

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

NOAS
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Steven R. Hart, Esq., Nevada Bar No. 15418
TAKOS LAW GROUP, LTD.
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Las Vegas, Nevada 89135
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Counsel for David P. Biesinger, DPM

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

ABSOLUTE FOOT CARE SPECIALISTS, a
Nevada corporation,

Plaintiff,

v.

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

Defendants.

DAVID P. BIESINGER, DPM, an
individual,

Counter-claimant,

v.

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

Counter-defendants.

Case No. A-17-754423-B

Dept. No. XIII

NOTICE OF APPEAL

Notice is hereby given that David P. Biesinger, DPM, defendant/counter-claimant in the above-captioned case, appeals to the Nevada Supreme Court from (1) the Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees filed in this action on December 20, 2021 (the corresponding notice of entry having been filed on December 21,

2021), and (2) the Amended Judgment filed in this action on January 13, 2022 (the corresponding notice of entry having been filed on January 14, 2022).

DATED this 19th day of January, 2022.

TAKOS LAW GROUP, LTD.

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

Counsel for David P. Biesinger, DPM

CERTIFICATE OF SERVICE

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

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

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

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

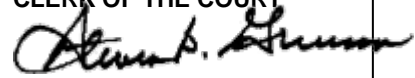
BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document via telecopy to the following facsimile number(s):

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

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

DATED this 19th day of January, 2022.

/s/ Zachary Takos
TAKOS LAW GROUP, LTD.



ASTA

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

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

TAKOS LAW GROUP, LTD.

1980 Festival Plaza Drive, Suite 300

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Email: zach@takoslaw.com

steven@takoslaw.com

Counsel for David P. Biesinger, DPM

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ABSOLUTE FOOT CARE SPECIALISTS, a
Nevada corporation,

Plaintiff,

v.

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

Defendants.

Case No. A-17-754423-B

Dept. No. XIII

CASE APPEAL STATEMENT

DAVID P. BIESINGER, DPM, an
individual,

Counter-claimant,

v.

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

Counter-defendants.

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

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

3. Appellant:

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

4. Respondent:

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

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

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

7. Appellant is represented by retained counsel on appeal.

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

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

10. This is a civil action involving claims for breach of contract, and counterclaims for breach of contract, among other things. This case culminated in a motion for summary judgment by Respondent on its cause of action for breach of contract and against Appellant's counterclaims, on which the district court issued a Findings of Fact, Conclusions of Law, and Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims and a Judgment, which Judgment is on appeal as Supreme Court Case No. 83544.

11. Subsequent to the above-mentioned Judgment and Appeal, the district court issued an Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees, on December 20, 2022, and an Amended Judgment on January 13, 2022, from which Appellants now appeal.

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

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

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

DATED this 19th day of January, 2022.

TAKOS LAW GROUP, LTD.

/s/ Zachary P. Takos

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

Counsel for David P. Biesinger, DPM

CERTIFICATE OF SERVICE

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

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DATED this 19th day of January, 2022.

/s/ Zachary Takos
TAKOS LAW GROUP, LTD.

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

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

§
§
§
§
§
§

Location: **Department 13**
Judicial Officer: **Denton, Mark R.**
Filed on: **04/24/2017**
Cross-Reference Case Number: **A754423**
Supreme Court No.: **83544**

CASE INFORMATION

Statistical Closures
08/18/2021 Summary Judgment

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

DATE

CASE ASSIGNMENT

Current Case Assignment

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




PARTY INFORMATION

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

DATE

EVENTS & ORDERS OF THE COURT


INDEX

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

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

Filed By: Counter Defendant Absolute Foot Care Specialists
[3] Plaintiff's Motion for: (1) Temporary Restraining Order; and (2) Preliminary Injunction on Order Shortening Time


05/01/2017

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

MINUTES

Granted;
Granted


SCHEDULED HEARINGS

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


05/15/2017, 05/22/2017

Motion for Preliminary Injunction (Non-Evidentiary)
Continued


05/03/2017

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


05/04/2017

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


05/04/2017

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


05/10/2017

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


05/10/2017

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


05/10/2017

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


05/10/2017

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

05/12/2017

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

05/15/2017

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

Motion for Preliminary Injunction (Non-Evidentiary)












MINUTES

Continued;
Granted;

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

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

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

06/13/2017	 Business Court Order <i>[23] Business Court Order</i>
06/15/2017	 Notice of Posting Bond Filed By: Counter Defendant Absolute Foot Care Specialists <i>[24] Notice of Posting Bond in Support of Order Granting Plaintiff's Motion for Preliminary Injunction</i>
06/15/2017	 Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[25] Order Granting Plaintiff's Motion for Preliminary Injunction</i>
06/16/2017	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[26] Notice of Entry of Order Granting Plaintiff's Motion for Preliminary Injunction</i>
06/29/2017	 Reply to Counterclaim Filed by: Counter Defendant Absolute Foot Care Specialists <i>[27] Plaintiff's Reply to Defendant/Counterclaimant David P. Biesinger's Counterclaims</i>
07/03/2017	 Motion to Amend Filed By: Counter Claimant Biesinger, DPM, David P. <i>[28] Defendant/Counterclaimant David P Biesinger's Motion to Amend Order Granting Plaintiff's Motion for Preliminary Injunction</i>
07/10/2017	 Mandatory Rule 16 Conference (2:15 PM) (Judicial Officer: Denton, Mark R.) MINUTES Matter Heard; <i>Matter Heard</i> SCHEDULED HEARINGS CANCELED Status Check (07/27/2017 at 9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i> <i>Status Check Re: JCCR Filing</i>
07/18/2017	 Motion for Order to Show Cause Filed By: Counter Defendant Absolute Foot Care Specialists <i>[29] Plaintiff's Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt for Violating Preliminary Injunction on Order Shortening Time</i>
07/19/2017	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>[30] Order Re Rule 16 Conference, Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Discovery Scheduling Order</i>
07/21/2017	 Joint Case Conference Report Filed By: Counter Defendant Absolute Foot Care Specialists <i>[31] Joint Case Conference Report</i>
07/25/2017	 Opposition to Motion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[32] Plaintiff's Opposition to Defendant David P. Biesinger, DPM's Motion to Amend Order Granting Motion for Preliminary Injunction</i>
07/27/2017	CANCELED Status Check (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i>











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

Status Check Re: JCCR Filing













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

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











Order to Show Cause

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

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

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











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

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








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

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










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

	<i>[79] Defendant/ Counterclaimant David P. Biesinger's Motion to Reconsider and Amend Order Granting Plaintiff Absolute Foot Care Specialists' Motion to Compel Defendants' Response to Plaintiff's First Set of Requests for Production</i>
05/19/2020	 Minute Order (10:30 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Plaintiff Absolute Foot Care Specialists' Unopposed Motion to Extend Discovery Deadline and Reset Trial Date</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
05/19/2020	 Clerk's Notice of Hearing <i>[80] Notice of Hearing</i>
05/20/2020	 Clerk's Notice of Nonconforming Document <i>[81] Clerk's Notice of Nonconforming Document</i>
05/20/2020	 Order Granting Motion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[82] Order Granting Plaintiff Absolute Foot Care Specialist's Unopposed Motion to Extend Discovery Deadlines and Reset Trial (3rd Request)</i>
05/21/2020	CANCELED Motion to Extend Discovery (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i> <i>Plaintiff Absolute Foot Care Specialists' Unopposed Motion to Extend Discovery Deadline and Reset Trial Date</i>
05/21/2020	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>[83] Order Setting Civil Jury Trial, Pre-Trial and Calendar Call</i>
05/22/2020	 Clerk's Notice of Nonconforming Document and Curative Action <i>[84] Clerk's Notice of Curative Action</i>
05/22/2020	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[85] Notice of Entry of Order Granting Plaintiff Absolute Foot Care Specialists' Unopposed Motion to Extend Discovery Deadline and Reset Trial Date (Third Request)</i>
05/22/2020	 Clerk's Notice of Hearing <i>[87] Notice of Hearing</i>
05/26/2020	CANCELED Calendar Call (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
06/01/2020	 Opposition and Countermotion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[88] Plaintiff Absolute Foot Care Specialists': (1) Consolidated Opposition to Defendants' Motions to Reconsider and Amend Order Granting Motion to Compel; and (2) Countermotion for NRCP 37(b) Sanctions against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel</i>
06/02/2020	CANCELED Jury Trial (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Stipulation and Order</i>
06/11/2020	 Reply in Support Filed By: Defendant Pallanti, Lorraine <i>[89] Defendant Lorraine Pallanti's Reply in Support of Her Motion to Reconsider</i>





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

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

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	Filed By: Counter Defendant Absolute Foot Care Specialists <i>[100] Motion to Compel Defendant/Counterclaimant David P. Biesinger to Respond to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Written Discovery Requests</i>
10/21/2020	 Opposition to Motion Filed By: Counter Claimant Biesinger, DPM, David P. <i>[101] Defendant/Counterclaimant David P. Biesinger's Opposition to Plaintiff Absolute Foot Care Specialists' Renewed Motion for NRCP 37(b) Sanctions</i>
10/22/2020	 Minute Order (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
10/22/2020	 Clerk's Notice of Hearing <i>[102] Notice of Hearing</i>
10/23/2020	 Reply in Support Filed By: Counter Defendant Absolute Foot Care Specialists <i>[103] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Reply in Support of Renewed Motion for NRCP 37(b) Sanctions against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel</i>
10/30/2020	 Demand for Jury Trial Filed By: Counter Claimant Biesinger, DPM, David P. <i>[104] Defendant/Counterclaimant David P. Biesinger's Demand for Jury Trial</i>
11/04/2020	 Opposition to Motion to Compel Filed By: Counter Claimant Biesinger, DPM, David P. <i>[105] Defendant/Counterclaimant David P. Biesinger's Opposition to Motion to Compel David P. Biesinger to Respond to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Written Discovery Requests</i>
11/05/2020	 Minute Order (7:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Plaintiff/Counterdefendant Absolute Foot Care Specialists' Renewed Motion for NRCP 37 (b) Sanctions Against David P. Biesinger, DPM, for Failure to Comply with Order Granting Motion to Compel</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
11/09/2020	 Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[106] Order Extending Dispositive Motion Deadline and Resetting Trial Date</i>
11/09/2020	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[107] Notice of Entry of Order Extending Dispositive Motion Deadline and Resetting Trial Date</i>
11/10/2020	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>[108] Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call</i>
11/16/2020	 Reply in Support Filed By: Counter Defendant Absolute Foot Care Specialists <i>[109] Reply in Support of Motion to Compel Defendant/Counterclaimant David P. Biesinger to Respond to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Written Discovery</i>

