Doors.

This fact is significant because it gives context to when and how Ms. Taylor actually discovered Defendant had destroyed crucial evidence including the West Doors' sensors, motor, gearbox, wiring, component parts, inspection forms, quotes, numerous emails, Worksheets and invoice for work performed at the West Doors which all took place around the time Defendant received Ms. Taylor's preservation letter.

28. **July 2, 2019:** Ms. Taylor files motion for sanctions related to spoliation of evidence.

As mentioned above, on October 4, 2018, Defendant provided documents in response to requests for production of documents. While Ms. Taylor's request asked for documents related to the West Doors, Defendant provided documents related to the East doors. Based on Defendant's representation that the documents provided were for the West Doors, it appeared that Defendant failed to preserve certain evidence. Importantly, the hearing for this motion while originally set for August 2, 2019 was rescheduled to accommodate schedules including taking the deposition of Defendant's 30(b)(6) representative, Mr. Dieter Thurnwald which occurred on August 7, 2019.

29. **August 7, 2019:** Defendant's 30(b)(6) representative, Mr. Dieter Thurnwald is deposed. Mr. Thurnwald testifies that Defendant accidently provided records for the East doors in response to request for production of documents instead of the West Doors. Thereafter, when questioned regarding the West Doors, he falsely testified as follows:

> "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]
>
> Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]
>
> That no documentation existed about the west doors. [Thurnwald depo., pp. 73 - 75]

> That the last time the west doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]
>
> The door mechanisms for the west doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]
>
> Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]
>
> Finally, he testified that only in an "imaginary world" was the subject door ever worked on or replaced. [Thurnwald depo., pp. 115 and 118]

The depositions of Defendant's NRCP 30(b)(6) corporate representatives strongly supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process. As mentioned above, on October 15, 2016 ASSA ABLOY Technician fills out the Inspection Form wherein he notes that the West Doors' safety systems are not operational, and the West Doors do not comply with the applicable standards. Mr. Thurnwald received all the quotes from ASSA ABLOY regarding the repair and replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts. These repairs would make the West Doors' safety system operation through replacement of the faulty sensors. Mr. Thurnwald is the employee who actually approved ASSA ABLOY to perform the work to replace the faulty sensors et al.

Mr. Thurnwald's binding testimony as Defendant's NRCP 30(b)(6) designee is shocking to this COURT. Mr. Thurnwald was fully aware that the West Doors' safety systems were not operational, and that significant work was required to make the safety systems operational. Mr. Thurnwald was aware of this safety issue approximately forty-four (44) days before the West Doors closed on Mr. Taylor causing injury. Mr. Thurnwald knew he approved ASSA ABLOY's quote for the replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts on December 20, 2016. Yet, Mr. Thurnwald provided blatantly false testimony which, if true, would dispute Ms. Taylor's allegations of actual notice related to liability and conscious disregard of safety related to punitive damages. The blatantly false testimony of Dieter Thurnwald provides strong indicia of Defendant's intent to halt the adversarial process.

30. **August 8, 2019:** Defendant supplements responses to Ms. Taylor's requests for production No. 34. Defendant indicated that the sensors and component parts were in fact still on the West Doors.

This fact is significant because it further supports Ms. Taylor's allegation that Defendant is providing false information to halt the adversarial process. Defendant knew the parts were replaced on December 21, 2016 as its employee, Travis Childers, signed off on ASSA ABLOY's Second Worksheet.

31. **August 9, 2019:** Defendant threatened Ms. Taylor's attorney, David Tanner, Esq., of violating NRCP Rule 11 for filing motion for sanctions related to destroyed or missing evidence.

First, it must be made clear that Ms. Taylor's July 2, 2019 motion for sanctions regarding lost or destroyed evidence related to the West Doors was in fact meritorious. While Ms. Taylor relied upon Defendant's production of documents which disclosed records of the wrong door, it turns out the destruction of evidence related to the West Doors was for more severe than that of the East doors. As such, Plaintiff's motion for sanction was indeed meritorious. The fact that Defendant threatened Plaintiff's counsel with Rule 11 sanctions for alleging Defendant lost or destroyed evidence related to the West Doors when in fact Defendant was fully aware that it failed to preserve nearly all substantive evidence related to the West Doors supports Ms. Taylor's contention that Defendant intended to halt the adversarial process through intimidation of counsel.

32. **August 15, 2019:** ASSA ABLOY sends Defendant a letter (and copies Jerry Busby, Esq., Defendant's counsel of record in this matter) asking for permission to disclose all relevant documents in response to Ms. Taylor's June 27, 2019 subpoena. Neither Defendant nor Jerry Busby, Esq. respond to ASSA ABLOY's letter.

The fact that Defendant never responded to ASSA ABLOY's letter requesting permission to fully disclose all responsive records related to the West Doors supports Ms. Taylor's contention that Defendant intended to halt the adversarial process. Here, ASSA ABLOY was prevented by contract with Defendant from disclosing the Quotes, invoice, and other documents without

Defendant's express permission. Defendant's refusal to grant ASSA ABLOY permission to disclose the very documents which would have supported Ms. Taylor's claims of actual notice in regards to liability and conscious disregard as it relates to punitive damages is further indicia of Defendant's intent harm Ms. Taylor and halt the adversarial process.

33. **September 5, 2019:** The parties enter into a stipulation and order to withdraw Ms. Taylor's July 2, 2019 motion for sanctions related to spoliation of evidence.

This fact is significant because it demonstrates that the blatantly false testimony of Defendant's NRCP 30(b)(6) designee, Dieter Thurnwald, combined with threats of NRCP Rule 11 sanctions intimidated Ms. Taylor's counsel into withdrawing a meritorious motion. Defendant knew Mr. Thurnwald's testimony was blatantly false, yet relied on the testimony to prevent this COURT from ruling on what was in fact a meritorious motion as it related to the West Doors. This supports Ms. Taylor's contention that Defendant intended to halt the adversarial process through false testimony and the destruction of evidence.

34. **September 13, 2019:** ASSA ABLOY produces selected documents in response to a Subpoena. It notes that it cannot provide additional documents because Defendant refused to respond to its August 15, 2019 letter.

This fact is highly significant because it represents the first time in exactly two (2) years of actual litigation that Ms. Taylor is provided actual documentation of service records, albeit incomplete, of the West Doors. While the information provided was incomplete, there was strong indications that the service history of West Doors was far more encompassing than indicated by the Defendant's 16.1 Disclosures, written discovery responses, and testimony under oath of its 30(b)(6) designees (including Dieter Thurnwald). As stated above, Dieter Thurnwald testified that the last time the West Doors were serviced was on October 16, 2016. This supports Ms. Taylor's allegation that Defendant intentionally gave false testimony under oath and intentionally destroyed evidence in an effort to halt the adversarial process.

35. **September 27, 2019:** Defendant provides second supplemental response to Interrogatory No. 13. Defendant's response indicates that there has been no work done to the West Doors and there was never any recommendation for work to be done on the West Doors.

Like the testimony of Defendant's NRCP 30(b)(6) designee, Dieter Thurnwald, Defendant's interrogatory responses are blatantly false declarations made under oath. Defendant's representations after two (2) years of litigation that no work was done on the West Doors and there was never any recommendation for work to be done on the West doors is shocking to this COURT. These false declarations under oath support Ms. Taylor allegations that Defendant intended to halt the adversarial process.

36. **October 14, 2019:** Ms. Taylor files Motion to Strike Defendant's Answer. Ms. Taylor's Motion to Strike Defendant's Answer is based on documents produced by ASSA ABLOY on September 13, 2019. While the response to the subpoena was incomplete, the records produced provided strong indications that ASSA ABLOY indeed serviced and replaced the West Doors after Ms. Taylor's injury.

This hearing was held on November 21, 2019. This COURT considered the motion on the merits; however, this COURT still did not have the full production of documents from ASSA ABLOY. Ms. Taylor indicated that she would file a motion for an evidentiary hearing to perhaps assist this COURT in determining whether striking the answer would be appropriate remedy in this case. Defendant indicated that they would file a motion to re-open discovery.

37. **November 15, 2019:** Discovery closes. The discovery deadline was extended four times.

38. **December 5, 2019:** Plaintiff files Motion for Evidentiary Hearing on an Order Shortening Time.

39. **December 20, 2019:** Defendant files Opposition to Motion for Evidentiary Hearing.

In its Opposition to having an evidentiary hearing, Defendant relied on three affidavits from its employees. None of the three affiants were disclosed by Defendant as witnesses in their NRCP 16.1 disclosures. Discovery in the case closed on November 15, 2019. Defendant, however, submitted an affidavit from Defendant's employee Courtney Shepherd. Ms. Shepherd's affidavit represented that "it appears ASSA ABLOY made a quote for repairs to the West Doors on October 17, 2016. The quote was submitted but it was not approved. However, it appears that the ASSA ABLOY technician that put together the quote on October 17, 2016, without approval, went to the store and performed the repair work." This is significant because for the first time, Defendant acknowledged that a quote for repairs to the West Doors was submitted. This is in stark contrast to Defendant's September 27, 2019 answers to Interrogatories and its 30(b)(6) representatives' testimony, which stated there was never any recommendation for work to be done on the West Doors. This COURT also made note of Ms. Shepherd's testimony that work was completed by ASSA ABLOY "without approval" from Defendant. This is significant because Defendant is opposing an evidentiary hearing which would allow Defendant to clarify on the record any prior testimony or discovery responses by Defendant. In opposing an evidentiary hearing, Defendant had received ASSA ABLOY's response to Ms. Taylor's subpoena yet continued to provide this COURT blatantly false testimony.

40. **January 22, 2020:** Hearing on Plaintiff's Motion for Evidentiary Hearing on Order Shortening Time. Defendant tells Court evidentiary hearing is not necessary because it will rely on affidavits submitted in its Opposition to Motion for Evidentiary Hearing.

Defendant's attorney represented to this COURT:

> The only topic of their nine that they say they want to be addressed – which, by the way, we've answered every single one of their nine topics, questions, inquiries, whatever they say requires an evidentiary hearing requires this Court to make another special time and hearing for this. The only one of those nine that deals with spoliation, I want to make sure I get this accurate, is the No. 5. What happened to the door mechanism, the sensors, the gearbox, the electric and mechanical components?

> The only person that could answer that question is the technician at Assa Abloy that performed the upgraded work that, contrary to what Mr. Tanner represented to the Court, was never authorized by Smith's. That's why Smith's never had a record of it from Assa Abloy. And that wasn't because of sloppy record keeping. He submitted a quote. It danced around for a month because it was another (sic?) approved. Then he went out to the store, unauthorized, quote, "was never approved", work never authorized, performed the work.
>
> Now here's the kicker, your Honor. We don't know if he performed the work. He's saying he did on his work -- work sheet that Assa Abloy has. It was never submitted to Smith's. No documents whatsoever submitted to Smith's regarding it.
>
> [See pages 17:12 to 18:12 of January 22, 2020 hearing transcript]

Here, Defendant is making very specific representations to this COURT which require candor. It is clear that defense counsel for Defendant is relying upon information given to him by Defendant. As such, the COURT does not hold these representations against Counsel. That being said, these representations are blatantly false.

Thereafter, defense counsel represented to this COURT that an evidentiary hearing would not be necessary because Defendant was not going to change its testimony from information provided in affidavits. Counsel stated:

> No one mislead anybody, your Honor. We went by the information that we had. We didn't have that record. There is absolutely no evidence that we did, because we didn't. We have affidavits from multiple employees that set forth answers to every one of their questions, inquiries, whatever you want to call them, their topics. They're answered. They're answered. **We will have a witness come here and just repeat everything they said in an affidavit.**
>
> [See page 69:14-23 January 22, 2020 hearing transcript]
>
> **You would get the answers that you can got today. That would be it. It would just be -- everything that's contained in the affidavits....**
>
> [See page 78:18-23 of January 22, 2020 hearing transcript]

Here, defense counsel clearly indicates that Defendant's witnesses at an evidentiary hearing would not offer any new testimony but rather simply repeat everything the Defendant's employees had already said their affidavits.

This COURT took ruling on the evidentiary hearing under advisement. Specifically, at the hearing this COURT verbally ordered a full production from ASSA ABLOY before making any decision.

> 41. **February 7, 2020:** This COURT signs orders to ASSA ABLOY to fully disclose all records, documents and emails which are responsive to June 27, 2019 subpoena.
>
> 42. **March 4, 2020:** ASSA ABLOY responds to February 7, 2020 Order and is able to fully comply with the June 27, 2019 subpoena and discloses emails, work orders, and bids. For the first time, Ms. Taylor learns that on December 20, 2016 Dieter Thurnwald approved the replacement of the West Doors. Dieter Thurnwald is the same gentleman who testified that only in an "imaginary world" were the West Doors ever worked on or replaced.

The full response from ASSA ABLOY to the June 27, 2019 subpoena undeniably proves that Defendant intentionally misguided litigation. Defendant never objected to the authenticity of ASSA ABLOY business records. These records prove that Defendant received numerous Quotes for the repair and replacement of sensors at the West Doors. These records demonstrate that Smith's had actual notice that the safety features at the West Doors were not operational forty-four (44) days before Ms. Taylor was injured by the West Doors. These records conclusively demonstrated that Defendant's NRCP 30(b)(6) witnesses bore false testimony under oath. These records conclusively demonstrated that Defendant's employees' affidavits bore false witness under oath to this COURT. These records conclusively demonstrated that Defendant wasted nearly two and half years (2.5) of litigation by misleading the Ms. Taylor in nearly every material aspect of this case. **This COURT is hard pressed to find any material, substantive evidence wherein Defendant was forthright.** This supports Ms. Taylor's allegation that Defendant's conduct throughout litigation was done with the intent to halt the adversarial process

and that Defendant destroyed, hid, and attempted to stop others from producing evidence. This shows the Defendant acted willfully and with intent.

43. **May 21, 2020:** This COURT issues an Order denying Motion for Evidentiary Hearing.

In denying an evidentiary hearing, this COURT has sufficient evidence to proceed forward in striking Defendant's Answer as to liability and damages based on Defendant's brazen misconduct throughout litigation and lack of candor with the COURT. Based on Defendant's two and half year (2.5) history of false and misleading testimony as well as Defendant's attorney's representation that Defendant's employees would simply repeat the same false answers that they gave in their affidavits at an evidentiary hearing, this COURT doubts an evidentiary hearing would be useful in obtaining any true testimony from Defendant.

A. Defendant's Failures And Breaches Of Its Duties During The Pre-Litigation Phase

THE COURT FURTHER FINDS that Defendant had a duty to preserve relevant evidence due to the December 7, 2016 preservation letter sent from Ms. Taylor's attorney and its legal obligations to preserve evidence. This preservation letter put Defendant on notice Ms. Taylor's intent to sue, and placed Defendant on notice that it had a duty to preserve all relevant evidence pertaining to the West Doors. See, e.g., Fire Ins. Exchange v. Zenith Radio Corp., 103 Nev. 648, 651, 747 P.2d 911 (1987). Even absent a preservation letter, Defendant had a duty under Nevada law to preserve relevant evidence. In Nevada, there is a common-law duty to preserve evidence and a potential party to a lawsuit is required to preserve documents, tangible items, and information relevant to litigation or that is reasonably calculated to lead to the discovery of admissible evidence. E.g., Banks v. Sunrise Hospital, 120 Nev. 822, 102 P.3d 52 (2004); Fire Ins. Exchange., 103 Nev. at 651; Bass-Davis v. Davis, 122 Nev. 442, 134 P.3d 103 (2006); Stubli v. Big D. Int'l Trucks, Inc., 107 Nev. 309, 810 P.2d 785 (1991). Nevada law holds that "even where an action has not been commenced and there is only a potential for litigation, the litigant is under a duty to preserve evidence which it knows or reasonably should know is relevant to the action." Fire Ins. Exch., 103 Nev. at 651. A party is not free to destroy or let be destroyed crucial evidence

simply because a court order was not issued to preserve the evidence. Stubli, 107 Nev. at 313-314.

THE COURT FURTHER FINDS that Defendant had significant and extensive evidence (from both before and after this incident) in its possession that it failed to preserve in contradiction to its legal duty to preserve, and which disregarded the December 7, 2016 preservation letter. This evidence included (1) the West Doors' sensors, motor, gearbox, wiring, and other component parts; (2) the October 17, 2016 Inspection Form wherein ASSA ABLOY noted that the door safety systems were not operational; (3) the October 17, 2016 Worksheet; (4) the October 18, 2016 quotes sent to Defendant; (5) the October 18, 2016 e-mail where ASSA ABLOY sent the Quotes to Defendant; (6) the correspondence wherein the quotes was resubmitted to Defendant on October 25 and 28, as well as on November 1, 8, 15, 23, 29; (7) the December 6, 2016 e-mail from ASSA ABLOY asking about the status of the Quotes; (8) the correspondence wherein the Quotes were resubmitted to Defendant on December 7, 2016; (9) the Dec. 20, 2016 e-mail where Defendant employee, Dieter Thurnwald approved the quotes; (10) the December 21, 2016 Second Inspection Form signed by Defendant's employee, Travis Childers; and (11) the October 17, 2016 Second Worksheet signed by Defendant's employee, Travis Childers.

THE COURT FURTHER FINDS that even if Defendant did not keep a copy of (1) the October 17, 2016 Inspection Form; (2) the October 17, 2016 Worksheet; (3) the December 21, 2016 Second Inspection Form; and (4) the October 21, 2016 Second Worksheet; that Defendant had the ability to obtain these documents from its vendor because these documents were within Defendant's control.

THE COURT FURTHER FINDS that Defendant attempted to eliminate, destroy, and spoliate virtually all evidence showing that it knew the West Doors were in disrepair, unsafe, not in compliance with the standards, and hazardous to customers. Further, Defendant attempted to eliminate, destroy, and spoliate all evidence showing that ASSA ABLOY repeatedly asked Defendant for approval to repair the West Doors, so they were safe and in compliance with applicable standards.

THE COURT FURTHER FINDS that these actions by Defendant demonstrated a conscious disregard for customers' safety. These actions also showed a disregard for its duty to preserve relevant evidence. Finally, these actions showed that Defendant acted willfully to gain an advantage in this litigation in its efforts to defeat Ms. Taylor's claims.

THE COURT FURTHER FINDS that Defendant sent a pre-litigation letter to Ms. Taylor on February 8, 2017 wherein it told Ms. Taylor that it investigated her fall that "our investigation has revealed no negligence on behalf of the store and therefore we must respectfully deny your client's claim..." These findings in this letter are directly contradicted by the evidence available to Defendant including, but not limited to: (1) the Work Order entry by Defendant's employee, Travis Childers, noting that the West Doors were not operating correctly and were running very poorly; (2) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (3) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (4) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (5) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (6) the December 21, 2016 Second Inspection Form; (7) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment.

THE COURT FURTHER FINDS that Defendant sending the February 8, 2017 pre-litigation letter that directly contradicted significant evidence which Defendant later destroyed showing an intent to deter Ms. Taylor from pursuing her claims, and a willfulness to destroy evidence for the purpose of gaining an advantage in the litigation.

THE COURT FURTHER FINDS that Defendant's failure to provide Ms. Taylor an opportunity to inspect the West Doors prior to effectuating repairs combined with the destruction of all material evidence relating to the repair and replacement of the West Doors' sensors, motor,

gearbox, wiring, and other component parts demonstrates Defendant's intention to halt the adversarial process.

B. Defendant's Failures And Breaches Of Its Duties During The Discovery Phase

THE COURT FURTHER FINDS that after Ms. Taylor filed her lawsuit, Defendant had duties when discovery began and while discovery was ongoing in this case. These duties included a duty to ensure that its discovery responses were complete and accurate, and a duty to timely supplement documents, discovery answers, and disclosures. See, NRCP 26(e) (holding that a "party who has made a disclosure under Rule 16.1 ... or responded to a request for discovery with a disclosure or response – is under a duty to timely supplement or correct the disclosure or response ..."); and NRCP 26(g) (holding that when a party or attorney signs a 16.1 Disclosure or discovery response, that signature indicates that to the "best of the person's knowledge, information, and belief formed after a reasonable inquiry: (A) with respect to a disclosure, it is complete and correct as of the time it is made"). Additionally, discovery duties included a duty to timely supplement disclosures and discovery as required by NRCP 26(e), its duty to properly prepare its 30(b)(6) representatives.[5] Defendant failure to meet its duties resulted in incomplete, inaccurate, misleading, and untimely disclosures and discovery responses.

THE COURT FURTHER FINDS that even if Defendant did not preserve evidence on its own internal systems, that evidence was still within its control because it was maintained by ASSA ABLOY. NRCP 16.1 requires a party to voluntarily produce "all documents, ... and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses ..." See, NRCP 16.1 (a)(1)(A)(ii). NRCP 34 has a similar duty that a party must produce the requested items that are in its possession, custody, or control. See, NRCP 34 (a)(1). Finally, Defendant had a duty to ensure that its disclosures were complete and accurate, and a duty to timely supplement documents, discovery answers, and disclosures. See, e.g., NRCP 26(e) and NRCP 26(g). Defendant did not obtain evidence from ASSA ABLOY, even though that evidence was within its control and Defendant was thus required to obtain and

[5] NRCP 30(b)(6) requires a party to prepare its representative to testify about information "known or reasonably available to the organization."

produce it. Defendant was required to ensure that all documents in its control were produced which included a requirement to check with its agents. Specifically, when making its Rule 16.1 Disclosures and responding to discovery, Defendant had a duty to conduct a "reasonable inquiry" to ensure that its disclosure and discovery responses were complete and accurate. See, e.g., NRCP 26(g); see also, Kristensen v. Credit Payment Services, Inc., 2014 WL 6675748, 6 (D. Nev. 2014); A. Farber and Partners, Inc. v. Garber, 234 F.R.D. 186, 189 (C. D. Cal. 2006). The reasonable inquiry duty requires a party to obtain information reasonably available to it from its employees, agents, or others subject to its control. A. Farber and Partners, Inc., at 189. (quoting Gray v. Faulkner, 148 F.R.D. 220, 223, N. D. Ind. 1992) ("A party responding to a Rule 34 production request ... 'is under an affirmative duty to seek that information reasonably available to [it] from [its] employees, agents, or others subject to [its] control.")). Defendant failed to meet its discovery and disclosure duties.

THE COURT FURTHER FINDS that Defendant written discovery answers were false, misleading, and incomplete. For example,

- In its Response to Plaintiff's Second Request for Production, No. 34, Defendant stated that the West Doors' component parts were replaced in June 2017 and were discarded and not available for use in this case. Yet, this response and the documents produced by Defendant in its Response pertained to the east doors, not the West Doors that caused Mr. Taylor's fall. Later, in its Supplemental Response to Plaintiff's Second Request for Production, No. 34, Defendant said that the component parts for the West Doors that caused Ms. Taylor's fall were still on the West Doors.

- In its Response to Plaintiff's First Request for Production Nos. 27 and 28 that asked for all service records for the West Doors, Defendant only produced the Work Order. It did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice. In fact, during discovery Defendant only produced documents for the wrong doors and failed to produce any documents (other than the Work Order) for the West Doors.

- In its Response to Plaintiff's First Request for Production No. 4, asking for documents showing a dangerous condition with the West Doors, Defendant stated that no such documents exist. Defendant did not produce It did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice, all of which showed the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be repaired.

- In its Supplemental Answer to Interrogatory No. 13, Defendant stated that there has been no work, and there was never any recommendation for work to be done, on the West Doors.

THE COURT FURTHER FINDS that Defendant 16.1 Disclosures were not accurate and complete, and that information was not timely supplemented, which breached various discovery duties. Examples of these failures are as follows:

- Defendant did not produce any e-mails with ASSA ABLOY, even though those e-mails addressed the West Doors' problems, transmitted bids to fix the West Doors to get them "up and running" and to upgrade them, and an authorization to repair and upgrade the West Doors.

- Defendant did not disclose the contract it had with ASSA ABLOY, the entity that Defendant used to evaluate the West Doors and perform repair and maintenance to them. Instead, Defendant produced an old, outdated contract it had with Stanley Access Technologies, a company that had not provided any door maintenance, repairs, or upgrades for many years.

- Defendant did not disclose the names of the employees that communicated with ASSA ABLOY about the Subject Doors in its Initial Disclosure, namely Dieter Thurnwald, Travis Childers, and Gilbert Alvarado.

- Discovery ended on August 27, 2019. The parties entered a limited stipulation to allow certain depositions to be done by November 15, 2019, but discovery remained closed for all other purposes. Despite this, on November 7, 2019 – months after discovery ended – Defendant disclosed Mr. Radcliffe and Mr. Osborn as witnesses. These are witnesses Defendant was aware of from the inception of this case and they were disclosed after discovery ended and thus too late for Ms. Taylor to conduct any discovery from them or about them.

- Defendant never disclosed the names of any of the employees who signed Affidavits.

THE COURT FURTHER FINDS that Defendant 30(b)(6) representative, Dieter Thurnwald, was not properly prepared for his deposition and did not testify accurately. At his deposition, he wrongfully testified that the West Doors were never repaired or replaced, that ASSA ABLOY did not come to Defendant store, that there were no documents related to the West Doors, and other matters:

1. "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]

2. Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the West Doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]

3. That no documentation existed about the West Doors. [Thurnwald depo., pp. 73 - 75]

4. That the last time the West Doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]

5. The door mechanisms for the West Doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]

6. Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]

THE COURT FURTHER FINDS that Mr. Thurnwald even testified that only in an "imaginary world" were the West Doors repaired and replaced.

THE COURT FURTHER FINDS that Defendant 30(b)(6) representative, Mr. Thurnwald provided this testimony even though it was his e-mail on December 20, 2016 that authorized the repair and replacement of component parts to the West Doors. So, he had first-hand knowledge about the repairs and replacement of the West Doors but testified to the exact opposite facts at the 30(b)(6) deposition.

THE COURT FURTHER FINDS that Defendant other 30(b)(6) representative, Ms. Trisha Tamiko Kozlowski, was also not properly prepared for her deposition and thus she provided inaccurate testimony. For example, she testified that the West Doors had no problems other than coming off their tracks.

THE COURT FURTHER FINDS that Defendant disclosed witnesses after expert disclosures were past, and witnesses that Defendant anticipated that would provide expert

opinions and analysis. These witnesses were known to Defendant from the date of the fall, but Defendant waited until November, 2019 – three years after the fall – to disclose these witnesses. Thus, Defendant did not timely disclose these witnesses nor did it timely supplement its disclosures, thereby further breaching its discovery duties.

THE COURT FURTHER FINDS that Defendant breached its duties related to discovery, disclosure, and 30(b)(6) representative testimony and attempted to defeat this case by destroying evidence, hiding evidence, and denying the truth. These actions further showed that Defendant was engaged in a deliberate and willful attempt to prevail in this case by hiding the truth, destroying evidence, and misleading Ms. Taylor.

C. <u>Defendant Blocked ASSA ABLOY From Producing Documents</u>

THE COURT FURTHER FINDS that in addition to Defendant breaches of its discovery duties, that it blocked ASSA ABLOY from disclosing documents. Defendant knew that these documents would contradict the Defendant's position, and that the ASSA ABLOY documents would show that the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be replaced and repaired. These documents would further show the Defendant's refusal to have the West Doors replaced and repaired, and that it had a conscious disregard for Ms. Taylor's safety. These documents would further show that West Doors were replaced and repaired.

THE COURT FURTHER FINDS that during discovery Ms. Taylor subpoenaed ASSA ABLOY to provide documents pertinent to this matter and the West Doors. ASSA ABLOY attempted to fully respond to Plaintiff's Subpoena but needed written permission from Defendant and/or its parent company, Kroger, because many of the documents requested in Ms. Taylor's subpoena were confidential pursuant to the contract between ASSA ABLOY and Defendant. Thus, on August 15, 2019 ASSA ABLOY sent a letter to Defendant/Kroger (with a copy to Defendant's counsel, Jerry S. Busby, Esq.) asking permission to disclose all relevant documents related to Ms. Taylor's Subpoena, including the Agreement and work authorizations:

> The Agreement and related work authorizations are responsive to the Subpoena but are considered Confidential Information pursuant

> to Section 5 of the Agreement. Enclosed as Exhibit B are copies of the Confidential Information that ASSA ABLOY must produce in response to the Subpoena. ASSA ABLOY, therefore, requests Kroger's written permission to produce these documents.
>
> Please provide a response to this request by August 23, 2019. If we do not receive a response by that date, we will inform Plaintiff's counsel that Kroger has not provided the required permission for ASSA ABLOY to produce the Confidential Information.

THE COURT FURTHER FINDS that Defendant did not respond to this letter. Thus, ASSA ABLOY disclosed only limited documents responsive to Ms. Taylor's Subpoena. When disclosing these limited documents, ASSA ABLOY prepared an Affidavit of Custodian of Records noting the numerous documents were not disclosed because Defendant would not give permission:

> On August 15, 2019, ASSA ABLOY sent a letter to the Kroger Company ("Kroger"), via first class mail (certified mail) and overnight UPS delivery requesting written authorization to produce certain other documents in its possession that are also responsive to the Subpoena. ASSA ABLOY is contractually obligated to obtain written approval from Kroger prior to producing the documents referenced in its letter. To date Kroger has not responded to the letter.

THE COURT FURTHER FINDS that even after the Custodian of Records Affidavit Defendant still did not respond to ASSA ABLOY's letter or this Affidavit. This continued to block ASSA ABLOY from producing all documents responsive to Ms. Taylor's Subpoena.

THE COURT FURTHER FINDS that this Court had to enter an Order, which it signed on February 7, 2020, to finally allow ASSA ABLOY to produce all documents responsive to Ms. Taylor' Subpoena. This Order required (1) Defendant and Kroger were not to contact any person, employee, or agent for ASSA ABLOY about this case, Ms. Taylor's Subpoena, the West Doors, or any documents or work in this case; and (2) that Ms. Taylor's counsel was to send a copy of the Order to ASSA ABLOY; and (3) that ASSA ABLOY was to produce all documents and information relevant to the West Doors to Ms. Taylor's counsel for production and use in this case. [See, Order Signed Feb. 7, 2020]

THE COURT FURTHER FINDS that Defendant's efforts to block discovery and to put forth a false narrative in its attempt to defeat Ms. Taylor's claims were so extensive that documents could only be produced after the Court ordered Defendant not to block discovery by requiring that it not communicate with ASSA ABLOY. This is another example of Defendant's discovery actions and spoliation efforts being so deliberate and willful that it would do anything to gain an advantage in this litigation and the extent of Defendant's actions that halted the adversarial process.

D. <u>Defendant's Lack Of Candor</u>

THE COURT FURTHER FINDS that Defendant had a duty of candor with this Court and with opposing counsel, which it breached on numerous occasions. This lack of candor is most prevalent in Defendant's pre-litigation and discovery failures, examples of which have been detailed above. Nevertheless, this lack of candor continued at various hearings.

THE COURT FURTHER FINDS that when Defendant did not produce the West Door's component parts, Ms. Taylor filed a Motion for Sanctions for Spoliation of Evidence. Prior to that hearing, the 30(b)(6) representative, Mr. Dieter Thurnwald provided his false testimony that the West Doors had no work done on them and that ASSA ABLOY never came to the Defendant store. Defendant attorney's then engaged actions intended to threaten and intimidate Ms. Taylor's attorney saying in an August 9, 2019 e-mail that Ms. Taylor's attorney had violated NRCP 11, and Professional Rules of Conduct 3.1, 3.2, and 3.3 alleging he made misrepresentations to the Court and claiming that Defendant would "seek all fees and costs for having to defend this frivolous motion." These threats came even though Defendant was aware that the West Door's component parts had been replaced and then lost or destroyed.

THE COURT FURTHER FINDS that at the August 13, 2019 hearing for the Motion for Sanctions for Spoliation of Evidence, Defendant represented to the Court that the West Doors had no repairs or work done at any time. Further, at that hearing, Defendant told this Court that all documents related to the West Doors had been produced and there were no prior problems with the West Doors. These representations were wrong.

THE COURT FURTHER FINDS that at a hearing held on March 10, 2020 that Defendant attempted to explain its position, (that the West Doors were never repaired or replaced), considering the recently disclosed ASSA ABLOY documents. Defendant told this Court that ASSA ABLOY may have done the work to replace the West Doors component parts, but that Defendant did not authorize that work to be done and Defendant had no idea that the work was done. These representations were wrong.