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Requests

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

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01/07/2021	 Opposition to Motion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[114] Plaintiff's Opposition to Defendant's Motion to Reconsider the Court's Order Granting, in Part, Plaintiff's Renewed Motion for NRCP 37(b) Sanctions</i>
01/19/2021	CANCELED Pre Trial Conference (1:20 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
01/19/2021	 Minute Order (2:30 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
01/21/2021	CANCELED Minute Order (11:15 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - On in Error</i> <i>Re: BlueJeans Appearance</i>
01/21/2021	 Reply in Support Filed By: Counter Claimant Biesinger, DPM, David P. <i>[115] Defendant's Reply in Support of Motion to Reconsider the Court's Order Granting, in Part Plaintiff's Renewed Motion for NRCP 37(B) Sanctions</i>
01/25/2021	 Order <i>[116] Order on Motion to Compel Defendant/CounterClaimant David P. Biesinger to Respond to Plaintiff/CounterDefendant Absolute Foot Care Specialists' Written Discovery Requests</i>
01/25/2021	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[117] Notice of Entry of Order on Motion to Compel Defendant/Counterclaimant David P. Biesinger to Respond to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Written Discovery Requests</i>
01/28/2021	 Declaration Filed By: Counter Defendant Absolute Foot Care Specialists <i>[118] Supplemental Declaration of Paul C. Williams in Support of Plaintiff's Opposition to Defendant's Motion to Reconsider the Court's Order Granting, in Part, Plaintiff's Renewed Motion for NRCP 37(b) Sanctions</i>
02/01/2021	CANCELED Calendar Call (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
02/02/2021	 Minute Order (2:30 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
02/02/2021	 Reply Filed by: Counter Claimant Biesinger, DPM, David P. <i>[119] Reply to Supplemental Dec. of Paul Williams in Support of Plaintiff's Opposition to Defendant's Motion for Reconsideration</i>
02/04/2021	Motion to Reconsider (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Defendant's Motion to Reconsider the Court's Order Granting, In Part, Plaintiff's Renewed Motion for NRCP 37(b) Sanctions</i> Granted in Part; <i>Granted in Part</i>








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

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

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

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Plaintiff Absolute Foot Care Specialists and Defendant Lorraine Pallanti









07/09/2021	 Minute Order (7:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims</i> Minute Order - No Hearing Held; Minute Order - No Hearing Held
08/18/2021	 Findings of Fact, Conclusions of Law and Order <i>[142] Findings of Fact, Conclusions of Law, and Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on (1) Its Breach of Contract Claims; and (2) Defendant Counterclaimant David P. Biesinger, DPM's Counterclaims</i>
08/18/2021	 Judgment Filed By: Counter Defendant Absolute Foot Care Specialists <i>[143] Judgment</i>
08/18/2021	 Notice of Entry Filed By: Counter Defendant Absolute Foot Care Specialists <i>[144] Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendants/Counterclaimant David P. Biesinger, DPM's Counterclaims</i>
08/18/2021	 Notice of Entry of Judgment Filed By: Counter Defendant Absolute Foot Care Specialists <i>[145] Notice of Entry of Judgment</i>
08/18/2021	Order of Dismissal Without Prejudice (Judicial Officer: Denton, Mark R.) Debtors: David P. Biesinger, DPM (Defendant) Creditors: Absolute Foot Care Specialists (Plaintiff) Judgment: 08/18/2021, Docketed: 08/19/2021 Comment: Certain Claims
08/23/2021	 Memorandum of Costs and Disbursements Filed By: Counter Defendant Absolute Foot Care Specialists <i>[146] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Memorandum of Costs and Disbursements</i>
08/23/2021	 Appendix Filed By: Counter Defendant Absolute Foot Care Specialists <i>[147] Appendix of Exhibits to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Memorandum of Costs and Disbursements - Volume 1 of 2</i>
08/23/2021	 Appendix Filed By: Counter Defendant Absolute Foot Care Specialists <i>[148] Appendix of Exhibits to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Memorandum of Costs and Disbursements - Volume 2 of 2</i>
08/25/2021	 Motion to Retax Filed By: Counter Claimant Biesinger, DPM, David P. <i>[149] Defendant's Motion to Retax Costs</i>
08/25/2021	 Clerk's Notice of Hearing <i>[150] Notice of Hearing</i>

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09/08/2021	 Motion for Attorney Fees Filed By: Counter Defendant Absolute Foot Care Specialists <i>[151] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees and Costs</i>
09/09/2021	 Clerk's Notice of Hearing <i>[152] Notice of Hearing</i>
09/10/2021	 Opposition to Motion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[153] Plaintiff/Counterdefendant Absolute Foot Care Specialists' Opposition to Defendant/Counterclaimant David P. Biesinger, DPM's Motion to Retax Costs</i>
09/16/2021	 Notice of Appeal Filed By: Counter Claimant Biesinger, DPM, David P. <i>[154] Notice of Appeal</i>
09/16/2021	 Case Appeal Statement Filed By: Counter Claimant Biesinger, DPM, David P. <i>[155] Case Appeal Statement</i>
09/20/2021	 Reply in Support Filed By: Counter Claimant Biesinger, DPM, David P. <i>[156] Reply in Support of Motion to Retax Costs</i>
09/22/2021	 Opposition to Motion Filed By: Counter Claimant Biesinger, DPM, David P. <i>[157] Defendant/Counterclaimant David P. Biesinger's Opposition to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees and Costs</i>
09/23/2021	 Minute Order (7:45 AM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
09/27/2021	 Motion to Retax (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>[149] Defendant's Motion to Retax Costs</i> Granted in Part; <i>Granted in Part</i>
10/01/2021	 Minute Order (7:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Defendant Biesinger s Motion to Retax Costs</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
10/04/2021	 Stipulation and Order Filed by: Counter Defendant Absolute Foot Care Specialists <i>[158] Stipulation and Order to Continue Hearing Date on Motion for Attorney's Fees (First Request)</i>
10/05/2021	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[159] Notice of Entry of Stipulation and Order to Continue Hearing Date on Motion for</i>

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Attorney's Fees (First Request)

10/11/2021	 Reply in Support Filed By: Counter Defendant Absolute Foot Care Specialists <i>[160] Reply in Support of Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees and Costs</i>
10/13/2021	 Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[161] Order Granting in Part, and Denying in Part, Motion to Retax Costs</i>
10/14/2021	 Minute Order (9:30 AM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
10/15/2021	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[162] Notice of Entry of Order Granting in Part, and Denying in Part, Motion to Retax Costs</i>
10/18/2021	 Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Denton, Mark R.) Events: 09/08/2021 Motion for Attorney Fees <i>Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees and Costs</i> Granted; <i>Granted</i>
11/01/2021	CANCELED Pre Trial Conference (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
11/08/2021	 Minute Order (7:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees and Costs</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
11/22/2021	CANCELED Calendar Call (2:00 PM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
11/30/2021	CANCELED Jury Trial (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Order</i>
12/20/2021	 Order Granting Motion Filed By: Counter Defendant Absolute Foot Care Specialists <i>[163] Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists Motion for Attorney's Fees</i>
12/20/2021	Order (Judicial Officer: Denton, Mark R.) Debtors: David P. Biesinger, DPM (Defendant) Creditors: Absolute Foot Care Specialists (Plaintiff) Judgment: 12/20/2021, Docketed: 12/21/2021 Total Judgment: 408,061.50
12/21/2021	 Notice of Entry of Order Filed By: Counter Defendant Absolute Foot Care Specialists <i>[164] Notice of Entry of Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees</i>

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

01/13/2022	 Amended Judgment <i>[165] Amended Judgment</i>
01/13/2022	Amended Judgment Plus Legal Interest (Judicial Officer: Denton, Mark R.) Debtors: David P. Biesinger, DPM (Defendant) Creditors: Absolute Foot Care Specialists (Plaintiff) Judgment: 01/13/2022, Docketed: 08/19/2021 Total Judgment: 1,240,224.15
01/14/2022	 Notice of Entry of Judgment Filed By: Counter Defendant Absolute Foot Care Specialists <i>[166] Notice of Entry of Amended Judgment</i>
01/19/2022	 Notice of Appeal Filed By: Counter Claimant Biesinger, DPM, David P. <i>[167] Notice of Appeal</i>
01/19/2022	 Case Appeal Statement Filed By: Counter Claimant Biesinger, DPM, David P. <i>[168] Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION
	Defendant Pallanti, Lorraine Total Charges 1,483.00 Total Payments and Credits 1,483.00 Balance Due as of 1/21/2022 0.00
	Counter Claimant Biesinger, DPM, David P. Total Charges 1,531.00 Total Payments and Credits 1,531.00 Balance Due as of 1/21/2022 0.00
	Counter Defendant Absolute Foot Care Specialists Total Charges 1,733.00 Total Payments and Credits 1,733.00 Balance Due as of 1/21/2022 0.00
	Counter Defendant Absolute Foot Care Specialists Temporary Restraining Order Balance as of 1/21/2022 0.00
	Counter Defendant Absolute Foot Care Specialists Injunction Balance as of 1/21/2022 0.00

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

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

XIII

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

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

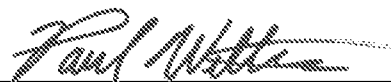
II. Nature of Controversy *(Please check the applicable boxes for both the civil case type and business court case type)*

☐ Arbitration Requested

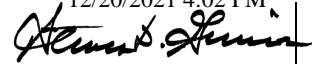
Civil Case Filing Types		Business Court Filing Types
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property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

April 24, 2017

Date



Signature of initiating party or representative


CLERK OF THE COURT

ORDR (CIV)

JOHN R. BAILEY

Nevada Bar No. 0137

JOSHUA M. DICKEY

Nevada Bar No. 6621

PAUL C. WILLIAMS

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Attorneys for Plaintiff/Counterdefendant

Absolute Foot Care Specialists

DISTRICT COURT

CLARK COUNTY, NEVADA

ABSOLUTE FOOT CARE SPECIALISTS, a
Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

DAVID P. BIESINGER, DPM, an individual,

Counterclaimant,

vs.

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

Counter-Defendant.

Case No. A-17-754423-B

Dept. No. XIII

**ORDER GRANTING PLAINTIFF/
COUNTERDEFENDANT ABSOLUTE FOOT
CARE SPECIALISTS' MOTION FOR
ATTORNEY'S FEES**

This matter came before the Court on October 11, 2021, at 9:00 a.m., for a hearing regarding Plaintiff/Counterdefendant Absolute Foot Care Specialists ("Absolute Foot Care" or "Plaintiff") Motion for Attorney's Fees (the "Motion for Attorney's Fees").

APPEARANCES

- Paul C. Williams, Esq. of Bailey ♦ Kennedy on behalf of Absolute Foot Care; and
- Zachary P. Takos, Esq. of Takos Law Group, Ltd. on behalf of Defendant/Counterclaimant David P. Biesinger, DPM (“Dr. Biesinger” or “Defendant”).

FINDINGS

Background

1. On June 7, 2010, Absolute Foot Care and Dr. Biesinger entered into the Employment Agreement pursuant to which Dr. Biesinger became an employee of Absolute Foot Care and agreed to perform certain duties and undertake certain responsibilities.

2. The Employment Agreement contains covenants whereby Dr. Biesinger agreed not to compete against Absolute Foot Care (within certain parameters) and agreed not to solicit Absolute Foot Care’s patients (the “Restrictive Covenants”).

3. The Employment Agreement contains an attorney’s fees clause (the “Attorney’s Fees Clause”) with two separate provisions. The first provision provides that “[i]n the event of any dispute arising out of this Agreement, the prevailing party, as determined by the Court, shall be entitled to reimbursement for all reasonable costs and attorneys[’] fees incurred” (hereinafter, the “Prevailing Party Provision”). The second provision provides, “Additionally, any and all attorneys’ fees and costs incurred by Employer due to Employee’s conduct or actions shall be reimbursable to Employer by Employee” (the “Indemnity Provision”).

4. On April 24, 2017, Absolute Foot Care initiated this action against Dr. Biesinger and Lorraine Pallanti (“Pallanti”), a former Absolute Foot Care employee. On July 1, 2021, the Court entered a Stipulation and Order dismissing Pallanti from this litigation.

5. Absolute Foot Care asserted the following claims for relief in its Complaint: (i) breach of contract; (ii) breach of the implied covenant of good faith and fair dealing; (iii) unjust enrichment; (iv) breach of fiduciary duty; (v) conversion; (vi) intentional interference; and (vii) civil conspiracy. Although Absolute Foot Care’s Complaint included tort claims, the crux of the action concerned Dr. Biesinger’s violations of the Restrictive Covenants. Further, the underlying theory of the tort claims asserted by Absolute Foot Care substantially overlapped with the contract-

1 based claims as they were based on the same set of operative facts: Dr. Biesinger's operation of a
2 competing podiatry practice and his solicitation of patients.

3 6. On May 22, 2017, upon application of Absolute Foot Care, the Court entered a
4 Preliminary Injunction, enjoining Dr. Biesinger from violating the Restrictive Covenants.

5 7. On July 2, 2017, Dr. Biesinger filed an Answer to Absolute Foot Care's Complaint
6 and asserted five counterclaims against Absolute Foot Care: (1) Declaratory Relief; (2) Breach of
7 Contract; (3) Breach of Implied Covenant of Good Faith and Fair Dealing; (4) Unjust Enrichment;
8 and (5) NRS 608.040 – Waiting Time Penalties. Four of the five counterclaims were based on the
9 Employment Agreement. In essence, Dr. Biesinger contended that Absolute Foot Care breached
10 the Employment Agreement by failing to provide him with an opportunity to purchase an
11 ownership interest in Absolute Foot Care and by failing to compensate him according to the
12 Employment Agreement.

13 8. Despite the Preliminary Injunction, Dr. Biesinger continued to operate a podiatry
14 practice (Centennial Foot & Ankle) at his Durango Office until July 21, 2017. The Court ultimately
15 held Dr. Biesinger in contempt for violating the Preliminary Injunction and awarded Absolute Foot
16 Care \$31,615.00 in attorney's fees.

17 9. On May 1, 2020, this court entered an Order Granting Plaintiff Absolute Foot Care's
18 Motion to Compel Defendants' Responses to Plaintiff's First Set of Requests of Production. As
19 part of this Order, the Court awarded Absolute Foot Care \$15,771.25 in attorney's fees.

20 10. On May 28, 2021, Absolute Foot Care filed its Motion for Summary Judgment on:
21 (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's
22 Counterclaims (hereinafter, the "Motion for Summary Judgment" or "MSJ").

23 11. Absolute Foot Care elected its breach of contract and the liquidated damages of
24 \$650,000.00 as its sole remedy if the Motion for Summary Judgment was granted (i.e., it agreed to
25 forgo its other claims for relief).

26 12. The Motion for Summary Judgment was fully briefed, and the Court held oral
27 argument on June 28, 2021.

28

1 13. On August 18, 2021, the Court entered its Findings of Fact, Conclusions of Law, and
2 Order Granting the Motion for Summary Judgment. The Court found that the Employment
3 Agreement was a valid and binding contract and that Dr. Biesinger had violated the Restrictive
4 Covenants, entitling Absolute Foot Care to \$650,000.00 in liquidated damages.

5 14. The Court also found that Absolute Foot Care was entitled to summary judgment on
6 Dr. Biesinger's Counterclaims.

7 15. The Court separately entered a Judgment against Dr. Biesinger for \$794,727.40
8 (\$650,000.00 in liquidated damages plus pre-judgment interest).

9 16. On September 8, 2021, Absolute Foot Care moved for an award of attorney's fees
10 pursuant to the Prevailing Party Provision (i.e., the Motion for Attorney's Fees).

11 17. On September 22, 2021, Dr. Biesinger filed an Opposition to the Motion for
12 Attorney's Fees (the "Opposition").

13 18. On October 11, 2021, Absolute Foot Care filed a Reply in Support of the Motion for
14 Attorney's Fees (the "Reply").

15 *Analysis of Conscionability of Attorney's Fees Clause*

16 19. Dr. Biesinger argues that the Indemnity Provision is unconscionable, and thereby,
17 the Attorney's Fees Clause is unenforceable. The Court is not persuaded by Dr. Biesinger's
18 argument.

19 20. First, the Motion for Attorney's Fees is based solely on the Prevailing Party
20 Provision, not the Indemnity Provision. Even if the Court found the Indemnity Provision was
21 unconscionable, the Prevailing Party Provision remains enforceable.

22 21. Under Nevada law, contracts are enforceable even where they contain illegal or
23 unenforceable provisions that are collateral (i.e. irrelevant) to the remedy sought. *See Vincent v.*
24 *Santa Cruz*, 98 Nev. 338, 341, 647 P.2d 379, 381 (1982). The Indemnity Provision is collateral (i.e.
25 irrelevant) to the remedy sought by Absolute Foot Care—reimbursement of its attorney's fees as the
26 prevailing party.

27 22. Moreover, the Employment Agreement provides that if any part is determined to be
28 "be invalid, illegal or unenforceable in whole or in part, the Parties agree that such invalid, illegal,

1 or unenforceable provision(s) may be severed from th[e] Agreement without, in any manner,
2 affecting the remaining portions hereof.” Such severance clauses are routinely enforced. *See, e.g.,*
3 *Garcia v. Good for Life by 81, Inc.*, No. 17-CV-07228, 2018 U.S. Dist. LEXIS 117437, at *5
4 (S.D.N.Y. July 12, 2018); *Pioneer Research Sols., Inc. v. Cbeyond, Inc.*, Civil Action No. H-14-
5 1795, 2015 U.S. Dist. LEXIS 191663, at *8 (S.D. Tex. Mar. 27, 2015).

6 23. Accordingly, even if the Court found the Indemnity Provision was unconscionable, it
7 may be severed from the Employment Agreement pursuant to the severance clause or by operation
8 of law.

9 24. Second, the Court finds the Indemnity Clause is not unconscionable.

10 25. “Nevada law requires both procedural and substantive unconscionability to
11 invalidate a contract as unconscionable.” *United States Home Corp. v. Ballesteros Tr.*, 134 Nev.
12 180, 190, 415 P.3d 32, 40 (2018).

13 26. A provision is procedurally unconscionable when a party lacks a meaningful
14 opportunity to agree to the provision terms either because of unequal bargaining power, as in an
15 adhesion contract, or because the provision and its effects are not readily ascertainable upon a
16 review of the contract.” *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 554, 96 P.3d 1159, 1162 (2004).

17 27. The Court finds that the Indemnity Clause is not procedurally unconscionable. The
18 Employment Agreement is not a contract of adhesion and there is no evidence of unequal
19 bargaining power. The Nevada Supreme Court has “declined to apply the unconscionable adhesion
20 contract doctrine to employment contract cases because employment contracts can generally be
21 negotiated.” *CVSM, Ltd. Liab. Co. v. Doe*, No. 72627, 2019 Nev. Unpub. LEXIS 215, at *4-5
22 (Nev. 2019) (unpublished disposition) (citing *Kindred v. Second Judicial Dist. Court*, 116 Nev.
23 405, 411, 996 P.2d 903, 907 (2000)). Further, Dr. Biesinger has not submitted any competent
24 evidence that there was unequal bargaining power between him and Absolute Foot Care—the
25 evidence demonstrates that he and Absolute Foot Care negotiated the terms of the Employment
26 Agreement.

27 28. As to substantive unconscionability, with “a concept as nebulous as
28 ‘unconscionability,’ it is important that courts not be thrust in the paternalistic role of intervening to

change contractual terms that the parties have agreed to merely because the court believes the terms are unreasonable. The terms must shock the conscience.” *Marin Storage & Trucking, Inc. v. Benco Contracting & Eng’g, Inc.*, 107 Cal. Rptr. 2d 645, 656 (Cal. Ct. App. 2001) (internal quotation marks omitted).

29. The Court finds that the Indemnity Clause is not substantively unconscionable. Courts routinely enforce one-way indemnification provisions. *See id.* (rejecting claim that one-way indemnification provision was substantively unconscionable).