THE COURT FURTHER FINDS that when it was pointed out to Defendant that documents showed the West Doors were repaired and replaced, that the Defendant then claimed that it did not know the work was done because ASSA ABLOY did not send it an invoice for that work. The representation at that hearing included: "We [Defendant] never got an invoice for the work;" "ASSA ABLOY never sent an invoice, was never paid for it;" and "The reason why they were never paid, they never sent an invoice ..." These representations, and others like them, are false because the evidence in this case shows that on December 28, 2016 ASSA ABLOY sent an invoice to Defendant for the work performed replacing the unsafe West Doors and related parts.

THE COURT FURTHER FINDS that these misrepresentations to the Court show that Defendant's actions were continuous, deliberate, and willful, and that Defendant was now misleading this COURT in an attempt to justify its actions and to prevail in this litigation.

E. <u>An Extensive Record Has Been Created</u>

THE COURT FURTHER FINDS that under Nevada law, a Court, when faced with the request to strike pleadings should only do so after "thoughtful consideration of all the factors involved." Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243, 252, 235 P.3d 592, 598 (2010) (quoting Young v. Johnny Ribeiro Building, Inc., 106 Nev. 88, 92, 787 P.2d 777, 780 (1990)). A district court does not abuse its discretion when it provides more than one meaningful opportunity to present evidence and arguments regarding misconduct. See, N. Am. Properties v. McCarran Int'l Airport, No. 61997, 2016 WL 699846, at *5, 132 Nev. 1011 (Nev. Feb. 19, 2016) (Unpublished).

THE COURT FURTHER FINDS that there has been an extensive record created in this case. This is the result of numerous Motions, Briefs, and Orders. The Motions and Briefs[6] previously filed related to Defendant's discovery failures and sanctionable conduct are:

1. Motion for Sanctions for Spoliation of Evidence filed on July 3, 2019;
2. Motion to Strike "Quasi Expert" Chad Crapo as a Witness filed on September 20, 2019;
3. Motion to Strike Defendant's Answer filed on October 14, 2019;
4. Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and to Continue the Trial Date on OST filed on December 4, 2019;
5. Motion for an Evidentiary Hearing filed on December 5, 2019;
6. Motion to Continue Hearings and Pre-Trial Conference on an OST filed on December 27, 2019;
7. Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order filed on December 19, 2019;
8. Motion to Amend Complaint to Allege Punitive Damages filed on January 30, 2020;
9. Defendant's Motion to Strike/Exclude Plaintiff's Damages for Her Cervical Fusion Surgery and Future Medical Care filed on April 8, 2020;
10. Motion to Limit Dr. Sanders, M.D.'s Expert Testimony filed on April 21, 2020;
11. Defendant's Motion for Leave to File Third-Party Complaint filed on May 15, 2020;
12. Defendant's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration of the Court's Order Denying Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence filed on June 9, 2020;
13. Supplemental Brief in Advance of March 24, 2020 Hearing filed on March 19, 2020;

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[6] All referenced Motions and Briefs include the Oppositions and Replies associated with those Motions and Briefs.

14. Supplemental Brief Timeline of Relevant Events filed on April 2, 2020; and

15. Renewed Motion to Strike Defendant's Answer, For Sanctions and Attorney's fees;

Additionally, this Court has issued numerous Orders related to the above Motions and Briefs, and in an attempt to discover the truth. Those Orders are:

1. Order Withdrawing Motion for Spoliation of Evidence;

2. Discovery Commissioner's Report & Recommendations regarding Motion to Strike "Quasi Expert" Chad Crapo as a Witness filed November 8, 2019;

3. Order Granting Motion to Continue Evidentiary Hearing; Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence; and Pretrial Conference filed on January 30, 2020;

4. Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All other Pending Motions filed on February 14, 2020;

5. Order Granting Plaintiff's Motion to Amend Complaint filed on April 17, 2020;

6. Order Denying Defendant's Motion to Continue Discovery Based Upon Newly Discovered Evidence and Order Granting Plaintiff's Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order filed on May 22, 2020;

7. Order Denying Plaintiff's Motion for an Evidentiary Hearing on an OST filed on June 18, 2020;

8. Order Denying Plaintiff's Motion to Limit Dr. Sanders, M.D.'s Expert Testimony filed on June 22, 2020;

9. Order Denying Defendant's Motion to Strike/Exclude Plaintiff's Damages for her Cervical Fusion Surgery and Future Medical Care filed on June 22, 2020;

10. Order Denying Defendant's Motion for Leave to File Third-Party Complaint filed on July 10, 2020.

THE COURT FURTHER FINDS that there have been numerous hearings arguing and discussing matters in these pleadings. These hearings have been held on August 13, 2019;

November 21, 2019; January 22, 2020; March 10, 2020; March 24, 2020; March 31, 2020; April 30, 2020; May 21, 2020; June 18, 2020; and November 5, 2020. These hearings generally lasted well over an hour, and some lasted for multiple hours.

THE COURT FURTHER FINDS that an adequate record has been developed based upon pleadings that have been filed, orders that have been entered, briefs that have been submitted, and hearings that have been held. These pleadings, orders, briefs, and hearings have occurred over the past year. These is no additional information or evidence that would be available to this Court if it held additional hearings, or even an evidentiary hearing. The Court has been fully apprised of the issues in this case.

THE COURT FURTHER FINDS that Defendant argued against an evidentiary hearing representing to the COURT that an evidentiary hearing would be of no value because its employees would simply repeat the testimony in their sworn affidavits. These arguments, coupled with the lack of candor shown by the Defendant, give this COURT the understanding that an evidentiary hearing would provide it with no additional information.

THE COURT FURTHER FINDS that when a Court considers imposing case terminating sanctions, it should consider certain factors such as (1) the degree of willfulness of the offending party; (2) the extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been irreparably lost; (5) the feasibility and fairness of alternative, less severe sanctions ... (6) the policy favoring adjudication on the merits; (7) whether sanctions unfairly operative to penalize a party for the misconduct of his or her attorney; and (8) the need to deter both the parties and future litigations from similar abuses. Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

F. Consideration of Defendant's Evidence

THE COURT FURTHER FINDS that after careful consideration of all Defendant's evidence in support of either no judicial sanction or a lesser judicial sanction that the evidence is largely inadmissible, contradictory, and severely lacking evidentiary content. This Court sets forth the key defense evidence as follows:

1. **Affidavit of Courtney Shephard**

Despite over two years of discovery in this case, Ms. Shephard was never identified by Defendant as a witness. Ms. Shephard provided an affidavit in opposition to Plaintiff's Motion for an Evidentiary Hearing. Ms. Shepherd's affidavit represented that "it appears ASSA ABLOY made a quote for repairs to the West Doors on October 17, 2016. The quote was submitted but it was not approved. However, it appears that the ASSA ABLOY technician that put together the quote on October 17, 2016, without approval, went to the store and performed the repair work." The documents produced by ASSA ABLOY clearly demonstrate that Ms. Shephard was not honest with this COURT. Importantly, Defendant never objected to the documents' authenticity from ASSA ABLOY. The documents produced by ASSA ABLOY establish that Defendant indeed approved ASSA ABLOY to repair and replace the West Doors. The Worksheet produced by ASSA ABLOY establish very clearly that Defendant knew the work was performed on December 21, 2016 as a Smith's employee, Travis Childers, signed off on both the Second Inspection Form and Second Worksheet. While Defendant included the affidavit from Ms. Shephard in its Opposition to Plaintiff's Motion for an Evidentiary Hearing, Defendant omitted Ms. Shephard's affidavit from its Opposition to Plaintiff's Motion to Strike Defendant's Answer. As such, this Court has considered Ms. Shephard's affidavit but is not persuaded that her statements are truthful or mitigating.

Ms. Shephard failed to disclose how, when, or why significant evidence including but not limited to (1) the Work Order entry by Defendant's employee, Travis Childers, noting that the West Doors were not operating correctly and were running very poorly; (2) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (3) the October 18, 2016 e-mail submitting the two ASSA ABLOY quotes to Defendant which included the Repair quote that needed to be approved to "get the doors up and running"; (4) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (5) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (6) the December 21, 2016 Second Inspection Form; (7) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the

West Doors' component parts; (8) the West door sensors, motor, and competent parts; and (9) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

2. Affidavit of Venessa Wickline Gribble

Despite over two years of discovery in this case, Ms. Gribble was never identified by Defendant as a witness in this case. Ms. Gribble is a paralegal in Defendant's litigation division. Defendant submitted Ms. Gribble's affidavit in both its Opposition to Plaintiff's Motion for an Evidentiary Hearing and in Opposition to Plaintiff's Motion to Strike Defendant's Answer. Ms. Gribble testified that she is the person who performed two searches for documents related to the doors in this case. Ms. Gribble testified in her first search for documents that she limited her search period from October 30, 2016 to December 2, 2016. These were the document first disclosed by Defendant. The initial search specifically excluded the October 17, 2016 Inspection Form, the October 18, 2016 Quotes, the October 25, 2016 email and re-submission of Quotes, the October 28, 2016 email and re-submission of Quotes, the December 7, 2016 email and re-submission of Quotes, the December 20, 2016 email approving repair and replacement of West Doors. The December 21, 2016 Inspection Form and Worksheet both of which were signed by Defendant's employee, Travis Childers. The December 28, 2016 invoice from ASSA ABLOY to Defendant. Ms. Gribble provides no rationale for why she was asked to perform such a limited scope. More importantly, however, is that the search period from October 30, 2016 to December 2, 2016 does include significant documents which were not disclosed by Ms. Gribble. For example, Ms. Gribble failed disclose the November 8, 2016 e-mail and re-submittal of Quotes, the November 15, 2016 e-mail and re-submittal of Quotes, the November 23, 2016 e-mail and re-submittal of Quotes, and the November 29, 2016 e-mail and re-submittal of Quotes.

Next, Ms. Gribble testified that she performed a second, more extensive search related to the replacement of door sensors. Ms. Gribble states that in September 2018, she provided to defense counsel. This Court finds that the September 2018 documents and subsequent disclosure were also problematic in that Ms. Gribble provided documents related to the wrong door.

Specifically, Ms. Gribble provided documentation related to the East doors not the West Doors where Ms. Taylor was injured.

In carefully considering the affidavit of Ms. Gribble this Court finds that Ms. Gribble testimony does not support mitigation of Defendant's conduct. It is clear from the records produced by ASSA ABLOY that Defendant was fully aware that the West Doors' safety features were not operation as of October 14, 2016. It is also clear that Defendant undertook to have the West Doors safety system including door sensors repaired on December 21, 2016. Additionally, Defendant was fully aware that the injury took place at the West Doors, yet Ms. Gribble provided evidence of the East doors. Ms. Gribble failed to disclose how, when, or why significant evidence including but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West door sensors, motor, and competent parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

3. <u>Affidavit of Ronald K. Radcliffe, Jr.</u>

Like Ms. Shephard and Ms. Gribble, Mr. Radcliffe was not identified as a witness in this litigation. Mr. Radcliffe's affidavit was submitted in both Defendant's Opposition to Plaintiff's Motion for an Evidentiary Hearing and Plaintiff's Motion to Strike Defendant's Answer. Mr. Radcliffe was asked to review certain maintenance records from Defendant's Service Hub and from ASSA ABLOY. Mr. Radcliffe's affidavit is dated October 30, 2019. As such, this Court finds that Mr. Radcliffe did not review the full set of records produced by ASSA ABLOY on March 4, 2020, approximately four months after Mr. Radcliffe prepared the subject affidavit. In reviewing records, Mr. Radcliffe offers expert testimony regarding the mechanisms, safety

features, and operation of the subject doors. As Mr. Radcliffe was not identified as a lay or expert witness, this COURT does not consider Mr. Radcliffe's opinion testimony. As such, the portion of Mr. Radcliffe's affidavit that this COURT does consider deals with his personal involvement in the procurement and production of evidence. Mr. Radcliffe states that in September 2018, he went to find out if or when the sensors were replaced on the doors at Smith's Store No. 347. He states that he went to the store to get the numbers from the doors so that he could identify them. He then called ASSA ABLOY and asked if any of the sensors at the store had been replaced in the last two years. He states that they sent him records. Mr. Radcliffe then states that records ASSA ABLOY sent him that the East doors had sensors replaced on June 15, 2017 and the West Doors do not show ASSA ABLOY replacing the West Doors sensors in the past two years.

This COURT finds that Mr. Radcliffe's testimony does not mitigate Defendant's conduct. First, it is clear that Mr. Radcliffe did not see the full production of documents from ASSA ABLOY which directly contradicts his statements under oath. According to Mr. Radcliffe, ASSA ABLOY told him that the West Doors sensors were not replace between September 2016 to September 2018. The documents from ASSA ABLOY prove otherwise. Additionally, Mr. Radcliffe failed to disclose how, when, or why significant evidence including but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West Doors sensors, motor, and competent parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated. Given the totality of the completeness of the records from ASSA ABLOY and totality of the evidence, this COURT finds that Mr. Radcliffe's affidavit regarding his phone conversation from an unknown employee from

ASSA ABLOY is not credible and is not admissible on an evidentiary basis. Mr. Radcliffe's testimony regarding what an unidentified employee of ASSA ABLOY told him is hearsay. The actual records from ASSA ABLOY have evidentiary value as they are found to be authentic and admissible evidence. Even if Mr. Radcliffe's testimony had evidentiary value, this Court finds that it would be insufficient to mitigate Defendant's extensive spoliation of evidence, lack of candor to this Court, and years of halting the adversarial process.

4. Argument That ASSA ABLOY Failed To Update Service Hub

This Court also considered Defendant's argument that ASSA ABLOY failed to update the service hub with quotes, work orders, inspections forms, authorization, repair invoice, etc. which violate its contractual obligations with Defendant. This Court finds this argument uncompelling. First, Ms. Taylor's preservation letter dated December 7, 2016 was sent to Defendant, not ASSA ABLOY. As such, Defendant was fully aware of Ms. Taylor's intent to sue. Defendant, therefore, had a duty to preserve evidence. Second, this COURT finds that Defendant has a non-delegable duty to update its service hub inasmuch as the service repairs relate to public safety of its patrons. For example, this COURT finds that Defendant's employee, Travis Childers, created the October 14, 2016 Work Order and entered the Work Order into the service hub. The Work Order was properly inputted by Defendant's employee into the service hub as the malfunctioning West Doors were a safety hazard. Yet, despite receiving Ms. Taylor's intent to sue letter dated December 7, 2016, Defendant failed to take any reasonable steps to preserve crucial evidence in this case.

ORDER

THE COURT HEREBY ORDERS that under the Young factors, Ms. Taylor is entitled to an Order striking Defendant's answer as to liability and damages.

THE COURT FURTHER ORDERS sanctions for numerous failures and breaches of duty. The failures include (1) spoliation of evidence; (2) numerous breaches of discovery duties including violations of NRCP 16.1, NRCP 26, and NRCP 37(c); (3) lack of candor with the Court and opposing counsel; and (4) halting the adversarial process. All of these actions were part of an extensive scheme by the Defendant to deter Ms. Taylor from pursuing her claims, and once

she was not deterred, to hide the truth, mislead Ms. Taylor and this COURT, and to willfully destroy evidence in an attempt to prevail in this litigation. These failures and breaches of duty also show repetitive, abusive, and recalcitrant discovery abuses which resulted in many years of misguided litigation. Based on the cumulative, extensive, and blatantly false representations made by Defendant to this COURT, this COURT finds Defendant acted with intent to halt the adversarial process.

THE COURT FURTHER ORDERS that a case involving spoliation could merit significant sanctions. See, e.g., Stubli v. Big D. Int'l Trucks, Inc., 107 Nev. 309, 810 P.2d 785 (1991) and Fire Ins. Exchange v. Zenith Radio Corp., 103 Nev 648, 747 P.2d 911 (1987). A case involving discovery abuses and failures to meet discovery duties could merit significant sanctions. See, e.g., NRCP 37; Foster v. Dingwald, 126 Nev. 56, 227 P.3d 1042, (2010) and Bahena v. Goodyear Tire & Rubber Co., 126 Nev 243, 258, 235 P.3d 592, 602 (2010) and Young v. Johnny Ribeiro Bldg., Inc., 106 Nev 88, 95, 787 P.2d 777, 782 (1990). A case involving lack of candor with the Court cold merit significant sanctions. **This is a unique case where Defendant engaged in all three failures and actions. In fact, this COURT can find no time when the Defendant put forth an honest defense, or when the Defendant was fully candid with the COURT.** The sanction, therefore, must be significant to address the Defendant's extensive, repetitive, ongoing, and brazen actions, deceit, and failures.

THE COURT FURTHER ORDERS sanctions for extensive spoliation of evidence by the Defendant. Physical evidence is at the heart of this case which includes the West Doors' sensors, motor, gearbox, wiring, and other component parts. That physical evidence was in the Defendant's possession when the fall occurred and was later removed at the Defendant's instruction. That evidence has not been produced in this case and the failure to produce it will greatly affect Ms. Taylor's ability to prove her claims. In Stubli v. Big D. Int'l Trucks, Inc., 107 Nev. 309, 810 P.2d 785 (1991), a product was central to that case which was destroyed by one of the parties. The Nevada Supreme Court upheld sanction of striking pleadings for the evidence destruction. Id. 107 Nev. at 314. Similarly, in Fire Ins. Exchange v. Zenith Radio Corp., 103 Nev 648, 747 P.2d 911 (1987) a product was central to that case which was not preserved by one of

the parties. The Nevada Supreme Court upheld sanction of striking an expert and then granting summary judgment. Id. 103 Nev. at 652.

THE COURT FURTHER ORDERS sanctions for Defendant's intentional destruction of e-mails and documents, including but not limited to the Invoice, Worksheets, Inspection Forms, and the Quotes. Further, the Court finds that the Defendant engaged in the evidence destruction and spoliation willfully and deliberately to gain an advantage in this litigation and to defeat Ms. Taylor's claims. Significant sanctions should result from this wrongdoing.

THE COURT FURTHER ORDERS sanctions for extensive discovery abuses which prevalent throughout discovery in this case. This included the failure to timely and properly disclose documents (including but not limited to the contract with ASSA ABLOY) and witnesses (including but not limited to Mr. Alvarado, Mr. Childress, and Mr. Thurnwald – witnesses who played vital roles in the events – and other witnesses who signed affidavits). The failure to timely disclose these items includes a failure to timely supplement disclosures pursuant to NRCP 26(e). Defendant failed to properly respond to request for production by failing to conduct a reasonable inquiry to ensure that the production responses were complete and accurate, and a failure to obtain documents in the Defendant's control, including documents in the possession of its vendor, ASSA ABLOY. The Defendant provided intentionally inaccurate discovery responses by providing documents for the wrong door in respond to request for production, and by providing interrogatory answers saying that the West Doors never had any changes to them. The Defendant further put forth two 30(b)(6) witnesses who testified in a manner that was untruthful and designed to mislead Ms. Taylor in a willful and intentional attempt to defeat Ms. Taylor's claims.

THIS COURT FURTHER ORDERS sanctions pursuant to NRCP 37 holds that an evasive or incomplete disclosure of discovery answer must be treated as a failure to disclose, answer, or respond. NRCP 37(a)(4). Further, if a party fails to provide a disclosure, then the court may impose sanctions including those in Rule 37(b)(1) which include striking pleadings, dismissing the action, or rendering default judgment. NRCP 37(c)(1)(C) (citing NRCP 37(b)(1)(C, E, and F)). A party that fails to serve answers or a response to an interrogatory or a request for production the court may impose sanctions including those in Rule 37(b)(1) which include striking pleadings,

dismissing the action, or rendering default judgment. NRCP 37(d)(1)(A)(ii) and 37(d)(3) (citing NRCP 37(b)(1)(C, E, and F)). In this case, Defendant provided evasive or incomplete disclosures and responses to written discovery. Even worse, Defendant provided written discovery responses that were designed to mislead Ms. Taylor and hide the truth. Defendant put forth inaccurate, misleading, and untruthful 30(b)(6) deposition testimony. Significant sanctions should result from this wrongdoing.

THE COURT FURTHER ORDERS sanctions for Defendant's repetitive, abusive, or recalcitrant discovery abuses. When a party puts forth deliberately inaccurate discovery responses in an attempt to mislead the other party, that significant sanctions should result such as striking pleadings and entering default judgement. Foster v. Dingwald, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010) (upholding the sanctions or striking the pleadings and entering default judgment when a party engaged in discovery abuses such as failing to attend depositions and failed to comply with the court's orders); Bahena v. Goodyear Tire & Rubber Co., 126 Nev 243, 258, 235 P.3d 592, 602 (2010) (upholding the sanction of striking the answer as to liability for repeated discovery abuses); Young v. Johnny Ribeiro Bldg., Inc., 106 Nev 88, 95, 787 P.2d 777, 782 (1990) (striking pleadings and entering default judgment when a party put forth known false and misleading documents and providing misleading deposition testimony about the evidence). Defendant, in this case, engaged in repeated discovery abuses and failures, all in an attempt to mislead Ms. Taylor and gain an advantage in this litigation. The Defendant's discovery failures and abuses were repetitive and wide-reaching (meaning that in every aspect of discovery from disclosures to written discovery to depositions the Defendant's deliberate scheme to hide the truth was shown). Even worse, the Defendant blocked proper discovery by a third-party ASSA ABLOY which showed that it would do anything to hide the truth and halt the adversarial process.

THE COURT FURTHER ORDERS sanctions for Defendant's breach of its duty of candor with the COURT. Defendant was untruthful with the COURT during various hearings including affidavit testimony from its witnesses. Clearly, the duty of candor was violated. Further, numerous documents were not obtained until this COURT ordered production of documents from

ASSA ABLOY when those documents were in the custody, possession, and control of Defendant. The lack of candor must result in significant sanctions.

THE COURT FURTHER ORDERS sanctions for Defendants repeated recalcitrant efforts to halt the adversarial process. Generally, sanctions including the striking of pleadings may only be imposed where there has been willful noncompliance with a court order or **where the adversary process has been halted by the actions of the unresponsive party** (emphasis added)." GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869, 900 P.2d 323, 325 (1995). Here, Defendant has undertaken to halt the adversarial process. Defendant destroyed nearly all physical evidence in this case despite having received Ms. Taylor's intent to sue letter with demand to preserve evidence. Defendant orchestrated over two years of misguided litigation. Defendant's repeated attempts to misguide litigation includes the following reprehensible conduct: (1) falsely disclosing Stanley Access Technology as the third party door vendor; (2) failure to disclose ASSA ABLOY as the correct third party door vendor; (3) two site inspections under false pretense that the West Doors, sensors, etc. were identical to door systems at the time of injury; (4) egregiously false testimony under oath from Defendants NRCP 30(b)(6) witnesses regarding the need for West Doors to be repaired, the repair of the West Doors, and the alleged lack of knowledge and/or authorization for the repair of the West Doors; (5) blocking production of documents from ASSA ABLOY to Ms. Taylor's subpoena; (6) blatantly false testimony in interrogatories which falsely testify that the West Doors' sensors and component parts are identical to the doors at the time of injury; (7) threats of Rule 11 sanctions against Ms. Taylor's counsel for filing a valid motion; (8) knowingly disclosing records and documents related to the wrong doors (East doors) and (9) attempts to mislead this COURT regarding the true nature of the authorization and repair of the West Doors.

THE COURT FURTHER ORDERS that this case involved extensive failures from (1) spoliation to (2) discovery abuses and failures and to (3) a lack of candor. All three combined in this case show that the Defendant should be severely sanctioned to the extent that the Defendant's answer as to liability and damages should be stricken. This Order comes only after the COURT

has considered each of the factors in the Young v. Johnny Ribeiro Bldg., Inc., 106 Nev 88, 93, 787 P.2d 777, 780 (1990) as shown below.

1. The Degree of Willfulness of The Offending Party

This COURT finds that willfulness is demonstrated by the Defendant's actions. Those actions began after the Defendant allowed evidence to be destroyed after the December 7, 2016 preservation letter was received. The Defendant then sent a letter to Ms. Taylor on February 8, 2017 denying the claim. Then throughout discovery, the Defendant continued to engage in actions that were designed to deceive and mislead Ms. Taylor. The Defendant blocked ASSA ABLOY from producing vital documents, and the only way to get those documents was for this COURT to order production and order Defendant not to obstruct discovery. Finally, the Defendant was not forthright with the COURT in an attempt to avoid sanctions and to further hide the truth. The only result from these actions is that the Defendant was engaged in a willful and deliberate scheme to avoid liability for its actions which resulted in an unsafe, unrepaired, and non-standard-complaint door striking Ms. Taylor.

2. The Degree to Which Ms. Taylor Would Be Prejudiced by a Lesser Sanction

This COURT has considered lesser sanctions such as an inference, presumption, striking the answer as to liability only, and other lesser sanctions. All these sanctions would not be appropriate and would fail to make the sanction meet the spoliation, the discovery abuse, and the lack of candor with the COURT. First, the product at issue is known to wear over time, and getting an exemplar product is not an option because an exemplar product cannot be aged in the same manner and method that the product at issue in this case aged and failed. There is no way to use an exemplar product. Second, the sanction must meet the Defendant's discovery failures and abuses. Spoliation of the product is only part of the Defendant's deliberate, willful wrong doings. As shown above, the Defendant engaged in actions that violated every discovery rule and tenant, and even produced evidence for the wrong door. The failure to be truthful, complete, and forthright in discovery, the failure to provide complete and timely disclosures and supplements, and the failure to conduct a reasonable inquiry into discovery responses is significant. Further,

the Defendant had the person who approved the repair and replacement of the doors act as its 30(b)(6) representative, and it had that person provide untruthful testimony that contradicted his actions early in this case. Third and finally, the Defendant's actions before this COURT showing a lack of candor demonstrates that it will engage in any tactic in an attempt to prevail in this case, even in dereliction of the COURT's proceedings. This COURT recognized that from the time this fall occurred the Defendant knew that it had failed to repair a broken and unsafe doors that did not comply with the applicable standards. The Defendant recognized that it has been reminded numerous times of the need to repair this dangerous door. Thus, the Defendant chose to hide the truth, destroy evidence, and fail to properly conduct discovery. The Defendant knew that if it provided complete and accurate disclosures and discovery responses that liability would be found against it. By only striking the Defendant's answer as to liability, the COURT would be putting the Defendant in the same position it would have been in if it had properly engaged in discovery. Thus, striking the answer as to liability only was no sanctions and would not deter such actions in the future by this Defendant or by other defendants. Again, a lesser sanction is not appropriate, although other sanctions were considered. The only appropriate sanction is that of striking the answer as to liability and damages.

3. <u>The Severity of The Sanction of Dismissal Relative to the Discovery Abuse</u>

The spoliation, the discovery abuses, and failures, the deceitful 30(b)(6) testimony, and the lack of candor with the COURT show that at no time was the Defendant attempting to honestly defend this case. From the moment of the fall, Defendant engaged in a deliberate scheme to hide the truth at all costs. The Defendant's actions and abuses have been repetitive and ongoing, and the sanction of striking the answer as to liability and damages fits the Defendant's actions. Because Defendant has thumbed its nose at its duties and the judicial process, a fair trial on the merits is now impossible. Therefore, the only adequate remedy, which restores fairness to the Ms. Taylor, is to strike Defendant's Answer.

4. <u>Whether the Evidence Has Been Irreparably Lost</u>

It is clear that the central piece of evidence is irreparably lost. The complete nature of this case would have changed if that evidence was preserved and it could thus be adequately inspected

and tested. Other evidence remains lost including the Quotes sent to the Defendant. The permanent loss of this evidence supports significant sanctions.

5. <u>The Feasibility and Fairness of Alternative Less Severe Sanctions</u>

As demonstrated under sections 2 and 3 above, striking Defendant's answer is the only fair and feasible sanction to remedy the extensive abuses, evidence destruction, and lack of candor to the COURT. While lesser sanctions were considered, they would not properly address the extensive scheme to destroy, deceive, and mislead that the Defendant engaged in from the time of the fall up through the hearings on various Motions.

This COURT has carefully considered any and all lesser sanctions and finds that any lesser sanction under these circumstances would encourage defendants to destroy evidence, commit perjury, falsify evidence, lie to judicial officers, and take any other action which would have the effect of halting the adversarial process.

This COURT considered the following sanctions: (1) adverse inference; (2) rebuttable presumption; (3) striking Answer as to liability only; and (4) striking Answer as to liability and damages. This COURT finds that granting an adverse inference for all destroyed evidence is an insufficient sanction given the totality of the misconduct. An adverse inference is an appropriate remedy when evidence is negligently lost or destroyed. Here, however, this COURT finds that Defendant received an intent to sue letter which demanded Defendant preserve evidence. Defendant was aware of Ms. Taylor's intent to sue yet decided to destroy crucial evidence AFTER Defendant knew it was likely going to involved in litigation. The evidence destroyed clearly would have supported Ms. Taylor's case on liability and punitive damages as Defendant had actual notice that the safety systems were non-operational based on the October 17, 2016 Inspection Form. The knowledge that the safety systems were not operation combined with repeated requests from ASSA ABLOY to make the repair from October 17, 2016 until November 30, 2016 when Ms. Taylor sustained injury due to the unsafe doors supports Ms. Taylor's allegation that in failing to promptly repair the doors that Defendant acted with a conscious disregard for her safety. Additionally, an adverse inference does not cure years of misguided litigation including the producing records for the East doors and presenting the false narrative that

those records pertained to the West Doors. An adverse inference does not cure two years of misguided litigation including Plaintiff's expert witness conducting two site inspections under the false pretense that the West Doors' sensors, and component parts were unchanged from the time of injury. Finally, an adverse inference would unfairly enable the Defendant to present evidence to the jury regarding the operation of the West Doors at the time of Ms. Taylor's injury which could not be rebutted by Ms. Taylor as Defendant destroyed the West Doors before any site inspection could be performed by Ms. Taylor's expert. Like Stubli and Zenith, Defendant would be reserving to itself all testimony regarding the operation of the vary article Ms. Taylor alleges to be defective.

This COURT considered a rebuttable presumption against Defendant. A rebuttable presumption is an appropriate remedy when evidence is intentionally destroyed with the intent to harm. Here, the COURT finds that Defendant acted with the intent to harm Ms. Taylor's case. Intent to harm is the logical conclusion when Defendant destroyed nearly all physical evidence despite having received a demand to preserve evidence before such evidence was destroyed. As stated above, the evidence destroyed clearly would have supported Ms. Taylor's case on liability and punitive damages as Defendant had actual notice that the safety systems were non-operational based on the October 17, 2016 Inspection Form. The knowledge that the safety systems were not operation combined with repeated requests from ASSA ABLOY to make the repair from October 17, 2016 until November 30, 2016 when Ms. Taylor sustained injury due to the unsafe West Doors supports Plaintiff allegation that in failing to promptly repair the West Doors that Defendant acted with a conscious disregard for her safety. Additionally, a rebuttable presumption does not cure years of misguided litigation including the producing records for the East doors and presenting those records as though they pertain to the West Doors. A rebuttable presumption does not cure two years of misguided litigation including Ms. Taylor's expert witness conducting two site inspections under the false pretense that the West Doors' sensors, and component parts were unchanged from the time of injury. Finally, a rebuttable presumption would unfairly enable the Defendant to present evidence to the jury regarding the operation of the West Doors at the time of Ms. Taylor's injury which could not be rebutted by Ms. Taylor as Defendant destroyed the

West Doors before any site inspection could be performed by Ms. Taylor's expert. Like Stubli and Zenith, Defendant would be reserving to itself all testimony regarding the operation of the vary article Ms. Taylor alleges to be defective.

Next, this COURT considered striking Defendant's Answer as to liability only or whether to strike the Answer as to liability and damages. Here, under these circumstances, this COURT finds that striking the Answer as to liability only would encourage such misconduct from future litigants. Here, this COURT recognizes the delicate balance between striking the Answer as to liability and striking the Answer as to liability and damages. This COURT also considered whether an evidentiary hearing was necessary to strike the Answer as to liability and damages.

Ultimately, the evidence destroyed clearly would have supported Ms. Taylor's case on liability and punitive damages. This by itself would support striking the Answer as to liability only. Here, however, this COURT must consider the time and expense of litigating this matter through the COURT system for over two (2) years. This COURT must consider judicial economy and a litigants right to a fair and speedy trial pursuant to NRCP 1. This COURT must consider the extreme abuses undertaken by Defendant as fully set forth herein. This COURT finds that as it relates to this Defendant that if Defendant had properly disclosed the initial October 17, 2016 Inspection Form, the October 17, 2016 Worksheet, the October 18, 2016 repair Quotes, the eight (8) e-mails and re-submitted Quotes from October 18, 2016 to November 29, 2016, the December 21, 2016 second Inspection Form, the December 21, 2016 Second Worksheet, the repair invoice that Defendant could have fairly litigated this case as a damages only case. Instead, Defendant decided to go a different route and completely undermined the adversarial process and lacked candor to this COURT.