Analysis of Prevailing Party Provision

30. Under Nevada law, parties “are free to provide for attorney fees by express contractual provisions.” *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012).

31. The purpose of a contractual attorney’s fees provision is to “indemnify the prevailing party for the full amount of the obligation.” *Musso v. Binick*, 104 Nev. 613, 614-15, 764 P.2d 477, 477 (1988).

32. A party is the “prevailing party” if the party “succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (analyzing NRS 18.010); *see also Davis*, 128 Nev. at 322, 278 P.3d at 515-16 (applying “prevailing party” definition from *Valley Elec. Ass’n* to analysis of contractual attorney’s fees provision).

33. The Court finds that Absolute Foot Care is the prevailing party as it obtained summary judgment on its breach of contract claim and on all of Dr. Biesinger’s counterclaims and, as a result, it “succeed[ed] on [many] significant issue[s] in litigation which achieves[d] some of the benefit it sought in bringing suit.” *Valley Elec. Ass’n*, 121 Nev. at 10, 106 P.3d at 1198.

34. Because Absolute Foot Care is the prevailing party, it is entitled to its reasonable attorney’s fees.

Analysis of Attorney’s Fees Sought

35. NRCP 54(d)(2)(B) provides that, in support of a motion for attorneys’ fees, along with an affidavit from counsel “swearing that the fees were actually and necessarily incurred and were reasonable,” a party must submit “documentation concerning the amount of fees claimed.”

1 The Court must then “determine the reasonableness of the requested fees.” *Shuette v. Beazer*
2 *Homes Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-59 (2005).

3 36. As the Nevada Supreme Court has explained, “in calculating attorney’s fees, the
4 court should consider the qualities of the advocate, the character of the work to be done, the work
5 actually performed by the lawyer, and the result.” *Hornwood v. Smith’s Food King No. 1*, 107 Nev.
6 80, 87, 807 P.2d 208, 213 (1991) (citing *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455
7 P.2d 31, 33 (1969)).

8 37. As a preliminary matter, the Court finds that the Motion for Attorney’s Fees was
9 timely filed, supported with a Declaration from Absolute Foot Care’s Counsel, “swearing that the
10 fees were actually and necessarily incurred and were reasonable,” and contained sufficient
11 documentation “concerning the amount of fees claimed” as required by NRCP 54(d)(2)(B).

12 38. The Court awards \$408,061.50 in attorney’s fees in favor of Absolute Foot Care and
13 against Dr. Biesinger.

14 39. The Court finds that the award of attorneys’ fees is supported by the *Brunzell*
15 factors.

16 40. With regard to the first *Brunzell* factor, the Court finds that counsel for Plaintiff are
17 qualified, experienced, and competent in handling commercial litigation cases and cases involving
18 restrictive covenants.

19 41. The Court finds that the hourly rates charged by Bailey ♦ Kennedy throughout this
20 matter are reasonable in this community for complex commercial litigation and allowed by courts in
21 Nevada for professional services rendered in complex commercial litigation, and therefore,
22 calculates the amount of fees to be awarded with the rates sought.

23 42. The Court is not persuaded by Dr. Biesinger’s arguments concerning the increases in
24 Bailey ♦ Kennedy’s billing rates throughout the litigation. Attorney rates often increase annually
25 due to (i) increased costs for law firms, (ii) inflation, and (iii) increased attorney experience.
26 Absolute Foot Care’s counsel’s rate increases, which were not substantial, are not objectionable.
27 *See Wall v. Altium Grp., LLC*, No. 16-1044, 2019 U.S. Dist. LEXIS 116486, at *34-35 (W.D. Pa.
28 July 12, 2019).

1 43. With regard to the second *Brunzell* factor, the Court finds that this action was
2 complex and involved a substantial amount of factual and legal issues. It required complex analysis
3 and swift action at the outset of the matter (in order to obtain injunctive relief). Further, this case is
4 a commercial litigation matter, which generally requires much more detailed analysis than ordinary
5 civil litigation. Dr. Biesinger's contempt of the Court's Preliminary Injunction and his failure to
6 comply with the Court's discovery orders (which led to sanctions) also added to the complexity of
7 this matter.

8 44. The Court is not persuaded by Dr. Biesinger's argument that attorney's fees should
9 be reduced based on his contention that Absolute Foot Care "was dedicated to the alleged bad faith
10 of Dr. Biesinger." That Absolute Foot Care pursued both contractual and tort remedies up until the
11 time of summary judgment and then ultimately elected to pursue contractual remedies does not
12 preclude it from recovering for time incurred related to its tort causes of action. Courts routinely
13 award fees for unsuccessful claims where they involve a common core of facts. *See Marsu, B.V. v.*
14 *Walt Disney Co.*, 185 F.3d 932, 939 (9th Cir. 1999); *Webb v. Sloan*, 330 F.3d 1158, 1168-69 (9th
15 Cir. 2003). Here, Absolute Foot Care's contract-based claims and tort claims arose out of a
16 common core of facts and a common course of conduct. Accordingly, the Court declines to reduce
17 the amount of attorney's fees awarded based on Absolute Foot Care's election to pursue its
18 contractual remedies as opposed to tort remedies. Moreover, that Absolute Foot Care incurred
19 attorney's fees to address Dr. Biesinger's violation of the Preliminary Injunction and failure to
20 abide by the Court's discovery orders does not justify reducing the fee award.

21 45. Further, the Court is not persuaded by Dr. Biesinger's argument that much of the
22 attorney's fees incurred by Absolute Foot Care concerned Ms. Pallanti. As evidenced by the billing
23 records submitted by Absolute Foot Care, it is not seeking fees that relate solely to its claims
24 against Ms. Pallanti. Moreover, much of the work that related to Pallanti would have been incurred
25 even if she had not been named a defendant. given that she was a critical witness.

26 46. With regard to the third *Brunzell* factor, the Court finds that Bailey Kennedy actually
27 performed the work and did so in an efficient and cost-effective manner. As reflected in the
28 exhibits submitted by Absolute Foot Care, legal work was delegated to those with lower billing

1 rates where appropriate. Specifically, most of the legal work was delegated to and performed by
2 Paul C. Williams, whose rate is substantially lower than John R. Bailey and Joshua M. Dickey.

3 47. The Court is also not persuaded by Dr. Biesinger's argument that fees should be
4 reduced for time incurred by John R. Bailey and Joshua M. Dickey because Dr. Biesinger's current
5 counsel has not had substantial interactions with them. The majority of time incurred by Messrs.
6 Bailey and Dickey was at the outset of the matter—which included a heavily litigated motion for
7 preliminary injunction and contempt proceedings. Also, the billing records indicate that Messrs.
8 Bailey and Dickey have remained actively involved in the matter, including overseeing strategy,
9 revising briefs, and attending hearings.

10 48. With regard to the fourth *Brunzell* factor, the Court finds that counsel for Absolute
11 Foot Care achieved a successful result. Absolute Foot Care's counsel successfully obtained a
12 Preliminary Injunction and then obtained summary judgment against Dr. Biesinger on its breach of
13 contract claim and Dr. Biesinger's counterclaims. Additionally, Absolute Foot Care's counsel
14 successfully addressed Dr. Biesinger's contempt of the Preliminary Injunction and failure to
15 comply with the Court's discovery orders.

16 49. Finally, Absolute Foot Care, through its Motion for Attorney's Fees, also sought
17 costs. However, in its Reply, Absolute Foot Care withdrew its request for costs (to the extent costs
18 were sought through the Motion for Attorney's Fees) because the Court had already ruled on
19 Absolute Foot Care's Memorandum of Costs and Dr. Biesinger's Motion to Retax Costs.

20 **ORDER**

21 Based on the foregoing Findings, and good cause appearing,

22 **IT IS HEREBY ORDERED** that Absolute Foot Care's Motion for Attorney's Fees is
23 GRANTED. Attorneys' fees are awarded to Absolute Foot Care and against Dr. Biesinger in the
24 total amount of \$408,061.50.

25 ///

26 ///

27 ///

28 ///

1 **IT IS FURTHER ORDERED** that Absolute Foot Care shall submit an amended judgment
2 to the Court incorporating the award of attorney's fees and the Court's award of taxable costs (as
3 set forth in the Court's Order Granting in Part, and Denying in Part, Motion to Retax Costs).

4
5 Dated this 20th day of December, 2021

6 

7 279 669 613E 5DEA
8 Mark R. Denton
District Court Judge

ABG

9 Respectfully submitted by:

Approved as to Form:

10 BAILEY ♦ KENNEDY

TAKOS LAW GROUP, LTD.

11 By: /s/ Paul C. Williams

By: /s/ Steven R. Hart

12 JOHN R. BAILEY

ZACHARY P. TAKOS

13 JOSHUA M. DICKEY

NEVADA BAR NO. 11293

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STEVEN R. HART

14 *Attorneys for Plaintiff/Counterdefendant*
15 *Absolute Foot Care Specialists*

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STEVEN@TAKOSLAW.COM

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FACSIMILE: (702) 9324-4422

Attorney for Defendant David P. Biesinger, DPM

Paul Williams

From: Steven Hart <steven@takoslaw.com>
Sent: Wednesday, December 15, 2021 12:00 PM
To: Paul Williams; Zachary Takos
Cc: Sharon Murnane; Joshua Gilmore
Subject: Re: AFC v. Biesinger - Order on Motion for Attorney's Fees
Attachments: Order re Mot for Attorneys Fees (SRH Edits).docx

Hi Paul,

Please see the attached. Just a few small edits, nothing substantive. I noticed throughout a slight difference in font color from one paragraph to the next or within the same paragraph. It may have just been my computer or my eyes adjusting strangely but I think it might be worth confirming.

You may affix my electronic signature.

Sincerely,

Steven R. Hart, Esq.

TakosLawGroup, Ltd.

1980 Festival Plaza Drive, Suite 300

Las Vegas, Nevada 89135

O: 702.856.4629

C: 801.380.8950

F: 702.924.4422

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From: Paul Williams <PWilliams@baileykennedy.com>
Date: Monday, December 13, 2021 at 5:21 PM
To: Steven Hart <steven@takoslaw.com>, Zachary Takos <zach@takoslaw.com>
Cc: Sharon Murnane <SMurnane@baileykennedy.com>, Joshua Gilmore <JGilmore@baileykennedy.com>
Subject: AFC v. Biesinger - Order on Motion for Attorney's Fees

Hi Zachary and Steven,

Attached is a draft Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees. Please let me know if you have any proposed revisions. If not, please confirm that I may affix your electronic signature and submit it to the court.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-17-754423-B

8 vs.

DEPT. NO. Department 13

9 David Biesinger, DPM,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting 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:

15 Service Date: 12/20/2021

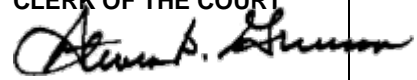
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18 John Bailey .	jbailey@baileykennedy.com
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Attorneys for Plaintiff

Absolute Foot Care Specialists

DISTRICT COURT

CLARK COUNTY, NEVADA

ABSOLUTE FOOT CARE SPECIALISTS, a
Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

DAVID P. BIESINGER, DPM, an individual,

Counterclaimant,

vs.

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

Counter-Defendant.

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

**NOTICE OF ENTRY OF ORDER GRANTING
PLAINTIFF/COUNTERDEFENDANT
ABSOLUTE FOOT CARE SPECIALISTS'
MOTION FOR ATTORNEY'S FEES**

PLEASE TAKE NOTICE that an Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees was entered in the above-entitled action on December 20, 2021, a true and correct copy of which is attached hereto.

DATED this 21st day of December, 2021.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

JOHN R. BAILEY

JOSHUA M. DICKEY

PAUL C. WILLIAMS

*Attorneys for Plaintiff Absolute
Foot Care Specialists*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 21st day of December, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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JEFFREY GRONICH

JEFFREY GRONICH,

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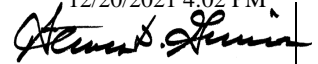
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LORRAINE PALLANTI

/s/ Sharon Murnane

Employee of BAILEY ♦ KENNEDY


CLERK OF THE COURT

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*Attorneys for Plaintiff/Counterdefendant
Absolute Foot Care Specialists*

DISTRICT COURT
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Counter-Defendant.

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

**ORDER GRANTING PLAINTIFF/
COUNTERDEFENDANT ABSOLUTE FOOT
CARE SPECIALISTS' MOTION FOR
ATTORNEY'S FEES**

This matter came before the Court on October 11, 2021, at 9:00 a.m., for a hearing regarding Plaintiff/Counterdefendant Absolute Foot Care Specialists ("Absolute Foot Care" or "Plaintiff") Motion for Attorney's Fees (the "Motion for Attorney's Fees").

APPEARANCES

- Paul C. Williams, Esq. of Bailey ♦ Kennedy on behalf of Absolute Foot Care; and
- Zachary P. Takos, Esq. of Takos Law Group, Ltd. on behalf of Defendant/Counterclaimant David P. Biesinger, DPM (“Dr. Biesinger” or “Defendant”).

FINDINGS

Background

1. On June 7, 2010, Absolute Foot Care and Dr. Biesinger entered into the Employment Agreement pursuant to which Dr. Biesinger became an employee of Absolute Foot Care and agreed to perform certain duties and undertake certain responsibilities.

2. The Employment Agreement contains covenants whereby Dr. Biesinger agreed not to compete against Absolute Foot Care (within certain parameters) and agreed not to solicit Absolute Foot Care’s patients (the “Restrictive Covenants”).

3. The Employment Agreement contains an attorney’s fees clause (the “Attorney’s Fees Clause”) with two separate provisions. The first provision provides that “[i]n the event of any dispute arising out of this Agreement, the prevailing party, as determined by the Court, shall be entitled to reimbursement for all reasonable costs and attorneys[’] fees incurred” (hereinafter, the “Prevailing Party Provision”). The second provision provides, “Additionally, any and all attorneys’ fees and costs incurred by Employer due to Employee’s conduct or actions shall be reimbursable to Employer by Employee” (the “Indemnity Provision”).

4. On April 24, 2017, Absolute Foot Care initiated this action against Dr. Biesinger and Lorraine Pallanti (“Pallanti”), a former Absolute Foot Care employee. On July 1, 2021, the Court entered a Stipulation and Order dismissing Pallanti from this litigation.

5. Absolute Foot Care asserted the following claims for relief in its Complaint: (i) breach of contract; (ii) breach of the implied covenant of good faith and fair dealing; (iii) unjust enrichment; (iv) breach of fiduciary duty; (v) conversion; (vi) intentional interference; and (vii) civil conspiracy. Although Absolute Foot Care’s Complaint included tort claims, the crux of the action concerned Dr. Biesinger’s violations of the Restrictive Covenants. Further, the underlying theory of the tort claims asserted by Absolute Foot Care substantially overlapped with the contract-

1 based claims as they were based on the same set of operative facts: Dr. Biesinger's operation of a
2 competing podiatry practice and his solicitation of patients.

3 6. On May 22, 2017, upon application of Absolute Foot Care, the Court entered a
4 Preliminary Injunction, enjoining Dr. Biesinger from violating the Restrictive Covenants.

5 7. On July 2, 2017, Dr. Biesinger filed an Answer to Absolute Foot Care's Complaint
6 and asserted five counterclaims against Absolute Foot Care: (1) Declaratory Relief; (2) Breach of
7 Contract; (3) Breach of Implied Covenant of Good Faith and Fair Dealing; (4) Unjust Enrichment;
8 and (5) NRS 608.040 – Waiting Time Penalties. Four of the five counterclaims were based on the
9 Employment Agreement. In essence, Dr. Biesinger contended that Absolute Foot Care breached
10 the Employment Agreement by failing to provide him with an opportunity to purchase an
11 ownership interest in Absolute Foot Care and by failing to compensate him according to the
12 Employment Agreement.

13 8. Despite the Preliminary Injunction, Dr. Biesinger continued to operate a podiatry
14 practice (Centennial Foot & Ankle) at his Durango Office until July 21, 2017. The Court ultimately
15 held Dr. Biesinger in contempt for violating the Preliminary Injunction and awarded Absolute Foot
16 Care \$31,615.00 in attorney's fees.

17 9. On May 1, 2020, this court entered an Order Granting Plaintiff Absolute Foot Care's
18 Motion to Compel Defendants' Responses to Plaintiff's First Set of Requests of Production. As
19 part of this Order, the Court awarded Absolute Foot Care \$15,771.25 in attorney's fees.

20 10. On May 28, 2021, Absolute Foot Care filed its Motion for Summary Judgment on:
21 (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's
22 Counterclaims (hereinafter, the "Motion for Summary Judgment" or "MSJ").

23 11. Absolute Foot Care elected its breach of contract and the liquidated damages of
24 \$650,000.00 as its sole remedy if the Motion for Summary Judgment was granted (i.e., it agreed to
25 forgo its other claims for relief).

26 12. The Motion for Summary Judgment was fully briefed, and the Court held oral
27 argument on June 28, 2021.

28

1 13. On August 18, 2021, the Court entered its Findings of Fact, Conclusions of Law, and
2 Order Granting the Motion for Summary Judgment. The Court found that the Employment
3 Agreement was a valid and binding contract and that Dr. Biesinger had violated the Restrictive
4 Covenants, entitling Absolute Foot Care to \$650,000.00 in liquidated damages.

5 14. The Court also found that Absolute Foot Care was entitled to summary judgment on
6 Dr. Biesinger's Counterclaims.

7 15. The Court separately entered a Judgment against Dr. Biesinger for \$794,727.40
8 (\$650,000.00 in liquidated damages plus pre-judgment interest).

9 16. On September 8, 2021, Absolute Foot Care moved for an award of attorney's fees
10 pursuant to the Prevailing Party Provision (i.e., the Motion for Attorney's Fees).

11 17. On September 22, 2021, Dr. Biesinger filed an Opposition to the Motion for
12 Attorney's Fees (the "Opposition").

13 18. On October 11, 2021, Absolute Foot Care filed a Reply in Support of the Motion for
14 Attorney's Fees (the "Reply").

15 *Analysis of Conscionability of Attorney's Fees Clause*

16 19. Dr. Biesinger argues that the Indemnity Provision is unconscionable, and thereby,
17 the Attorney's Fees Clause is unenforceable. The Court is not persuaded by Dr. Biesinger's
18 argument.

19 20. First, the Motion for Attorney's Fees is based solely on the Prevailing Party
20 Provision, not the Indemnity Provision. Even if the Court found the Indemnity Provision was
21 unconscionable, the Prevailing Party Provision remains enforceable.

22 21. Under Nevada law, contracts are enforceable even where they contain illegal or
23 unenforceable provisions that are collateral (i.e. irrelevant) to the remedy sought. *See Vincent v.*
24 *Santa Cruz*, 98 Nev. 338, 341, 647 P.2d 379, 381 (1982). The Indemnity Provision is collateral (i.e.
25 irrelevant) to the remedy sought by Absolute Foot Care—reimbursement of its attorney's fees as the
26 prevailing party.

27 22. Moreover, the Employment Agreement provides that if any part is determined to be
28 "be invalid, illegal or unenforceable in whole or in part, the Parties agree that such invalid, illegal,

1 or unenforceable provision(s) may be severed from th[e] Agreement without, in any manner,
2 affecting the remaining portions hereof.” Such severance clauses are routinely enforced. *See, e.g.,*
3 *Garcia v. Good for Life by 81, Inc.*, No. 17-CV-07228, 2018 U.S. Dist. LEXIS 117437, at *5
4 (S.D.N.Y. July 12, 2018); *Pioneer Research Sols., Inc. v. Cbeyond, Inc.*, Civil Action No. H-14-
5 1795, 2015 U.S. Dist. LEXIS 191663, at *8 (S.D. Tex. Mar. 27, 2015).

6 23. Accordingly, even if the Court found the Indemnity Provision was unconscionable, it
7 may be severed from the Employment Agreement pursuant to the severance clause or by operation
8 of law.

9 24. Second, the Court finds the Indemnity Clause is not unconscionable.

10 25. “Nevada law requires both procedural and substantive unconscionability to
11 invalidate a contract as unconscionable.” *United States Home Corp. v. Ballesteros Tr.*, 134 Nev.
12 180, 190, 415 P.3d 32, 40 (2018).

13 26. A provision is procedurally unconscionable when a party lacks a meaningful
14 opportunity to agree to the provision terms either because of unequal bargaining power, as in an
15 adhesion contract, or because the provision and its effects are not readily ascertainable upon a
16 review of the contract.” *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 554, 96 P.3d 1159, 1162 (2004).