Here, Defendant destroyed crucial evidence after it received Plaintiff's preservation letter. Next, Defendant falsely disclosed the wrong door vendor. Next, Defendant falsely disclosed service documents related to the wrong door. Next, Defendant permitted two site inspections under the guise that the West Doors were unchanged from the time of Ms. Taylor's injury. Next, and perhaps most egregious, Defendant's NRCP 30(b)(6) witness continued the guise by testifying that only in an "imaginary world" were the West Doors' sensors repaired or replaced.

This testimony under oath is particularly egregious as it was offered by Dieter Thurnwald. Mr. Thurnwald is the same gentleman who approved the repair and replacement at the West Doors. Next, Defendant thwarted document production from ASSA ABLOY which records clearly brought to light the extent of Defendant's false representations. Next, Defendant submitted false affidavits to this Court alleging that ASSA ABLOY never had permission to replace the subject doors and did so without Defendant's knowledge. This Court finds that at a certain point a litigant, through its own severe, recalcitrant abuses of the adversarial process, loses its right to present its case to a jury on liability and damages pursuant to NRCP 37(c). This Court finds that for over two (2) years Defendant has engaged in such abusive, recalcitrant behavior. Merely striking the Answer as to liability would have the effect of rewarding Defendant for its abuses because it places Defendant in the same position it would have been in if Defendant properly disclosed all evidence from the beginning while ignoring the facts that Defendant attempted to deceitfully defend this case rather than on the merits. The question, therefore, must be asked: What if Defendant's tactic succeeded? What would stop Defendant or any other defendant from doing the same conduct again? By striking the Answer as to liability and damages, this COURT upholds its directive to deter future litigants from engaging in the same or similar conduct.

6. <u>The Policy of Favoring Adjudication on the Merits</u>

Defendant's flagrant discovery abuses have made a fair trial on the merits impossible. Therefore, striking its answer is the only way to properly address the egregiousness and widespread nature of the abuse. While public policy and the preference that claims should be resolved on their merits whenever possible may be a factor against dismissal, it is not dispositive. Given the extent and egregiousness of the misconduct and the prejudice to the Ms. Taylor, it is nigh impossible to adjudicate this matter on the merits and the fault for this lies directly at the feet of the Defendant.

7. Whether Sanctions Unfairly Operate to Penalize A Party for Attorney Misconduct, and the Need To Deter Both the Parties and Future Litigants from Similar Abuses

This COURT does not believe that the spoliation, discovery failures, and lack of candor were the result of Defendant's attorneys. In fact, the Defendant's scheme to destroy and deceive began well before litigation started. The deceptive practices continued during discovery during the deposition testimony of Defendant's NRCP 30(b)(6) corporate representative, Dieter Thurnwald. In fact, defense counsel even questioned Mr. Thurnwald during the deposition regarding whether the West Doors were repaired. It's clear that Defendant's attorney was seeking information and it was the corporate representative who insisted upon providing false testimony. As mentioned above, this is particularly egregious as it was Mr. Thurnwald who approved the replacement of the door sensors and component parts. The deceptive practices continued after the close of discovery when Defendant's employee, Courtney Shephard, falsely represented to this COURT that ASSA ABLOY effectuated the replacement of the West Doors' sensors without authorization from Defendant, that Defendant did not know the repair was made, and Defendant was never invoiced for the repair. All of these representations are blatantly false. The sanction is not the result of the attorneys in this case.

8. The Need To Deter This Defendant And Others From Similar Misconduct

This COURT finds that deterrence is an important factor. If the sanction is not severe and extensive, then this Defendant, and others, might try to avoid liability by deceit and deception believing that the worst sanction is striking the answer as to liability, a result that would occur if the Defendant had been honest and met its discovery obligations. Thus, to deter such actions and the temptations to engaged in such action in the future, the sanction of striking the answer as to liability and damages is the appropriate sanction in this case.

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THE COURT FURTHER ORDERS that, based upon the foregoing, the Defendant's Answer is stricken as to liability and damages.

THE COURT FURTHER ORDERS that when a default is entered as a result of a discovery sanction, the non-offending party need only establish a prima facie case in order to obtain the default judgment. Foster v. Dingwall, 126 Nev. 56, 67, 227 P.3d 1042, 1049 (2010) (citing Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 94, 787 P.2d 777, 781 (1990)). Defendant's Answer is stricken as to liability and damages as a result of numerous failings including spoliation of evidence, discovery abuses, and lack of candor. These failings and actions amount to a discovery sanction. Thus, Ms. Taylor need only establish a prima facie case to obtain default judgment.

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HEARING DATE(S) ENTERED IN ODYSSEY

THE COURT FURTHER ORDERS that a prove-up hearing to determine the exact amount of damages is hereby scheduled to occur on February 18, 2021, at 9:05 AM.

January 20, 2021 ZJ

Respectfully Submitted by:

Dated: DEC. 18, 2020
TANNER CHURCHILL ANDERSON

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Approved as to form and content by:

Dated: _____
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WILL NOT SIGN

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Sent: Friday, December 18, 2020 9:25 AM
To: Courtney McMenamy
Cc: David Tanner; Busby Jerry S.; Rutkowski Theresa H.
Subject: Taylor v. Smith's
Attachments: 6098022_1.docx

We will not be signing the Order prepared by your office. Instead, we propose submitting the following order. Please let me know if you have any proposed changes.

Thanks

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME** Date of Hearings: February 16, 2021; and March 18, 2021 Time of Hearing: 9:05 a.m.

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME

Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification on Order Shortening Time ("Motion"), having come on for hearing on February 16, 2021 and on March 18, 2021; David A. Tanner, Esq.; David Churchill, Esq.; and Micah Echols, Esq. appeared on behalf of Plaintiff, Patricia A. Taylor; Gregory A. Kraemer, Esq. appearing on behalf of Defendant Smith's Food & Drug Centers, Inc.

The Court having read and considered the Motion, the Opposition, and Reply to the same; having entertained oral argument, and being fully advised on the premises, and good cause appearing therefore,

FINDINGS

THE COURT FINDS that this matter was on calendar to resolve Defendant's Motion.

THE COURT FURTHER FINDS that the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees was a significant, thorough, and lengthy Order which considered all relevant factors including those outlined in Young v. Johnny Ribeiro Building, Inc., 106 Nev. 88, 92, 787 P.2d 777, 780 (1990). [See, Jan. 21, 2021 Order]

THE COURT FURTHER FINDS that deterrence is an important factor in determining the sanctions for Defendant's abuses and failures which include discovery failures, spoliation of evidence, and lack of veracity and candor.

THE COURT FURTHER FINDS that at the February 16, 2021 hearing, the Court denied the Motion, but the Minute Order issued after that Hearing was vague regarding whether the Court would uphold the entirety of the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees, specifically the portion related to striking Defendant's damages. At that hearing, the COURT set another hearing for March 18, 2021.

THE COURT FURTHER FINDS that at the March 18, 2021 hearing, the ambiguity in the Minute Order from the February 16, 2021 hearing was addressed and the COURT

acknowledged that the ambiguity existed. The COURT heard further arguments from counsel and clarified that it was denying the Motion in its entirety. The COURT moved the prove up hearing to April 7, 2021 at 1:30 pm. The COURT and Parties confirmed that at the March 18, 2021 hearing that Ms. Taylor and her medical expert Dr. Garber would testify at the April 7, 2021 prove up hearing and that Defendant could appropriately cross-examine them if desired. The COURT and Parties also confirmed that various Trial Briefs had been filed by both Ms. Taylor (three Briefs) and Defendant (one Brief). The COURT and Parties also confirmed that Ms. Taylor's exhibits she intended to use at the April 7, 2021 hearing had been provided to the COURT and Defendant.

THE COURT FURTHER FINDS that Defendant has repeatedly shown that it has not been honest throughout this case. The COURT has grave concerns as to Defendant's lack of veracity and candor including (1) the veracity of the NRCP 30(b)(6) designee's Dieter Thurnwald and Trish Kozlowski as it relates to the performance problems for the door at issue, (2) veracity and candor failings in responses to written discovery and Rule 16.1 Disclosures, and (3) the failure to retain and produce documents and emails between Defendant and ASSA ABLOY as to the doors function and maintenance. The COURT's concerns are heightened considering that Defendant was placed on actual notice when it received the December 7, 2016 evidence preservation letter shortly after Ms. Taylor's November 30, 2016 fall.

THE COURT FURTHER FINDS that the lack of veracity and candor permeated this entire action as more fully set forth below.

A. <u>Defendant's Lack Of Veracity And Candor In Its Prelitigation Actions</u>

THE COURT FURTHER FINDS that Ms. Taylor's fall occurred on November 30, 2016. Only a week later on December 7, 2016, Defendant was served with a preservation letter from Ms. Taylor's attorney. This preservation letter put Defendant on notice to preserver all relevant evidence.

THE COURT FURTHER FINDS that Defendant received the December 7, 2016 preservation letter because it disclosed the same in its Initial Rule 16.1 Disclosures.

THE COURT FURTHER FINDS that despite receiving the December 7, 2016 preservation letter, Defendant intentionally destroyed, let be destroyed, and failed to preserve vital evidence in this case. This evidence included: (1) the West Doors' sensors, motor, gearbox, wiring, and other component parts; (2) the October 17, 2016 Inspection Form wherein ASSA ABLOY noted that the West Doors' safety systems were not operational; (3) the October 17, 2016 Worksheet; (4) the October 18, 2016 Quotes sent to Defendant; (5) the October 18, 2016 e-mail where ASSA ABLOY sent the Quotes to Defendant; (6) the correspondence wherein the Quotes was resubmitted to Defendant on October 25 and 28, 2016, as well as on November 1, 8, 15, 23, 29, 2016; (7) the December 6, 2016 e-mail from ASSA ABLOY asking about the status of the Quotes; (8) the correspondence wherein the Quotes were resubmitted to Defendant on December 7, 2016; (9) the December 20, 2016 e-mail where Defendant employee, Dieter Thurnwald approved the Repair and Replacement Quotes; (10) the December 21, 2016 Second Inspection Form signed by Defendant's employee, Travis Childers; (11) the October 17, 2016 Second Worksheet signed by Defendant's employee, Travis Childers; (12) the December 28, 2016 invoice for repairs completed by ASSA ABLOY.

THE COURT FURTHER FINDS that the failure to preserve this evidence and documents was intentional and showed a lack of veracity and candor related to the litigation process that Defendant had notice would occur.

B. <u>Defendant's Lack of Veracity And Candor In Rule 16.1 Disclosures</u>

THE COURT FURTHER FINDS that when litigation began Defendant had already intentionally destroyed, let be destroyed, and failed to preserve vital evidence in this case as shown above.

THE COURT FURTHER FINDS that despite Defendant's destruction of evidence and failure to preserve evidence, Defendant still had knowledge of its door vendor, ASSA ABLOY and the Contract it had with this vendor. Despite this, in its Rule 16.1 Disclosures, Defendant never disclosed the identity of its door vendor and never disclosed the Contract it had with this door vendor. Rather, Defendant disclosed the wrong door vendor to Ms. Taylor. Defendant also

produced an old, outdated contract it had with Stanley Access Technologies, a company that had not provided any door maintenance, repairs, or upgrades for many years.

THE COURT FURTHER FINDS that Defendant did not disclose the identity of various individuals who played a role in the subject door's repair and replacement including Gilbert Alverado and Brad Childress. Further, it was not until the end of discovery that ASSA ABLOY disclosed the identity of the person that approved the door replacement and repair, Dieter Thurnwald.

THE COURT FURTHER FINDS that in its Rule 16.1 Disclosures and written discovery responses, Defendant actually produced documents related to the wrong door – the East door not the West Door.

THE COURT FURTHER FINDS that in its Rule 16.1 Disclosures, Defendant failed to disclose vital witnesses. For example, Defendant did not disclose the names of the employees that communicated with ASSA ABLOY about the Subject Doors in its Initial Rule 16.1 Disclosure, namely Dieter Thurnwald, Travis Childers, and Gilbert Alvarado.

THE COURT FURTHER FINDS that Defendant failed to disclose certain witnesses until after discovery ended even though it knew the identify of these witnesses from before the lawsuit was filed. Specifically, discovery ended on August 27, 2019. The parties entered a limited stipulation to allow certain depositions to be done by November 15, 2019, but discovery remained closed for all other purposes. Despite this, on November 7, 2019 – months after discovery ended – Defendant disclosed Mr. Radcliffe and Mr. Osborn as witnesses. These are witnesses Defendant was aware of from the inception of this case and they were disclosed after discovery ended and thus too late for Ms. Taylor to conduct any discovery from them or about them.

THE COURT FURTHER FINDS that Defendant never disclosed the identity of the employees who signed Affidavits that the Defendant relied upon to argue that an evidentiary hearing was not necessary.

THE COURT FURTHER FINDS that Defendant's lack of veracity and candor was evident through its failure to disclosure (and timely disclose) information, entities, contracts, and witnesses in its Rule 16.1 Disclosures.

C. Defendant's Lack Of Veracity And Candor In Its Written Discovery Responses

THE COURT FURTHER FINDS that as noted above, in its Rule 16.1 Disclosures and written discovery responses, Defendant actually produced documents related to the wrong door – the East door not the West Door.

THE COURT FURTHER FINDS that on October 4, 2018, Defendant responded to requests for production. Plaintiff's First Request for Production Nos. 27 and 28 requested all service records for the West Doors. Defendant failed to produce e-mails about the West Doors, Quotes from ASSA ABLOY, or many other documents. In fact, during discovery Defendant only produced documents for the wrong door and failed to produce any documents (other than the Work Order) for the West Doors.

THE COURT FURTHER FINDS that on August 8, 2019, Defendant supplemented its responses to Ms. Taylor's Request for Production No. 34 and wrongfully indicated that the sensors and component parts were still on the West Doors.

THE COURT FURTHER FINDS that Defendant's written discovery answers were false, misleading, and incomplete. For example, in its Response to Plaintiff's Second Request for Production, No. 34, Defendant stated that the West Doors' component parts were replaced in June 2017 and were discarded and not available for use in this case. Yet, this response and the documents produced by Defendant in its Response pertained to the East Doors, not the West Doors that caused Mr. Taylor's fall. Later, in its Supplemental Response to Plaintiff's Second Request for Production, No. 34, Defendant said that the component parts for the West Doors that caused Ms. Taylor's fall were still on the West Doors.

THE COURT FURTHER FINDS that in its Response to Plaintiff's First Request for Production Nos. 27 and 28 that asked for all service records for the West Doors, Defendant only produced the Work Order. It did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice.

THE COURT FURTHER FINDS that in its Response to Plaintiff's First Request for Production No. 4, asking for documents showing a dangerous condition with the West Doors, Defendant stated that no such documents exist. Defendant did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice, all of which showed the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be repaired.

THE COURT FURTHER FINDS that in its Supplemental Answer to Interrogatory No. 13, Defendant stated that there has been no work, and there was never any recommendation for work to be done, on the West Doors.

THE COURT FURTHER FINDS that the Defendant's blatantly false written discovery responses was intentional and showed a lack of veracity and candor.

D. <u>Defendant's Lack Of Veracity And Candor In Its 30(b)(6) Deposition Testimony</u>

THE COURT FURTHER FINDS that on March 1, 2019 Defendant's first 30(b)(6) representative, Ms. Trisha Kozlowski was deposed. She falsely testified that the only problem with the West Doors were them coming off the tracks.

THE COURT FURTHER FINDS that on August 7, 2019 Defendant's second 30(b)(6) representative, Mr. Dieter Thurnwald was deposed. He falsely testified as follows:

> "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]
>
> Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]
>
> That no documentation existed about the west doors. [Thurnwald depo., pp. 73 - 75]
>
> That the last time the west doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]
>
> The door mechanisms for the west doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]

> Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]
>
> Finally, he testified that only in an "imaginary world" was the subject door ever worked on or replaced. [Thurnwald depo., pp. 115 and 118]

The depositions of Defendant's NRCP 30(b)(6) corporate representatives show Defendant's lack of veracity and candor throughout discovery.

THE COURT FURTHER FINDS that the ASSA ABLOY Technician filled out the Inspection Form wherein he notes that the West Doors' safety systems are not operational, and the West Doors do not comply with the applicable standards. Mr. Thurnwald received all the quotes from ASSA ABLOY regarding the repair and replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts. These repairs would make the West Doors' safety system operation through replacement of the faulty sensors. Mr. Thurnwald is the employee who actually approved ASSA ABLOY to perform the work to replace the faulty sensors et al.

THE COURT FURTHER FINDS that Mr. Thurnwald's binding testimony as Defendant's NRCP 30(b)(6) designee is shocking to this COURT. Mr. Thurnwald was fully aware that the West Doors' safety systems were not operational, and that significant work was required to make the safety systems operational. Mr. Thurnwald was aware of this safety issue approximately forty-four (44) days before the West Doors closed on Mr. Taylor causing injury. Mr. Thurnwald knew he approved ASSA ABLOY's quote for the replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts on December 20, 2016. Yet, Mr. Thurnwald provided blatantly false testimony which, if true, would dispute Ms. Taylor's allegations of actual notice related to liability and conscious disregard of safety related to punitive damages.

THE COURT FURTHER FINDS that the blatantly false testimony of Trisha Kozlowski and Dieter Thurnwald, the 30(b)(6) representatives, provide strong indicia that Defendant's lack

of veracity and candor was intentional because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process.

E. Defendant Blocked Discovery From A Third Party

THE COURT FURTHER FINDS that in addition to Defendant's lack of candor in its Rule 16.1 Disclosures, its written discovery responses, and its 30(b)(6) deposition testimony, Defendant also blocked a third party, ASSA ABLOY, from producing evidence. These actions showed a lack of veracity and candor that and that Defendant would go to any lengths to hide the truth because Defendant knew that these documents would contradict the Defendant's position, and that the ASSA ABLOY documents would show that the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be replaced and repaired. These documents would further show the Defendant's refusal to have the West Doors replaced and repaired, and that it had a conscious disregard for Ms. Taylor's safety. These documents would further show that West Doors were replaced and repaired and that Defendant was invoiced for that work.

THE COURT FURTHER FINDS that during discovery Ms. Taylor subpoenaed ASSA ABLOY to provide documents pertinent to this matter and the West Doors. ASSA ABLOY attempted to fully respond to Ms. Taylor's Subpoena but needed written permission from Defendant and/or its parent company, Kroger, because many of the documents requested in Ms. Taylor's subpoena were confidential pursuant to the contract between ASSA ABLOY and Defendant. Thus, on August 15, 2019 ASSA ABLOY sent a letter to Defendant/Kroger (with a copy to Defendant's counsel, Jerry S. Busby, Esq.) asking permission to disclose all relevant documents related to Ms. Taylor's Subpoena, including the Agreement and work authorizations:

> The Agreement and related work authorizations are responsive to the Subpoena but are considered Confidential Information pursuant to Section 5 of the Agreement. Enclosed as Exhibit B are copies of the Confidential Information that ASSA ABLOY must produce in response to the Subpoena. ASSA ABLOY, therefore, requests Kroger's written permission to produce these documents.
>
> Please provide a response to this request by August 23, 2019. If we do not receive a response by that date, we will inform Plaintiff's

> counsel that Kroger has not provided the required permission for ASSA ABLOY to produce the Confidential Information.

THE COURT FURTHER FINDS that Defendant did not respond to this letter. Thus, ASSA ABLOY disclosed only limited documents responsive to Ms. Taylor's Subpoena. When disclosing these limited documents, ASSA ABLOY prepared an Affidavit of Custodian of Records noting the numerous documents were not disclosed because Defendant would not give permission:

> On August 15, 2019, ASSA ABLOY sent a letter to the Kroger Company ("Kroger"), via first class mail (certified mail) and overnight UPS delivery requesting written authorization to produce certain other documents in its possession that are also responsive to the Subpoena. ASSA ABLOY is contractually obligated to obtain written approval from Kroger prior to producing the documents referenced in its letter. To date Kroger has not responded to the letter.

THE COURT FURTHER FINDS that even after the Custodian of Records Affidavit Defendant still did not respond to ASSA ABLOY's letter or this Affidavit. This continued to block ASSA ABLOY from producing all documents responsive to Ms. Taylor's Subpoena.

THE COURT FURTHER FINDS that this Court had to enter an Order, which it signed on February 7, 2020, to finally allow ASSA ABLOY to produce all documents responsive to Ms. Taylor' Subpoena. This Order required (1) Defendant and Kroger were not to contact any person, employee, or agent for ASSA ABLOY about this case, Ms. Taylor's Subpoena, the West Doors, or any documents or work in this case; and (2) that Ms. Taylor's counsel was to send a copy of the Order to ASSA ABLOY; and (3) that ASSA ABLOY was to produce all documents and information relevant to the West Doors to Ms. Taylor's counsel for production and use in this case. [See, Order Signed Feb. 7, 2020]

THE COURT FURTHER FINDS that Defendant's efforts to block discovery and to put forth a false narrative in its attempt to defeat Ms. Taylor's claims were so extensive that documents could only be produced after the Court ordered Defendant not to block discovery by requiring that it not communicate with ASSA ABLOY.

THE COURT FURTHER FINDS that this is another example of Defendant's lack of veracity and candor to hide the truth and to put forth a false narrative in this case. The Defendant's actions are so brazen and far reaching that it can only conclude that Defendant's lack of veracity and candor are intentional.

F. Defendant's Lack Of Veracity And Candor In Affidavits

THE COURT FURTHER FINDS that Defendant presented three Affidavits of people and Defendant argued that these Affidavits showed that an evidentiary hearing was not necessary. This COURT closely examined these Affidavits and found they contained numerous false statements.

1. Affidavit of Courtney Shephard

Despite over two years of discovery in this case, Ms. Shephard was never identified by Defendant as a witness. Ms. Shephard provided an affidavit in opposition to Plaintiff's Motion for an Evidentiary Hearing. Ms. Shepherd's affidavit represented that "it appears ASSA ABLOY made a quote for repairs to the West Doors on October 17, 2016. The quote was submitted but it was not approved. However, it appears that the ASSA ABLOY technician that put together the quote on October 17, 2016, without approval, went to the store and performed the repair work." The documents produced by ASSA ABLOY clearly demonstrate that Ms. Shephard was not honest with this COURT. Importantly, Defendant never objected to the documents' authenticity from ASSA ABLOY. The documents produced by ASSA ABLOY establish that Defendant indeed approved ASSA ABLOY to repair and replace the West Doors. The Worksheet produced by ASSA ABLOY establish very clearly that Defendant knew the work was performed on December 21, 2016 as a Defendant employee, Travis Childers, signed off on both the Second Inspection Form and Second Worksheet. While Defendant included the affidavit from Ms. Shephard in its Opposition to Plaintiff's Motion for an Evidentiary Hearing, Defendant omitted Ms. Shephard's affidavit from its Opposition to Plaintiff's Motion to Strike Defendant's Answer. As such, this COURT has considered Ms. Shephard's affidavit but is not persuaded that her statements are truthful or mitigating.

Ms. Shephard failed to disclose how, when, or why significant evidence including but not limited to (1) the Work Order entry by Defendant's employee, Travis Childers, noting that the West Doors were not operating correctly and were running very poorly; (2) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (3) the October 18, 2016 e-mail submitting the two ASSA ABLOY quotes to Defendant which included the Repair quote that needed to be approved to "get the doors up and running"; (4) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant multiple times before Ms. Taylor's fall; (5) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (6) the December 21, 2016 Second Inspection Form; (7) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (8) the West door sensors, motor, and competent parts; and (9) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

2. <u>Affidavit of Venessa Wickline Gribble</u>

Despite over two years of discovery in this case, Ms. Gribble was never identified by Defendant as a witness in this case. Ms. Gribble is a paralegal in Defendant's litigation division. Defendant submitted Ms. Gribble's affidavit in both its Opposition to Plaintiff's Motion for an Evidentiary Hearing and in Opposition to Plaintiff's Motion to Strike Defendant's Answer. Ms. Gribble testified that she is the person who performed two searches for documents related to the doors in this case. Ms. Gribble testified in her first search for documents that she limited her search period from October 30, 2016 to December 2, 2016. These were the document first disclosed by Defendant. The initial search specifically excluded the October 17, 2016 Inspection Form, the October 18, 2016 Quotes, the October 25, 2016 email and re-submission of Quotes, the October 28, 2016 email and re-submission of Quotes, the December 7, 2016 email and re-submission of Quotes, the December 20, 2016 email approving repair and replacement of West Doors. The December 21, 2016 Inspection Form and Worksheet both of which were signed by Defendant's employee, Travis Childers. The December 28, 2016 invoice from ASSA ABLOY to Defendant. Ms. Gribble provides no rationale for why she was asked to

perform such a limited scope. More importantly, however, is that the search period from October 30, 2016 to December 2, 2016 does include significant documents which were not disclosed by Ms. Gribble. For example, Ms. Gribble failed disclose the November 8, 2016 e-mail and re-submittal of Quotes, the November 15, 2016 e-mail and re-submittal of Quotes, the November 23, 2016 e-mail and re-submittal of Quotes, and the November 29, 2016 e-mail and re-submittal of Quotes.

Next, Ms. Gribble testified that she performed a second, more extensive search related to the replacement of door sensors. Ms. Gribble states that in September 2018, she provided to defense counsel. This COURT finds that the September 2018 documents and subsequent disclosure were also problematic in that Ms. Gribble provided documents related to the wrong door. Specifically, Ms. Gribble provided documentation related to the East Doors not the West Doors where Ms. Taylor was injured.

In carefully considering the affidavit of Ms. Gribble this COURT finds that Ms. Gribble testimony does not support mitigation of Defendant's conduct. It is clear from the records produced by ASSA ABLOY that Defendant was fully aware that the West Doors' safety features were not operation as of October 14, 2016. It is also clear that Defendant undertook to have the West Doors safety system including door sensors repaired on December 21, 2016. Additionally, Defendant was fully aware that the injury took place at the West Doors, yet Ms. Gribble provided evidence of the East Doors. Ms. Gribble failed to disclose how, when, or why significant evidence including but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West door sensors, motor, and competent parts; and

(8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

3. **Affidavit of Ronald K. Radcliffe, Jr.**

Like Ms. Shephard and Ms. Gribble, Mr. Radcliffe was not identified as a witness in this litigation. Mr. Radcliffe's affidavit was submitted in both Defendant's Opposition to Plaintiff's Motion for an Evidentiary Hearing and Plaintiff's Motion to Strike Defendant's Answer. Mr. Radcliffe was asked to review certain maintenance records from Defendant's Service Hub and from ASSA ABLOY. Mr. Radcliffe's affidavit is dated October 30, 2019. As such, this Court finds that Mr. Radcliffe did not review the full set of records produced by ASSA ABLOY on March 4, 2020, approximately four months after Mr. Radcliffe prepared the subject affidavit. In reviewing records, Mr. Radcliffe offers expert testimony regarding the mechanisms, safety features, and operation of the subject doors. As Mr. Radcliffe was not identified as a lay or expert witness, this COURT does not consider Mr. Radcliffe's opinion testimony. As such, the portion of Mr. Radcliffe's affidavit that this COURT does consider deals with his personal involvement in the procurement and production of evidence. Mr. Radcliffe states that in September 2018, he went to find out if or when the sensors were replaced on the doors at Defendant Store No. 347. He states that he went to the store to get the numbers from the doors so that he could identify them. He then called ASSA ABLOY and asked if any of the sensors at the store had been replaced in the last two years. He states that they sent him records. Mr. Radcliffe then states that records ASSA ABLOY sent him that the East Doors had sensors replaced on June 15, 2017 and the West Doors do not show ASSA ABLOY replacing the West Doors' sensors in the past two years.

This COURT finds that Mr. Radcliffe's testimony does not mitigate Defendant's conduct. First, it is clear that Mr. Radcliffe did not see the full production of documents from ASSA ABLOY which directly contradicts his statements under oath. According to Mr. Radcliffe, ASSA ABLOY told him that the West Doors' sensors were not replace between September 2016 to September 2018. The documents from ASSA ABLOY prove otherwise. Additionally, Mr. Radcliffe failed to disclose how, when, or why significant evidence including

but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant multiple times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West Doors sensors, motor, and competent parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated. Given the totality of the completeness of the records from ASSA ABLOY and totality of the evidence, this COURT finds that Mr. Radcliffe's affidavit regarding his phone conversation from an unknown employee from ASSA ABLOY is not credible and is not admissible on an evidentiary basis. Mr. Radcliffe's testimony regarding what an unidentified employee of ASSA ABLOY told him is hearsay. The actual records from ASSA ABLOY have evidentiary value as they are found to be authentic and admissible evidence. Even if Mr. Radcliffe's testimony had evidentiary value, this COURT finds that it would be insufficient to mitigate Defendant's extensive spoliation of evidence, lack of candor to this COURT, and years of halting the adversarial process. Finally, this COURT finds that Mr. Radcliffe's testimony regarding his inspection of the subject doors is remarkable in that he alleges to have provided to corporate Defendant the exact serial numbers of the subject doors; yet corporate Defendant failed to provided records for the subject doors. Rather, corporate Defendant chose to the records for the East Doors which Defendant attempted to pass off as records for the West Doors.

THE COURT FURTHER FINDS that presenting these false Affidavits shows the extent and breadth of Defendant's lack of veracity and candor.

G. Defendant's Lack Of Veracity And Candor When Interacting With The COURT

1. Defendant's Lack Of Veracity And Candor At Hearings

THE COURT FURTHER FINDS that Defendant exhibited a general lack of candor with this Court and opposing counsel. This lack of candor is most prevalent in Defendant discovery failures, examples of which have been detailed above. Nevertheless, this lack of candor continued at various hearings.

THE COURT FURTHER FINDS that at the August 13, 2019 hearing for the Motion for Sanctions for Spoliation of Evidence, Defendant represented to the Court that the subject door had no repairs or work done at any time. Further, at that hearing, Defendant told this Court that all documents related to the subject door had been produced and there were no prior problems with the door. These representations were wrong.

THE COURT FURTHER FINDS that at a later hearing held on March 10, 2020 that Defendant attempted to explain its position in light of the recently disclosed ASSA ABLOY documents. Defendant told this Court that ASSA ABLOY may have done the work to replace the door's component parts, but that Defendant did not authorize that work to be done and Defendant had no idea that the work was done. When considering Defendant new arguments, this COURT recognized that Defendant was still blocking ASSA ABLOY for producing all relevant documents. Thus, this COURT entered and Order that Defendant was not to communicate with ASSA ABLOY, that all documents ASSA ABLOY was withholding were to be produced, and that Ms. Taylor was to furnish ASSA ABLOY with a copy of this Court's Order for production of all relevant documents. Another hearing was scheduled for March 31, 2020.

THE COURT FURTHER FINDS that ASSA ABLOY produced the documents pursuant to the Court Order. These documents showed that Defendant prior representations that ASSA ABLOY was not authorized to do work on the subject door's component parts was false. In fact, these new documents produced by ASSA ABLOY included e-mails between ASSA ABLOY and Defendant representatives showing (1) that the subject doors were unsafe, in disrepair, and in need of upgrading before Ms. Taylor's incident; and (2) that Defendant

approved ASSA ABLOY to perform work to the door's component parts. Even worse, it was Defendant own 30(b)(6) representative Mr. Dieter Thurnwald that send the e-mail approving the work to be done on the subject doors.

THE COURT FURTHER FINDS that at the March 31, 2020 hearing, Defendant attempted to blame ASSA ABLOY for Defendant repeated, ongoing discovery failures and misrepresentations to this Court. Defendant claimed that ASSA ABLOY did not properly document its work in Defendant service hub program, and that Defendant had no e-mails because it destroys all e-mails after 30 days. Yet, these representations rang hollow because they were contradicted by the evidence and did not alleviate Defendant from its disclosure and discovery duties.

THE COURT FURTHER FINDS that at the March 31, 2020 hearing, Defendant was attempting to explain why it did not have various documents related to the subject doors. Defendant represented to the COURT at that hearing that ASSA ABLOY never sent an invoice for the work performed on the subject doors. [See, March 31, 2020 hearing, pp. 25 and 33] This was false because ASSA ABLOY produced the invoice it sent to Defendant as part of the documents it disclosed (which Defendant initially blocked from being produced) after being ordered by the COURT.

THE COURT FURTHER FINDS that Defendant representations to this Court during numerous hearings were wrong. Its representations were contradicted by other documents. And its representations did not explain why Defendant breached every duty it had (duty to preserve, duty of candor, discovery duties, disclosure duties, and duty to prepare 30(b)(6) witnesses) which led to almost three years of misguided litigation.