17 27. The Court finds that the Indemnity Clause is not procedurally unconscionable. The
18 Employment Agreement is not a contract of adhesion and there is no evidence of unequal
19 bargaining power. The Nevada Supreme Court has “declined to apply the unconscionable adhesion
20 contract doctrine to employment contract cases because employment contracts can generally be
21 negotiated.” *CVSM, Ltd. Liab. Co. v. Doe*, No. 72627, 2019 Nev. Unpub. LEXIS 215, at *4-5
22 (Nev. 2019) (unpublished disposition) (citing *Kindred v. Second Judicial Dist. Court*, 116 Nev.
23 405, 411, 996 P.2d 903, 907 (2000)). Further, Dr. Biesinger has not submitted any competent
24 evidence that there was unequal bargaining power between him and Absolute Foot Care—the
25 evidence demonstrates that he and Absolute Foot Care negotiated the terms of the Employment
26 Agreement.

27 28. As to substantive unconscionability, with “a concept as nebulous as
28 ‘unconscionability,’ it is important that courts not be thrust in the paternalistic role of intervening to

change contractual terms that the parties have agreed to merely because the court believes the terms are unreasonable. The terms must shock the conscience.” *Marin Storage & Trucking, Inc. v. Benco Contracting & Eng’g, Inc.*, 107 Cal. Rptr. 2d 645, 656 (Cal. Ct. App. 2001) (internal quotation marks omitted).

29. The Court finds that the Indemnity Clause is not substantively unconscionable. Courts routinely enforce one-way indemnification provisions. *See id.* (rejecting claim that one-way indemnification provision was substantively unconscionable).

Analysis of Prevailing Party Provision

30. Under Nevada law, parties “are free to provide for attorney fees by express contractual provisions.” *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012).

31. The purpose of a contractual attorney’s fees provision is to “indemnify the prevailing party for the full amount of the obligation.” *Musso v. Binick*, 104 Nev. 613, 614-15, 764 P.2d 477, 477 (1988).

32. A party is the “prevailing party” if the party “succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (analyzing NRS 18.010); *see also Davis*, 128 Nev. at 322, 278 P.3d at 515-16 (applying “prevailing party” definition from *Valley Elec. Ass’n* to analysis of contractual attorney’s fees provision).

33. The Court finds that Absolute Foot Care is the prevailing party as it obtained summary judgment on its breach of contract claim and on all of Dr. Biesinger’s counterclaims and, as a result, it “succeed[ed] on [many] significant issue[s] in litigation which achieves[d] some of the benefit it sought in bringing suit.” *Valley Elec. Ass’n*, 121 Nev. at 10, 106 P.3d at 1198.

34. Because Absolute Foot Care is the prevailing party, it is entitled to its reasonable attorney’s fees.

Analysis of Attorney’s Fees Sought

35. NRCP 54(d)(2)(B) provides that, in support of a motion for attorneys’ fees, along with an affidavit from counsel “swearing that the fees were actually and necessarily incurred and were reasonable,” a party must submit “documentation concerning the amount of fees claimed.”

1 The Court must then “determine the reasonableness of the requested fees.” *Shuette v. Beazer*
2 *Homes Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-59 (2005).

3 36. As the Nevada Supreme Court has explained, “in calculating attorney’s fees, the
4 court should consider the qualities of the advocate, the character of the work to be done, the work
5 actually performed by the lawyer, and the result.” *Hornwood v. Smith’s Food King No. 1*, 107 Nev.
6 80, 87, 807 P.2d 208, 213 (1991) (citing *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455
7 P.2d 31, 33 (1969)).

8 37. As a preliminary matter, the Court finds that the Motion for Attorney’s Fees was
9 timely filed, supported with a Declaration from Absolute Foot Care’s Counsel, “swearing that the
10 fees were actually and necessarily incurred and were reasonable,” and contained sufficient
11 documentation “concerning the amount of fees claimed” as required by NRCP 54(d)(2)(B).

12 38. The Court awards \$408,061.50 in attorney’s fees in favor of Absolute Foot Care and
13 against Dr. Biesinger.

14 39. The Court finds that the award of attorneys’ fees is supported by the *Brunzell*
15 factors.

16 40. With regard to the first *Brunzell* factor, the Court finds that counsel for Plaintiff are
17 qualified, experienced, and competent in handling commercial litigation cases and cases involving
18 restrictive covenants.

19 41. The Court finds that the hourly rates charged by Bailey ♦ Kennedy throughout this
20 matter are reasonable in this community for complex commercial litigation and allowed by courts in
21 Nevada for professional services rendered in complex commercial litigation, and therefore,
22 calculates the amount of fees to be awarded with the rates sought.

23 42. The Court is not persuaded by Dr. Biesinger’s arguments concerning the increases in
24 Bailey ♦ Kennedy’s billing rates throughout the litigation. Attorney rates often increase annually
25 due to (i) increased costs for law firms, (ii) inflation, and (iii) increased attorney experience.
26 Absolute Foot Care’s counsel’s rate increases, which were not substantial, are not objectionable.
27 *See Wall v. Altium Grp., LLC*, No. 16-1044, 2019 U.S. Dist. LEXIS 116486, at *34-35 (W.D. Pa.
28 July 12, 2019).

1 43. With regard to the second *Brunzell* factor, the Court finds that this action was
2 complex and involved a substantial amount of factual and legal issues. It required complex analysis
3 and swift action at the outset of the matter (in order to obtain injunctive relief). Further, this case is
4 a commercial litigation matter, which generally requires much more detailed analysis than ordinary
5 civil litigation. Dr. Biesinger's contempt of the Court's Preliminary Injunction and his failure to
6 comply with the Court's discovery orders (which led to sanctions) also added to the complexity of
7 this matter.

8 44. The Court is not persuaded by Dr. Biesinger's argument that attorney's fees should
9 be reduced based on his contention that Absolute Foot Care "was dedicated to the alleged bad faith
10 of Dr. Biesinger." That Absolute Foot Care pursued both contractual and tort remedies up until the
11 time of summary judgment and then ultimately elected to pursue contractual remedies does not
12 preclude it from recovering for time incurred related to its tort causes of action. Courts routinely
13 award fees for unsuccessful claims where they involve a common core of facts. *See Marsu, B.V. v.*
14 *Walt Disney Co.*, 185 F.3d 932, 939 (9th Cir. 1999); *Webb v. Sloan*, 330 F.3d 1158, 1168-69 (9th
15 Cir. 2003). Here, Absolute Foot Care's contract-based claims and tort claims arose out of a
16 common core of facts and a common course of conduct. Accordingly, the Court declines to reduce
17 the amount of attorney's fees awarded based on Absolute Foot Care's election to pursue its
18 contractual remedies as opposed to tort remedies. Moreover, that Absolute Foot Care incurred
19 attorney's fees to address Dr. Biesinger's violation of the Preliminary Injunction and failure to
20 abide by the Court's discovery orders does not justify reducing the fee award.

21 45. Further, the Court is not persuaded by Dr. Biesinger's argument that much of the
22 attorney's fees incurred by Absolute Foot Care concerned Ms. Pallanti. As evidenced by the billing
23 records submitted by Absolute Foot Care, it is not seeking fees that relate solely to its claims
24 against Ms. Pallanti. Moreover, much of the work that related to Pallanti would have been incurred
25 even if she had not been named a defendant. given that she was a critical witness.

26 46. With regard to the third *Brunzell* factor, the Court finds that Bailey Kennedy actually
27 performed the work and did so in an efficient and cost-effective manner. As reflected in the
28 exhibits submitted by Absolute Foot Care, legal work was delegated to those with lower billing

1 rates where appropriate. Specifically, most of the legal work was delegated to and performed by
2 Paul C. Williams, whose rate is substantially lower than John R. Bailey and Joshua M. Dickey.

3 47. The Court is also not persuaded by Dr. Biesinger's argument that fees should be
4 reduced for time incurred by John R. Bailey and Joshua M. Dickey because Dr. Biesinger's current
5 counsel has not had substantial interactions with them. The majority of time incurred by Messrs.
6 Bailey and Dickey was at the outset of the matter—which included a heavily litigated motion for
7 preliminary injunction and contempt proceedings. Also, the billing records indicate that Messrs.
8 Bailey and Dickey have remained actively involved in the matter, including overseeing strategy,
9 revising briefs, and attending hearings.

10 48. With regard to the fourth *Brunzell* factor, the Court finds that counsel for Absolute
11 Foot Care achieved a successful result. Absolute Foot Care's counsel successfully obtained a
12 Preliminary Injunction and then obtained summary judgment against Dr. Biesinger on its breach of
13 contract claim and Dr. Biesinger's counterclaims. Additionally, Absolute Foot Care's counsel
14 successfully addressed Dr. Biesinger's contempt of the Preliminary Injunction and failure to
15 comply with the Court's discovery orders.

16 49. Finally, Absolute Foot Care, through its Motion for Attorney's Fees, also sought
17 costs. However, in its Reply, Absolute Foot Care withdrew its request for costs (to the extent costs
18 were sought through the Motion for Attorney's Fees) because the Court had already ruled on
19 Absolute Foot Care's Memorandum of Costs and Dr. Biesinger's Motion to Retax Costs.

20 **ORDER**

21 Based on the foregoing Findings, and good cause appearing,

22 **IT IS HEREBY ORDERED** that Absolute Foot Care's Motion for Attorney's Fees is
23 GRANTED. Attorneys' fees are awarded to Absolute Foot Care and against Dr. Biesinger in the
24 total amount of \$408,061.50.

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1 **IT IS FURTHER ORDERED** that Absolute Foot Care shall submit an amended judgment
2 to the Court incorporating the award of attorney's fees and the Court's award of taxable costs (as
3 set forth in the Court's Order Granting in Part, and Denying in Part, Motion to Retax Costs).

4
5 Dated this 20th day of December, 2021

6 

7 279 669 613E 5DEA
8 Mark R. Denton
District Court Judge

ABG

9 Respectfully submitted by:

Approved as to Form:

10 BAILEY ♦ KENNEDY

TAKOS LAW GROUP, LTD.

11 By: /s/ Paul C. Williams

By: /s/ Steven R. Hart

12 JOHN R. BAILEY

ZACHARY P. TAKOS

13 JOSHUA M. DICKEY

NEVADA BAR NO. 11293

PAUL C. WILLIAMS

STEVEN R. HART

14 *Attorneys for Plaintiff/Counterdefendant*
15 *Absolute Foot Care Specialists*

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Attorney for Defendant David P. Biesinger, DPM

Paul Williams

From: Steven Hart <steven@takoslaw.com>
Sent: Wednesday, December 15, 2021 12:00 PM
To: Paul Williams; Zachary Takos
Cc: Sharon Murnane; Joshua Gilmore
Subject: Re: AFC v. Biesinger - Order on Motion for Attorney's Fees
Attachments: Order re Mot for Attorneys Fees (SRH Edits).docx

Hi Paul,

Please see the attached. Just a few small edits, nothing substantive. I noticed throughout a slight difference in font color from one paragraph to the next or within the same paragraph. It may have just been my computer or my eyes adjusting strangely but I think it might be worth confirming.

You may affix my electronic signature.

Sincerely,

Steven R. Hart, Esq.

TakosLawGroup, Ltd.

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From: Paul Williams <PWilliams@baileykennedy.com>
Date: Monday, December 13, 2021 at 5:21 PM
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Cc: Sharon Murnane <SMurnane@baileykennedy.com>, Joshua Gilmore <JGilmore@baileykennedy.com>
Subject: AFC v. Biesinger - Order on Motion for Attorney's Fees

Hi Zachary and Steven,

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Thank you,

Paul C. Williams
Bailey Kennedy, LLP

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8 vs.

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Steven Hart

steven@takoslaw.com

Heather S. Linn
CLERK OF THE COURT

AJ (CIV)
JOHN R. BAILEY
Nevada Bar No. 0137
JOSHUA M. DICKEY
Nevada Bar No. 6621
PAUL C. WILLIAMS
Nevada Bar No. 12524
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JBailey@BaileyKennedy.com
JDickey@BaileyKennedy.com
PWilliams@BaileyKennedy.com

*Attorneys for Plaintiff/Counterdefendant
Absolute Foot Care Specialists*

DISTRICT COURT
CLARK COUNTY, NEVADA

ABSOLUTE FOOT CARE SPECIALISTS, a
Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

DAVID P. BIESINGER, DPM, an individual,

Counterclaimant,

vs.

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

Counter-Defendant.

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

AMENDED JUDGMENT

Pursuant to:

1. The Court's Findings of Fact, Conclusions of Law, and Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment

on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's Counterclaims, filed on August 18, 2021;

2. The Court's Order Granting in Part, and Denying in Part, Motion to Retax Costs, filed on October 10, 2021; and

3. The Court's Order Granting Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees, filed on December 20, 2021;

JUDGMENT is hereby entered in favor of Plaintiff/Counterdefendant Absolute Foot Care Specialists and against Defendant/Counterclaimant David P. Biesinger, DPM, in the amount of ONE MILLION, TWO HUNDRED FORTY THOUSAND, TWO HUNDRED TWENTY-FOUR AND 15/100 DOLLARS (\$1,240,224.15)—consisting of:

1. \$650,000.00 in damages;
2. \$408,061.50 in attorney's fees;
3. \$20,920.46 in costs;
4. \$147,498.70 in pre-judgment interest as of August 18, 2021; and
5. \$13,743.49 in post-judgment interest as of January 13, 2022.

Post-judgment interest shall accrue from the date of entry of this Amended Judgment at the highest rate allowed by law until this Amended Judgment is paid in full.

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

Dated this 13th day of January, 2022



ABG

65B B9D 2D43 9430
Mark R. Denton
District Court Judge

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

Approved as to Form:
TAKOS LAW GROUP, LTD.
By: /s/ Steven R. Hart
ZACHARY P. TAKOS
Nevada Bar No. 11293
STEVEN R. HART
Nevada Bar No. 15418
1980 Festival Plaza Drive, Suite 300
Las Vegas, Nevada 89135
zach@takoslaw.com
steven@takoslaw.com
Telephone (702) 856-4629
Facsimile: (702) 9324-4422
Attorney for Defendant David P. Biesinger, DPM

Paul Williams

From: Steven Hart <steven@takoslaw.com>
Sent: Thursday, January 13, 2022 9:52 AM
To: Paul Williams; Zachary Takos
Cc: Joshua Dickey; Sharon Murnane; Karen Rodman
Subject: Re: Absolute Foot Care v. Biesinger - Amended Judgment

Hi Paul,

I have reviewed and have no edits. You may affix my electronic signature. Thanks.

Sincerely,

Steven R. Hart, Esq.

TakosLawGroup, Ltd.

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

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

From: Paul Williams <PWilliams@baileykennedy.com>
Date: Thursday, January 13, 2022 at 9:35 AM
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Cc: Joshua Dickey <JDickey@baileykennedy.com>, Sharon Murnane <SMurnane@baileykennedy.com>, Karen Rodman <KRodman@baileykennedy.com>
Subject: Absolute Foot Care v. Biesinger - Amended Judgment

Hi Zach and Steven,

Attached is a draft Amended Judgment incorporating the attorney's fees/costs into the judgment and updating interest. Please let me know if you have any proposed revisions. If not, please confirm that I may affix your electronic signature to the same and submit it to the Court.

Thank you,

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

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-17-754423-B

8 vs.

DEPT. NO. Department 13

9 David Biesinger, DPM,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 1/13/2022

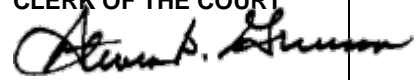
16 Zachary Takos	zach@takoslaw.com
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24 Jeffrey Gronich	jgronich@gronichlaw.com
25 Katie Erickson	katie@takoslaw.com

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Steven Hart

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NJUD (CIV)
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JOSHUA M. DICKEY
Nevada Bar No. 6621
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JDickey@BaileyKennedy.com
PWilliams@BaileyKennedy.com

Attorneys for Plaintiff
Absolute Foot Care Specialists

DISTRICT COURT
CLARK COUNTY, NEVADA

ABSOLUTE FOOT CARE SPECIALISTS, a
Nevada Corporation,

Plaintiff,

vs.

DAVID P. BIESINGER, DPM, an individual; and
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Defendants.

DAVID P. BIESINGER, DPM, an individual,

Counterclaimant,

vs.

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

Counter-Defendant.

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

**NOTICE OF ENTRY OF
AMENDED JUDGMENT**

PLEASE TAKE NOTICE that an Amended Judgment was entered in the above-entitled action on January 13, 2022, a true and correct copy of which is attached hereto.

DATED this 14th day of January, 2022.

BAILEY ♦ KENNEDY

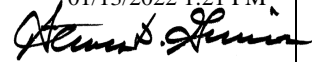
By: /s/ Paul C. Williams
JOHN R. BAILEY
JOSHUA M. DICKEY
PAUL C. WILLIAMS
*Attorneys for Plaintiff Absolute
Foot Care Specialists*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 14th day of January, 2022, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

ZACHARY P. TAKOS	Email: zach@takoslaw.com
STEVEN R. HART, ESQ.	steven@takoslaw.com
TAKOS LAW GROUP, LTD.	
1980 Festival Plaza Drive, Suite 300	<i>Attorney for Defendant</i>
Las Vegas, Nevada 89135	DAVID BIESINGER, DPM

/s/ Sharon Murnane
Employee of BAILEY ♦ KENNEDY


CLERK OF THE COURT

BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

AJ (CIV)
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DISTRICT COURT
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ABSOLUTE FOOT CARE SPECIALISTS, a
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Dated this 13th day of January, 2022



ABG

65B B9D 2D43 9430
Mark R. Denton
District Court Judge

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

Approved as to Form:
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By: /s/ Steven R. Hart
ZACHARY P. TAKOS
Nevada Bar No. 11293
STEVEN R. HART
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zach@takoslaw.com
steven@takoslaw.com
Telephone (702) 856-4629
Facsimile: (702) 9324-4422
Attorney for Defendant David P. Biesinger, DPM

Paul Williams

From: Steven Hart <steven@takoslaw.com>
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To: Paul Williams; Zachary Takos
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Subject: Re: Absolute Foot Care v. Biesinger - Amended Judgment

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Thank you,

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1 **CSERV**

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-17-754423-B

8 vs.

DEPT. NO. Department 13

9 David Biesinger, DPM,
10 Defendant(s)

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Steven Hart

steven@takoslaw.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 01, 2017

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

May 01, 2017	9:00 AM	Motion for Temporary Restraining Order
---------------------	----------------	---

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Marwanda Knight

RECORDER: Martha Szramek

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

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

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

Following argument, COURT STATED ITS FINDINGS, and ORDERED, Motion for TRO GRANTED

relative to the second and third aspects: solicitation of patients, solicitation of staff, and use of information. The Court will not grant a TRO to restrain competition otherwise; bond SET at \$500.00.

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

Court clarified its ruling.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 15, 2017

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

**May 15, 2017 9:00 AM Motion for Preliminary
Injunction**

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Marwanda Knight

RECORDER: Jennifer Gerold

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 22, 2017

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

May 22, 2017	9:00 AM	Motion for Preliminary Injunction
---------------------	----------------	--

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Marwanda Knight

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 05, 2017

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

June 05, 2017

9:25 AM

Decision

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Marwanda Knight

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

July 10, 2017

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

**July 10, 2017 2:15 PM Mandatory Rule 16
Conference**

HEARD BY: Denton, Mark R.

COURTROOM: No Location

COURT CLERK: Marwanda Knight

RECORDER:

REPORTER:

PARTIES

PRESENT: Clark, Dustin L Attorney
 Dickey, Joshua M. Attorney

JOURNAL ENTRIES

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

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

Upon the Court's inquiry as to how much time counsel would require for discovery; both counsel confirmed they would require nine (9) months until the close of discovery. Court advised that based upon that date the Department would issue a combined Scheduling/Trial Order. Court further

noted that the case is currently being carried as a jury case. Based upon the stipulation of counsel and Order of the Court, discovery can begin immediately.