2. Defendant's Lack Of Veracity And Candor Submitting Incorrect Orders

THE COURT FURTHER FINDS that Defendant has presented this COURT with Orders that it knows are false and incorrect. This shows a lack of veracity and candor with the COURT.

THE COURT FURTHER FINDS that at the November 5, 2021 hearing on the renewed Motion to Strike Defendant's Answer, this COURT ruled that Defendant's Answer was stricken as to liability and damages. This ruling was clarified by Defendant's counsel:

> MR. KRAEMER: Your Honor, just for clarification, does that apply to liability only or is it damages as well? ...
>
> THE COURT: We did have – we did – there was two and a half years or so of litigation that was – I think I termed it "misguided" in this case. So what I'm going to do is this: I'm going to go ahead, it goes to both the liability and damages. ...
>
> MR. KRAEMER: Fine, your Honor. Have a good day, sir.

[See, November 5, 2021 Hearing Transcript, pp. 102 – 104]

THE COURT FURTHER FINDS that despite obtaining clarification from this COURT about the extent of the COURT's ruling, Defendant nevertheless submitted a proposed order that it knew was false. On December 18, 2020, Defendant submitted to this COURT a proposed order saying, in part: "THE COURT HERBY ORDERS that Plaintiff's Motion to Strike Defendant's Answer as to liability only is HEREBY GRANTED."

THE COURT FURTHER FINDS that at a later hearing related to the instant Motion (Defendant's Motion for Reconsideration) the COURT had denied that Motion. Nevertheless, Defendant submitted a knowingly false order which stated, in part: "Motion for Reconsideration as it pertains to the Striking of Defendant's Answer on Damages is HEREBY GRANTED." Again, this proposed order is knowingly false.

THE COURT FURTHER FINDS that after the Defendant's Motion for Reconsideration was heard, the COURT told the parties that it was denying that Motion although there was some inherit confusion in the hearing transcript and Minute Order. Nevertheless, Defendant submitted a proposed Order which stated that the COURT granted the Motion for Reconsideration. Again, this proposed Order was not what this COURT ruled and was contradicted by the COURT's comments and the Minute Order.

THE COURT FURTHER FINDS that Defendant's actions of submitting knowingly false proposed order to this COURT shows the Defendant's ongoing actions of lack of veracity and candor.

H. <u>Defendant Argued That An Evidentiary Hearing Was Not Necessary</u>

THE COURT FURTHER FINDS that on December 5, 2019, Ms. Taylor filed Ms. Taylor's motion for an Evidentiary Hearing on an Order Shortening Time, which the Defendant opposed. In Defendant's Opposition it included three Affidavits which were discussed above. Defendant then represented to the COURT that the Affidavits were the only evidence it needed to resolve the issues. For example, Defendant stated:

> An evidentiary hearing of a DEFENDANT witness (Courtney Shepherd) would result in the same testimony provided in her attached affidavit. The hearing, therefore, would only serve to have Ms. Shepard state her affidavit testimony in open Court. This hearing would serve no legitimate purpose whatsoever.

Similarly, about Ms. Gribble's Affidavit:

> ... Ms. Gribble has already explained in an affidavit when she initially requested maintenance records related to this case, who requested them (Sedgwick) and when she requested additional requests to respond to Ms. Taylor's Second Set of Requests for Production of Documents. Ms. Gribble's affidavit testimony speaks for itself and there is no evidence that is in anyway inaccurate or needs further explanation.

Defendant again reiterated that "All of the so called issues or "matters" that Ms. Taylor states requires evidentiary hearing can easily be addressed by existing testimony (affidavits). ..."

THE COURT FURTHER FINDS that oral argument was held on Ms. Taylor's Motion for an Evidentiary Hearing. At that hearing, Defendant continued to argue that an evidentiary hearing was not necessary because it has submitted Affidavits which were all the evidence that the COURT needed to address the issues.

> MR. KRAEMER: ... We have affidavits from multiple employees that they set forth answers to every one of their questions, inquiries, whatever you want to call them, their topics. They're

> answered. They're answered. We will have a witness come here and just repeat everything they said in an affidavit.

[See, Jan. 22, 2020 hearing, p. 69]

THE COURT FURTHER FINDS that after the hearing, this Court issued an Order wherein it agreed with Defendant's arguments and denied the request for an Evidentiary Hearing.

THE COURT FURTHER FINDS that in the instant Motion, the Defendant has presented no new evidence or law that would show that the COURT's initial ruling was legally or factually in error. Further, this COURT fully considered the evidence Defendant submitted in the form of Affidavits.

I. Defendant's Lack Of Veracity And Candor Is Intentional

THE COURT FURTHER FINDS that there is no time when the Defendant put forth an honest defense or when it was fully candid with the COURT. The spoliation, the discovery abuses, and failures, the spoliation, the deceitful 30(b)(6) testimony, and the lack of candor with the COURT and other failures by Defendant show that at no time was the Defendant attempting to honestly defend this case. From the moment of the fall, Defendant engaged in a deliberate scheme to hide the truth at all costs. Given the extensive, repeated, and ongoing lack of veracity and candor, this COURT reaches the obvious conclusion that Defendant's lack of veracity and candor are intentional.

J. Defendant Choose To Forgo Evidentiary Hearing

THE COURT FURTHER FINDS that Defendant had an opportunity to have an evidentiary hearing in this matter. Defendant chose to oppose an evidentiary hearing and instead chose to rely upon the Affidavits submitted. As shown above, these Affidavits contained blatantly false and misleading testimony. Defendant's explanation for opposing evidentiary hearing was that Defendant did not believe this Court would grant Plaintiff's Motion to Strike Defendant's Answer. [See, Feb. 16, 2021 Hearing Transcript, p. 7] Defendant clearly understood the nature of Ms. Taylor's Motion to Strike because that Motion requested that Defendant's Answer be stricken as to liability and damages. It bewilders this COURT that Defendant's assumed this COURT would not carefully analyze all factors and consider all

relevant testimony and simply find in Defendant's favor. Defendant's assumption is mistaken as this COURT would have entertained an evidentiary hearing. Given Defendant's opposition to the evidentiary hearing, this COURT carefully considered all evidence presented which overwhelming supports Ms. Taylor's position.

ORDER

THE COURT HEREBY ORDERS that Defendant's Motion is hereby DENIED in its entirety and the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees remains unchanged.

THE COURT FURTHER ORDERS that the COURT has considered all the Young factors and the necessity to deter future conducted related to the failure to preserve all evidence upon receipt of the preservation of evidence letter and the cascade of untruthful discovery responses. Notwithstanding the prior failures, once Ms. Taylor subpoena ASSA ABLOY for the actual maintenance records for the door at issue, ASSA ABLOY requested Defendant's permission to disclose all relevant maintenance records and documents fully. While Defendant had control of the maintenance records production, it never responded to ASSA ABLOY's request and thus production could not occur until this COURT ordered Defendant to stop thwarting and blocking production. This showed the extent and lengths Defendant would go to avoid the truth and thus further confirmed the COURT's concern about Defendant's lack of veracity and candor. It further established that the Defendant's lack of veracity and candor was intentional.

THE COURT FURTHER ORDERS that the record in this case is fully developed that the numerous filings, hearings, along with the Affidavits preserved by Defendant have provided this COURT with ample evidence and information to consider the issues at hand. Further, it was the Defendant that argued an evidentiary hearing was not necessary.

THE COURT FURTHER ORDERS that EDCR 2.24 provides:

> **Rule 2.24. Rehearing of motions.**
>
> (a) No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be

> reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.
>
> (b) A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, **must** file a motion for such relief **within 14 days after service of written notice of the order** or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed, and heard as is any other motion. A motion for reconsideration does not toll the period for filing a notice of appeal from a final order or judgment.
>
> (c) If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case. Here, Defendant's Motion for Reconsideration seeks an evidentiary hearing with this Court.

This COURT's Order denying an evidentiary hearing was entered on June 22, 2020. Defendant's Motion for Reconsideration was not filed for over 6 (six) months. Further, Defendant never sought to enlarge the time to file for reconsideration. THE COURT ORDERS that Defendant's Motion for Reconsideration is untimely and jurisdictionally barred from reconsideration for failure to comply with EDCR 2.24.

THE COURT FURTHER ORDERS that Defendant initially opposed an evidentiary hearing. The Defendant is thus judicially estopped from taking inconsistent position with the COURT, which is another reason the Motion for Reconsideration is denied.

THE COURT FURTHER ORDERS that throughout this case, the Defendant has shown a lack of veracity and candor. This COURT has grave concerns that an evidentiary hearing would be of any benefit or that it would result in finding the truth. This is particularly an issue because Defendant's lack of veracity and candor is intentional. This is another reason that the Motion for Reconsideration is denied.

THE COURT FURTHER ORDERS that Defendant's conduct in this case merits striking the answer as an appropriate sanction to deter future litigants from halting the adversarial process or engaging in similar misconduct.

THE COURT FURTHER ORDERS that a prove up hearing for Ms. Taylor regarding damages will be held on April 7, 2021 at 1:30 pm., and will proceed as outlined above.

Dated this 12th day of April, 2021

DISTRICT COURT JUDGE
528 20C CAF2 AA22
Timothy C. Williams
District Court Judge

ZJ

Respectfully Submitted by:

Dated: 4/9/21

TANNER CHURCHILL ANDERSON

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Approved as to form and content by:

Dated: _____

COOPER LEVENSON, P.A.

- REFUSED TO SIGN -

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Patricia Taylor, Plaintiff(s) vs. Smith's Food and Drug Centers Inc, Defendant(s)	CASE NO: A-17-761650-C DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

Service Date: 4/12/2021

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DISTRICT COURT
CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME**

NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME

PLEASE TAKE NOTICE that the Order Denying Defendant's Motion For Reconsideration Of The Court's Order Granting Ms. Taylor's Motion To Strike Defendant's

Answer To Liability And Damages, Motion For Stay Pending Resolution By The Nevada Supreme Court And Motion For Clarification On Order Shortening Time was entered by the above entitled Court on the 12th day of April, 2021, a copy of which is attached hereto and made a part hereof.

DATED this 15 day of April, 2021.

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of TANNER CHURCHILL ANDERSON LAW FIRM and that on the 15 day of April, 2021, I served the above and foregoing **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME** by Electronic Service to the following:

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Docket 84049 Document 2022-00861

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DISTRICT COURT
CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME** Date of Hearings: February 16, 2021; and March 18, 2021 Time of Hearing: 9:05 a.m.

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME

Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification on Order Shortening Time ("Motion"), having come on for hearing on February 16, 2021 and on March 18, 2021; David A. Tanner, Esq.; David Churchill, Esq.; and Micah Echols, Esq. appeared on behalf of Plaintiff, Patricia A. Taylor; Gregory A. Kraemer, Esq. appearing on behalf of Defendant Smith's Food & Drug Centers, Inc.

The Court having read and considered the Motion, the Opposition, and Reply to the same; having entertained oral argument, and being fully advised on the premises, and good cause appearing therefore,

FINDINGS

THE COURT FINDS that this matter was on calendar to resolve Defendant's Motion.

THE COURT FURTHER FINDS that the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees was a significant, thorough, and lengthy Order which considered all relevant factors including those outlined in Young v. Johnny Ribeiro Building, Inc., 106 Nev. 88, 92, 787 P.2d 777, 780 (1990). [See, Jan. 21, 2021 Order]

THE COURT FURTHER FINDS that deterrence is an important factor in determining the sanctions for Defendant's abuses and failures which include discovery failures, spoliation of evidence, and lack of veracity and candor.

THE COURT FURTHER FINDS that at the February 16, 2021 hearing, the Court denied the Motion, but the Minute Order issued after that Hearing was vague regarding whether the Court would uphold the entirety of the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees, specifically the portion related to striking Defendant's damages. At that hearing, the COURT set another hearing for March 18, 2021.

THE COURT FURTHER FINDS that at the March 18, 2021 hearing, the ambiguity in the Minute Order from the February 16, 2021 hearing was addressed and the COURT

acknowledged that the ambiguity existed. The COURT heard further arguments from counsel and clarified that it was denying the Motion in its entirety. The COURT moved the prove up hearing to April 7, 2021 at 1:30 pm. The COURT and Parties confirmed that at the March 18, 2021 hearing that Ms. Taylor and her medical expert Dr. Garber would testify at the April 7, 2021 prove up hearing and that Defendant could appropriately cross-examine them if desired. The COURT and Parties also confirmed that various Trial Briefs had been filed by both Ms. Taylor (three Briefs) and Defendant (one Brief). The COURT and Parties also confirmed that Ms. Taylor's exhibits she intended to use at the April 7, 2021 hearing had been provided to the COURT and Defendant.

THE COURT FURTHER FINDS that Defendant has repeatedly shown that it has not been honest throughout this case. The COURT has grave concerns as to Defendant's lack of veracity and candor including (1) the veracity of the NRCP 30(b)(6) designee's Dieter Thurnwald and Trish Kozlowski as it relates to the performance problems for the door at issue, (2) veracity and candor failings in responses to written discovery and Rule 16.1 Disclosures, and (3) the failure to retain and produce documents and emails between Defendant and ASSA ABLOY as to the doors function and maintenance. The COURT's concerns are heightened considering that Defendant was placed on actual notice when it received the December 7, 2016 evidence preservation letter shortly after Ms. Taylor's November 30, 2016 fall.

THE COURT FURTHER FINDS that the lack of veracity and candor permeated this entire action as more fully set forth below.

A. <u>Defendant's Lack Of Veracity And Candor In Its Prelitigation Actions</u>

THE COURT FURTHER FINDS that Ms. Taylor's fall occurred on November 30, 2016. Only a week later on December 7, 2016, Defendant was served with a preservation letter from Ms. Taylor's attorney. This preservation letter put Defendant on notice to preserver all relevant evidence.

THE COURT FURTHER FINDS that Defendant received the December 7, 2016 preservation letter because it disclosed the same in its Initial Rule 16.1 Disclosures.

THE COURT FURTHER FINDS that despite receiving the December 7, 2016 preservation letter, Defendant intentionally destroyed, let be destroyed, and failed to preserve vital evidence in this case. This evidence included: (1) the West Doors' sensors, motor, gearbox, wiring, and other component parts; (2) the October 17, 2016 Inspection Form wherein ASSA ABLOY noted that the West Doors' safety systems were not operational; (3) the October 17, 2016 Worksheet; (4) the October 18, 2016 Quotes sent to Defendant; (5) the October 18, 2016 e-mail where ASSA ABLOY sent the Quotes to Defendant; (6) the correspondence wherein the Quotes was resubmitted to Defendant on October 25 and 28, 2016, as well as on November 1, 8, 15, 23, 29, 2016; (7) the December 6, 2016 e-mail from ASSA ABLOY asking about the status of the Quotes; (8) the correspondence wherein the Quotes were resubmitted to Defendant on December 7, 2016; (9) the December 20, 2016 e-mail where Defendant employee, Dieter Thurnwald approved the Repair and Replacement Quotes; (10) the December 21, 2016 Second Inspection Form signed by Defendant's employee, Travis Childers; (11) the October 17, 2016 Second Worksheet signed by Defendant's employee, Travis Childers; (12) the December 28, 2016 invoice for repairs completed by ASSA ABLOY.

THE COURT FURTHER FINDS that the failure to preserve this evidence and documents was intentional and showed a lack of veracity and candor related to the litigation process that Defendant had notice would occur.

B. <u>Defendant's Lack of Veracity And Candor In Rule 16.1 Disclosures</u>

THE COURT FURTHER FINDS that when litigation began Defendant had already intentionally destroyed, let be destroyed, and failed to preserve vital evidence in this case as shown above.

THE COURT FURTHER FINDS that despite Defendant's destruction of evidence and failure to preserve evidence, Defendant still had knowledge of its door vendor, ASSA ABLOY and the Contract it had with this vendor. Despite this, in its Rule 16.1 Disclosures, Defendant never disclosed the identity of its door vendor and never disclosed the Contract it had with this door vendor. Rather, Defendant disclosed the wrong door vendor to Ms. Taylor. Defendant also

produced an old, outdated contract it had with Stanley Access Technologies, a company that had not provided any door maintenance, repairs, or upgrades for many years.

THE COURT FURTHER FINDS that Defendant did not disclose the identity of various individuals who played a role in the subject door's repair and replacement including Gilbert Alverado and Brad Childress. Further, it was not until the end of discovery that ASSA ABLOY disclosed the identity of the person that approved the door replacement and repair, Dieter Thurnwald.

THE COURT FURTHER FINDS that in its Rule 16.1 Disclosures and written discovery responses, Defendant actually produced documents related to the wrong door – the East door not the West Door.

THE COURT FURTHER FINDS that in its Rule 16.1 Disclosures, Defendant failed to disclose vital witnesses. For example, Defendant did not disclose the names of the employees that communicated with ASSA ABLOY about the Subject Doors in its Initial Rule 16.1 Disclosure, namely Dieter Thurnwald, Travis Childers, and Gilbert Alvarado.

THE COURT FURTHER FINDS that Defendant failed to disclose certain witnesses until after discovery ended even though it knew the identify of these witnesses from before the lawsuit was filed. Specifically, discovery ended on August 27, 2019. The parties entered a limited stipulation to allow certain depositions to be done by November 15, 2019, but discovery remained closed for all other purposes. Despite this, on November 7, 2019 – months after discovery ended – Defendant disclosed Mr. Radcliffe and Mr. Osborn as witnesses. These are witnesses Defendant was aware of from the inception of this case and they were disclosed after discovery ended and thus too late for Ms. Taylor to conduct any discovery from them or about them.

THE COURT FURTHER FINDS that Defendant never disclosed the identity of the employees who signed Affidavits that the Defendant relied upon to argue that an evidentiary hearing was not necessary.

THE COURT FURTHER FINDS that Defendant's lack of veracity and candor was evident through its failure to disclosure (and timely disclose) information, entities, contracts, and witnesses in its Rule 16.1 Disclosures.

C. Defendant's Lack Of Veracity And Candor In Its Written Discovery Responses

THE COURT FURTHER FINDS that as noted above, in its Rule 16.1 Disclosures and written discovery responses, Defendant actually produced documents related to the wrong door – the East door not the West Door.

THE COURT FURTHER FINDS that on October 4, 2018, Defendant responded to requests for production. Plaintiff's First Request for Production Nos. 27 and 28 requested all service records for the West Doors. Defendant failed to produce e-mails about the West Doors, Quotes from ASSA ABLOY, or many other documents. In fact, during discovery Defendant only produced documents for the wrong door and failed to produce any documents (other than the Work Order) for the West Doors.

THE COURT FURTHER FINDS that on August 8, 2019, Defendant supplemented its responses to Ms. Taylor's Request for Production No. 34 and wrongfully indicated that the sensors and component parts were still on the West Doors.

THE COURT FURTHER FINDS that Defendant's written discovery answers were false, misleading, and incomplete. For example, in its Response to Plaintiff's Second Request for Production, No. 34, Defendant stated that the West Doors' component parts were replaced in June 2017 and were discarded and not available for use in this case. Yet, this response and the documents produced by Defendant in its Response pertained to the East Doors, not the West Doors that caused Mr. Taylor's fall. Later, in its Supplemental Response to Plaintiff's Second Request for Production, No. 34, Defendant said that the component parts for the West Doors that caused Ms. Taylor's fall were still on the West Doors.

THE COURT FURTHER FINDS that in its Response to Plaintiff's First Request for Production Nos. 27 and 28 that asked for all service records for the West Doors, Defendant only produced the Work Order. It did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice.

THE COURT FURTHER FINDS that in its Response to Plaintiff's First Request for Production No. 4, asking for documents showing a dangerous condition with the West Doors, Defendant stated that no such documents exist. Defendant did not produce e-mails, quotes, Inspection Forms, Worksheets, or the Invoice, all of which showed the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be repaired.

THE COURT FURTHER FINDS that in its Supplemental Answer to Interrogatory No. 13, Defendant stated that there has been no work, and there was never any recommendation for work to be done, on the West Doors.

THE COURT FURTHER FINDS that the Defendant's blatantly false written discovery responses was intentional and showed a lack of veracity and candor.

D. <u>Defendant's Lack Of Veracity And Candor In Its 30(b)(6) Deposition Testimony</u>

THE COURT FURTHER FINDS that on March 1, 2019 Defendant's first 30(b)(6) representative, Ms. Trisha Kozlowski was deposed. She falsely testified that the only problem with the West Doors were them coming off the tracks.

THE COURT FURTHER FINDS that on August 7, 2019 Defendant's second 30(b)(6) representative, Mr. Dieter Thurnwald was deposed. He falsely testified as follows:

> "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]
>
> Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]
>
> That no documentation existed about the west doors. [Thurnwald depo., pp. 73 - 75]
>
> That the last time the west doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]
>
> The door mechanisms for the west doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]

> Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]
>
> Finally, he testified that only in an "imaginary world" was the subject door ever worked on or replaced. [Thurnwald depo., pp. 115 and 118]

The depositions of Defendant's NRCP 30(b)(6) corporate representatives show Defendant's lack of veracity and candor throughout discovery.

THE COURT FURTHER FINDS that the ASSA ABLOY Technician filled out the Inspection Form wherein he notes that the West Doors' safety systems are not operational, and the West Doors do not comply with the applicable standards. Mr. Thurnwald received all the quotes from ASSA ABLOY regarding the repair and replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts. These repairs would make the West Doors' safety system operation through replacement of the faulty sensors. Mr. Thurnwald is the employee who actually approved ASSA ABLOY to perform the work to replace the faulty sensors et al.

THE COURT FURTHER FINDS that Mr. Thurnwald's binding testimony as Defendant's NRCP 30(b)(6) designee is shocking to this COURT. Mr. Thurnwald was fully aware that the West Doors' safety systems were not operational, and that significant work was required to make the safety systems operational. Mr. Thurnwald was aware of this safety issue approximately forty-four (44) days before the West Doors closed on Mr. Taylor causing injury. Mr. Thurnwald knew he approved ASSA ABLOY's quote for the replacement of West Doors' sensors, motor, gearbox, wiring, and other component parts on December 20, 2016. Yet, Mr. Thurnwald provided blatantly false testimony which, if true, would dispute Ms. Taylor's allegations of actual notice related to liability and conscious disregard of safety related to punitive damages.

THE COURT FURTHER FINDS that the blatantly false testimony of Trisha Kozlowski and Dieter Thurnwald, the 30(b)(6) representatives, provide strong indicia that Defendant's lack

of veracity and candor was intentional because it supports Ms. Taylor's allegation that Defendant intended to halt the adversarial process.

E. <u>Defendant Blocked Discovery From A Third Party</u>

THE COURT FURTHER FINDS that in addition to Defendant's lack of candor in its Rule 16.1 Disclosures, its written discovery responses, and its 30(b)(6) deposition testimony, Defendant also blocked a third party, ASSA ABLOY, from producing evidence. These actions showed a lack of veracity and candor that and that Defendant would go to any lengths to hide the truth because Defendant knew that these documents would contradict the Defendant's position, and that the ASSA ABLOY documents would show that the West Doors were unsafe, broken, not complaint with the applicable standards, and needed to be replaced and repaired. These documents would further show the Defendant's refusal to have the West Doors replaced and repaired, and that it had a conscious disregard for Ms. Taylor's safety. These documents would further show that West Doors were replaced and repaired and that Defendant was invoiced for that work.

THE COURT FURTHER FINDS that during discovery Ms. Taylor subpoenaed ASSA ABLOY to provide documents pertinent to this matter and the West Doors. ASSA ABLOY attempted to fully respond to Ms. Taylor's Subpoena but needed written permission from Defendant and/or its parent company, Kroger, because many of the documents requested in Ms. Taylor's subpoena were confidential pursuant to the contract between ASSA ABLOY and Defendant. Thus, on August 15, 2019 ASSA ABLOY sent a letter to Defendant/Kroger (with a copy to Defendant's counsel, Jerry S. Busby, Esq.) asking permission to disclose all relevant documents related to Ms. Taylor's Subpoena, including the Agreement and work authorizations:

> The Agreement and related work authorizations are responsive to the Subpoena but are considered Confidential Information pursuant to Section 5 of the Agreement. Enclosed as Exhibit B are copies of the Confidential Information that ASSA ABLOY must produce in response to the Subpoena. ASSA ABLOY, therefore, requests Kroger's written permission to produce these documents.
>
> Please provide a response to this request by August 23, 2019. If we do not receive a response by that date, we will inform Plaintiff's

> counsel that Kroger has not provided the required permission for ASSA ABLOY to produce the Confidential Information.

THE COURT FURTHER FINDS that Defendant did not respond to this letter. Thus, ASSA ABLOY disclosed only limited documents responsive to Ms. Taylor's Subpoena. When disclosing these limited documents, ASSA ABLOY prepared an Affidavit of Custodian of Records noting the numerous documents were not disclosed because Defendant would not give permission:

> On August 15, 2019, ASSA ABLOY sent a letter to the Kroger Company ("Kroger"), via first class mail (certified mail) and overnight UPS delivery requesting written authorization to produce certain other documents in its possession that are also responsive to the Subpoena. ASSA ABLOY is contractually obligated to obtain written approval from Kroger prior to producing the documents referenced in its letter. To date Kroger has not responded to the letter.

THE COURT FURTHER FINDS that even after the Custodian of Records Affidavit Defendant still did not respond to ASSA ABLOY's letter or this Affidavit. This continued to block ASSA ABLOY from producing all documents responsive to Ms. Taylor's Subpoena.

THE COURT FURTHER FINDS that this Court had to enter an Order, which it signed on February 7, 2020, to finally allow ASSA ABLOY to produce all documents responsive to Ms. Taylor' Subpoena. This Order required (1) Defendant and Kroger were not to contact any person, employee, or agent for ASSA ABLOY about this case, Ms. Taylor's Subpoena, the West Doors, or any documents or work in this case; and (2) that Ms. Taylor's counsel was to send a copy of the Order to ASSA ABLOY; and (3) that ASSA ABLOY was to produce all documents and information relevant to the West Doors to Ms. Taylor's counsel for production and use in this case. [See, Order Signed Feb. 7, 2020]

THE COURT FURTHER FINDS that Defendant's efforts to block discovery and to put forth a false narrative in its attempt to defeat Ms. Taylor's claims were so extensive that documents could only be produced after the Court ordered Defendant not to block discovery by requiring that it not communicate with ASSA ABLOY.

THE COURT FURTHER FINDS that this is another example of Defendant's lack of veracity and candor to hide the truth and to put forth a false narrative in this case. The Defendant's actions are so brazen and far reaching that it can only conclude that Defendant's lack of veracity and candor are intentional.

F. Defendant's Lack Of Veracity And Candor In Affidavits

THE COURT FURTHER FINDS that Defendant presented three Affidavits of people and Defendant argued that these Affidavits showed that an evidentiary hearing was not necessary. This COURT closely examined these Affidavits and found they contained numerous false statements.

1. Affidavit of Courtney Shephard

Despite over two years of discovery in this case, Ms. Shephard was never identified by Defendant as a witness. Ms. Shephard provided an affidavit in opposition to Plaintiff's Motion for an Evidentiary Hearing. Ms. Shepherd's affidavit represented that "it appears ASSA ABLOY made a quote for repairs to the West Doors on October 17, 2016. The quote was submitted but it was not approved. However, it appears that the ASSA ABLOY technician that put together the quote on October 17, 2016, without approval, went to the store and performed the repair work." The documents produced by ASSA ABLOY clearly demonstrate that Ms. Shephard was not honest with this COURT. Importantly, Defendant never objected to the documents' authenticity from ASSA ABLOY. The documents produced by ASSA ABLOY establish that Defendant indeed approved ASSA ABLOY to repair and replace the West Doors. The Worksheet produced by ASSA ABLOY establish very clearly that Defendant knew the work was performed on December 21, 2016 as a Defendant employee, Travis Childers, signed off on both the Second Inspection Form and Second Worksheet. While Defendant included the affidavit from Ms. Shephard in its Opposition to Plaintiff's Motion for an Evidentiary Hearing, Defendant omitted Ms. Shephard's affidavit from its Opposition to Plaintiff's Motion to Strike Defendant's Answer. As such, this COURT has considered Ms. Shephard's affidavit but is not persuaded that her statements are truthful or mitigating.

Ms. Shephard failed to disclose how, when, or why significant evidence including but not limited to (1) the Work Order entry by Defendant's employee, Travis Childers, noting that the West Doors were not operating correctly and were running very poorly; (2) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (3) the October 18, 2016 e-mail submitting the two ASSA ABLOY quotes to Defendant which included the Repair quote that needed to be approved to "get the doors up and running"; (4) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant multiple times before Ms. Taylor's fall; (5) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (6) the December 21, 2016 Second Inspection Form; (7) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (8) the West door sensors, motor, and competent parts; and (9) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

2. <u>Affidavit of Venessa Wickline Gribble</u>

Despite over two years of discovery in this case, Ms. Gribble was never identified by Defendant as a witness in this case. Ms. Gribble is a paralegal in Defendant's litigation division. Defendant submitted Ms. Gribble's affidavit in both its Opposition to Plaintiff's Motion for an Evidentiary Hearing and in Opposition to Plaintiff's Motion to Strike Defendant's Answer. Ms. Gribble testified that she is the person who performed two searches for documents related to the doors in this case. Ms. Gribble testified in her first search for documents that she limited her search period from October 30, 2016 to December 2, 2016. These were the document first disclosed by Defendant. The initial search specifically excluded the October 17, 2016 Inspection Form, the October 18, 2016 Quotes, the October 25, 2016 email and re-submission of Quotes, the October 28, 2016 email and re-submission of Quotes, the December 7, 2016 email and re-submission of Quotes, the December 20, 2016 email approving repair and replacement of West Doors. The December 21, 2016 Inspection Form and Worksheet both of which were signed by Defendant's employee, Travis Childers. The December 28, 2016 invoice from ASSA ABLOY to Defendant. Ms. Gribble provides no rationale for why she was asked to

perform such a limited scope. More importantly, however, is that the search period from October 30, 2016 to December 2, 2016 does include significant documents which were not disclosed by Ms. Gribble. For example, Ms. Gribble failed disclose the November 8, 2016 e-mail and re-submittal of Quotes, the November 15, 2016 e-mail and re-submittal of Quotes, the November 23, 2016 e-mail and re-submittal of Quotes, and the November 29, 2016 e-mail and re-submittal of Quotes.

Next, Ms. Gribble testified that she performed a second, more extensive search related to the replacement of door sensors. Ms. Gribble states that in September 2018, she provided to defense counsel. This COURT finds that the September 2018 documents and subsequent disclosure were also problematic in that Ms. Gribble provided documents related to the wrong door. Specifically, Ms. Gribble provided documentation related to the East Doors not the West Doors where Ms. Taylor was injured.

In carefully considering the affidavit of Ms. Gribble this COURT finds that Ms. Gribble testimony does not support mitigation of Defendant's conduct. It is clear from the records produced by ASSA ABLOY that Defendant was fully aware that the West Doors' safety features were not operation as of October 14, 2016. It is also clear that Defendant undertook to have the West Doors safety system including door sensors repaired on December 21, 2016. Additionally, Defendant was fully aware that the injury took place at the West Doors, yet Ms. Gribble provided evidence of the East Doors. Ms. Gribble failed to disclose how, when, or why significant evidence including but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant seven times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West door sensors, motor, and competent parts; and

(8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated.

3. **Affidavit of Ronald K. Radcliffe, Jr.**

Like Ms. Shephard and Ms. Gribble, Mr. Radcliffe was not identified as a witness in this litigation. Mr. Radcliffe's affidavit was submitted in both Defendant's Opposition to Plaintiff's Motion for an Evidentiary Hearing and Plaintiff's Motion to Strike Defendant's Answer. Mr. Radcliffe was asked to review certain maintenance records from Defendant's Service Hub and from ASSA ABLOY. Mr. Radcliffe's affidavit is dated October 30, 2019. As such, this Court finds that Mr. Radcliffe did not review the full set of records produced by ASSA ABLOY on March 4, 2020, approximately four months after Mr. Radcliffe prepared the subject affidavit. In reviewing records, Mr. Radcliffe offers expert testimony regarding the mechanisms, safety features, and operation of the subject doors. As Mr. Radcliffe was not identified as a lay or expert witness, this COURT does not consider Mr. Radcliffe's opinion testimony. As such, the portion of Mr. Radcliffe's affidavit that this COURT does consider deals with his personal involvement in the procurement and production of evidence. Mr. Radcliffe states that in September 2018, he went to find out if or when the sensors were replaced on the doors at Defendant Store No. 347. He states that he went to the store to get the numbers from the doors so that he could identify them. He then called ASSA ABLOY and asked if any of the sensors at the store had been replaced in the last two years. He states that they sent him records. Mr. Radcliffe then states that records ASSA ABLOY sent him that the East Doors had sensors replaced on June 15, 2017 and the West Doors do not show ASSA ABLOY replacing the West Doors' sensors in the past two years.

This COURT finds that Mr. Radcliffe's testimony does not mitigate Defendant's conduct. First, it is clear that Mr. Radcliffe did not see the full production of documents from ASSA ABLOY which directly contradicts his statements under oath. According to Mr. Radcliffe, ASSA ABLOY told him that the West Doors' sensors were not replace between September 2016 to September 2018. The documents from ASSA ABLOY prove otherwise. Additionally, Mr. Radcliffe failed to disclose how, when, or why significant evidence including

but not limited to (1) the October 17, 2016 Inspection Form signed by Defendant employee, Gilbert Alvarado; (2) the October 18, 2016 e-mail submitting the two ASSA ABLOY Quotes to Defendant which included the Repair Quote that needed to be approved to "get the doors up and running"; (3) the two October 18, 2016 ASSA ABLOY Quotes – these Quotes were sent the Defendant multiple times before Ms. Taylor's fall; (4) the December 20, 2016 e-mail from Defendant employee, Dieter Thurnwald, to ASSA ABLOY finally approving the Quotes; (5) the December 21, 2016 Second Inspection Form; (6) the December 21, 2016 Second Worksheet, confirming that ASSA ABLOY repaired and replaced the West Doors' component parts; (7) the West Doors sensors, motor, and competent parts; and (8) the December 28, 2016 Invoice ASSA ABLOY sent to Defendant confirming the work and asking for payment were spoliated. Given the totality of the completeness of the records from ASSA ABLOY and totality of the evidence, this COURT finds that Mr. Radcliffe's affidavit regarding his phone conversation from an unknown employee from ASSA ABLOY is not credible and is not admissible on an evidentiary basis. Mr. Radcliffe's testimony regarding what an unidentified employee of ASSA ABLOY told him is hearsay. The actual records from ASSA ABLOY have evidentiary value as they are found to be authentic and admissible evidence. Even if Mr. Radcliffe's testimony had evidentiary value, this COURT finds that it would be insufficient to mitigate Defendant's extensive spoliation of evidence, lack of candor to this COURT, and years of halting the adversarial process. Finally, this COURT finds that Mr. Radcliffe's testimony regarding his inspection of the subject doors is remarkable in that he alleges to have provided to corporate Defendant the exact serial numbers of the subject doors; yet corporate Defendant failed to provided records for the subject doors. Rather, corporate Defendant chose to the records for the East Doors which Defendant attempted to pass off as records for the West Doors.

THE COURT FURTHER FINDS that presenting these false Affidavits shows the extent and breadth of Defendant's lack of veracity and candor.

G. Defendant's Lack Of Veracity And Candor When Interacting With The COURT

1. Defendant's Lack Of Veracity And Candor At Hearings

THE COURT FURTHER FINDS that Defendant exhibited a general lack of candor with this Court and opposing counsel. This lack of candor is most prevalent in Defendant discovery failures, examples of which have been detailed above. Nevertheless, this lack of candor continued at various hearings.

THE COURT FURTHER FINDS that at the August 13, 2019 hearing for the Motion for Sanctions for Spoliation of Evidence, Defendant represented to the Court that the subject door had no repairs or work done at any time. Further, at that hearing, Defendant told this Court that all documents related to the subject door had been produced and there were no prior problems with the door. These representations were wrong.

THE COURT FURTHER FINDS that at a later hearing held on March 10, 2020 that Defendant attempted to explain its position in light of the recently disclosed ASSA ABLOY documents. Defendant told this Court that ASSA ABLOY may have done the work to replace the door's component parts, but that Defendant did not authorize that work to be done and Defendant had no idea that the work was done. When considering Defendant new arguments, this COURT recognized that Defendant was still blocking ASSA ABLOY for producing all relevant documents. Thus, this COURT entered and Order that Defendant was not to communicate with ASSA ABLOY, that all documents ASSA ABLOY was withholding were to be produced, and that Ms. Taylor was to furnish ASSA ABLOY with a copy of this Court's Order for production of all relevant documents. Another hearing was scheduled for March 31, 2020.

THE COURT FURTHER FINDS that ASSA ABLOY produced the documents pursuant to the Court Order. These documents showed that Defendant prior representations that ASSA ABLOY was not authorized to do work on the subject door's component parts was false. In fact, these new documents produced by ASSA ABLOY included e-mails between ASSA ABLOY and Defendant representatives showing (1) that the subject doors were unsafe, in disrepair, and in need of upgrading before Ms. Taylor's incident; and (2) that Defendant

approved ASSA ABLOY to perform work to the door's component parts. Even worse, it was Defendant own 30(b)(6) representative Mr. Dieter Thurnwald that send the e-mail approving the work to be done on the subject doors.

THE COURT FURTHER FINDS that at the March 31, 2020 hearing, Defendant attempted to blame ASSA ABLOY for Defendant repeated, ongoing discovery failures and misrepresentations to this Court. Defendant claimed that ASSA ABLOY did not properly document its work in Defendant service hub program, and that Defendant had no e-mails because it destroys all e-mails after 30 days. Yet, these representations rang hollow because they were contradicted by the evidence and did not alleviate Defendant from its disclosure and discovery duties.

THE COURT FURTHER FINDS that at the March 31, 2020 hearing, Defendant was attempting to explain why it did not have various documents related to the subject doors. Defendant represented to the COURT at that hearing that ASSA ABLOY never sent an invoice for the work performed on the subject doors. [See, March 31, 2020 hearing, pp. 25 and 33] This was false because ASSA ABLOY produced the invoice it sent to Defendant as part of the documents it disclosed (which Defendant initially blocked from being produced) after being ordered by the COURT.

THE COURT FURTHER FINDS that Defendant representations to this Court during numerous hearings were wrong. Its representations were contradicted by other documents. And its representations did not explain why Defendant breached every duty it had (duty to preserve, duty of candor, discovery duties, disclosure duties, and duty to prepare 30(b)(6) witnesses) which led to almost three years of misguided litigation.

2. Defendant's Lack Of Veracity And Candor Submitting Incorrect Orders

THE COURT FURTHER FINDS that Defendant has presented this COURT with Orders that it knows are false and incorrect. This shows a lack of veracity and candor with the COURT.

THE COURT FURTHER FINDS that at the November 5, 2021 hearing on the renewed Motion to Strike Defendant's Answer, this COURT ruled that Defendant's Answer was stricken as to liability and damages. This ruling was clarified by Defendant's counsel:

> MR. KRAEMER: Your Honor, just for clarification, does that apply to liability only or is it damages as well? ...
>
> THE COURT: We did have – we did – there was two and a half years or so of litigation that was – I think I termed it "misguided" in this case. So what I'm going to do is this: I'm going to go ahead, it goes to both the liability and damages. ...
>
> MR. KRAEMER: Fine, your Honor. Have a good day, sir.

[See, November 5, 2021 Hearing Transcript, pp. 102 – 104]

THE COURT FURTHER FINDS that despite obtaining clarification from this COURT about the extent of the COURT's ruling, Defendant nevertheless submitted a proposed order that it knew was false. On December 18, 2020, Defendant submitted to this COURT a proposed order saying, in part: "THE COURT HERBY ORDERS that Plaintiff's Motion to Strike Defendant's Answer as to liability only is HEREBY GRANTED."

THE COURT FURTHER FINDS that at a later hearing related to the instant Motion (Defendant's Motion for Reconsideration) the COURT had denied that Motion. Nevertheless, Defendant submitted a knowingly false order which stated, in part: "Motion for Reconsideration as it pertains to the Striking of Defendant's Answer on Damages is HEREBY GRANTED." Again, this proposed order is knowingly false.

THE COURT FURTHER FINDS that after the Defendant's Motion for Reconsideration was heard, the COURT told the parties that it was denying that Motion although there was some inherit confusion in the hearing transcript and Minute Order. Nevertheless, Defendant submitted a proposed Order which stated that the COURT granted the Motion for Reconsideration. Again, this proposed Order was not what this COURT ruled and was contradicted by the COURT's comments and the Minute Order.

THE COURT FURTHER FINDS that Defendant's actions of submitting knowingly false proposed order to this COURT shows the Defendant's ongoing actions of lack of veracity and candor.

H. <u>Defendant Argued That An Evidentiary Hearing Was Not Necessary</u>

THE COURT FURTHER FINDS that on December 5, 2019, Ms. Taylor filed Ms. Taylor's motion for an Evidentiary Hearing on an Order Shortening Time, which the Defendant opposed. In Defendant's Opposition it included three Affidavits which were discussed above. Defendant then represented to the COURT that the Affidavits were the only evidence it needed to resolve the issues. For example, Defendant stated:

> An evidentiary hearing of a DEFENDANT witness (Courtney Shepherd) would result in the same testimony provided in her attached affidavit. The hearing, therefore, would only serve to have Ms. Shepard state her affidavit testimony in open Court. This hearing would serve no legitimate purpose whatsoever.

Similarly, about Ms. Gribble's Affidavit:

> ... Ms. Gribble has already explained in an affidavit when she initially requested maintenance records related to this case, who requested them (Sedgwick) and when she requested additional requests to respond to Ms. Taylor's Second Set of Requests for Production of Documents. Ms. Gribble's affidavit testimony speaks for itself and there is no evidence that is in anyway inaccurate or needs further explanation.

Defendant again reiterated that "All of the so called issues or "matters" that Ms. Taylor states requires evidentiary hearing can easily be addressed by existing testimony (affidavits). ..."

THE COURT FURTHER FINDS that oral argument was held on Ms. Taylor's Motion for an Evidentiary Hearing. At that hearing, Defendant continued to argue that an evidentiary hearing was not necessary because it has submitted Affidavits which were all the evidence that the COURT needed to address the issues.

> MR. KRAEMER: ... We have affidavits from multiple employees that they set forth answers to every one of their questions, inquiries, whatever you want to call them, their topics. They're

> answered. They're answered. We will have a witness come here and just repeat everything they said in an affidavit.

[See, Jan. 22, 2020 hearing, p. 69]

THE COURT FURTHER FINDS that after the hearing, this Court issued an Order wherein it agreed with Defendant's arguments and denied the request for an Evidentiary Hearing.

THE COURT FURTHER FINDS that in the instant Motion, the Defendant has presented no new evidence or law that would show that the COURT's initial ruling was legally or factually in error. Further, this COURT fully considered the evidence Defendant submitted in the form of Affidavits.

I. Defendant's Lack Of Veracity And Candor Is Intentional

THE COURT FURTHER FINDS that there is no time when the Defendant put forth an honest defense or when it was fully candid with the COURT. The spoliation, the discovery abuses, and failures, the spoliation, the deceitful 30(b)(6) testimony, and the lack of candor with the COURT and other failures by Defendant show that at no time was the Defendant attempting to honestly defend this case. From the moment of the fall, Defendant engaged in a deliberate scheme to hide the truth at all costs. Given the extensive, repeated, and ongoing lack of veracity and candor, this COURT reaches the obvious conclusion that Defendant's lack of veracity and candor are intentional.

J. Defendant Choose To Forgo Evidentiary Hearing

THE COURT FURTHER FINDS that Defendant had an opportunity to have an evidentiary hearing in this matter. Defendant chose to oppose an evidentiary hearing and instead chose to rely upon the Affidavits submitted. As shown above, these Affidavits contained blatantly false and misleading testimony. Defendant's explanation for opposing evidentiary hearing was that Defendant did not believe this Court would grant Plaintiff's Motion to Strike Defendant's Answer. [See, Feb. 16, 2021 Hearing Transcript, p. 7] Defendant clearly understood the nature of Ms. Taylor's Motion to Strike because that Motion requested that Defendant's Answer be stricken as to liability and damages. It bewilders this COURT that Defendant's assumed this COURT would not carefully analyze all factors and consider all

relevant testimony and simply find in Defendant's favor. Defendant's assumption is mistaken as this COURT would have entertained an evidentiary hearing. Given Defendant's opposition to the evidentiary hearing, this COURT carefully considered all evidence presented which overwhelming supports Ms. Taylor's position.

ORDER

THE COURT HEREBY ORDERS that Defendant's Motion is hereby DENIED in its entirety and the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees remains unchanged.

THE COURT FURTHER ORDERS that the COURT has considered all the Young factors and the necessity to deter future conducted related to the failure to preserve all evidence upon receipt of the preservation of evidence letter and the cascade of untruthful discovery responses. Notwithstanding the prior failures, once Ms. Taylor subpoena ASSA ABLOY for the actual maintenance records for the door at issue, ASSA ABLOY requested Defendant's permission to disclose all relevant maintenance records and documents fully. While Defendant had control of the maintenance records production, it never responded to ASSA ABLOY's request and thus production could not occur until this COURT ordered Defendant to stop thwarting and blocking production. This showed the extent and lengths Defendant would go to avoid the truth and thus further confirmed the COURT's concern about Defendant's lack of veracity and candor. It further established that the Defendant's lack of veracity and candor was intentional.

THE COURT FURTHER ORDERS that the record in this case is fully developed that the numerous filings, hearings, along with the Affidavits preserved by Defendant have provided this COURT with ample evidence and information to consider the issues at hand. Further, it was the Defendant that argued an evidentiary hearing was not necessary.

THE COURT FURTHER ORDERS that EDCR 2.24 provides:

> **Rule 2.24. Rehearing of motions.**
>
> (a) No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be

> reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.
>
> (b) A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, **must** file a motion for such relief **within 14 days after service of written notice of the order** or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed, and heard as is any other motion. A motion for reconsideration does not toll the period for filing a notice of appeal from a final order or judgment.
>
> (c) If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.
> Here, Defendant's Motion for Reconsideration seeks an evidentiary hearing with this Court.

This COURT's Order denying an evidentiary hearing was entered on June 22, 2020. Defendant's Motion for Reconsideration was not filed for over 6 (six) months. Further, Defendant never sought to enlarge the time to file for reconsideration. THE COURT ORDERS that Defendant's Motion for Reconsideration is untimely and jurisdictionally barred from reconsideration for failure to comply with EDCR 2.24.

THE COURT FURTHER ORDERS that Defendant initially opposed an evidentiary hearing. The Defendant is thus judicially estopped from taking inconsistent position with the COURT, which is another reason the Motion for Reconsideration is denied.

THE COURT FURTHER ORDERS that throughout this case, the Defendant has shown a lack of veracity and candor. This COURT has grave concerns that an evidentiary hearing would be of any benefit or that it would result in finding the truth. This is particularly an issue because Defendant's lack of veracity and candor is intentional. This is another reason that the Motion for Reconsideration is denied.

THE COURT FURTHER ORDERS that Defendant's conduct in this case merits striking the answer as an appropriate sanction to deter future litigants from halting the adversarial process or engaging in similar misconduct.

THE COURT FURTHER ORDERS that a prove up hearing for Ms. Taylor regarding damages will be held on April 7, 2021 at 1:30 pm., and will proceed as outlined above.

Dated this 12th day of April, 2021

DISTRICT COURT JUDGE
528 20C CAF2 AA22
Timothy C. Williams
District Court Judge

ZJ

Respectfully Submitted by:

Dated: 4/9/21

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Dated: _____

COOPER LEVENSON, P.A.

- REFUSED TO SIGN -

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DISTRICT COURT
CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME** Date of Hearings: September 20, 2021; October 14, 2021; and October 22, 2021 Time of Hearing: 9:30 a.m.

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME

Defendant's Motion for Reconsideration or, in the Alternative, to Alter or Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on Order Shortening Time ("The Motion"), having come on for hearing on September 20, 2021; October 14, 2021; and October 22, 2021; David A. Tanner, Esq.; David J. Churchill, Esq.; E. Daniel Kidd, Esq.; and Micah S. Echols, Esq. appeared on behalf of Plaintiff, Patricia A. Taylor; Gregory A. Kraemer, Esq.; Jerry Busby, Esq.; Daniel F. Polsenberg, Esq.; and Joel D. Henriod, Esq. appeared on behalf of Defendant Smith's Food & Drug Centers, Inc.

The Court having read and considered The Motion, Opposition, and Reply to the same; having entertained oral argument, and being fully advised on the premises, and good cause appearing therefore,

FINDINGS

THE COURT FINDS that this matter was on calendar to resolve The Motion.

THE COURT FURTHER FINDS that its decision to issue sanctions striking Defendant's Answer as to liability and damages was not based upon one singular fact. This COURT'S decision to sanction Defendant was based upon Defendant's actions of spoliation of evidence, its breaches of discovery duties, its lack of candor to opposing counsel and the COURT, and its halting of the adversarial process. These actions occurred over a long time and cumulatively showed that Defendant's conduct was repetitive, abusive, and recalcitrant and, therefore, warranted sanctions.

THE COURT FURTHER FINDS that the basis for its decision to strike Defendant's Answer as to liability and damages was set forth in its prior Orders; namely, the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees (filed on January 20, 2021), and the Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time (filed on April 12, 2021).

THE COURT FURTHER FINDS that the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees was a significant, thorough, and lengthy Order which considered all relevant factors including those outlined in Young v. Johnny Ribeiro Building, Inc., 106 Nev. 88, 92, 787 P.2d 777, 780 (1990). [See, January 20, 2021 Order]

THE COURT FURTHER FINDS that The Motion is the second motion for reconsideration wherein the Defendant has asked that this COURT reconsider the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees.

THE COURT FURTHER FINDS that it denied the previous motion for reconsideration filed by the Defendant. The Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time was likewise a significant, thorough, and lengthy Order. [See, April 12, 2021 Order]

THE COURT FURTHER FINDS that there was not one fact that was more important than the other in issuing sanctions to the Defendant. That the Defendant never responded to ASSA ABLOY's August 15, 2019 letter asking to allow it to disclose all relevant documents was just one of the facts that the COURT considered when deciding to strike Defendant's Answer.

THE COURT FURTHER FINDS that the facts enumerated below provide additional reasons that the COURT hereby denies The Motion and upholds its prior Order Striking Defendant's Answer. [See, January 20, 2021 Order]

A. Defendant Destroyed Almost All Evidence In Its Possession After The Incident And After Receiving A Preservation Letter

THE COURT FURTHER FINDS that after the Defendant received a preservation letter on December 7, 2016, it subsequently destroyed almost all evidence related to this matter that was in its possession. This included the e-mails between it and ASSA ABLOY dated as late as

December 20, 2016, the quotes contained in the e-mails, the text messages sent to Defendant's internal maintenance personnel about the subject doors, the subject doors' sensors and component parts (including the motor, gearbox, and wiring), and the invoice dated December 28, 2016. This evidence was in the Defendant's possession and should have been preserved in light of the preservation letter. It also should have been preserved in light of Defendant's duty to preserve relevant evidence. All this evidence was destroyed by Defendant.

THE COURT FURTHER FINDS that there were numerous other documents available to the Defendant and that were maintained and preserved by the Defendant's door maintenance provider, ASSA ABLOY. Defendant did nothing to obtain documents from ASSA ABLOY and, as shown below, did not even disclose documents from or about ASSA ABLOY during discovery (including the contract Defendant had with ASSA ABLOY, the Master Services Agreement).

THE COURT FURTHER FINDS that Defendant preserved the Service Hub document, but its lack of candor related to that document resulted in that preservation being meaningless. To that end, Defendant's 30(b)(6) representative testified that Defendant did not know if the Service Hub document pertained to the subject doors:

> He did not know how to determine if the Service Hub document pertained to the west doors. [Thurnwald depo., p. 25]
>
> There was no way to determine if the Service Hub document pertained to the west doors. [Thurnwald depo., p. 27]
>
> He does not know if the west doors were serviced and does not know which doors the Service Hub document references. [Thurnwald depo., p. 29]
>
> He did not know what the entries in the Service Hub document meant or if the Service Hub document's entries pertain to the west doors. [Thurnwald depo., p. 49]
>
> Objection by Defendant's counsel that the Service Hub document did not reference east or west doors. [Thurnwald depo., p. 49]

THE COURT FURTHER FINDS that the 30(b)(6) representative then testified that the subject doors were never repaired or replaced:

> "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]
>
> Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]
>
> That no documentation existed about the west doors. [Thurnwald depo., pp. 73 - 75]
>
> That the last time the west doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]
>
> The door mechanisms for the west doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]
>
> Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]
>
> Only in an "imaginary world" was the subject door ever worked on or replaced. [Thurnwald depo., pp. 115 and 118]

THE COURT FURTHER FINDS that Defendant had its attorney represent to this COURT that there were no documents pertaining to the subject doors: "THE COURT: Have the documents been produced for the right door? MR. KRAEMER: Yes, your Honor. There are none." [August 13, 2019 Hearing, p. 22]

THE COURT FURTHER FINDS that the Defendant's 30(b)(6) representative's testimony about the Service Hub document, and its attorney's representations to this COURT that no documents exist pertaining to the subject doors show that the Defendant's position during discovery regarding the Service Hub document is that it was irrelevant and not related to the subject doors.

THE COURT FURTHER FINDS that in numerous hearings, Defendant's attorneys have pointed to the Service Hub document arguing that it contained information about the subject doors and that preserving other documents was not necessary because of the information contained in the Service Hub document. Defendant's attorneys have also represented that Ms. Taylor should have known about ASSA ABLOY's involvement in this case and other such matters because of the Service Hub document. For example, at the August 30, 2021 hearing, Defendant's attorney argued it did not need to preserve the e-mails between it and ASSA ABLOY that were ultimately destroyed by Defendant because: "Those e-mails were recorded essentially in the documents that we [Defendant] disclosed from the beginning of the case, the Service Hub record. ... So, while I appreciate, you know, this, you know, the importance of the e-mails, Your Honor, those e-mails were recorded in the Service Hub record." [August 30, 2021 Hearing, p. 45; see also, pp. 53 – 55 ("So Mr. Thurnwald's – if Mr. Thurnwald would have saved those e-mails, Your Honor, we would be at – we would be where we were at the deposition because, again, we had the Service Hub record that talked about the quotes being submitted. ... So even if we should have preserved those e-mails, his testimony, arguably, would not have changed, Your Honor. ... Because we had the Service Hub record, he was asked questions ad nauseam about it, and he based his answers on the record.")] Later, at the September 20, 2021 hearing, Defendant argued: "Now, even if we had the e-mails, Your Honor – and I can't stress this point enough, let's say the emails were preserved. It would not have changed anything in this case. And the reason why it wouldn't have changed anything, Your Honor, is because they were substantively disclosed in the service hub record. The emails sent by Assa Abloy on October 28th, 2016, with the quotes for the additional upgrade work, it's there in the service hub record." [September 20, 2021 Hearing, pp. 30 - 31] At that same hearing, Defendant argued that documents were not needed to be preserved due to the disclosure of the Service Hub record. [September 20, 2021 Hearing, pp. 49 – 50]

THE COURT FURTHER FINDS that these inconsistent positions by the Defendant show that it was willing to go to any lengths to hide the truth from Ms. Taylor. It further shows that the Defendant lacked candor during discovery and in hearings with this COURT.

B. ASSA ABLOY Attempted To Produce Evidence

THE COURT FURTHER FINDS that the Defendant's attempts to place blame on ASSA ABLOY for the Defendant's failure to preserve evidence is misplaced. It was the Defendant that had significant evidence (it had the Service Hub document, e-mails, text messages, the subject doors sensors and component parts, and the Master Services Agreement) in its possession that it destroyed, failed to produce, or that it claimed in discovery did not apply to the subject doors.

THE COURT FURTHER FINDS that there is no indication that Defendant attempted to contact ASSA ABLOY to obtain and retrieve relevant documents.

THE COURT FURTHER FINDS that ASSA ABLOY was subpoenaed in June, 2019 and attempted to produce relevant documents. To that end, it sent documents to Ms. Taylor's counsel on about August 8, 2019, and a week later, on August 15, 2019, sent a letter to Defendant asking for permission to disclose all relevant documents. Defendant never responded to the August 15, 2019 letter and thus ASSA ABLOY was unable to produce all relevant documents.

THE COURT FURTHER FINDS that the Defendant was not fully candid with this COURT about ASSA ABLOY's August 15, 2019 letter and its lack of a response. At various hearings, the Defendant, through its counsel, made the following representations about Defendant's failure to respond to the August 15, 2019 letter:

> "This was approved by Kroger. Again, that's their letter. We can't control if they want to send a letter to counsel before they disclose records pertinent to another party, but it was approved, and there's absolutely no evidence to suggest otherwise. None." [November 21, 2019 Hearing, pp. 58 – 59]
>
> "They had no idea they had to. They didn't know that there was a requirement." [January 22, 2020 Hearing, p. 4; see also, January 20, 2020 Hearing, pp. 57 – 58]
>
> The letter was overlooked. [January 22, 2020 Hearing, pp. 57 – 58]

> "They didn't read the letter, your Honor." [January 22, 2020 Hearing, p. 63]
>
> The Defendant did not see the request to respond in the second paragraph of the letter. [April 30, 2020 Hearing, p. 31; see also, November 5, 2020 Hearing, p. 42]
>
> There was no response because there was confusion about who was going to respond. [Sept. 20, 2021 Hearing, p. 22]

THE COURT FURTHER FINDS that the Defendant's inconsistent excuses for not responding to the August 15, 2019 letter shows a lack of candor and shows that the Defendant would make any excuse to justify its failure to respond so that full disclosures could be made.

C. Violating A Court Order

THE COURT FURTHER FINDS that when ASSA ABLOY was not able to produce all documents, that the COURT ordered that it produce all documents. This COURT further ordered that no party was to communicate with ASSA ABLOY:

> THE COURT FURTHER ORDERS that other than Plaintiff's counsel informing ASSA ABLOY about this Order and facilitating the receipt of the requested records, the parties are prohibited from contacting ASSA ABLOY. This specifically includes an Order that Smith's and Kroger are not to contact any person, employee, or agent at or for ASSA ABLOY about this case, Plaintiff's Subpoena, the subject door, or any documents or work in this case.
>
> THE COURT FURTHER ORDERS that Plaintiff's counsel is to bring a copy of the documents produced by ASSA ABLOY to the next hearing on these matters. These documents are to be disclosed only to the Court and to counsel for the parties.

(See, Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All Other Pending Motions (filed February 14, 2020)).

THE COURT FURTHER FINDS that at no time did Defendant ask that the Order filed February 14, 2020 be amended, rescinded, or modified to allow it to communicate with ASSA ABLOY. Despite this, Defendant communicated with ASSA ABLOY which allowed it to obtain the affidavit and declaration of Christine Shedrow, an employee of ASSA ABLOY.

D. False Discovery Responses

THE COURT FURTHER FINDS that on September 13, 2019, ASSA ABLOY signed a Custodian of Records Affidavit which noted that Defendant continued to block ASSA ABLOY from disclosing all relevant documents and records.

THE COURT FURTHER FINDS that ASSA ABLOY sent the Custodian of Records Affidavit along with just over 60 pages of documents to Ms. Taylor's counsel. Those documents were produced in a supplemental NRCP 16.1 Disclosure on September 30, 2019. Those documents affirmatively show that the subject doors' sensors and other component parts were repaired and replaced in December, 2016 after ASSA ABLOY informed Defendant that the sensors were broken, the subject doors were dangerous, and that the subject doors did not comply with the applicable standards.

THE COURT FURTHER FINDS that despite receiving the September 30, 2019 Supplemental NRCP 16.1 Disclosure, the following day, October 1, 2019, Defendant served a supplemental answer to Interrogatory No. 13 as follows:

> **INTERROGATORY NO. 13**
>
> Please state whether there have been any instances when service has been done to the automatic door at issue and additional equipment or upgrades have been suggested to improve the safety of the subject automatic door.
>
> **SUPPLEMENTAL ANSWER NO. 13:**
>
> None.

THE COURT FURTHER FINDS that this Supplemental Interrogatory Answer was false. Further, it was signed under oath by Mr. Thurnwald, Defendant's 30(b)(6) representative and the person who approved the repair and replacement of the subject doors' sensors and component parts.

THE COURT FURTHER FINDS that the Defendant's actions of serving a known false Interrogatory Answer after receiving documents the day before shows the lengths to which the

Defendant would go to hide the truth and deceive Ms. Taylor. This lack of candor was repetitive, abusive, and recalcitrant.

E. <u>Defendant Mislead Ms. Taylor Throughout Discovery</u>

THE COURT FURTHER FINDS that the Defendant chose to mislead Ms. Taylor throughout discovery. There are many instances of Defendant's deceptive discovery outlined in the COURT's prior Orders, specifically its Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees (filed on January 20, 2021), and the Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time (filed on April 12, 2021).

THE COURT FURTHER FINDS that during discovery the Defendant produced documents related to the wrong door – the East doors, not the West doors (the West doors are the subject doors). The Defendant did this even though it knew that the subject doors were the West doors. This is evidenced by the fact that the Defendant preserved surveillance video showing Ms. Taylor walking into the West doors, the subject doors, yet it decided to produce documents related to the East doors.

THE COURT FURTHER FINDS that the Defendant answered written discovery providing responses related to the East doors, not the West doors.

THE COURT FURTHER FINDS that in discovery Defendant disclosed its contract with Stanley Access Technologies. Thereafter, in a supplemental NRCP 16.1 Disclosure, Defendant disclosed Chad Crapo from Stanley Access Technologies as the person most knowledgeable regarding the "operation of the automatic-sliding glass doors at DEFENDANT store No. 347." Defendant made these disclosures even though it knew that ASSA ABLOY was its door vendor, that it had a contract with ASSA ABLOY, and that it was ASSA ABLOY that did the repair and replacement of the subject doors' sensors and component parts.

THE COURT FURTHER FINDS that at no time during discovery did Defendant name ASSA ABLOY in any of its 16.1 Disclosures, and at no time did Defendant produce its contract

with ASSA ABLOY. Defendant knew ASSA ABLOY was its door vendor and it had numerous interactions with ASSA ABLOY about the subject doors before and after Ms. Taylor's fall. Defendant's refusal to disclose ASSA ABLOY in any of its mandatory 16.1 Disclosures and its failure to disclose its contract with ASSA ABLOY shows an intent to deceive and mislead Ms. Taylor, and to halt the adversarial process.

F. <u>Untimely Affidavit</u>

THE COURT FURTHER FINDS that Defendant disclosed a declaration (later an affidavit) from Christine Shedrow at ASSA ABLOY. Ms. Shedrow's declaration/affidavit outlines events from 2019 and 2020. Notably, Ms. Shedrow (and her company ASSA ABLOY) existed in 2016 when the subject doors were dangerous, broken, and did not comply with the applicable standards; when the fall occurred; and when the subject doors' sensors and component parts were repaired and replaced. Ms. Shedrow (and her company ASSA ABLOY) existed in 2017 when the Complaint was filed. Ms. Shedrow (and her company ASSA ABLOY) existed for the almost two years that discovery was being conducted. Finally, Ms. Shedrow (and her company ASSA ABLOY) existed in August and September, 2019 when ASSA ABLOY sent a letter to Defendant asking for permission to produce all relevant documents, and when ASSA ABLOY provided a Custodian or Records Affidavit stating that it could not provide all relevant documents because it was not allowed by Defendant.

THE COURT FURTHER FINDS that therefore, Ms. Shedrow and her company ASSA ABLOY were not "new" evidence. The information held by Ms. Shedrow and her company ASSA ABLOY were readily available to Defendant at any time after this fall. It was the Defendant who chose to destroy or not disclose documents and evidence from ASSA ABLOY. The Defendant cannot be allowed to introduce evidence at this late stage when that evidence was available prior to and throughout discovery.

G. <u>Waiver of Evidentiary Hearing And A Fully Developed Record</u>

THE COURT FURTHER FINDS that the Defendant again asked that an evidentiary hearing be held to address this COURT's decision to strike its Answer as to liability and damages.

THE COURT FURTHER FINDS that Ms. Taylor filed her Motion to Strike Defendant's Answer on October 14, 2019. The hearing on that Motion occurred on November 21, 2019. At that hearing, Ms. Taylor asked for an evidentiary hearing. This COURT thus requested that a Motion be filed to address Ms. Taylor's request for an evidentiary hearing.

THE COURT FURTHER FINDS that Ms. Taylor filed Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time on December 5, 2019. The Defendant filed Defendant's Opposition to Plaintiff's Motion for An Evidentiary Hearing on December 20, 2019. In Defendant's Opposition to Plaintiff's Motion for An Evidentiary Hearing the Defendant attached three Affidavits. Multiple hearings were subsequently held on January 22, 2020; March 24, 2020; March 31, 2020; and April 30, 2020.

THE COURT FURTHER FINDS that Defendant argued against an evidentiary hearing representing to the COURT that an evidentiary hearing would be of no value because the witnesses would simply repeat the testimony contained in their three Affidavits that were attached to Defendant's Opposition to Plaintiff's Motion for An Evidentiary Hearing. These arguments, coupled with the lack of candor shown by the Defendant, give this COURT the understanding that an evidentiary hearing would not be helpful.

THE COURT FURTHER FINDS that in the Opposition and up to this COURT's Order, the Defendant's position remained the same – that it opposed an Evidentiary Hearing. This COURT, on June 18, 2020 prepared and filed an Order Denying Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time.

THE COURT FURTHER FINDS that the COURT has given all parties ample opportunity to address the matters at issue, Defendant has presented numerous declarations and affidavits, and all parties have been heard through oral argument as well as in various Motions and Briefs. Finally, the Defendant had Mr. Thurnwald testify at the prove up hearing.

THE COURT FURTHER FINDS that there has been an extensive record created in this case. This is the result of numerous Motions, Briefs, and Orders. Some of the Motions and

Briefs[1] previously filed that relate to Defendant's discovery failures and sanctionable conduct are:

1. Motion for Sanctions for Spoliation of Evidence filed on July 3, 2019;
2. Motion to Strike "Quasi Expert" Chad Crapo as a Witness filed on September 20, 2019;
3. Motion to Strike Defendant's Answer filed on October 14, 2019;
4. Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and to Continue the Trial Date on an Order Shortening Time filed on December 4, 2019;
5. Motion for an Evidentiary Hearing filed on December 5, 2019;
6. Motion to Continue Hearings and Pre-Trial Conference on an Order Shortening Time filed on December 27, 2019;
7. Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order filed on December 19, 2019;
8. Motion to Amend Complaint to Allege Punitive Damages filed on January 30, 2020;
9. Defendant's Motion to Strike/Exclude Plaintiff's Damages for Her Cervical Fusion Surgery and Future Medical Care filed on April 8, 2020;
10. Motion to Limit Dr. Sanders, M.D.'s Expert Testimony filed on April 21, 2020;
11. Defendant's Motion for Leave to File Third-Party Complaint filed on May 15, 2020;
12. Defendant's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration of the Court's Order Denying Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence filed on June 9, 2020;

[1] All referenced Motions and Briefs include the Oppositions and Replies associated with those Motions and Briefs.

13. Supplemental Brief in Advance of March 24, 2020 Hearing filed on March 19, 2020;
14. Supplemental Brief Timeline of Relevant Events filed on April 2, 2020; and
15. Renewed Motion to Strike Defendant's Answer, For Sanctions and Attorney's fees filed on September 15, 2020;
16. Plaintiff's Trial Brief on Guidelines for the Prove-up Hearing filed February 12, 2021;
17. Plaintiff's Supplemental Trial Brief on Guidelines for the Prove-up Hearing filed on March 10, 2021;
18. Defendant's Offer of Proof for Prove-up Hearing filed on March 16, 2021;
19. Ms. Taylor's Motion to Preclude Dieter Thurnwald from Providing Testimony at the Upcoming Prove Up Hearing and Strike the ANSI Standards on Order Shortening Time filed April 12, 2021;
20. Plaintiff's Supplemental Trial Brief on Burden of Proof For Prove-up Hearing filed on May 13, 2021;
21. Plaintiff's Second Supplemental Trial Brief on Guidelines for the Prove-up Hearing filed on August 2, 2021;
22. Plaintiff's Motion to Strike Dieter Thurnwald's Testimony at the May 17, 2021 Prove-up Hearing filed August 2, 2021;
23. Plaintiff's Motion to Strike Defendant's Fourth Supplemental to Initial Disclosure Statement (including the witness and Affidavit Produced Therein) and to Strike the Surveillance Video filed on August 2, 2021;
24. Defendant's Brief on Scope of Prove-up, Plaintiff's Failure to Establish a Prima Facie Case on Liability and Damages, and Punitive Damages filed on August 2, 2021;
25. Defendant's Motion for Reconsideration or, in the Alternative, to Alter of Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on Order Shortening Time filed on September 15, 2021;

26. Plaintiff's Trial Brief Prior to the Final Prove Up Hearing filed on September 16, 2021; and

27. Defendant's Brief in Support of its Argument that Punitive Damages are not Applicable in this Case filed on September 16, 2021.

THE COURT FURTHER FINDS that there have been numerous hearings arguing and discussing matters in these pleadings and briefs. These hearings have been held on various dates including, but not limited to, August 13, 2019; November 21, 2019; January 22, 2020; March 10, 2020; March 24, 2020; March 31, 2020; April 30, 2020; June 18, 2020; November 5, 2020; February 16, 2021; March 18, 2021; April 7, 2021; April 21, 2021; May 17, 2021; August 30, 2021; September 20, 2021; October 14, 2021; and October 22, 2021. These hearings generally lasted well over an hour, and some lasted for multiple hours.

THE COURT FURTHER FINDS that the Defendant has been given an opportunity to have witnesses testify via live testimony and through declarations and affidavits. Defendant has presented the affidavits or declarations of various witnesses including, but not limited to: Venessa Gribble, Courtney Shepherd, Ronald Radcliffe, Linda Snyder, and Christine Shedrow. Defendant has also presented testimony from its 30(b)(6) representative Mr. Thurnwald, and its expert witness, Dr. Sanders. This COURT has given Defendant multiple opportunities to present evidence in the form of affidavits, declarations, and live testimony.

THE COURT FURTHER FINDS that an adequate record has been developed based upon pleadings, briefs, orders, hearings, and other matters. The COURT has been fully apprised of the issues in this case.

ORDER

THE COURT HEREBY ORDERS that The Motion is denied in its entirety and the COURT'S prior Orders striking Defendant's Answer and denying Defendant's First Motion for Reconsideration remain. (See, Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees (filed on January 20, 2021), and the Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay

Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time (filed on April 12, 2021)).

THE COURT FURTHER ORDERS that its decision to issue sanctions striking Defendant's Answer as to liability and damages was not based upon one singular fact. This COURT'S decision to sanction Defendant was based upon Defendant's cumulative actions of spoliation of evidence, its breaches of discovery duties, its lack of candor to opposing counsel and the COURT, and its halting of the adversarial process. These actions showed that Defendant's conduct was repetitive, abusive, and recalcitrant and, therefore, warranted sanctions.

THE COURT FURTHER ORDERS that the Defendant only takes exception with one portion of its prior Order, that ASSA ABLOY provided documents to Ms. Taylor's counsel on about August 8, 2019. Yet, ASSA ABLOY asked Defendant permission to disclose all relevant documents by sending a letter to Defendant on August 15, 2019. Further, the reason ASSA ABLOY asked Defendant for permission to produce documents was because Ms. Taylor subpoenaed ASSA ABLOY in June, 2019. That Subpoena was only served after notifying Defendant and waiting the prescribed time period pursuant to NRCP 45. Thus, Defendant was aware in June, 2019 that ASSA ABLOY was going to produce documents; and it was aware that ASSA ABLOY had documents to produce and needed permission to produce them on August 15, 2019. Despite this, Defendant never allowed for ASSA ABLOY to produce all relevant documents.

THE COURT FURTHER ORDERS that Defendant's supposed reasons for not responding to the August 15, 2019 letter from ASSA ABLOY included that there was confusion who was going to respond, it was approved, the letter was overlooked, the letter was not read, Defendant did not see the second paragraph in the letter, and the Defendant did not know a response was needed. These inconsistent representations to this COURT about Defendant's failure to respond to the August 15, 2019 letter shows a lack of candor. It also demonstrates a failure to properly engage in discovery.

THE COURT FURTHER ORDERS that after Defendant refused to respond to ASSA ABLOY's August 15, 2019 letter, ASSA ABLOY produced certain, limited documents. Those documents were produced, along with a Custodian of Records Affidavit, on about September 13, 2019. The documents were then disclosed by Ms. Taylor about two weeks later, on September 30, 2019. There were just over 60 pages of documents disclosed by ASSA ABLOY at that time.

THE COURT FURTHER ORDERS that after this COURT signed an Order on February 7, 2020 ordering ASSA ABLOY to disclose all documents and that Defendant could not interfere with ASSA ABLOY's disclosure of documents (See, Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All Other Pending Motions (filed February 14, 2020)) that ASSA ABLOY produced almost 200 additional pages of documents. This shows that ASSA ABLOY was willing to produce documents and Defendant was not allowing that production.

THE COURT FURTHER ORDERS that ASSA ABLOY's production two months before the discovery cutoff does not pardon Defendant's efforts to halt the adversarial process and commit numerous discovery violations during the nearly two-year discovery period. Defendant had a duty pursuant to NRCP 16.1 to disclose all relevant documents and witnesses. Despite this, Defendant never named ASSA ABLOY as a witness in any of its 16.1 Disclosures and never produced a document from ASSA ABLOY in any of its 16.1 Disclosures. Rather, Defendant chose to provide documents and discovery for the wrong doors and the wrong door vendor.

THE COURT FURTHER ORDERS that in the Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All Other Pending Motions (filed February 14, 2020) this COURT ordered that no party was to contact ASSA ABLOY. Defendant violated that Order when it contacted ASSA ABLOY to obtain the declaration and affidavit of Christine Shedrow.

THE COURT FURTHER ORDERS that "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is

clearly erroneous." Masonry & Tile Contrs. v. Jolley, Urga & Wirth Ass'n, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (citing Little Earth of United Tribes v. Department of Housing, 807 F.2d 1433, 1441 (8th Cir. 1986); see also Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted."). Further, NRCP 61 holds that: "Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."

THIS COURT FURTHER ORDERS that when considering whether there was harmless error, "[t]he record must be considered as a whole." Truckee-Carson Irrigation Dist. v. Wyatt, 84 Nev. 662, 668, 448 P.2d 46, 50 (1968). The Court "do[es] not presume prejudice from the occurrence of error in a civil case." Boyd v. Pernicano, 79 Nev. 356, 359, 385 P.2d 342, 343 (1963); Cook v. Sunrise Hosp. & Med. Ctr., LLC, 124 Nev. 997, 1006, 194 P.3d 1214, 1219 (2008) (confirming that the appealing party must establish "by providing record evidence ... that, but for the error, a different result might have been reached"). Defendant has not presented sufficient evidence and arguments to overcome the harmless error standard. It was the Defendant that halted the adversarial process, exhibited a lack of candor to this COURT and with opposing counsel, and destroyed evidence. The Defendant's substantial rights have not been affected by this COURT's findings in its prior Orders.

THIS COURT FURTHER ORDERS that NRCP 59(a)(1)(D) holds that "The court may, on motion, grant a new trial on all or some of the issues—and to any party—for any of the following causes or grounds materially affecting the substantial rights of the moving party: ... newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial...." (see also, Pinschower v. Hanks, 18 Nev. 99, 107-08, 1 P. 454, 458 (1883) ("The law demands of the parties all reasonable diligence and caution in preparing for trial, and furnishes no relief for the hardships

resulting from inexcusable negligence or want of diligence. When, therefore, a new trial is sought because of newly-discovered evidence, it should most certainly be shown by the party making the application that his failure to produce such evidence at the first trial was not the result of any negligence upon his part. Of that fact the court should be perfectly satisfied. To grant new trials upon this ground, where no such showing is made, would simply be giving encouragement to negligence, and judicial approval to inexcusable carelessness.") (citation omitted). Defendant presented the declaration and affidavit of Ms. Shedrow from ASSA ABLOY. Yet, ASSA ABLOY was known to the Defendant from the inception of problems with the subject door in October, 2016 and throughout discovery. Thus, ASSA ABLOY and its employees were not "new" evidence. Defendant chose not to disclose ASSA ABLOY as a witness and Defendant chose not to disclose ASSA ABLOY's documents in this case. Defendant cannot now present a declaration and affidavit from a company that was known to Defendant from the inception of this case.

THE COURT FURTHER ORDERS that Defendant attempts to use the Service Hub document to argue that it did not need to preserve evidence or that the evidence it did destroy or failed to produce was harmless because the Service Hub contained adequate information. It also uses the Service Hub document to argue that Ms. Taylor had knowledge about the subject doors and persons or entities who were involved with inspecting or repairing the subject doors. Yet, the Defendant's 30(b)(6) representative testified that the Service Hub document did not apply in this case by providing testimony that there was no way to know if the Service Hub document pertained to the subject doors and that he did not know what the entries in the Service Hub document meant. [Thurnwald depo., pp. 25, 27, 29, and 49] The 30(b)(6) representative then testified that there was never any work done to the subject doors and that ASSA ABLOY never came to the store. [Thurnwald depo., pp. 29, 44, 73 – 75, 101 – 102, 115, 118, and 120 – 121] Finally, Defendant represented to this COURT that no documents exist pertaining to the subject doors.

...

...

THE COURT FURTHER ORDERS that the Defendant cannot have it both ways: it cannot testify during discovery that the Service Hub document does not apply, that no work was done to the subject doors, and that no documents pertain to the subject doors; and then argue after a Motion was filed to sanction Defendant that the Service Hub document effectively gave Ms. Taylor all the information she needed about the subject doors, in an attempt to justify its spoliation of evidence, failure to disclose documents and witnesses, and its false discovery responses and representations. These inconsistent positions show a lack of candor and intent to deceive Ms. Taylor and this COURT.

THE COURT FURTHER ORDERS that an extensive record has been developed. There have been dozens of pleadings and briefs filed addressing pertinent issues including Defendant's spoliation of evidence, discovery abuses, lack of candor, and halting the adversarial process. Defendant has presented numerous affidavits and declarations. Defendant has had multiple witnesses provide testimony, and there have been extensive hearings held. Finally, Defendant opposed an evidentiary hearing.

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THE COURT FURTHER ORDERS that an evidentiary hearing is thus not necessary in this case.

Dated this 30th day of November, 2021

A5A 296 B6F2 785A
Timothy C. Williams
District Court Judge

MH

Respectfully Submitted by:

Dated: 11/16/21

TANNER CHURCHILL ANDERSON

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Approved as to form and content by:

Dated: _____

COOPER LEVENSON, P.A.

Refused to Sign

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Courtney McMenamy

From: Courtney McMenamy
Sent: Tuesday, November 9, 2021 11:00 AM
To: Busby Jerry S.; Kraemer, Gregory A.; Rutkowski Theresa H.; amarques@cooperlevenson.com
Cc: ekapolnai@lewisroca.com; ckelley@lewisroca.com; Polsenberg, Daniel F. (DPolsenberg@lewisroca.com); Henriod, Joel D. (JHenriod@lewisroca.com); asmith@lewisroca.com; jhelm@lewisroca.com
Subject: Taylor v. Smith's / ODM / A-17-761650-C
Attachments: TAYLOR Order Denying Defs Motion for Reconsideration.pdf

Good morning,

Please find attached the drafted Order Denying Defendant's Motion for Reconsideration or, In the Alternative, to Alter or Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on OST for your review. Please let me know of any changes that need to be made. If agreeable, please let me know if I may a-fix the attorney's e-signature.

Thank you,

Courtney McMenamy
Paralegal to David A. Tanner

TANNER LAW FIRM

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Patricia Taylor, Plaintiff(s) vs. Smith's Food and Drug Centers Inc, Defendant(s)	CASE NO: A-17-761650-C DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

Service Date: 11/30/2021

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DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME**

PLEASE TAKE NOTICE that the Order Denying Defendant's Motion For Reconsideration Or, In The Alternative, To Alter Or Amend The Court's Order Granting Plaintiff's Renewed Motion To Strike Defendant's Answer On Order Shortening Time was entered by the above entitled Court on the 30th day of November, 2021, a copy of which is

attached hereto and made a part hereof.

DATED this __1st___ day of December, 2021.

By: ___*/s/ David A. Tanner*_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of TANNER CHURCHILL ANDERSON LAW FIRM and that on the __1st___ day of December, 2021, I served the above and foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME** by Electronic Service to the following:

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SMITH'S FOOD & DRUG CENTERS, INC.

/s/ Courtney McMenamy
An Employee with Tanner Churchill Anderson

EXHIBIT 1

EXHIBIT 1

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DISTRICT COURT
CLARK COUNTY, NEVADA

PATRICIA A. TAYLOR, an individual Plaintiff, vs. SMITH'S FOOD & DRUG CENTERS, INC. d/b/a SMITH'S FOOD AND DRUG, a foreign corporation, DOES 1-50, ROE CORPORATIONS 1-50, Defendants.	CASE NO.: A-17-761650-C DEPT. NO.: XVI **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME** Date of Hearings: September 20, 2021; October 14, 2021; and October 22, 2021 Time of Hearing: 9:30 a.m.

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME

Case Number: A-17-761650-C

Defendant's Motion for Reconsideration or, in the Alternative, to Alter or Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on Order Shortening Time ("The Motion"), having come on for hearing on September 20, 2021; October 14, 2021; and October 22, 2021; David A. Tanner, Esq.; David J. Churchill, Esq.; E. Daniel Kidd, Esq.; and Micah S. Echols, Esq. appeared on behalf of Plaintiff, Patricia A. Taylor; Gregory A. Kraemer, Esq.; Jerry Busby, Esq.; Daniel F. Polsenberg, Esq.; and Joel D. Henriod, Esq. appeared on behalf of Defendant Smith's Food & Drug Centers, Inc.

The Court having read and considered The Motion, Opposition, and Reply to the same; having entertained oral argument, and being fully advised on the premises, and good cause appearing therefore,

FINDINGS

THE COURT FINDS that this matter was on calendar to resolve The Motion.

THE COURT FURTHER FINDS that its decision to issue sanctions striking Defendant's Answer as to liability and damages was not based upon one singular fact. This COURT'S decision to sanction Defendant was based upon Defendant's actions of spoliation of evidence, its breaches of discovery duties, its lack of candor to opposing counsel and the COURT, and its halting of the adversarial process. These actions occurred over a long time and cumulatively showed that Defendant's conduct was repetitive, abusive, and recalcitrant and, therefore, warranted sanctions.

THE COURT FURTHER FINDS that the basis for its decision to strike Defendant's Answer as to liability and damages was set forth in its prior Orders; namely, the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees (filed on January 20, 2021), and the Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time (filed on April 12, 2021).

THE COURT FURTHER FINDS that the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees was a significant, thorough, and lengthy Order which considered all relevant factors including those outlined in Young v. Johnny Ribeiro Building, Inc., 106 Nev. 88, 92, 787 P.2d 777, 780 (1990). [See, January 20, 2021 Order]

THE COURT FURTHER FINDS that The Motion is the second motion for reconsideration wherein the Defendant has asked that this COURT reconsider the Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees.

THE COURT FURTHER FINDS that it denied the previous motion for reconsideration filed by the Defendant. The Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time was likewise a significant, thorough, and lengthy Order. [See, April 12, 2021 Order]

THE COURT FURTHER FINDS that there was not one fact that was more important than the other in issuing sanctions to the Defendant. That the Defendant never responded to ASSA ABLOY's August 15, 2019 letter asking to allow it to disclose all relevant documents was just one of the facts that the COURT considered when deciding to strike Defendant's Answer.

THE COURT FURTHER FINDS that the facts enumerated below provide additional reasons that the COURT hereby denies The Motion and upholds its prior Order Striking Defendant's Answer. [See, January 20, 2021 Order]

A. Defendant Destroyed Almost All Evidence In Its Possession After The Incident And After Receiving A Preservation Letter

THE COURT FURTHER FINDS that after the Defendant received a preservation letter on December 7, 2016, it subsequently destroyed almost all evidence related to this matter that was in its possession. This included the e-mails between it and ASSA ABLOY dated as late as

December 20, 2016, the quotes contained in the e-mails, the text messages sent to Defendant's internal maintenance personnel about the subject doors, the subject doors' sensors and component parts (including the motor, gearbox, and wiring), and the invoice dated December 28, 2016. This evidence was in the Defendant's possession and should have been preserved in light of the preservation letter. It also should have been preserved in light of Defendant's duty to preserve relevant evidence. All this evidence was destroyed by Defendant.

THE COURT FURTHER FINDS that there were numerous other documents available to the Defendant and that were maintained and preserved by the Defendant's door maintenance provider, ASSA ABLOY. Defendant did nothing to obtain documents from ASSA ABLOY and, as shown below, did not even disclose documents from or about ASSA ABLOY during discovery (including the contract Defendant had with ASSA ABLOY, the Master Services Agreement).

THE COURT FURTHER FINDS that Defendant preserved the Service Hub document, but its lack of candor related to that document resulted in that preservation being meaningless. To that end, Defendant's 30(b)(6) representative testified that Defendant did not know if the Service Hub document pertained to the subject doors:

> He did not know how to determine if the Service Hub document pertained to the west doors. [Thurnwald depo., p. 25]
>
> There was no way to determine if the Service Hub document pertained to the west doors. [Thurnwald depo., p. 27]
>
> He does not know if the west doors were serviced and does not know which doors the Service Hub document references. [Thurnwald depo., p. 29]
>
> He did not know what the entries in the Service Hub document meant or if the Service Hub document's entries pertain to the west doors. [Thurnwald depo., p. 49]
>
> Objection by Defendant's counsel that the Service Hub document did not reference east or west doors. [Thurnwald depo., p. 49]

THE COURT FURTHER FINDS that the 30(b)(6) representative then testified that the subject doors were never repaired or replaced:

> "The replacement of Eagle activation sensors with IXIO sensors, that did not occur on the west doors, correct? A. That is correct." [Thurnwald depo., pp. 102 - 103]
>
> Even though there was a reference to ASSA ABLOY in the Work Order that Defendant did not want ASSA ABLOY to do any work on the doors and the quote referenced in the Work Order was cancelled and ASSA ABLOY never came to the Defendant's store. [Thurnwald depo., pp. 44, 73 - 75]
>
> That no documentation existed about the west doors. [Thurnwald depo., pp. 73 - 75]
>
> That the last time the west doors were serviced was on October 16, 2016. [Thurnwald depo., p. 29]
>
> The door mechanisms for the west doors are still in place at the store. [Thurnwald depo., pp. 101 - 102]
>
> Any reference to ASSA ABLOY, and any bid by ASSA ABLOY, was just an automatic computer-generated entry and meant nothing. [Thurnwald depo., pp. 120 - 121]
>
> Only in an "imaginary world" was the subject door ever worked on or replaced. [Thurnwald depo., pp. 115 and 118]

THE COURT FURTHER FINDS that Defendant had its attorney represent to this COURT that there were no documents pertaining to the subject doors: "THE COURT: Have the documents been produced for the right door? MR. KRAEMER: Yes, your Honor. There are none." [August 13, 2019 Hearing, p. 22]

THE COURT FURTHER FINDS that the Defendant's 30(b)(6) representative's testimony about the Service Hub document, and its attorney's representations to this COURT that no documents exist pertaining to the subject doors show that the Defendant's position during discovery regarding the Service Hub document is that it was irrelevant and not related to the subject doors.

THE COURT FURTHER FINDS that in numerous hearings, Defendant's attorneys have pointed to the Service Hub document arguing that it contained information about the subject doors and that preserving other documents was not necessary because of the information contained in the Service Hub document. Defendant's attorneys have also represented that Ms. Taylor should have known about ASSA ABLOY's involvement in this case and other such matters because of the Service Hub document. For example, at the August 30, 2021 hearing, Defendant's attorney argued it did not need to preserve the e-mails between it and ASSA ABLOY that were ultimately destroyed by Defendant because: "Those e-mails were recorded essentially in the documents that we [Defendant] disclosed from the beginning of the case, the Service Hub record. ... So, while I appreciate, you know, this, you know, the importance of the e-mails, Your Honor, those e-mails were recorded in the Service Hub record." [August 30, 2021 Hearing, p. 45; see also, pp. 53 – 55 ("So Mr. Thurnwald's – if Mr. Thurnwald would have saved those e-mails, Your Honor, we would be at – we would be where we were at the deposition because, again, we had the Service Hub record that talked about the quotes being submitted. ... So even if we should have preserved those e-mails, his testimony, arguably, would not have changed, Your Honor. ... Because we had the Service Hub record, he was asked questions ad nauseam about it, and he based his answers on the record.")] Later, at the September 20, 2021 hearing, Defendant argued: "Now, even if we had the e-mails, Your Honor – and I can't stress this point enough, let's say the emails were preserved. It would not have changed anything in this case. And the reason why it wouldn't have changed anything, Your Honor, is because they were substantively disclosed in the service hub record. The emails sent by Assa Abloy on October 28th, 2016, with the quotes for the additional upgrade work, it's there in the service hub record." [September 20, 2021 Hearing, pp. 30 - 31] At that same hearing, Defendant argued that documents were not needed to be preserved due to the disclosure of the Service Hub record. [September 20, 2021 Hearing, pp. 49 – 50]

THE COURT FURTHER FINDS that these inconsistent positions by the Defendant show that it was willing to go to any lengths to hide the truth from Ms. Taylor. It further shows that the Defendant lacked candor during discovery and in hearings with this COURT.

B. ASSA ABLOY Attempted To Produce Evidence

THE COURT FURTHER FINDS that the Defendant's attempts to place blame on ASSA ABLOY for the Defendant's failure to preserve evidence is misplaced. It was the Defendant that had significant evidence (it had the Service Hub document, e-mails, text messages, the subject doors sensors and component parts, and the Master Services Agreement) in its possession that it destroyed, failed to produce, or that it claimed in discovery did not apply to the subject doors.

THE COURT FURTHER FINDS that there is no indication that Defendant attempted to contact ASSA ABLOY to obtain and retrieve relevant documents.

THE COURT FURTHER FINDS that ASSA ABLOY was subpoenaed in June, 2019 and attempted to produce relevant documents. To that end, it sent documents to Ms. Taylor's counsel on about August 8, 2019, and a week later, on August 15, 2019, sent a letter to Defendant asking for permission to disclose all relevant documents. Defendant never responded to the August 15, 2019 letter and thus ASSA ABLOY was unable to produce all relevant documents.

THE COURT FURTHER FINDS that the Defendant was not fully candid with this COURT about ASSA ABLOY's August 15, 2019 letter and its lack of a response. At various hearings, the Defendant, through its counsel, made the following representations about Defendant's failure to respond to the August 15, 2019 letter:

> "This was approved by Kroger. Again, that's their letter. We can't control if they want to send a letter to counsel before they disclose records pertinent to another party, but it was approved, and there's absolutely no evidence to suggest otherwise. None." [November 21, 2019 Hearing, pp. 58 – 59]
>
> "They had no idea they had to. They didn't know that there was a requirement." [January 22, 2020 Hearing, p. 4; see also, January 20, 2020 Hearing, pp. 57 – 58]
>
> The letter was overlooked. [January 22, 2020 Hearing, pp. 57 – 58]

> "They didn't read the letter, your Honor." [January 22, 2020 Hearing, p. 63]
>
> The Defendant did not see the request to respond in the second paragraph of the letter. [April 30, 2020 Hearing, p. 31; see also, November 5, 2020 Hearing, p. 42]
>
> There was no response because there was confusion about who was going to respond. [Sept. 20, 2021 Hearing, p. 22]

THE COURT FURTHER FINDS that the Defendant's inconsistent excuses for not responding to the August 15, 2019 letter shows a lack of candor and shows that the Defendant would make any excuse to justify its failure to respond so that full disclosures could be made.

C. Violating A Court Order

THE COURT FURTHER FINDS that when ASSA ABLOY was not able to produce all documents, that the COURT ordered that it produce all documents. This COURT further ordered that no party was to communicate with ASSA ABLOY:

> THE COURT FURTHER ORDERS that other than Plaintiff's counsel informing ASSA ABLOY about this Order and facilitating the receipt of the requested records, the parties are prohibited from contacting ASSA ABLOY. This specifically includes an Order that Smith's and Kroger are not to contact any person, employee, or agent at or for ASSA ABLOY about this case, Plaintiff's Subpoena, the subject door, or any documents or work in this case.
>
> THE COURT FURTHER ORDERS that Plaintiff's counsel is to bring a copy of the documents produced by ASSA ABLOY to the next hearing on these matters. These documents are to be disclosed only to the Court and to counsel for the parties.

(See, Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All Other Pending Motions (filed February 14, 2020)).

THE COURT FURTHER FINDS that at no time did Defendant ask that the Order filed February 14, 2020 be amended, rescinded, or modified to allow it to communicate with ASSA ABLOY. Despite this, Defendant communicated with ASSA ABLOY which allowed it to obtain the affidavit and declaration of Christine Shedrow, an employee of ASSA ABLOY.

D. False Discovery Responses

THE COURT FURTHER FINDS that on September 13, 2019, ASSA ABLOY signed a Custodian of Records Affidavit which noted that Defendant continued to block ASSA ABLOY from disclosing all relevant documents and records.

THE COURT FURTHER FINDS that ASSA ABLOY sent the Custodian of Records Affidavit along with just over 60 pages of documents to Ms. Taylor's counsel. Those documents were produced in a supplemental NRCP 16.1 Disclosure on September 30, 2019. Those documents affirmatively show that the subject doors' sensors and other component parts were repaired and replaced in December, 2016 after ASSA ABLOY informed Defendant that the sensors were broken, the subject doors were dangerous, and that the subject doors did not comply with the applicable standards.

THE COURT FURTHER FINDS that despite receiving the September 30, 2019 Supplemental NRCP 16.1 Disclosure, the following day, October 1, 2019, Defendant served a supplemental answer to Interrogatory No. 13 as follows:

> **INTERROGATORY NO. 13**
>
> Please state whether there have been any instances when service has been done to the automatic door at issue and additional equipment or upgrades have been suggested to improve the safety of the subject automatic door.
>
> **SUPPLEMENTAL ANSWER NO. 13:**
>
> None.

THE COURT FURTHER FINDS that this Supplemental Interrogatory Answer was false. Further, it was signed under oath by Mr. Thurnwald, Defendant's 30(b)(6) representative and the person who approved the repair and replacement of the subject doors' sensors and component parts.

THE COURT FURTHER FINDS that the Defendant's actions of serving a known false Interrogatory Answer after receiving documents the day before shows the lengths to which the

Defendant would go to hide the truth and deceive Ms. Taylor. This lack of candor was repetitive, abusive, and recalcitrant.

E. <u>Defendant Mislead Ms. Taylor Throughout Discovery</u>

THE COURT FURTHER FINDS that the Defendant chose to mislead Ms. Taylor throughout discovery. There are many instances of Defendant's deceptive discovery outlined in the COURT's prior Orders, specifically its Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees (filed on January 20, 2021), and the Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time (filed on April 12, 2021).

THE COURT FURTHER FINDS that during discovery the Defendant produced documents related to the wrong door – the East doors, not the West doors (the West doors are the subject doors). The Defendant did this even though it knew that the subject doors were the West doors. This is evidenced by the fact that the Defendant preserved surveillance video showing Ms. Taylor walking into the West doors, the subject doors, yet it decided to produce documents related to the East doors.

THE COURT FURTHER FINDS that the Defendant answered written discovery providing responses related to the East doors, not the West doors.

THE COURT FURTHER FINDS that in discovery Defendant disclosed its contract with Stanley Access Technologies. Thereafter, in a supplemental NRCP 16.1 Disclosure, Defendant disclosed Chad Crapo from Stanley Access Technologies as the person most knowledgeable regarding the "operation of the automatic-sliding glass doors at DEFENDANT store No. 347." Defendant made these disclosures even though it knew that ASSA ABLOY was its door vendor, that it had a contract with ASSA ABLOY, and that it was ASSA ABLOY that did the repair and replacement of the subject doors' sensors and component parts.

THE COURT FURTHER FINDS that at no time during discovery did Defendant name ASSA ABLOY in any of its 16.1 Disclosures, and at no time did Defendant produce its contract

with ASSA ABLOY. Defendant knew ASSA ABLOY was its door vendor and it had numerous interactions with ASSA ABLOY about the subject doors before and after Ms. Taylor's fall. Defendant's refusal to disclose ASSA ABLOY in any of its mandatory 16.1 Disclosures and its failure to disclose its contract with ASSA ABLOY shows an intent to deceive and mislead Ms. Taylor, and to halt the adversarial process.

F. <u>Untimely Affidavit</u>

THE COURT FURTHER FINDS that Defendant disclosed a declaration (later an affidavit) from Christine Shedrow at ASSA ABLOY. Ms. Shedrow's declaration/affidavit outlines events from 2019 and 2020. Notably, Ms. Shedrow (and her company ASSA ABLOY) existed in 2016 when the subject doors were dangerous, broken, and did not comply with the applicable standards; when the fall occurred; and when the subject doors' sensors and component parts were repaired and replaced. Ms. Shedrow (and her company ASSA ABLOY) existed in 2017 when the Complaint was filed. Ms. Shedrow (and her company ASSA ABLOY) existed for the almost two years that discovery was being conducted. Finally, Ms. Shedrow (and her company ASSA ABLOY) existed in August and September, 2019 when ASSA ABLOY sent a letter to Defendant asking for permission to produce all relevant documents, and when ASSA ABLOY provided a Custodian or Records Affidavit stating that it could not provide all relevant documents because it was not allowed by Defendant.

THE COURT FURTHER FINDS that therefore, Ms. Shedrow and her company ASSA ABLOY were not "new" evidence. The information held by Ms. Shedrow and her company ASSA ABLOY were readily available to Defendant at any time after this fall. It was the Defendant who chose to destroy or not disclose documents and evidence from ASSA ABLOY. The Defendant cannot be allowed to introduce evidence at this late stage when that evidence was available prior to and throughout discovery.

G. <u>Waiver of Evidentiary Hearing And A Fully Developed Record</u>

THE COURT FURTHER FINDS that the Defendant again asked that an evidentiary hearing be held to address this COURT's decision to strike its Answer as to liability and damages.

THE COURT FURTHER FINDS that Ms. Taylor filed her Motion to Strike Defendant's Answer on October 14, 2019. The hearing on that Motion occurred on November 21, 2019. At that hearing, Ms. Taylor asked for an evidentiary hearing. This COURT thus requested that a Motion be filed to address Ms. Taylor's request for an evidentiary hearing.

THE COURT FURTHER FINDS that Ms. Taylor filed Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time on December 5, 2019. The Defendant filed Defendant's Opposition to Plaintiff's Motion for An Evidentiary Hearing on December 20, 2019. In Defendant's Opposition to Plaintiff's Motion for An Evidentiary Hearing the Defendant attached three Affidavits. Multiple hearings were subsequently held on January 22, 2020; March 24, 2020; March 31, 2020; and April 30, 2020.

THE COURT FURTHER FINDS that Defendant argued against an evidentiary hearing representing to the COURT that an evidentiary hearing would be of no value because the witnesses would simply repeat the testimony contained in their three Affidavits that were attached to Defendant's Opposition to Plaintiff's Motion for An Evidentiary Hearing. These arguments, coupled with the lack of candor shown by the Defendant, give this COURT the understanding that an evidentiary hearing would not be helpful.

THE COURT FURTHER FINDS that in the Opposition and up to this COURT's Order, the Defendant's position remained the same – that it opposed an Evidentiary Hearing. This COURT, on June 18, 2020 prepared and filed an Order Denying Plaintiff's Motion for an Evidentiary Hearing on an Order Shortening Time.

THE COURT FURTHER FINDS that the COURT has given all parties ample opportunity to address the matters at issue, Defendant has presented numerous declarations and affidavits, and all parties have been heard through oral argument as well as in various Motions and Briefs. Finally, the Defendant had Mr. Thurnwald testify at the prove up hearing.

THE COURT FURTHER FINDS that there has been an extensive record created in this case. This is the result of numerous Motions, Briefs, and Orders. Some of the Motions and

Briefs[1] previously filed that relate to Defendant's discovery failures and sanctionable conduct are:

1. Motion for Sanctions for Spoliation of Evidence filed on July 3, 2019;
2. Motion to Strike "Quasi Expert" Chad Crapo as a Witness filed on September 20, 2019;
3. Motion to Strike Defendant's Answer filed on October 14, 2019;
4. Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence and to Continue the Trial Date on an Order Shortening Time filed on December 4, 2019;
5. Motion for an Evidentiary Hearing filed on December 5, 2019;
6. Motion to Continue Hearings and Pre-Trial Conference on an Order Shortening Time filed on December 27, 2019;
7. Motion to Strike Late Disclosure of "Quasi Expert" Witnesses and Motion to Strike Chad Crapo or Compel Compliance with Order filed on December 19, 2019;
8. Motion to Amend Complaint to Allege Punitive Damages filed on January 30, 2020;
9. Defendant's Motion to Strike/Exclude Plaintiff's Damages for Her Cervical Fusion Surgery and Future Medical Care filed on April 8, 2020;
10. Motion to Limit Dr. Sanders, M.D.'s Expert Testimony filed on April 21, 2020;
11. Defendant's Motion for Leave to File Third-Party Complaint filed on May 15, 2020;
12. Defendant's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration of the Court's Order Denying Defendant's Motion to Continue Discovery Based on Newly Discovered Evidence filed on June 9, 2020;

[1] All referenced Motions and Briefs include the Oppositions and Replies associated with those Motions and Briefs.

13. Supplemental Brief in Advance of March 24, 2020 Hearing filed on March 19, 2020;
14. Supplemental Brief Timeline of Relevant Events filed on April 2, 2020; and
15. Renewed Motion to Strike Defendant's Answer, For Sanctions and Attorney's fees filed on September 15, 2020;
16. Plaintiff's Trial Brief on Guidelines for the Prove-up Hearing filed February 12, 2021;
17. Plaintiff's Supplemental Trial Brief on Guidelines for the Prove-up Hearing filed on March 10, 2021;
18. Defendant's Offer of Proof for Prove-up Hearing filed on March 16, 2021;
19. Ms. Taylor's Motion to Preclude Dieter Thurnwald from Providing Testimony at the Upcoming Prove Up Hearing and Strike the ANSI Standards on Order Shortening Time filed April 12, 2021;
20. Plaintiff's Supplemental Trial Brief on Burden of Proof For Prove-up Hearing filed on May 13, 2021;
21. Plaintiff's Second Supplemental Trial Brief on Guidelines for the Prove-up Hearing filed on August 2, 2021;
22. Plaintiff's Motion to Strike Dieter Thurnwald's Testimony at the May 17, 2021 Prove-up Hearing filed August 2, 2021;
23. Plaintiff's Motion to Strike Defendant's Fourth Supplemental to Initial Disclosure Statement (including the witness and Affidavit Produced Therein) and to Strike the Surveillance Video filed on August 2, 2021;
24. Defendant's Brief on Scope of Prove-up, Plaintiff's Failure to Establish a Prima Facie Case on Liability and Damages, and Punitive Damages filed on August 2, 2021;
25. Defendant's Motion for Reconsideration or, in the Alternative, to Alter of Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on Order Shortening Time filed on September 15, 2021;

26. Plaintiff's Trial Brief Prior to the Final Prove Up Hearing filed on September 16, 2021; and

27. Defendant's Brief in Support of its Argument that Punitive Damages are not Applicable in this Case filed on September 16, 2021.

THE COURT FURTHER FINDS that there have been numerous hearings arguing and discussing matters in these pleadings and briefs. These hearings have been held on various dates including, but not limited to, August 13, 2019; November 21, 2019; January 22, 2020; March 10, 2020; March 24, 2020; March 31, 2020; April 30, 2020; June 18, 2020; November 5, 2020; February 16, 2021; March 18, 2021; April 7, 2021; April 21, 2021; May 17, 2021; August 30, 2021; September 20, 2021; October 14, 2021; and October 22, 2021. These hearings generally lasted well over an hour, and some lasted for multiple hours.

THE COURT FURTHER FINDS that the Defendant has been given an opportunity to have witnesses testify via live testimony and through declarations and affidavits. Defendant has presented the affidavits or declarations of various witnesses including, but not limited to: Venessa Gribble, Courtney Shepherd, Ronald Radcliffe, Linda Snyder, and Christine Shedrow. Defendant has also presented testimony from its 30(b)(6) representative Mr. Thurnwald, and its expert witness, Dr. Sanders. This COURT has given Defendant multiple opportunities to present evidence in the form of affidavits, declarations, and live testimony.

THE COURT FURTHER FINDS that an adequate record has been developed based upon pleadings, briefs, orders, hearings, and other matters. The COURT has been fully apprised of the issues in this case.

ORDER

THE COURT HEREBY ORDERS that The Motion is denied in its entirety and the COURT'S prior Orders striking Defendant's Answer and denying Defendant's First Motion for Reconsideration remain. (See, Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer, Motion for Sanctions and Attorney Fees (filed on January 20, 2021), and the Order Denying Defendant's Motion for Reconsideration of the Court's Order Granting Ms. Taylor's Motion to Strike Defendant's Answer as to Liability and Damages, Motion for Stay

Pending Resolution by the Nevada Supreme Court and Motion for Clarification of Order Shortening Time (filed on April 12, 2021)).

THE COURT FURTHER ORDERS that its decision to issue sanctions striking Defendant's Answer as to liability and damages was not based upon one singular fact. This COURT'S decision to sanction Defendant was based upon Defendant's cumulative actions of spoliation of evidence, its breaches of discovery duties, its lack of candor to opposing counsel and the COURT, and its halting of the adversarial process. These actions showed that Defendant's conduct was repetitive, abusive, and recalcitrant and, therefore, warranted sanctions.

THE COURT FURTHER ORDERS that the Defendant only takes exception with one portion of its prior Order, that ASSA ABLOY provided documents to Ms. Taylor's counsel on about August 8, 2019. Yet, ASSA ABLOY asked Defendant permission to disclose all relevant documents by sending a letter to Defendant on August 15, 2019. Further, the reason ASSA ABLOY asked Defendant for permission to produce documents was because Ms. Taylor subpoenaed ASSA ABLOY in June, 2019. That Subpoena was only served after notifying Defendant and waiting the prescribed time period pursuant to NRCP 45. Thus, Defendant was aware in June, 2019 that ASSA ABLOY was going to produce documents; and it was aware that ASSA ABLOY had documents to produce and needed permission to produce them on August 15, 2019. Despite this, Defendant never allowed for ASSA ABLOY to produce all relevant documents.

THE COURT FURTHER ORDERS that Defendant's supposed reasons for not responding to the August 15, 2019 letter from ASSA ABLOY included that there was confusion who was going to respond, it was approved, the letter was overlooked, the letter was not read, Defendant did not see the second paragraph in the letter, and the Defendant did not know a response was needed. These inconsistent representations to this COURT about Defendant's failure to respond to the August 15, 2019 letter shows a lack of candor. It also demonstrates a failure to properly engage in discovery.

THE COURT FURTHER ORDERS that after Defendant refused to respond to ASSA ABLOY's August 15, 2019 letter, ASSA ABLOY produced certain, limited documents. Those documents were produced, along with a Custodian of Records Affidavit, on about September 13, 2019. The documents were then disclosed by Ms. Taylor about two weeks later, on September 30, 2019. There were just over 60 pages of documents disclosed by ASSA ABLOY at that time.

THE COURT FURTHER ORDERS that after this COURT signed an Order on February 7, 2020 ordering ASSA ABLOY to disclose all documents and that Defendant could not interfere with ASSA ABLOY's disclosure of documents (See, Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All Other Pending Motions (filed February 14, 2020)) that ASSA ABLOY produced almost 200 additional pages of documents. This shows that ASSA ABLOY was willing to produce documents and Defendant was not allowing that production.

THE COURT FURTHER ORDERS that ASSA ABLOY's production two months before the discovery cutoff does not pardon Defendant's efforts to halt the adversarial process and commit numerous discovery violations during the nearly two-year discovery period. Defendant had a duty pursuant to NRCP 16.1 to disclose all relevant documents and witnesses. Despite this, Defendant never named ASSA ABLOY as a witness in any of its 16.1 Disclosures and never produced a document from ASSA ABLOY in any of its 16.1 Disclosures. Rather, Defendant chose to provide documents and discovery for the wrong doors and the wrong door vendor.

THE COURT FURTHER ORDERS that in the Order on Plaintiff's Motion for an Evidentiary Hearing and Order to Continue Hearing on All Other Pending Motions (filed February 14, 2020) this COURT ordered that no party was to contact ASSA ABLOY. Defendant violated that Order when it contacted ASSA ABLOY to obtain the declaration and affidavit of Christine Shedrow.

THE COURT FURTHER ORDERS that "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is

clearly erroneous." Masonry & Tile Contrs. v. Jolley, Urga & Wirth Ass'n, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (citing Little Earth of United Tribes v. Department of Housing, 807 F.2d 1433, 1441 (8th Cir. 1986); see also Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted."). Further, NRCP 61 holds that: "Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."

THIS COURT FURTHER ORDERS that when considering whether there was harmless error, "[t]he record must be considered as a whole." Truckee-Carson Irrigation Dist. v. Wyatt, 84 Nev. 662, 668, 448 P.2d 46, 50 (1968). The Court "do[es] not presume prejudice from the occurrence of error in a civil case." Boyd v. Pernicano, 79 Nev. 356, 359, 385 P.2d 342, 343 (1963); Cook v. Sunrise Hosp. & Med. Ctr., LLC, 124 Nev. 997, 1006, 194 P.3d 1214, 1219 (2008) (confirming that the appealing party must establish "by providing record evidence ... that, but for the error, a different result might have been reached"). Defendant has not presented sufficient evidence and arguments to overcome the harmless error standard. It was the Defendant that halted the adversarial process, exhibited a lack of candor to this COURT and with opposing counsel, and destroyed evidence. The Defendant's substantial rights have not been affected by this COURT's findings in its prior Orders.

THIS COURT FURTHER ORDERS that NRCP 59(a)(1)(D) holds that "The court may, on motion, grant a new trial on all or some of the issues—and to any party—for any of the following causes or grounds materially affecting the substantial rights of the moving party: ... newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial...." (see also, Pinschower v. Hanks, 18 Nev. 99, 107-08, 1 P. 454, 458 (1883) ("The law demands of the parties all reasonable diligence and caution in preparing for trial, and furnishes no relief for the hardships

resulting from inexcusable negligence or want of diligence. When, therefore, a new trial is sought because of newly-discovered evidence, it should most certainly be shown by the party making the application that his failure to produce such evidence at the first trial was not the result of any negligence upon his part. Of that fact the court should be perfectly satisfied. To grant new trials upon this ground, where no such showing is made, would simply be giving encouragement to negligence, and judicial approval to inexcusable carelessness.") (citation omitted). Defendant presented the declaration and affidavit of Ms. Shedrow from ASSA ABLOY. Yet, ASSA ABLOY was known to the Defendant from the inception of problems with the subject door in October, 2016 and throughout discovery. Thus, ASSA ABLOY and its employees were not "new" evidence. Defendant chose not to disclose ASSA ABLOY as a witness and Defendant chose not to disclose ASSA ABLOY's documents in this case. Defendant cannot now present a declaration and affidavit from a company that was known to Defendant from the inception of this case.

THE COURT FURTHER ORDERS that Defendant attempts to use the Service Hub document to argue that it did not need to preserve evidence or that the evidence it did destroy or failed to produce was harmless because the Service Hub contained adequate information. It also uses the Service Hub document to argue that Ms. Taylor had knowledge about the subject doors and persons or entities who were involved with inspecting or repairing the subject doors. Yet, the Defendant's 30(b)(6) representative testified that the Service Hub document did not apply in this case by providing testimony that there was no way to know if the Service Hub document pertained to the subject doors and that he did not know what the entries in the Service Hub document meant. [Thurnwald depo., pp. 25, 27, 29, and 49] The 30(b)(6) representative then testified that there was never any work done to the subject doors and that ASSA ABLOY never came to the store. [Thurnwald depo., pp. 29, 44, 73 – 75, 101 – 102, 115, 118, and 120 – 121] Finally, Defendant represented to this COURT that no documents exist pertaining to the subject doors.

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THE COURT FURTHER ORDERS that the Defendant cannot have it both ways: it cannot testify during discovery that the Service Hub document does not apply, that no work was done to the subject doors, and that no documents pertain to the subject doors; and then argue after a Motion was filed to sanction Defendant that the Service Hub document effectively gave Ms. Taylor all the information she needed about the subject doors, in an attempt to justify its spoliation of evidence, failure to disclose documents and witnesses, and its false discovery responses and representations. These inconsistent positions show a lack of candor and intent to deceive Ms. Taylor and this COURT.

THE COURT FURTHER ORDERS that an extensive record has been developed. There have been dozens of pleadings and briefs filed addressing pertinent issues including Defendant's spoliation of evidence, discovery abuses, lack of candor, and halting the adversarial process. Defendant has presented numerous affidavits and declarations. Defendant has had multiple witnesses provide testimony, and there have been extensive hearings held. Finally, Defendant opposed an evidentiary hearing.

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THE COURT FURTHER ORDERS that an evidentiary hearing is thus not necessary in this case.

Dated this 30th day of November, 2021

A5A 296 B6F2 785A
Timothy C. Williams
District Court Judge

MH

Respectfully Submitted by:

Dated: 11/16/21

TANNER CHURCHILL ANDERSON

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Approved as to form and content by:

Dated: _____

COOPER LEVENSON, P.A.

Refused to Sign

JERRY S. BUSBY, Esq.
Nevada Bar No. 1107
3016 West Charleston Boulevard, #195
Las Vegas, NV 89102
Telephone: (702) 366-1125
Facsimile: (702) 366-1857
Attorneys for Defendant, Smith's Food & Drug Centers, Inc.

Courtney McMenamy

From: Courtney McMenamy
Sent: Tuesday, November 9, 2021 11:00 AM
To: Busby Jerry S.; Kraemer, Gregory A.; Rutkowski Theresa H.; amarques@cooperlevenson.com
Cc: ekapolnai@lewisroca.com; ckelley@lewisroca.com; Polsenberg, Daniel F. (DPolsenberg@lewisroca.com); Henriod, Joel D. (JHenriod@lewisroca.com); asmith@lewisroca.com; jhelm@lewisroca.com
Subject: Taylor v. Smith's / ODM / A-17-761650-C
Attachments: TAYLOR Order Denying Defs Motion for Reconsideration.pdf

Good morning,

Please find attached the drafted Order Denying Defendant's Motion for Reconsideration or, In the Alternative, to Alter or Amend the Court's Order Granting Plaintiff's Renewed Motion to Strike Defendant's Answer on OST for your review. Please let me know of any changes that need to be made. If agreeable, please let me know if I may a-fix the attorney's e-signature.

Thank you,

Courtney McMenamy
Paralegal to David A. Tanner

TANNER LAW FIRM

Address: 7895 West Sunset Road, Ste. 115, Las Vegas, NV 89113
Phone: 702-987-8888
Fax: 702-410-8070

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Patricia Taylor, Plaintiff(s) vs. Smith's Food and Drug Centers Inc, Defendant(s)	CASE NO: A-17-761650-C DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

Service Date: 11/30/2021

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DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **December 07, 2017**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

December 07, 2017 **9:00 AM** **Motion to Continue**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER:

PARTIES PRESENT:

Busby, Jerry S.	Attorney
VON MAGDENKO, NADIA	Attorney

JOURNAL ENTRIES

- Mr. Busby informed there is an Early Case Conference and requested to delay 30 days after the Motion to Disqualify is heard. Court advised at Defendant's Motion to Disqualify Counsel hearing, the Early Case Conference date would be set, and ORDERED, Motion GRANTED.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **January 04, 2018**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

January 04, 2018 **9:00 AM** **Motion to Disqualify Attorney**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

Busby, Jerry S.	Attorney
VON MAGDENKO, NADIA	Attorney

JOURNAL ENTRIES

- David Korrey, Esq. also present on behalf of Plaintiff, and Ty Maynarich, Esq. also present on behalf of Defendant. Mr. Busby argued Ms. Mandello had access to confidential information in documents at his office while employed by Cooper Levenson, creating a conflict. Court stated this is a premise liability case and issues would be whether there was a hazardous condition and whether the store had notice of those conditions; reviewed statutory law regarding potential conflict of interest. Court inquired regarding what type of confidence existed that would not be present in the public realm. Mr. Busby argued he knew for a fact that Ms. Mandello had access to privileged and confidential information. Court noted it has to be the same matter or substantially related matter, and stated "substantially related matter" is a broad term. COURT ORDERED, Motion DENIED, and stated findings.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **August 13, 2019**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

August 13, 2019 **9:00 AM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT: Tanner, David A. Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Gregory Kraemer, Esq. for Deft.

MOTION TO AMEND COMPLAINT
Arguments by counsel. Court FINDS if evidence supports res ipsa loquitur instruction based on general negligence principles, would give the instruction; otherwise, would not. Therefore, Court ORDERED, Motion to Amend DENIED as MOOT. There being agreement, Mr. Kraemer to prepare the order.

PLAINTIFF'S MOTION FOR SANCTIONS FOR SPOLIATION OF EVIDENCE
Mr. Tanner presented documents for Court to review. Arguments by counsel and colloquy regarding possible continuance of matter for opportunity to withdraw and possible Rule 11 motion by Defense. COURT ORDERED, Motion for Sanctions CONTINUED 30 days.

CONTINUED TO: 9/11/19 9:00 AM PLAINTIFF'S MOTION FOR SANCTIONS FOR SPOLIATION OF EVIDENCE

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **September 11, 2019**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

September 11, 2019 **9:00 AM** **Status Check: Trial Readiness**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT: Tanner, David A. Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Gregory Kraemer, Esq. present for Deft.

Matter of Status Check: Trial Readiness. Mr. Tanner advised trial ready. Mr. Kraemer advised issue of deposition of expert not available until November and his opinions are incomplete. Court stated will not make decision to continue trial at this time; however, counsel may file appropriate motion.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **October 23, 2019**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

October 23, 2019 **9:00 AM** **Motion to Strike** **Plaintiff's Motion to Strike "Quasi Expert" Chad Crapo as A Witness**

HEARD BY: Truman, Erin **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES PRESENT:

Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- Arguments by counsel. Mr. Kraemer took over the file a few months ago, and he will be moving to continue discovery. Mr. Kraemer addressed the substance of Chad Crapo's testimony, and Mr. Crapo's specialized knowledge. Mr. Kraemer requested Commissioner hold off ruling on this Motion, or deny the Motion.

COMMISSIONER RECOMMENDED, motion is GRANTED IN PART and DENIED IN PART; the lay witness will only testify about specific knowledge, personal knowledge, and knowledge of policies and procedures how the door worked, or should have worked at that store; no expert opinions, and no testimony on duties and standards; IDENTIFY WHEN Mr. Crapo was at the store, and Commissioner can address issues if the Court grants the Motion to Continue Discovery. Mr. Tanner to prepare the Report and Recommendations, and Mr. Kraemer to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **November 21, 2019**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

November 21, 2019 **9:00 AM** **Motion to Strike**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Benjamin Cloward, Esq. present for Pltf.

Arguments by counsel as to Pltf's Motion to Strike Deft's Answer. As to matter ripeness, COURT ORDERED, Mr. Cloward to submit a request for evidentiary hearing as to spoliation issue immediately on order shortened time; Mr. Kraemer may submit a formal motion to reopen discovery with analysis.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **January 07, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

January 07, 2020 **9:00 AM** **Motion to Continue**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- Arguments by counsel. COURT ORDERED, Plaintiff's Motion to Continue Hearings and Pre-Trial Conference GRANTED; hearings previously set 1/8/20 and 1/23/20 RESET to 1/22/20. FURTHER ORDERED, Trial CONTINUED; will discuss trial scheduling issues at the reset hearing. Mr. Tanner advised will prepare today's order including new dates.

CONTINUED TO: 1/22/20 1:15 PM PLTF'S MOTION FOR AN EVIDENTIARY HEARING...DEFT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERY EVIDENCE AND TO CONTINUE TRIAL DATE...PLTF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **January 22, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

January 22, 2020 **1:15 PM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:
Kraemer, Gregory A Attorney
Tanner, David A. Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: David Churchill, Esq. present for Pltf.

PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER

Arguments by Mr. Tanner and Mr. Kraemer. Mr. Tanner presented documents to Court for review. Court directed Mr. Tanner to prepare a direct Court order for corporate counsel to produce documents related to work authorizations at issue or other documents withheld pursuant to confidentiality. Court further instructed order to state production is for Court and eyes of counsel only. Court admonished there is to be no contact by either party to corporate counsel. Colloquy regarding rescheduling today's matters in light of anticipated production. There being agreement, COURT ORDERED, today's matters CONTINUED to 3/10/20 at 1:15 p.m.

CONTINUED TO: 3/10/20 1:15 PM PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **February 18, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

February 18, 2020 **8:02 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- On February 14, 2020, Cooper Levenson Law Firm electronically filed an Arbitration Selection List into Case No. A-17-761650-C. This was incorrectly filed as it should have been filed into Case No. A-19-807051-C.

It is hereby ORDERED that the Arbitration Selection List filed on 2/14/20 into case No. A-17-761650-C is hereby stricken from the record due to a filing error.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **March 10, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

March 10, 2020 **1:15 PM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: David Churchill, Esq. present for Pltf.

DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER

Mr. Tanner presented email correspondence for Court's review. Mr. Tanner advised there was exchange with Assa Abloy regarding subpoena response and anticipates receiving same by end of this week. Colloquy regarding the subpoena response with respect to today's matters. Mr. Kraemer requested disclosure of the subject documents once received. Mr. Tanner agreed to immediate disclosure of same. Further colloquy regarding potential discovery related to the subpoena response. Colloquy regarding rescheduling today's matters. There being agreement, COURT ORDERED, today's matters CONTINUED to 3/24/20 at 10:30 a.m.; Motion to Amend Complaint RESET from 3/24/20 9:00 a.m. to 10:30 a.m. FURTHER ORDERED, Status Check SET 3/24/20 at 10:30 a.m. regarding subpoena response and related discovery, and scheduling pending matters including trial.

CONTINUED TO: 3/24/20 10:30 AM DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER

3/24/20 10:30 AM STATUS CHECK: SUBPOENA RESPONSE FROM ASSA ABLOY AND RELATED DISCOVERY ISSUES/SCHEDULING PENDING MATTERS AND TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **March 24, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

March 24, 2020 **10:30 AM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

JOURNAL ENTRIES

- APPEARANCES: David Tanner, Esq. and David Churchill, Esq. present via CourtCall for Pltf. Gregory Kraemer, Esq. present telephonically for Deft.

PLAINTIFF'S MOTION TO AMEND COMPLAINT...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER...STATUS CHECK: SUBPOENA RESPONSE FROM ASSA ABLOY AND RELATED DISCOVERY/SCHEDULING PENDING MATTERS AND TRIAL

Colloquy regarding rescheduling certain matters. COURT ORDERED, matters other than Motion to Amend and Status Check CONTINUED to 3/31/20. Arguments by Mr. Tanner and Mr. Kraemer regarding the Motion to Amend. Court stated ITS FINDINGS and ORDERED, Motion GRANTED. Court directed Mr. Tanner to prepare findings of fact and conclusions of law to include what was considered; if parties cannot agree on form and content, may submit competing orders and do so electronically.

CONTINUED TO: 3/31/20 9:00 AM DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **March 25, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

March 25, 2020 **10:17 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court offers two methods of appearance: telephonic conference through BlueJeans or CourtCall. As CourtCall involves a cost, the use of BlueJeans is strongly favored given the number of people the system can accommodate.
If you prefer to use BlueJeans, please call in prior to your hearing to appear. The call-in number is:
Dial the following number: 1-888-748-9073
Meeting ID: 720 112 055
To connect, dial the telephone number then enter the meeting ID and passcode followed by #.
PLEASE NOTE the following protocol each participant will be required to follow:
Place your telephone on mute while waiting for your matter to be called.
Do not place the conference on hold as it may play wait/hold music to others.
Identify yourself before speaking each and every time as a record is being made.
Please be mindful of sounds of rustling of papers or coughing
If you prefer to use CourtCall, please contact CourtCall to schedule your appearance. They can be reached toll-free at 1-888-882-6878 and/or on-line at www.courtcall.com.

CLERK S NOTE: Minute Order amended to provide new call-in information as reflected above. This

Minute Order has been electronically served to counsel through Odyssey eFile. /cd 3-30-20/

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **March 31, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

March 31, 2020 **9:00 AM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

JOURNAL ENTRIES

- APPEARANCES: David Tanner, Esq. and David Churchill, Esq. present telephonically for Pltf. Gregory Kraemer, Esq. present telephonically for Deft.

PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME

Arguments by counsel regarding Motion to Strike and Motion for Evidentiary Hearing. COURT ORDERED, supplemental timeline of 1-2 pages to be filed within one week referencing the record with respect to the preservation of evidence letter, emails, and the like. Colloquy regarding impact of anticipated decision on the pending Motion to Continue Discovery. Mr. Tanner requested opportunity to argue issue of discovery. COURT ORDERED, Chambers Decision SET 4/14/20 regarding Motion to Strike and Motion for Evidentiary Hearing; will incorporate Motion to Continue Discovery in the decision.

4/14/20 CHAMBERS DECISION: PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF

"QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **April 08, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

April 08, 2020 **3:00 AM** **Status Check**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department notes receipt of supplemental briefing. Matter confirmed.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **April 23, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

April 23, 2020 **12:17 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Pending matters originally set for in-chambers decision on 4/14/20 are hereby RESET by this Court to 4/30/20 at 11:00 a.m. to coincide with the status check matter regarding related supplemental timelines.

CONTINUED TO: 4/30/20 11:00 AM CHAMBERS DECISION: PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME

4/30/20 11:00 AM STATUS CHECK RE DISCUSSION OF THE PARTIES SUBMITTED SUPPLEMENTAL TIMELINES REFERENCING THE RECORD AS TO THE PRESERVATION OF EVIDENCE, LETTER, EMAILS, RELATED DOCUMENTS.

CLERK'S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **April 30, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

April 30, 2020 **11:00 AM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

JOURNAL ENTRIES

- APPEARANCES: David Tanner, Esq. and David Churchill, Esq. present telephonically for Pltf. Gregory Kraemer, Esq. present telephonically for Deft.

STATUS CHECK RE DISCUSSION OF THE PARTIES SUBMITTED SUPPLEMENTAL TIMELINES REFERENCING THE RECORD AS TO THE PRESERVATION OF EVIDENCE, LETTER, EMAILS, RELATED DOCUMENTS...DEFENDANT'S MOTION TO CONTINUE DISCOVERY BASED ON NEWLY DISCOVERED EVIDENCE AND TO CONTINUE TRIAL DATE ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION FOR AN EVIDENTIARY HEARING ON AN ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO STRIKE LATE DISCLOSURE OF "QUASI EXPERT" WITNESSES AND MOTION TO STRIKE CHAD CRAPO OR COMPEL COMPLIANCE WITH ORDER

Arguments by Mr. Kraemer and Mr. Tanner. Court stated ITS FINDINGS and ORDERED, Motion to Continue Discovery DENIED; will review Motion for Evidentiary Hearing and issue minute order decision; Motion to Strike Late Disclosure RESOLVED by today's ruling and additional witnesses stricken as discussed. Colloquy regarding posture of case, certain depositions, and trial setting. FURTHER ORDERED, proposed deposition of Mr. Panish not permitted; whether additional discovery can be done from medical perspective is to be determined after two pending motions. ORDERED, 5/12/20 Motion to Strike before Discovery Commissioner to be heard before this Court

and RESET from 5/12/20 to 6/9/20 to be heard with 6/9/20 Motion to Limit. ORDERED, Status Check SET 5/21/20 regarding trial setting. Court directed Mr. Tanner to prepare today's order

5/21/20 9:00 AM STATUS CHECK: TRIAL SETTING

6/9/20 9:00 AM DEFT'S MOTION TO STRIKE/EXCLUDE PLTF'S DAMAGES FOR HER CERVICAL FUSION SURGERY AND FUTURE MEDICAL...MOTION TO LIMIT DR. STEVEN M. SANDERS, M.D.'S EXPERT TESTIMONY

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **May 12, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

May 12, 2020 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is:
Dial the following number: 1-408-419-1715
Meeting ID: 897 197 013
To connect, dial the telephone number then enter the meeting ID followed by #.
PLEASE NOTE the following protocol each participant will be required to follow:
Place your telephone on mute while waiting for your matter to be called.
Do not place the conference on hold as it may play wait/hold music to others.
Identify yourself before speaking each and every time as a record is being made.
Please be mindful of sounds of rustling of papers or coughing.

CLERK S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **May 21, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

May 21, 2020 **9:00 AM** **Status Check: Trial Setting**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- APPEARANCES: David Tanner, Esq. and David Churchill, Esq. present telephonically for Pltf. Gregory Kraemer, Esq. present telephonically for Deft.

Colloquy regarding jury trial setting in light of public health crisis. There being agreement, COURT ORDERED, Trial SET 2/22/21. Department to issue amended trial order. Mr. Kraemer advised order denying motion to reopen discovery is pending and requested anticipated motion for reconsider to be heard on order shortening time (OST). Court stated the OST may be filed and set with at least ten (10) days for opposition. Court further stated pending minute order on motion for evidentiary hearing is anticipated today or tomorrow.

2/11/21 10:30 AM PRETRIAL/CALENDAR CALL

2/22/21 9:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **May 21, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

May 21, 2020 **12:48 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- After a review and consideration of the record, the points and authorities on file herein, and oral argument of counsel, the Court determined as follows:

Under Nevada law, when a court does not impose the ultimate discovery sanctions of striking an answer as to liability and damages, the court should, at its discretion, hold such hearing as it reasonably deems necessary to consider matters that are pertinent to the imposition of appropriate sanctions. Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243, 256, 235 P.3d 592, 600 01 (2010). The length and nature of the hearing for non-case concluding sanctions shall be left to the district court s sound discretion. Id. In determining the nature of [the] hearing, the district court should exercise its discretion to ensure that there is sufficient information presented to support [any] sanctions ordered. Id. A district court does not abuse its discretion when it provides more than one meaningful opportunity to present evidence and arguments regarding misconduct. See N. Am. Properties v. McCarran Int l Airport, No. 61997, 2016 WL 699864, at *5, 132 Nev. 1011 (Nev. Feb. 19, 2016) (Unpublished).

The Plaintiff s Motion For An Evidentiary Hearing was based on her 10/14/19, request to strike the Defendant s answer. At the hearing for Plaintiff s Motion To Strike Defendant s Answer, this Court found that the request was premature. The Court found that further development of the underlying

facts that led up to the motion to strike was required. In response to the Court s ripeness decision, Plaintiff filed her Motion For An Evidentiary Hearing on 11/27/19.

Since that November filing, the Court has held multiple hearings that specifically dealt with Smiths conduct as related to, and among other things:

Disregard of its duty to preserve evidence that it knew or should have known was relevant to this litigation, which was mandated by the Plaintiff s December 7, 2016, preservation letter;
Company record-retention policies that resulted in the destruction or lack of preservation of maintenance records that were vital to Plaintiff s case in chief: Assa Abloy s inspection notes, safety assessments, AAADM compliance assessment, service and repair recommendations, repair estimates, and Smiths subsequent approval;
Inaccurate discovery responses that contradicted or refuted Abloy s actual involvement in the case, the actual service and repair history of the door, and Smiths actions;
Inaccurate testimony from multiple Smiths 30(b)(6) witnesses that contradicted or refuted Abloy s actual involvement in the case, the actual service and repair history of the door, and Smiths actions;
Smiths disregard of Abloy s August 15, 2019, communication request for permission to disclose records that dealt with maintenance, recommendations, and repair; and
the absence of diligence, good faith, and/or candor by Smiths over the course this disputes litigation history as it pertains to the door at issue.

Additionally, since October 2019, both parties have provided written supplements, additional briefing, Smiths Motion to Re-Open Discovery, and oral argument that gave the Court relevant context and substantive background to the nature of conduct mentioned above.

In light of the additional briefing and hearings, the Court finds that it has sufficiently reflected on the facts and procedural history of this case. Therefore, with the substantial amount of evidence and argument this Court has already considered, the Court finds that an evidentiary hearing is not required to fully evaluate the import of the parties conduct, as well as the tremendous burden of roughly three years of misguided litigation. The Court finds that it is now able to render a decision on a properly brought motion for sanctions. Consequently, the Plaintiff s Motion for an Evidentiary Hearing is DENIED.

Plaintiff shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK S NOTE: This Minute Order has been served to counsel electronically through Odyssey eFile

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **May 29, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

May 29, 2020 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is:
Dial the following number: 1-408-419-1715
Meeting ID: 948 657 904
To connect, dial the telephone number then enter the meeting ID followed by #.
PLEASE NOTE the following protocol each participant will be required to follow:
Place your telephone on mute while waiting for your matter to be called.
Do not place the conference on hold as it may play wait/hold music to others.
Identify yourself before speaking each and every time as a record is being made.
Please be mindful of sounds of rustling of papers or coughing.

CLERK S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **June 09, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

June 09, 2020 **9:00 AM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

JOURNAL ENTRIES

- APPEARANCES CONTINUED: David Churchill, Esq. present telephonically for Pltf.

DEFENDANT'S MOTION TO STRIKE/EXCLUDE PLAINTIFF'S DAMAGES FOR HER CERVICAL FUSION SURGERY AND FUTURE MEDICAL CARE...MOTION TO LIMIT DR. STEVEN M. SANDERS, M.D.'S EXPERT TESTIMONY

All counsel present telephonically. Arguments by counsel. Court stated ITS FINDINGS and ORDERED, Motion to Strike DENIED; Motion to Limit DENIED; as to cost issue, will allow supplement if not done so, otherwise case will stay in current posture. Court directed Mr. Tanner to prepare the Motion to Strike order; Mr. Kraemer to prepare the Motion to Limit order. Proposed orders to be submitted electronically to DC16Inbox@clarkcountycourts.us.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **June 12, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

June 12, 2020 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is:
Dial the following number: 1-408-419-1715
Meeting ID: 948 657 904
To connect, dial the telephone number then enter the meeting ID followed by #.
PLEASE NOTE the following protocol each participant will be required to follow:
Place your telephone on mute while waiting for your matter to be called.
Do not place the conference on hold as it may play wait/hold music to others.
Identify yourself before speaking each and every time as a record is being made.
Please be mindful of sounds of rustling of papers or coughing.

CLERK S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **June 18, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

June 18, 2020 **9:00 AM** **Motion for Leave**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Dana J. Tavaglione

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- Counsel present telephonically. Arguments by counsel. Court FINDS cannot make good cause determination for leave; therefore, ORDERED, Motion for Leave to File Third-Party Complaint DENIED, notwithstanding, other remedies available as discussed. Mr. Tanner advised will prepare and circulate the order. Court stated if parties do not agree on form and content, may submit competing orders. Proposed order(s) to be submitted electronically to DC16Inbox@clarkcountycourts.us.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **July 30, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

July 30, 2020 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is:
Dial the following number: 1-408-419-1715
Meeting ID: 301 745 453
To connect, dial the telephone number then enter the meeting ID followed by #.
PLEASE NOTE the following protocol each participant will be required to follow:
Place your telephone on mute while waiting for your matter to be called.
Do not place the conference on hold as it may play wait/hold music to others.
Identify yourself before speaking each and every time as a record is being made.
Please be mindful of sounds of rustling of papers or coughing.

CLERK S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **August 06, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

August 06, 2020 **10:00 AM** **Motion for Leave**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: David Churchill, Esq. present for Pltf. Court Reporter, Michael Bouley, present.

All parties present telephonically. Arguments by counsel. COURT FINDS no new facts, change in law, or that prior decision erroneous. Therefore, COURT ORDERED, Motion for Reconsideration DENIED with exception to deposition of Dr. Khavkin and Mr. Sanders within 30 days of entry of today's order. Mr. Tanner to prepare and circulate the order; if parties cannot agree on form and content, may submit competing orders. Colloquy regarding status of determination of prior Motion to Strike. Court directed counsel refile the motion for a hearing in approximately 45 days. Mr. Tanner advised he will refile all the briefing and renotice hearing.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **October 14, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

October 14, 2020 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is:
Dial the following number: 1-408-419-1715
Meeting ID: 458 575 421
To connect, dial the telephone number then enter the meeting ID followed by #.
PLEASE NOTE the following protocol each participant will be required to follow:
Place your telephone on mute while waiting for your matter to be called.
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CLERK S NOTE: A copy of this Minute Order was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **October 29, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

October 29, 2020 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is:
Dial the following number: 1-408-419-1715
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DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **November 05, 2020**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

November 05, 2020 **9:00 AM** **Motion to Strike**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

Churchill, David J.	Attorney
Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- Hearing held telephonically. Arguments by Mr. Tanner and Mr. Kramer. Court FINDS failure to preserve and over 2 years of misguided litigation. Therefore, COURT ORDERED, Motion to Strike GRANTED as to both liability and damages. Court directed Mr. Tanner to prepare and circulate detailed findings of fact and conclusions of law; if parties cannot agree on form and content, may submit competing orders.

Proposed order(s) to be submitted electronically to DC16Inbox@clarkcountycourts.us.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **February 10, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

February 10, 2021 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Orders 20-10 and 20-24, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conferences through BlueJeans conferencing, wherein you dial in prior to your hearing to appear. Also, please check in with the Courtroom Clerk by 8:55 a.m. The call-in number is:
Dial the following number: 1-408-419-1715
Meeting ID: 552 243 859
To connect, dial the telephone number then enter the meeting ID followed by #.
PLEASE NOTE the following protocol each participant will be required to follow:
Place your telephone on mute while waiting for your matter to be called.
Do not place the conference on hold as it may play wait/hold music to others.
Identify yourself before speaking each and every time as a record is being made.
Please be mindful of sounds of rustling of papers or coughing.

CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **February 11, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

February 11, 2021 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Orders 20-10 and 20-24, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conferences through BlueJeans conferencing, wherein you dial in prior to your hearing to appear. Also, please check in with the Courtroom Clerk by 8:55 a.m. The call-in number is:
Dial the following number: 1-408-419-1715
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Do not place the conference on hold as it may play wait/hold music to others.
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CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability	**COURT MINUTES**	**February 16, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

February 16, 2021	**9:05 AM**	**Motion For Reconsideration**	**See 3/31/21 Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

Churchill, David J.	Attorney
Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Micah Echols, Esq. present for Pltf.

Arguments by Mr. Kraemer and Mr. Tanner. Court stated ITS FINDINGS and ORDERED, Motion for Reconsideration DENIED; Motion for Stay DENIED; will review issue of damages before decision. COURT FURTHER ORDERED, 2/18/21 Prove Up Hearing regarding damages CONTINUED to 3/18/21. Prevailing party to prepare today s order.

Proposed order(s) to be submitted electronically to DC16Inbox@clarkcountycourts.us.

CONTINUED TO: 3/18/21 9:05 AM PROVE UP RE PLAINTIFF S DAMAGES (DFT S ANSWER STRICKEN)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **March 18, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

March 18, 2021 **9:05 AM** **Prove Up/Default**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

Churchill, David J.	Attorney
Echols, Micah S.	Attorney
Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- Hearing held by BlueJeans remote conferencing. Discussion and argument by counsel regarding results of hearing on 2/16/21 and whether appellate issue may exist with respect to the record. Further colloquy regarding matter continuance and availability of the parties for same. COURT ORDERED, matter CONTINUED to 4/7/21 at 1:30 p.m. COURT DIRECTED Mr. Churchill to prepare order on the standing issue. Court stated it will submit a minute order as to the decision set forth at the 2/16/21 hearing and address inconsistency in minute entry.

CONTINUED TO: 4/7/21 1:30 PM PROVE UP RE PLAINTIFF S DAMAGES (DFT S ANSWER STRICKEN)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **March 31, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

March 31, 2021 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- After review and consideration of the points and authorities on file herein, and oral argument of counsel, the Court determined as follows:
Of paramount significance, the Court recognizes that in general, when the record is undeveloped, that before the issuance of possible case terminating sanctions, the Court should consider an evidentiary hearing with testimony. However, the record in the instant action is well developed based upon the deposition testimony and affidavits presented for the Court's consideration. In addition, the Court relied on Defendant Smiths' representations that an evidentiary hearing wasn't necessary as set forth in the June 18, 2020 Order of the Court.
Moreover, the Court has grave concerns as to 1) the veracity of the NRCP 30(b)(6) designee's Dieter Thurnwald and Trish Kozlowski as it relates to the performance problems for the door at issue, 2) veracity failings in responses to written discovery, and 3) the failure to retain and produce emails between Smiths' employees and Assa Abloy as to the doors function maintenance. The Court's concerns heightened considering that Defendant Smiths was placed on actual notice when it received evidence letter preservation shortly after the event at issue.
Ultimately, this Court has considered all the Young factors and the necessity to deter future conduct related to the failure to preserve all evidence upon receipt of the preservation of evidence letter and the cascade of untruthful discovery responses. Notwithstanding the prior failures, once Plaintiff subpoenaed Assa

Abloy for the actual maintenance records for the door at issue, Assa Abloy requested Defendant Smiths' permission to disclose all relevant maintenance records and documents fully. Notwithstanding controlling the maintenance records production, Defendant Smiths never responded, and this Court was required to order production.

Defendant Smiths failure to respond to Assa Abloy's request to produce maintenance records within its control and in light of the evidentiary hearing and procedural history of this case was of grave concern to this Court resulting in the Court's determination that the conduct of Defendant Smiths was intentional. This type of conduct must be deterred.

Thus, based upon the uncontroverted evidence in the record and the failure to meet the requirements under EDCR 2.24, Defendant Smith's Motion for Reconsideration shall be DENIED.

Counsel on behalf of Plaintiff, Patricia Taylor, shall prepare a Findings of Fact, Conclusions of Law and Order based not only on the Court's minute order but the pleadings on file herein, argument of counsel, and the entire record. Lastly, counsel is to circulate the order prior to submission to the Court to adverse counsel. If the counsel can't agree on the contents, the parties are to submit competing orders.

CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **April 01, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

April 01, 2021 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Orders 21-03, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. The call-in number or website is:
Dial the following number: 1-408-419-1715
Meeting ID: 552 243 859
Online: https://bluejeans.com/552243859
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DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **April 07, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

April 07, 2021 **1:30 PM** **Prove Up/Default**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Churchill, David J.	Attorney
Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney
Taylor, Patricia A	Plaintiff

JOURNAL ENTRIES

- Hearing held by BlueJeans remote conferencing.

Opening statements by counsel. Dr. Jason Garber sworn and testified. Mr. Tanner moved for default judgment. Following arguments by counsel regarding the oral motion, COURT ORDERED, testimony of Dr. Sanders will proceed. Dr. Steven Sanders sworn and testified. Colloquy regarding available session to continue matter. COURT ORDERED, matter CONTINUED to 4/21/21 at 1:30 p.m.

CONTINUED TO: 4/21/21 1:30 PM PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **April 14, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

April 14, 2021 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
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Meeting ID: 552 243 859
Online: https://bluejeans.com/552243859
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DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **April 21, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

April 21, 2021 **1:30 PM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

Anderson, Jared B.	Attorney
Busby, Jerry S.	Attorney
Churchill, David J.	Attorney
Echols, Micah S.	Attorney
Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- MS. TAYLOR'S MOTION TO PRECLUDE DIETER THURNWALD FROM PROVIDING TESTIMONY AT THE UPCOMING PROVE-UP HEARING AND STRIKE THE ANSI STANDARDS ON ORDER SHORTENING TIME...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

Hearing held by BlueJeans remote conferencing. Arguments by counsel regarding Motion to Preclude. COURT ORDERED, will allow the testimony limited to punitive damages. Testimony presented. (See worksheet.) Colloquy regarding availability to continue and anticipated testimony and argument. There being agreement, COURT ORDERED, Prove-Up CONTINUED to 5/10/21 at 10:00 a.m. Court stated examination of next witness anticipated in the morning with arguments in the afternoon.

CONTINUED TO: 5/10/21 10:00 AM PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER

STRICKEN)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **May 03, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

May 03, 2021 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Orders 21-03, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. The call-in number or website is:
Dial the following number: 1-408-419-1715
Meeting ID: 552 243 859
Online: https://bluejeans.com/552243859
To connect by phone, dial the telephone number, then the meeting ID, followed by #.
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DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **May 11, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

May 11, 2021 **8:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
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Online: https://bluejeans.com/552243859
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DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **May 17, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

May 17, 2021 **9:30 AM** **Prove Up/Default**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Churchill, David J.	Attorney
Echols, Micah S.	Attorney
Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- Hearing held by BlueJeans remote conference. Colloquy regarding whether or not Pltf's anticipated witness today is re-opening case in chief and issue of response to Pltf's recent trial brief. Court stated will allow points and authorities response from Defense to trial brief; notes Pltf's case in chief closed, however, will proceed with direct examination of today's witness by Defense and cross-examination by Pltf. thereafter as part of case in chief. Testimony and exhibits presented. (See worksheets.) Colloquy regarding setting status check in 45 days as to offer of proof documents as well as further briefing and argument after a certain medical procedure by Pltf. with records and bills. COURT ORDERED, status check SET 7/1/21 regarding production of offer of proof documents, setting briefing schedule, and setting time for continued prove-up hearing.

7/1/21 9:00 AM STATUS CHECK: OFFER OF PROOF DOCUMENTS/BRIEFING SCHEDULE/SETTING CONTINUED PROVE-UP HEARING

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **June 28, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

June 28, 2021 **3:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. Also, please check in with the Courtroom Clerk by 8:55 a.m. The call-in number or website is:
Dial the following number: 1-408-419-1715
Meeting ID: 552 243 859
Online: https://bluejeans.com/552243859
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CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **July 01, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

July 01, 2021 **9:00 AM** **Status Check**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Churchill, David J.	Attorney
Echols, Micah S.	Attorney
Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- Hearing held by BlueJeans remote conferencing. Court noted instant status check title should properly reflect burden of proof. Colloquy regarding recent surgery with subsequent disclosure of records and bills; briefing areas of concern the parties deem appropriate; setting full-day continued hearing. There being agreement, COURT ORDERED, briefing and continued hearing as follows: briefs DUE 7/26/21; responsive/opposing briefs DUE 10 days thereafter; reply brief in normal course; full-day continued hearing SET 8/23/21 at 9:30 a.m. Court directed counsel prepare non-substantive scheduling order with hearing date. Mr. Tanner advised he will prepare and circulate the order.

CONTINUED TO: 8/23/21 9:30 AM PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **August 16, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

August 16, 2021 **3:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. The call-in number or website is:
Dial the following number: 1-408-419-1715
Meeting ID: 305 354 001
Participant Passcode: 2258
Online: https://bluejeans.com/305354001/2258
To connect by phone, dial the telephone number, then the meeting ID, followed by #.
PLEASE NOTE the following protocol each participant will be required to follow:
Place your telephone on mute while waiting for your matter to be called.
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CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **August 23, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

August 23, 2021 **9:30 AM** **Prove Up/Default**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Rhonda Aquilina

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Anthony Gordon, Representative of Smith's, present.

Colloquy regarding the Motion to Continue submitted Friday, Pltf's preference to proceed today, Deft's preference for Mr. Polsenberg participation, and impact of pending 9/14/21 Motions on the instant matter. Further colloquy regarding rescheduling all matters. COURT ORDERED, Motions RESET from 9/14/21 to 8/30/21 at 9:30 a.m. and instant matter arguments to be heard thereafter; instant matter FURTHER CONTINUED to 9/20/21 at 9:30 a.m.; Status Check SET 8/26/21 at 9:00 a.m. regarding availability of counsel to proceed as set; 8/24/21 Motion to Continue VACATED.

8/26/21 9:00 AM STATUS CHECK: AVAILABILITY OF COUNSEL TO PROCEED 8/30/21 AND/OR 9/20/21

8/30/21 9:30 AM PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

9/20/21 9:30 AM PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

CLERK'S NOTE: Subsequent to proceedings, Court vacated the 8/24/21 Motion to Continue in light of today's proceedings, as reflected above. /8-23-2021/

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **August 24, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

August 24, 2021 **3:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically
Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters to be heard via remote appearance. The court is currently scheduling all remote conferences through BlueJeans, wherein you dial in by phone or connect online prior to your hearing to appear. The call-in number or website is:
Dial the following number: 1-408-419-1715
Meeting ID: 305 354 001
Participant Passcode: 2258
Online: https://bluejeans.com/305354001/2258
To connect by phone, dial the telephone number, then the meeting ID, followed by #.
PLEASE NOTE the following protocol each participant will be required to follow:
Place your telephone on mute while waiting for your matter to be called.
Do not place the conference on hold as it may play wait/hold music to others.
Identify yourself before speaking each and every time as a record is being made.
Please be mindful of sounds of rustling of papers or coughing.

CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **August 26, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

August 26, 2021 **9:00 AM** **Status Check**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Churchill, David J.	Attorney
Echols, Micah S.	Attorney
Henriod, Joel D.	Attorney
Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- Hearing held by BlueJeans remote conferencing. Colloquy regarding pending motions and prove-up scheduling in light of availability of counsel and court. COURT ORDERED, will proceed 8/30/21 with the motions and limit future arguments on prove-up to half-day; DIRECTED, counsel to meet and confer in the interim to arrive upon a setting for arguments.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **August 30, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

August 30, 2021 **9:30 AM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER: Christine Erickson

REPORTER:

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Churchill, David J.	Attorney
Echols, Micah S.	Attorney
Henriod, Joel D.	Attorney
Kraemer, Gregory A	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S FOURTH SUPPLEMENT TO INITIAL DISCLOSURE STATEMENT (INCLUDING THE WITNESS AND AFFIDAVIT PRODUCED THEREIN) AND TO STRIKE THE SURVEILLANCE VIDEO
Arguments by Mr. Tanner and Mr. Busby. COURT ORDERED, Motion GRANTED IN PART and DENIED IN PART; GRANTED as to being used for any purpose as pertains to liability; will permit for limited purpose as to damages. Court directed Mr. Tanner to prepare the order.

PLAINTIFF'S MOTION TO STRIKE DIETER THURNWALD'S TESTIMONY AT THE MAY 17, 2021 PROVE-UP HEARING
Arguments by Mr. Tanner, Mr. Kraemer, and Mr. Busby. Court stated will review proposed portions of the transcript Pltf. requests be stricken; will issue decision on each item.

PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

Colloquy regarding conflicts of counsel and court regarding scheduling arguments, whether or not to set apart punitive and compensatory arguments, and briefing issue of conscious disregard. COURT ORDERED, hearing on 9/20/21 at 9:30 a.m. STANDS; will give three hours argument per side; briefing regarding conscious disregard DUE 9/16/21 from the parties.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **September 13, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

September 13, 2021 **3:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Remotely

Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters be heard remotely. The court utilizes BlueJeans for remote conferencing wherein you appear and participate by phone or through an internet enabled device. Please be sure to check in with the Courtroom Clerk at 8:55 a.m. on the date of your hearing. The call-in number or website to connect is:
Telephone:
Dial: 1-408-419-1715
Meeting ID: 305 354 001
Participant Passcode: 2258
Smartphone/Computer:
Website: https://bluejeans.com/305354001/2258

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Protocol each participant will be required to follow:
Place your telephone on mute while waiting for your matter to be called.
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Identify yourself before speaking each and every time as a record is being made.
Wait for the line to clear before speaking as the conference audio is one-way.
Be mindful of background noises and echoing from using multiple devices.

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JEA, Lynn Berkheimer [Dept16EA@clarkcountycourts.us]; Law Clerk, Michael Holthus [Dept16LC@clarkcountycourts.us]; Court Clerk, Chris CJ Darling [DarlingC@clarkcountycourts.us]

CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **September 20, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

September 20, 2021 9:30 AM All Pending Motions

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Kimberly Farkas

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Churchill, David J.	Attorney
Echols, Micah S.	Attorney
Henriod, Joel D.	Attorney
Kraemer, Gregory A	Attorney
Polsenberg, Daniel F.	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- MOTION TO CONTINUE September 20, 2021 PROVE-UP HEARING...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

Arguments by counsel. Regarding pending Plaintiff's Motion to Strike Dieter Thurnwald's Testimony, COURT ORDERED, will not strike him; will consider all the evidence as far as he is concerned. Further arguments by counsel. Colloquy regarding potential exclusionary counter-motion from Pltf. and related timelines. COURT FURTHER ORDERED, deadline for countermotion is 9/29/21; reply or opposition is 10/11/21; matters to be heard on 10/14/21. Court stated it will determine status of proceeding with final arguments at the 10/14/21 hearing.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **October 11, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

October 11, 2021 **3:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Remotely

Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters be heard remotely. The court utilizes BlueJeans for remote conferencing wherein you appear and participate by phone or through an internet enabled device. Please be sure to check in with the Courtroom Clerk at 8:55 a.m. on the date of your hearing. The call-in number or website to connect is:
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Dial: 1-408-419-1715
Meeting ID: 305 354 001
Participant Passcode: 2258
Smartphone/Computer:
Website: https://bluejeans.com/305354001/2258

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JEA, Lynn Berkheimer [Dept16EA@clarkcountycourts.us]; Law Clerk, Michael Holthus [Dept16LC@clarkcountycourts.us]; Court Clerk, Chris CJ Darling [DarlingC@clarkcountycourts.us]

CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **October 14, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

October 14, 2021 **9:05 AM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER: Maria Garibay

REPORTER:

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Churchill, David J.	Attorney
Echols, Micah S.	Attorney
Kraemer, Gregory A	Attorney
Polsenberg, Daniel F.	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- Hearing held by BlueJeans remote conferencing.

DEFENDANT'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAITIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON OST
Arguments by counsel. Colloquy regarding continuance due to certain time conflict today. There being agreement, COURT ORDERED, instant and pending matters CONTINUED to 10/22/21 at 9:30 a.m.

CONTINUED TO: 10/22/21 9:30 AM DEFENDANT'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAITIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON OST...MOTION TO CONTINUE September 20, 2021 PROVE-UP HEARING...DEFENDANT'S MOTION TO ALTER OR AMEND THE

COURT'S ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S FOURTH SUPPLEMENT TO INITIAL DISCLOSURE STATEMENT AND TO STRIKE THE SURVEILLANCE VIDEO ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO PRECLUDE ARGUMENTS OF NO PRIOR INCIDENTS ON OST...[190] PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANTS ANSWER ON ORDER SHORTENING TIME; AND COUNTERMOTION TO STRIKE AFFIDAVIT OF CHRISTINE SHEDROW...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **October 22, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

October 22, 2021 **9:30 AM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER: Maria Garibay

REPORTER:

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Churchill, David J.	Attorney
Echols, Micah S.	Attorney
Henriod, Joel D.	Attorney
Kraemer, Gregory A	Attorney
Polsenberg, Daniel F.	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Daniel Kidd, Esq. present for Pltf.

DEFENDANT'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAITIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON OST
Arguments by counsel. Court stated will review matter; decision will issue by Monday, October 25, 2021. Colloquy regarding status check to address status of remaining matters. There being agreement, COURT ORDERED, status check SET 11/2/21 at 8:45 a.m.

11/2/21 8:45 AM STATUS CHECK: RESETTING PENDING MATTERS...MOTION TO CONTINUE September 20, 2021 PROVE-UP HEARING...DEFENDANT'S MOTION TO ALTER OR AMEND THE COURT'S ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO

STRIKE DEFENDANT'S FOURTH SUPPLEMENT TO INITIAL DISCLOSURE STATEMENT AND TO STRIKE THE SURVEILLANCE VIDEO ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO PRECLUDE ARGUMENTS OF NO PRIOR INCIDENTS ON OST...[190] PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANTS ANSWER ON ORDER SHORTENING TIME; AND COUNTERMOTION TO STRIKE AFFIDAVIT OF CHRISTINE SHEDROW...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **October 25, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

October 25, 2021 **3:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Remotely

Please be advised that pursuant to Administrative Order 21-04, Department 16 will temporarily require all matters be heard remotely. The court utilizes BlueJeans for remote conferencing wherein you appear and participate by phone or through an internet enabled device. The call-in number or website to connect is:
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device s browser exactly as show above and follow the instructions on screen; optionally, download the BlueJeans app as indicated on this same website. If you wish to test your audio/video in advance of the hearing, please visit https://bluejeans.com/111.
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CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **October 25, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

October 25, 2021 **3:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- After review and consideration of the points and authorities on file herein, and oral argument of counsel, the Court determined as follows:

The Court's decision to issue sanctions was not based solely on Defendant Smith's actions to prevent Assa Abloy from producing the maintenance records. Of greater significance to the Court was Defendant Smith's failure to respond at all to Assa Abloy's letter dated August 15th, 2019. This fact, in combination with the spoliation of evidence, breaches of discovery duties, lack of candor to the Court, and halting of the adversarial process, demonstrate that Defendant Smith's conduct was repetitive, abusive, and recalcitrant and, therefore, warranted sanctions. In addition, after countless hearings, this Court feels that there is enough evidence and information to support its decision. Accordingly, Defendant Smith's Motion for Reconsideration shall be DENIED.

Counsel on behalf of Plaintiff, Patricia Taylor, shall prepare a Findings of Fact, Conclusions of Law and Order based not only on the Court's minute order but the pleadings on file herein, argument of counsel, and the entire record. Lastly, counsel is to circulate the order prior to submission to the Court to adverse counsel. If counsel can't agree on the contents, the parties are to submit competing orders.

CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **November 02, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

November 02, 2021 **9:00 AM** **All Pending Motions**

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER: Maria Garibay

REPORTER:

PARTIES PRESENT:

Busby, Jerry S.	Attorney
Kraemer, Gregory A	Attorney
Polsenberg, Daniel F.	Attorney
Tanner, David A.	Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Daniel Kidd, Esq. present for Pltf.

STATUS CHECK: RESETTING PENDING MATTERS
Hearing held by live and by BlueJeans remote conferencing. Colloquy regarding resetting matters in light of limited availability of Court due to pending trials and law and motion as well as availability of counsel. There being agreement, pending matters CONTINUED to 12/8/21 at 9:15 a.m. and 12/13/21 at 9:15; motion matters to be heard before argument; setting subject to whether or not current trial in unrelated case is vacated.

CONTINUED TO: 12/8/21 9:15 AM MOTION TO CONTINUE September 20, 2021 PROVE-UP HEARING...DEFENDANT'S MOTION TO ALTER OR AMEND THE COURT'S ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S FOURTH SUPPLEMENT TO INITIAL DISCLOSURE STATEMENT AND TO STRIKE THE SURVEILLANCE VIDEO ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO PRECLUDE ARGUMENTS OF NO PRIOR INCIDENTS ON OST...[190] PLAINTIFF'S OPPOSITION TO DEFENDANTS

MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANTS ANSWER ON ORDER SHORTENING TIME; AND COUNTERMOTION TO STRIKE AFFIDAVIT OF CHRISTINE SHEDROW...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

CONTINUED TO: 12/13/21 9:15 AM MOTION TO CONTINUE September 20, 2021 PROVE-UP HEARING...DEFENDANT'S MOTION TO ALTER OR AMEND THE COURT'S ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S FOURTH SUPPLEMENT TO INITIAL DISCLOSURE STATEMENT AND TO STRIKE THE SURVEILLANCE VIDEO ON ORDER SHORTENING TIME...PLAINTIFF'S MOTION TO PRECLUDE ARGUMENTS OF NO PRIOR INCIDENTS ON OST...190] PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANTS ANSWER ON ORDER SHORTENING TIME; AND COUNTERMOTION TO STRIKE AFFIDAVIT OF CHRISTINE SHEDROW...PROVE UP RE PLAINTIFF'S DAMAGES (DFT'S ANSWER STRICKEN)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **December 01, 2021**

A-17-761650-C Patricia Taylor, Plaintiff(s)
vs.
Smith's Food and Drug Centers Inc, Defendant(s)

December 01, 2021 **3:00 AM** **Minute Order**

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling
Maricela Grant

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Remotely

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JEA, Lynn Berkheimer [Dept16EA@clarkcountycourts.us]; Law Clerk, Michael Holthus [Dept16LC@clarkcountycourts.us]; Court Clerk, Chris CJ Darling [DarlingC@clarkcountycourts.us]

CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

JERRY S. BUSBY
3016 W. CHARLESTON BLVD., SUITE 195
LAS VEGAS, NV 89102

DATE: January 5, 2022
CASE: A-17-761650-C

RE CASE: PATRICIA A. TAYLOR vs. SMITH'S FOOD & DRUG CENTERS, INC. dba SMITH'S FOOD & DRUG

NOTICE OF APPEAL FILED: January 3, 2022

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

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; ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES; NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER, MOTION FOR SANCTIONS AND ATTORNEY FEES; ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME; NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING MS. TAYLOR'S MOTION TO STRIKE DEFENDANT'S ANSWER TO LIABILITY AND DAMAGES, MOTION FOR STAY PENDING RESOLUTION BY THE NEVADA SUPREME COURT AND MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME; ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO LATER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME; NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO ALTER OR AMEND THE COURT'S ORDER GRANTING PLAINTIFF'S RENEWED MOTION TO STRIKE DEFENDANT'S ANSWER ON ORDER SHORTENING TIME; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

PATRICIA A. TAYLOR, Plaintiff(s), vs. SMITH'S FOOD & DRUG CENTERS, INC. dba SMITH'S FOOD & DRUG, Defendant(s),	Case No: A-17-761650-C Dept No: XVI

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 5 day of January 2022.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk
A-17-761650-C