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

August 10, 2017

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

August 10, 2017	9:00 AM	Motion for Order to Show Cause
------------------------	----------------	---------------------------------------

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Marwanda Knight

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 09, 2017

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

October 09, 2017 9:00 AM Show Cause Hearing

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

COURT CLERK: Marwanda Knight

RECORDER: Jennifer Gerold

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 17, 2017

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

October 17, 2017	2:57 PM	Decision
-------------------------	----------------	-----------------

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Marwanda Knight

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 07, 2019

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

January 07, 2019 2:35 PM Pre Trial Conference

HEARD BY: Denton, Mark R.

COURTROOM: No Location

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 06, 2019

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

May 06, 2019 10:30 AM Settlement Conference

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

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

Settlement options discussed with no settlement reached.

1-13-20	2:05 PM	PRE TRIAL CONFERENCE (DEPT XIII)
1-27-20	2:00 PM	CALENDAR CALL (DEPT XIII)
2-4-20	9:00 AM	JURY TRIAL (DEPT XIII)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

March 17, 2020

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

March 17, 2020 3:45 PM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Notice of Required Telephonic Appearance

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

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

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

March 26, 2020

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

March 26, 2020 9:00 AM Motion to Compel

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 19, 2020

A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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May 19, 2020	10:30 AM	Minute Order
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HEARD BY: Denton, Mark R.	COURTROOM: Chambers
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COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

IT IS SO ORDERED.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 15, 2020

A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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June 15, 2020

3:30 PM

Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

IT IS SO ORDERED.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

June 26, 2020 11:00 AM Minute Order

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

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

IT IS SO ORDERED.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 01, 2020

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

October 01, 2020

2:15 PM

Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

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

Meeting ID: 307 274 151

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

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

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

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

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

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

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

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

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

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

Please be mindful of where your camera is pointing.

We encourage you to visit the Bluejeans.com website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 05, 2020

A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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October 05, 2020 9:00 AM Motion for Sanctions

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

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

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

JOURNAL ENTRIES

- Counsel present via BlueJeans.

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

10/15/20 9:00 AM STATUS CHECK: SUBSTITUTION OF COUNSEL FOR DEFENDANT DAVID BIESINGER, DPM AND DEADLINES

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 08, 2020

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

October 08, 2020

3:00 PM

Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

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

Meeting ID: 307 274 151

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

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

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Please be mindful of where your camera is pointing.

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters**COURT MINUTES****October 15, 2020**

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

October 15, 2020 9:00 AM Status Check

HEARD BY: Denton, Mark R.**COURTROOM:** RJC Courtroom 03D**COURT CLERK:** Madalyn Kearney**RECORDER:** Jennifer Gerold**REPORTER:****PARTIES**

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

JOURNAL ENTRIES

- Counsel present via BlueJeans.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 22, 2020

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

October 22, 2020 2:00 PM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

Meeting ID: 307 274 151

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

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

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

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

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

Please be mindful of where your camera is pointing.

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 26, 2020

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

October 26, 2020 9:00 AM Motion for Sanctions

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

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

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

JOURNAL ENTRIES

- Counsel present via BlueJeans.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 05, 2020

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

November 05, 2020 7:00 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

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

opposing counsel for review and signification of approval/disapproval.

IT IS SO ORDERED.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 19, 2020

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

November 19, 2020 1:00 PM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

Meeting ID: 944 156 346

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

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

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

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Please be mindful of where your camera is pointing.

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 10, 2020

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

December 10, 2020 11:00 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

Meeting ID: 628 582 066

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

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

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

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 14, 2020

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

December 14, 2020 9:00 AM Motion to Compel

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

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

JOURNAL ENTRIES

- Counsel present via BlueJeans.

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 05, 2021

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

January 05, 2021 4:00 PM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

Meeting ID: 502 385 931

URL: bluejeans.com/502385931

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

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

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 07, 2021

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

January 07, 2021 9:00 AM Status Check

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 19, 2021

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

January 19, 2021 2:30 PM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

Meeting ID: 502 385 931

URL: bluejeans.com/502385931

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters**COURT MINUTES****January 21, 2021**

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

January 21, 2021 9:00 AM Status Check

HEARD BY: Denton, Mark R.**COURTROOM:** RJC Courtroom 03D**COURT CLERK:** Madalyn Kearney**RECORDER:** Jennifer Gerold**REPORTER:****PARTIES**

PRESENT: Williams, Paul Attorney

JOURNAL ENTRIES

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

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

2/4/21 9:00 AM DEFENDANTS' MOTION TO RECONSIDER THE COURT'S ORDER GRANTING IN PART, PLAINTIFF'S RENEWED MOTION FOR NRCP 37(B) SANCTIONS...STATUS CHECK: PRODUCTION OF DOCUMENTS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

February 02, 2021

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

February 02, 2021 2:30 PM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

Meeting ID: 663 783 212

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

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

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

February 04, 2021

A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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February 04, 2021 9:00 AM All Pending Motions

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

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

February 09, 2021

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

February 09, 2021 7:00 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

Counsel for Defendant Biesinger is directed to submit a proposed order consistent herewith

after providing the same to opposing counsel for signification of approval/disapproval. Instead of seeking to clarify or litigate meaning or any disapproval through correspondence to the Court or to counsel with copies to the Court, any such clarification or disapproval should be the subject of appropriate motion practice.

IT IS SO ORDERED.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 19, 2021

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

May 19, 2021

10:45 AM

Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

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

Meeting ID: 751 790 305

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 24, 2021

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

May 24, 2021

2:40 PM

Pre Trial Conference

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

Gronich, Jeffrey S.
Williams, Paul

Attorney
Attorney

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 24, 2021

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

June 24, 2021

2:30 PM

Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

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

Meeting ID: 751 790 305

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 28, 2021

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

June 28, 2021 9:00 AM All Pending Motions

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

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

Counsel present via BlueJeans.

Court noted it recieved no opposition to the Motion to Seal. Cause appearing and there being no opposition, COURT ORDERED, Motion to Seal Exhibits 22 through 24 to the Appendix of Exhibits to Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Summary Judgment on: (1) Its Breach of Contract Claims; and (2) Defendant/Counterclaimant David P. Biesinger, DPM's

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

July 09, 2021

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

July 09, 2021 7:00 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 7/9/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 23, 2021

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

September 23, 2021 7:45 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

Meeting ID: 869 862 085

Participant Passcode: 0049

URL: <https://bluejeans.com/869862085/0049>

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

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 27, 2021

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

September 27, 2021 9:00 AM Motion to Retax

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

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT: Dickey, Joshua M. Attorney

JOURNAL ENTRIES

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

Following arguments by Mr. Hart and Mr. Dickey, COURT ORDERED, Defendant's Motion to Retax Costs UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 01, 2021

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

October 01, 2021	7:00 AM	Minute Order
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HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- HAVING further reviewed and considered the parties' filings and argument of counsel pertaining to Defendant Biesinger's Motion to Retax Costs, heard and taken under advisement on September 27, 2021, and being fully advised in the premises, the Court GRANTS such Motion IN PART to the extent that it will reduce the taxable expert cost to \$1,500.00 and will further reduce taxable costs by the amount of the agreed-upon reductions reflected in the Conclusion of the Opposition to the Motion, but it DENIES the Motion IN PART in all other respects. Counsel for Plaintiff is directed to submit a proposed order consistent herewith and with supportive briefing/argument following submission of the same to opposing counsel for signification of approval/disapproval.

IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 10/4/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 14, 2021

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

October 14, 2021	9:30 AM	Minute Order
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HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled October 18, 2021 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

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

Meeting ID: 869 862 085

Participant Passcode: 0049

URL: <https://bluejeans.com/869862085/0049>

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

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

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

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

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

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

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

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

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

Please be mindful of where your camera is pointing.

We encourage you to visit the Bluejeans.com website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.

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

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

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 10/14/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 18, 2021

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

**October 18, 2021 9:00 AM Motion for Attorney Fees
and Costs**

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

COURT CLERK: Madalyn Kearney
Brittany Ates

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT: Takos Esq, Zachary P. Attorney
Williams, Paul Attorney

JOURNAL ENTRIES

- Counsel present via Bluejeans.

Following arguments by Mr. Williams and Mr. Takos, COURT ORDERED,
Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees and Costs,
UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 08, 2021

A-17-754423-B	Absolute Foot Care Specialists, Plaintiff(s) vs. David Biesinger, DPM, Defendant(s)
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November 08, 2021 7:00 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- HAVING further reviewed and considered the parties' filings and argument of counsel pertaining to "Plaintiff/Counterdefendant Absolute Foot Care Specialists' Motion for Attorney's Fees and Costs," heard and taken under advisement on October 18, 2021, and being fully advised in the premises, and noting that footnote 2 within Plaintiff's Reply to the Opposition states that the cost aspect of the Motion is no longer being sought pursuant to such Motion, and noting, further, as to the merits of the fee aspect of the Motion, that the lengthy litigation history of this case shows that Plaintiff has sought and obtained both equitable and legal relief and has successfully defended Defendant's counterclaims, and that extensive work on the part of Plaintiff's counsel has been necessary, and being persuaded that the attorneys' fees sought are awardable under the parties' contract and are warranted both as to the work done and with regard to the factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), the Court GRANTS the subject Motion insofar as it relates to the attorneys' fees sought. Counsel for Plaintiff is directed to submit a proposed order consistent herewith and with supportive briefing/argument following submission of the same to opposing counsel for signification of approval/disapproval.

IT IS SO ORDERED.

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

Kearney, to all registered parties for Odyssey File & Serve. /mk 11/8/21



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

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

DATE: January 21, 2022
CASE: A-17-754423-B

RE CASE: ABSOLUTE FOOT CARE SPECIALISTS vs. DAVID P. BIESINGER, DPM

NOTICE OF APPEAL FILED: January 19, 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/COUNTERDEFENDANT ABSOLUTE FOOT CARE SPECIALISTS' MOTION FOR
ATTORNEY'S FEES; NOTICE OF ENTRY OF ORDER GRANTING
PLAINTIFF/COUNTERDEFENDANT ABSOLUTE FOOT CARE SPECIALISTS' MOTION FOR
ATTORNEY'S FEES; AMENDED JUDGMENT; NOTICE OF ENTRY OF AMENDED JUDGMENT;
DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

ABSOLUTE FOOT CARE SPECIALISTS,

Plaintiff(s),

vs.

DAVID P. BIESINGER, DPM,

Defendant(s),

Case No: A-17-754423-B

Dept No: XIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 21 day of January 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk