IN THE SUPREME COURT OF THE STATE OF NEVADA

LANDS, INC. dba SPRINGSTONE LAKES MONTESSORI SCHOOL and SPRINGLANDS LLC

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA ex rel. THE COUNTY OF CLARK, AND THE HONORABLE TARA CLARK NEWBERRY,

Respondent.

JASMIN LAUDIG, a minor, by and through her father, JOHN LAUDIG,

Real Party In Interest.

Supreme Court No.: _____

District Court Case No.: A-20-808230-C

PETITIONERS' APPENDIX VOLUME 4 of 4

Karie N. Wilson, Esq. (NBN: 7957)
Tiffanie Bittle, Esq. (NBN:15179)
ALVERSON TAYLOR & SANDERS
6605 Grand Montecito Pkwy., Ste. 200
Las Vegas, Nevada 89149
(702) 384-7000

Attorneys for Petitioners Lands, Inc. dba springstone Lakes Montessori School and Springlands LLC

Petitioner's Appendix Volume 1

Petitioner's Appendix Volume 2

Petitioner's Appendix Volume 3

Petitioner's Appendix Volume 4

EXHIBIT L

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8/24/2021 6:19 PM

JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Telephone: (702) 960-4050
Facsimile: (702) 960-4092
Jordan@TheSchnitzerLawFirm.com
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JASMIN LAUDIG, a minor, by and through her father, JOHN LAUDIG, an individual; Plaintiff, vs. LANDS, INC., dba SPRINGSTONE LAKES MONTESSORI SCHOOL, a domestic corporation; SPRINGLANDS LLC, a domestic limited liability corporation; DOES 1 through 10, and ROE CORPORATIONS 1 through 20, inclusive, Defendants.	Case No.: A-20-808230-C Dept. No.: 1 **PLAINTIFF'S DESIGNATION OF REBUTTAL EXPERT WITNESSES**

COMES NOW, Plaintiff JASMIN LAUDIG, by and through her counsel, THE SCHNITZER LAW FIRM, and submits the following her Designation of Rebuttal Expert Witnesses as follows:

RETAINED EXPERT:

1. R.P. Phelps
Phelps Consulting Group LLC
P.O. Box 751750
Las Vegas, NV 89136

R.P. Phelps is a construction and maintenance expert. R.P. Phelps is a licensed general contractor with over 40 years of experience. Mr. Phelps also is a licensed insurance adjuster, Member of the ICC (International Code Council). Mr. Phelps is a retained expert and will provide expert rebuttal opinions and testimony as to his opinion and comparison to The Industry standard

Case Number: A-20-808230-C

of care regarding safe premises and construction in environments such as the one at issue within the industry, specifically, that Defendant fell below the standard of care.

Specifically, Mr. Phelps will rebut the opinions of Defendant, expert Daniel S. Grant, R.A., NCARB, CXLT.

The bases of Mr. Phelps's rebuttal opinions include, but are not limited to, his education, training and experience, any scholarly articles addressed in his report, or any other documents identified in his report. Mr. Phelps reserves the right to amend and/or supplement his rebuttal expert report and opinions pending review of additional records, items and testimony in this matter.

This statement of the subject matter of his testimony and the summary of facts and opinions is for the purpose of rebuttal expert disclosure only and is not intended to be a complete statement of all opinions to be expressed, the basis or reasons therefor, or of the data or other information considered by the witness in forming the opinions.

Each of his opinions as described above is expected to be provided to a reasonable degree of certainty. Mr. Phelps's CV, Testimony List and fee schedule are attached hereto as **Exhibit "1"**, Bates Stamp: **PHELPS 000001-000009** his rebuttal report is attached as **Exhibit "2",** Bates Stamp: **PHELPS REBUTTAL 000001- 00005**.

DATED this 24th day of August 2021.

THE SCHNITZER LAW FIRM

By:_____
JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Telephone: (702) 960-4050
Facsimile: (702) 960-4092
Attorney for Plaintiff

CERTIFICATE OF SERVICE

In accordance with Rule 9 of the N.E.F.C.R., I, the undersigned hereby certify that on the 24th day of Aug 2021, I served a true and correct copy of the foregoing **PLAINTIFF'S DESIGNATION OF REBUTTAL EXPERT WITNESSES** to the above-entitled Court for electronic filing and service upon the Court's Service List to the following counsel:

J. BRUCE ALVERSON, ESQ.
Nevada Bar No. 1339
KARIE N. WILSON, ESQ.
Nevada Bar No. 7957
ALVERSON TAYLOR & SANDERS
6605 Grand Montecito Pkwy, Ste. 200
Las Vegas, NV 89149

BY:_____
An employee of
THE SCHNITZER LAW FIRM

THE SCHNITZER LAW FIRM

Exhibit “1”

THE SCHNITZER LAW FIRM

R.P. PHELPS
Phelps Consulting Group LLC
P.O. Box 751750
Las Vegas, NV 89136
(702) 232-2037 - Fax: (702) 656-2843

CURRICULUM VITAE

PROFESSIONAL EXPERIENCE:

2000 to Present **PHELPS CONSULTING GROUP LLC** Las Vegas, Nevada

providing forensic consulting and expert witness services for Construction Defect Litigation and other construction related issues. Menu of services include **site inspections, forensic and witness investigations, expert reports, and cost of repair, depositions, trial exhibits and testimony.** The following are examples of cases that Phelps Consulting Group has been designated as an expert witness and provided opinions for.

- Land Development
- Grading
- Paving
- Concrete
- Framing/ Truss
- Drywall
- Windows
- Waterproofing
- Swimming Pools
- Building Codes
- Finish Carpentry
- Ceramic Tile
- Roofing
- Landscape
- Stucco
- Masonry (block, brick etc)
- Plumbing
- Water and Sewer
- Water Damage Remediation
- Accidents (injury)

Phelps Consulting Group serves as associate compliance inspector for the Ceramic Tile Institute of America Inc., often used as a point of authority.

1991 to Present **MORNINGSIDE HOMES, INC.**, Las Vegas, Nevada

PRESIDENT of family-owned residential home builder/developer; responsible for all executive, management, and administrative duties, including handling on-site and off-site construction at various projects as needed; examples of projects are:

- Innovations at Hidden Canyon $15,120,000
  144 single-family detached homes
- Innovations at Nellis Valley $ 2,767,500
  123-lot subdivision - single-family homes
  Land development and lot sales
- Summit at Elkhorn Springs $11,280,000
  94 lot subdivision - single-family detached homes
- Toucan Trails at Elkhorn $ 980,000
  58 single-family lot sales
  Entitlement and engineering
- Orchard Springs – 15 custom single-family $ 4,650,000
  detached homes on ½ acre lots
- Tropicana & Stephanie $ 2,860,000
  22 detached single-family rental homes
- Rough carpentry framing for various home $ 3,000,000
  builders in Las Vegas
- Developed and sold 16 ½ acre custom lots $ 897,000
- Developed 48 Condominium units Fernley Nevada $ 8,160,000
- Custom Home and Casita 6,000 sq ft $950,000
- Custom home in Bigfork Montana $975,000

1985 to 1991 **AMERICAN GENERAL DEVELOPMENT COMPANY**, Palm Desert, California

PRESIDENT of family-owned residential/industrial developer and general contractor; responsible for all executive, management, and administrative duties, including handling on-site and off-site construction at various projects as needed; samples of projects include:

- Laguna de La Paz – 89 single-family homes - attached and detached $15,575,000
- Country Club Business Park – two industrial office/warehouse buildings $ 1,900,000
- Mesa Mirage – 17 single-family custom homes $ 3,400,000
- Remodel Master, a separate division of American General Development Company – residential room additions / remodels $ 1,700,000

- Bermuda Dunes – 15 semi-custom and custom $ 2,250,000

1984 to 1985 **SUN RANCH DEVELOPERS**, Cathedral City, California

PARTNER in residential development company responsible for all on-site and off-site construction; the largest project completed was:

- Sun Ranch – 79 single-family detached homes $ 2,736,000

1980 to 1983 **PARADE OF HOMES, INC.**, Olathe, Kansas

PRESIDENT of family-owned custom home building and developing company; sample projects included:

- Indian Creek Ridge subdivision coordinator
  - 228 lot sales $ 2,736,000
  - Construction of various scattered lot homes $ 525,000

BANKING

- 2001 to 2006 One of nine Founders of Northern Nevada Community Bank Reno Nevada. Bank was successfully sold to larger banking concern.

INDUSTRY ASSOCIATIONS AND LICENSES:

- Licensed General Contractor – Nevada - #53574 (1,000,000 Bid limit)
- Licensed General Contractor – California - #475037 (Expired)
- Licensed General Contractor-South Carolina #49923
- Licensed General Contractor Arizona (pending)
- Licensed Insurance Adjustor
- Member ICC (International Code Council)
- Compliance inspector for Ceramic Tile Institute of America Inc.
- Ceramic Tile Consultant designation by CTIOA

- Certified Window Installer AAMA/Installation Masters tm
- Accredited Instructor AAMA/Installation Masters tm
- Member AAMA
- E.I.F.S. Inspector & Moisture Analyst Certified by EDI
- Building Envelope Analyst Level II Certified by EDI
- Steep Slope Roof Inspector Certified by EDI

EDUCATION:

- High School – Jefferson City, Missouri – 1972

Ver:01-01-2020

Phelps Consulting Group

Rate Schedule

July 1st 2019

		Rate/Amount
Expert hourly rate	$	215.00
Technician hourly rate	$	195.00
Travel expenses outside Las Vegas area:		As incurred
Travel time billing charges		Billing rate as required
Secretarial/Administration charges		None
Deposition Preparation		Standard Rate
Deposition and Trial Testimony	$	375.00

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type See Specific Instructions on page 2.

Name (as shown on your income tax return)
Phelps Consulting Group, LLC

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☑ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ► **C**
☐ Other (see instructions) ►

☐ Exempt payee

Address (number, street, and apt. or suite no.)
P.O. Box 751750

Requester's name and address (optional)

City, state, and ZIP code
Las Vegas, NV 89136

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number
26 4249594

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ► *Duke Phelps* Date ► 4-2-10

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

Clark County Nevada Deposition, Trial and Arbitration Testimony
Of
R.P. Phelps
8/01/2017

Admirals Point II HOA v. Windcrest Development Inc.
Alcantara v. Rhodes Homes Inc.
Campbell v. Lewis Homes of Nevada Inc.
Distinctive General Contracting v. Tucson Plaza, LLC
Eakin v. Spann
Federico v. Earth Development Inc.
Glen Woods v. WCB Investments Inc.
Hutch v. Stainer
Las Posada HOA v. Signature Homes Inc
Marbury-Hammonds v. Nascimento
Miramonte v. Beazer Homes of Arizona Inc.
Pacific Legends East HOA v. Pacific Homes Inc
Press v. Abrahms
Palm Gardens HOA v. Rhodes Homes Inc.
Pelican Bay HOA v. Robert V. Jones Inc.
Sante Fe v. Eising
Scottsdale Valley HOA v. Templeton Development
TJM Inc. v. McMillan
Village at Crag Ranch v. Beazer Homes Inc.
The Falls v. Red Vista
Love v. Ramos
Hayward V. Del Webb
Quail Ridge v. Comstock Development
Canyon Villas v Anse
Canyon Villas v Cedar Roofing
Goyak v. Unlimited Home Repair Inc.
Amber Ridge HOA v ANSE
Amber Ridge HOA v Dupont Tile
Gerstein v T&T Tile
Matt v WCB Construction
T&T Tile v Weiner
Blackstone v Schneider
Cosmopolitan v. 40 40 Club LLC
South Park v Rystin
Westpoint v. Mathew
Hollingsworth v Mandalay Bay
Chateau Versailles v Summit Drywall
Chateau Nouveau v Summit Drywall
Jasmine Ranch v Union Pacific
Barbarino v DR Horton (First Premier and Summit Drywall)

Deposition and Trial Testimony of R.P. Duke Phelps Continued

Richmond American v MS Concrete
Latigo v R.J. Framing
Healy v DR Horton (Summit Drywall)
Sun Colony v Bebout (KB Framers)
Desert Pines v (Picerne Danko Glass Owens Plastering)
Allen v Sun Colony (ANSE)
Sure Steel v Desert Mesa Construction
Loftsgaarden v ANSE
Aventine v Vanguard (Vanguard/Viega)
Town Center v Stewart and Sundell Concrete
Southern Nevada Paving v Turnberry LLC
Bransky v K&K Door and Trim
McDowell v Roadrunner Drywall
McDowell v First Premiere Drywall and Paint
Keller v ANSE
Keller v Adams Brothers Flooring
Hermosa Vistas HOA v Alford Grading
Big D v Take it For Granite Too
Noyes v KB Framers LLC
Conlin v Aria
RBM v Rosenauer
Amareld v Tropicanna
Houck v Ecker Enterprises
Houck v ANSE
Houck v Hutchins Drywall
Sandstone v Deck Systems of Nevada
Sandstone v Mesquite Tile
Calloway v K&K Door and Trim
Allen v K&K Door and Trim
Patton v Dayton Drywall
Drennen v Ecker Enterprises
Wigwam Ranch East v Sunstate Landscaping
Gonzales v Hutchison Drywall
Bedrosian v Vegas General Construction Co.
Bedrosian v K&K Framers LLC
Hernandez v Ecker Enterprises
Wigwam Ranch v Sunstate
Hernandez v Ecker Enterprises
Alder/Brown v KB Framers Inc
Lopez v Kennington Plastering
College Villas v CMD Door and Trim
Atkins v Adams Brothers Flooring
Hackett v Gerald Stuart Concrete

Exhibit “2”

THE SCHNITZER LAW FIRM

Phelps Consulting Group LLC
P.O. Box 751750
Las Vegas, NV 89136
phelpsgroup@cox.net

08/19/2021

Jordan P. Schnitzer, Esquire
The Schnitzer Law Firm
9205 Russell Road
Suite 120
Las Vegas, NV

RE: Laudig v Lands Inc DBA Springstone Lakes Montessori School – Rebuttal Report

Dear Mr. Schnitzer:

Please accept this as my rebuttal expert report regarding and injury Jasmine Laudig suffered while attending the Springstone Lakes Montessori School located at 2750 Lake Sahara Drive in Las Vegas NV. The injury occurred on February 12th 2017. It is believed Jasmine fell in the vicinity of a chain link fence with shade screening attached which is adjacent to a concrete walking area while playing on the outdoors area. Jasmine was treated at Summerlin Hospital.

I have reviewed the July 19th, 2021 Report of Findings prepared by Rimkus Consulting Group, Inc. specifically prepared by Daniel S. Grant.

Mr. Grant referenced the photo taken at the alleged location of the incident on the date of the incident.

A photograph taken of the Incident location (**Figure 2**) was included in the Incident report and was taken at the time of the Incident. The Incident report was signed by Mr. Laudig.

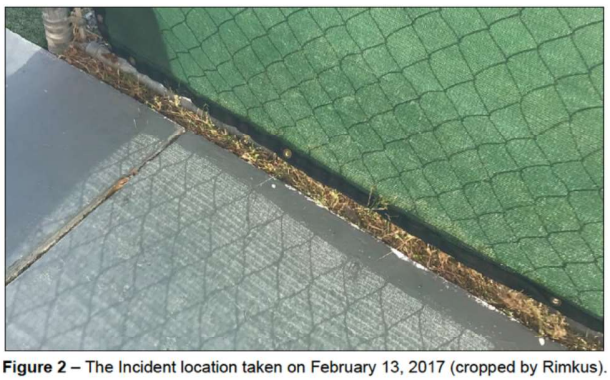


Figure 2 – The Incident location taken on February 13, 2017 (cropped by Rimkus).

PHELPS REBUTTAL 000001

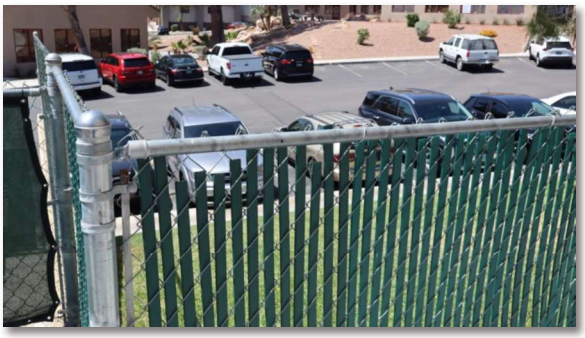
He then states later in his report and in his conclusions the following:

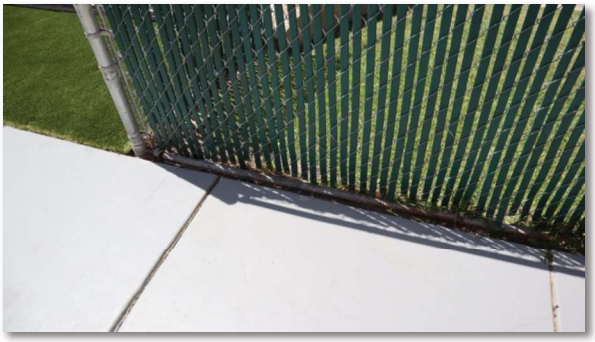
- The chain-link fabric and wire ties at the fence near the Incident location were trimmed and bent in a manner to prevent injury at the time of the Incident (**Figure 2**).

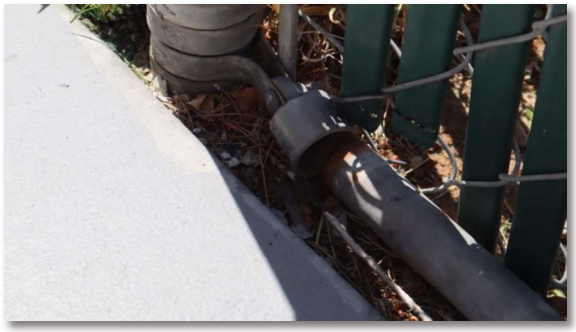
3. The chain link fabric and wire ties at the fence near the Incident location were trimmed and bent in a manner to prevent injury at the time of the Incident.

It would be difficult to determine, based on the photograph refenced, what the condition of the wire ties are as they appear to be covered by the chain link fabric that is loose at the bottom of the fencing. The loose fabric at the bottom of the could be concealing the wire tie condition.

It appears that Mr. Grant omits or ignores the current condition of the wire ties at the property as observed at our site visit. This is the same site visit that was performed by Mr. Grant. It also appears that the condition of the fencing at the incident location has been altered. The photo taken at the time of the original incident show that there was a mesh fabric over the fencing. The current condition of the chain link fence shows that plastic slats have been installed and the mesh has been removed. In addition, the current condition of chain link fence at the alleged location of the incident is in need of repair and maintenance. Below are the photographs taken by PCG on May 10th 2021 at the alleged location of the incident referenced above which show that a wire tie was not bent or trimmed in a manner to prevent injury and in need of repair.





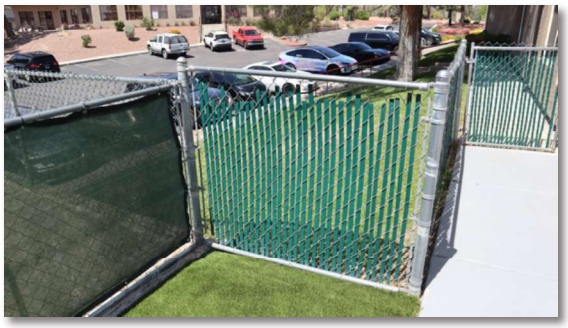
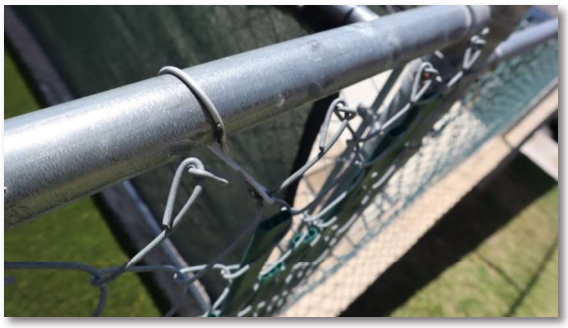
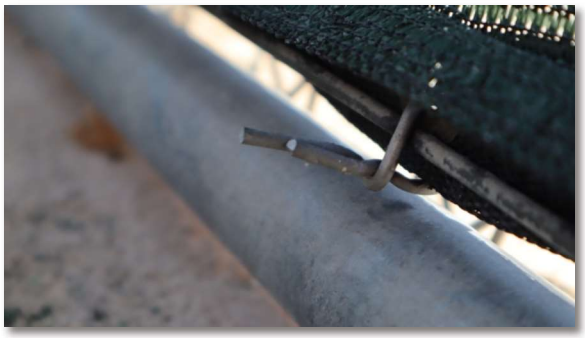
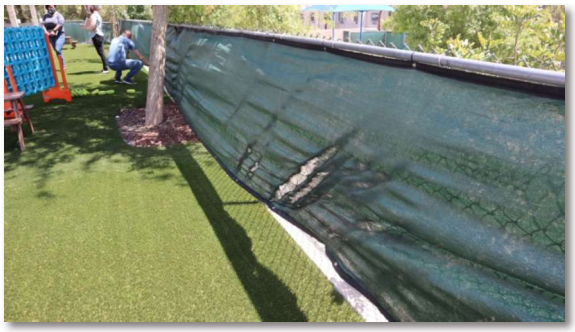


Later on page 10 of Mr. Grants report he states the following statements

8.2.1 Consumer Safety – For fence applications where pedestrians may be in contact with the fence, such as play areas, sports field, play courts, and swimming pools, wire ties shall be trimmed and bent in such a manner as to avoid injury to pedestrians in contact with the fence.

9.4 Place the fabric by securing one end, applying sufficient tension to remove all slack before making attachment elsewhere. Tighten the fabric to provide a smooth uniform appearance free from sag.

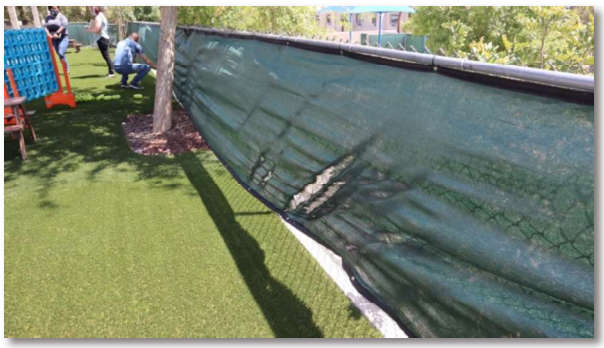
It appears that Mr. Grant omits or ignores the current condition of the fencing as observed during the site visit of the Springstone Lakes Montessori School. Multiple locations were observed to have exposed wire ties and sagging or loose fabric which create a hazardous condition at the property. Below are the photographs taken by PCG on May 10th 2021.

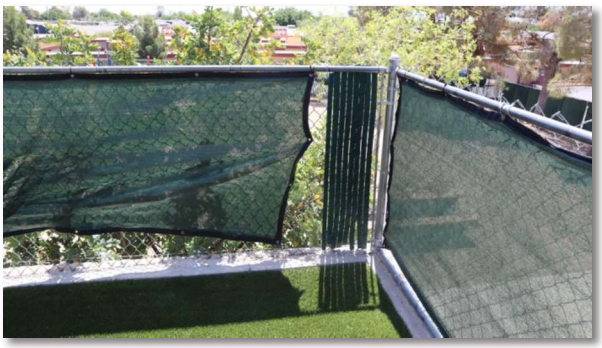





The Following was observed at the May 10, 2021 site inspection performed by Mr. Grant:

fence at the incident location was approximately 9 feet long and did not have a line post (**Photograph 3**). Terminal posts were installed at the fence section corners adjacent to the Incident location. The chain-link fabric had was smooth, uniform, and tight, and was attached to the rail at less than 24-inch intervals.

It appears that Mr. Grant omits or ignores the current condition of the chain link fabric at the property as observed at our site visit. The chain link fabric was loose and blowing in the wind. This is not smooth, uniform, or tight as stated by Mr. Grant. Below are the photographs taken by PCG on May 10th 2021.

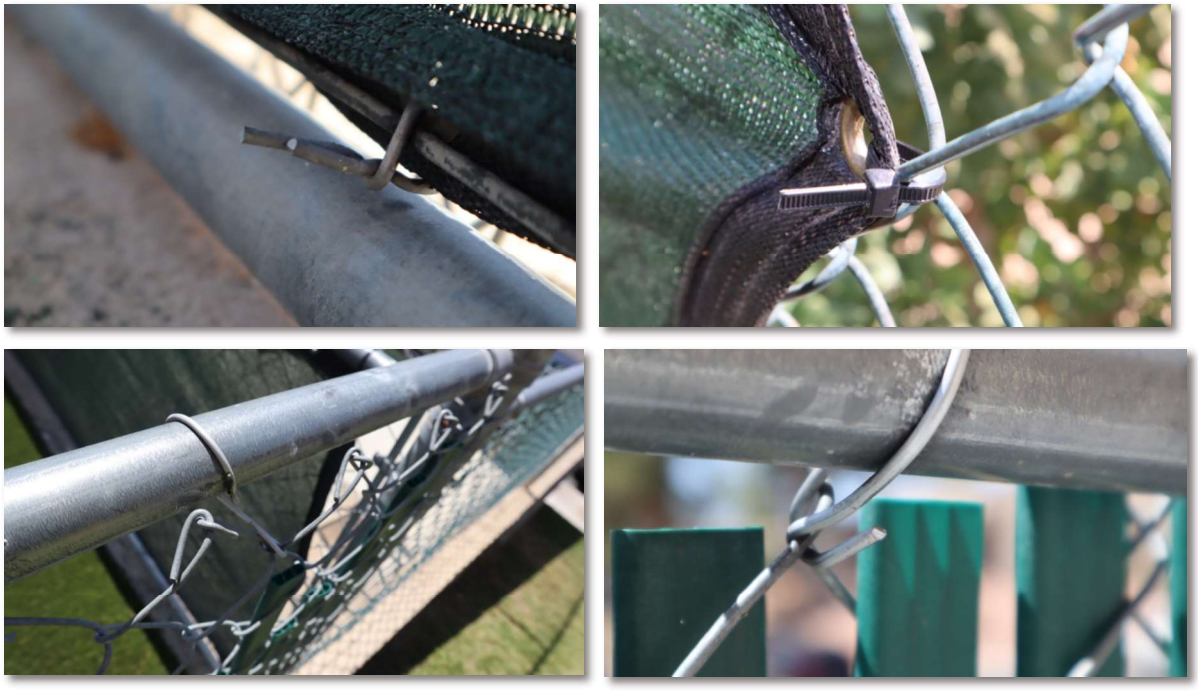




The Following was observed at the May 10, 2021 preformed by Mr. Grant:

posts (**Photograph 4**). The wire ties were trimmed and bent downward. The chain-link fabric was wrapped around vertical rails. The vertical rails were attached to the terminal posts. The chain-link fabric terminated at the top and bottom fence rails (**Photograph 5**). The secured wire between the chain-link fabric and the rails

It appears that Mr. Grant omits or ignores the current condition of the wire ties and fabric ties at the property as observed at our site visit. There are some wire ties that are not trimmed or bent downward. The plastic zip ties used to secure the mesh fabric to the chain link fencing is also not trimmed. Both of these conditions continue to create a hazardous condition. Below are the photographs taken by PCG on May 10th 2021.



Conclusions and Opinions:

Based on the current condition of the chain link fence, mesh fabric, and attachment methods, it appears that Mr. Grant has omitted or ignored multiple hazardous conditions that are currently present in the fencing system today. The fence construction falls below the standard of care. Mr. Grant stated in his conclusion that the fence at the incident location was properly installed and met the standard of care. It appears that Mr. Grant has omitted or ignored wire ties and connections that are not installed per his stated standards. The condition of the chain link fence as of May 10th 2021 continues to create a hazardous condition. The chain link fencing at the alleged location has been altered since the incident occurred and has not been properly maintained. A reasonable person would have expected, after the incident with Jasmine Laudig, that the Springstone Lakes Montessori School would have engaged a licensed fence contractor to mitigate any hazardous conditions present. It is obvious that this did not occur.

Discovery is ongoing in this matter. No other expert reports have been produced and no site inspections have been scheduled. I reserved my right to supplement this report after the aforementioned have been undertaken.

Sincerely yours,

R.P. Phelps, signed electronically

EXHIBIT M

JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Telephone: (702) 960-4050
Facsimile: (702) 960-4092
Jordan@TheSchnitzerLawFirm.com
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JASMIN LAUDIG, a minor, by and through her father, JOHN LAUDIG, an individual;

Plaintiff,

vs.

LANDS, INC. dba SPRINGSTONE LAKES MONTESSORI SCHOOL, a domestic corporation; SPRINGLANDS LLC, a domestic limited liability corporation; DOES 1 through 10, and ROE CORPORATIONS 1 through 20, inclusive,

Defendants.

Case No.: A-20-808230-C

Dept. No.: 21

PLAINTIFF'S MOTION IN LIMINE NO. 2: TO EXCLUDE EVIDENCE OF ANY GRANTED OR WAIVED PAST MEDICAL SPECIALS AND MEDICAL BILLS

HEARING REQUESTED

Plaintiff, JASMIN LAUDIG, by and through her attorney of record Jordan P. Schnitzer, Esq. of The Schnitzer Law Firm; hereby submit her Motion in Limine No. 2: to Exclude Evidence of Any Granted or Waived Past Medical Specials and Medical Bills.

This Motion is made based on Points and Authorities submitted herewith, together with the papers and pleadings on file herein, exhibits attached hereto and oral arguments at the time of hearing.

DATED this 4th day of March 2022.

BY: _____
JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Attorney for Plaintiff

DECLARATION OF JORDAN P. SCHNITZER, ESQ. IN SUPPORT OF PLAINTIFF'S MOTION IN LIMINE

I, Jordan P. Schnitzer, Esq., declares under the penalty of perjury:

1. I am an attorney at the law firm of THE SCHNITZER LAW FIRM. and am duly licensed to practice law in the State of Nevada. I am the attorney of record representing the PLAINTIFF, in the subject lawsuit currently pending in the Eighth Judicial District Court.
2. I am competent to testify to the matters set forth in this Declaration and will do so if called upon.
3. That I make this Declaration on behalf of Plaintiff and in support of the instant Motion in Limine.
4. On March 2, 2022, pursuant to Eighth Judicial District Court Rule 2.47, I participated in an EDCR 2.47 conference with Defendant's Counsel, Karie N. Wilson, Esq. and Samantha Meron, Esq., regarding Motions in Limine, including the subject matter of this Motion. During the conference, the parties resolved some potential Motions in Limine. The Parties engaged in a good-faith effort to resolve the dispute at issue in this Motion but were unable to reach a resolution.
5. Pursuant to the requirements set forth in EDCR 2.47(b), the Parties discussed the issues related to the substance of the instant Motion.

DATED this 4th day of March 2022.

Jordan P. Schnitzer, Esq.

THE SCHNITZER LAW FIRM

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND FACTUAL BACKGROUND

This case involves what should be a simple trip and fall.

Plaintiff anticipates waiving, as items of special damages, some of the amount of her past medical expenses incurred for the care and treatment of the injuries related to the subject incident. Similarly, Plaintiff also has a pending motion seeking summary judgment on some of her medical specials. While there will be evidence of the medical care Plaintiff received after the fall, she likely will not pursue all damages related to medical specials and/or some of them may already be decided by the Court. Plaintiff's pain and suffering damages will be proven by her own testimony, the testimony of lay witnesses, and expert witness testimony.

For the medical specials that Plaintiff is not claiming, or those the Court grants, those bills, the amounts of the bills, and the fact that some of those medical bills may have been paid by collateral sources, are irrelevant to the facts at issue at trial. There is no logical connection between the amounts billed or paid for medical services and the pain and suffering that resulted from Plaintiff's injuries. The amounts billed—including documents such as billing statements or invoices—have no "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." NRS 48.015. Therefore, those amounts, and those billing documents are irrelevant and inadmissible.

Therefore, Plaintiff requests that all bills and amounts that Plaintiff waives in the pretrial memorandum related to her past treatment, and those that the Court grants as part of Plaintiff's pending motion, be excluded and that Defendants, defense counsel, and all witnesses, including experts, be precluded from mentioning, referencing, or commenting on the amounts of the waived or granted past medical special damages. They should also be precluded from arguing any waived past medical special damages are unreasonable. Further, Plaintiffs request that Defendants, defense counsel, and all witnesses be precluded from using Plaintiff's waived past medical specials as a measure of his pain and suffering damages.

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II. STANDARD FOR MOTION IN LIMINE

The primary purpose of a Motion in Limine is to prevent prejudice at trial. *Hess v. Inland Asphalt Co.*, 1990 U. S. Dist Lexis 6465, 1990-1 Trade Cases (CCH) P68,954 (E.D. Wash., Feb. 20, 1990). Such motions are designed to simplify the trial and avoid prejudice that often occurs when a party is forced to object in front of the jury to the introduction of evidence. *Fenimore v. Drake Construction Co.*, 87 Wn.2d 85, 549 P.2d 483 (1976).

Motions in Limine in Nevada are governed by NRS 47.080 and EDCR 2.47. NRS. 47.080 provides:

> "In jury cases, hearings on preliminary questions of admissibility, offers of proof in narrative or question and answer form, and statements of the judges showing the character of the evidence shall to the extent practicable unless further restricted by NRS 47.0090, be conducted out of the hearing of the jury, to prevent the suggestion of inadmissible evidence."

NRS 48.205(2) provides that "[e]vidence that is not relevant is not admissible." Relevant evidence is:

> "[e]vidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without be the evidence."

NRS 48.015.

NRS 48.035 restricts the admission of relevant evidence in certain circumstances:

> 1. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.
> 2. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Therefore, evidence that is unfairly prejudicial must be excluded even when it is relevant. *Givens v. State*, 99 Nev. 50, 657 P.2d 97 (1983).

III. LEGAL ARGUMENT

A. ANY OF PLAINTIFF'S PAST MEDICAL BILLS THAT ARE WAIVED ARE IRRELEVANT AND INADMISSIBLE UNDER NRS 48.015

The Nevada Supreme Court has "long held that 'in actions for damages in which the law provides no legal rule of measurement it is the special province of the jury to determine the amount that ought to be allowed….'" *Stackiewicz v. Nissan Motor Corp.*, 100 Nev. 443, 454-55, 686 P.2d 925, 932 (1984). It has further noted that "the elements of pain and suffering are wholly subjective. It can hardly be denied that, because of their very nature, a determination of their monetary compensation falls peculiarly within the province of the jury…." *Id.*; *see also Wyeth v. Rowatt*, 126 Nev. 446, 471, 244 P.3d 765, 782 (2010) ("Damages for pain and suffering are peculiarly within the jury's province").

While the Nevada Supreme Court has not specifically ruled on the issue of the relevancy of medical bills to pain and suffering[1], its insistence that damages for pain and suffering are strictly for the jury to consider comports with the law of other jurisdictions. *See, e.g.*, *Martin v. Soblotney*, 502 Pa. 418, 466 A.2d 1022 (1983) (holding the amount of money expended on medical treatment and related expenses has no relevance or correlation to the extent of pain and suffering); *LaBar v. McDonald*, 2012 U.S. Dist. LEXIS 9641 (E.D. Pa. Jan. 27, 2012) ("medical expenses incurred are not relevant to establish the severity of the injuries sustained"); *Payne v. Wyeth Pharmaceuticals, Inc.*, 2008 U.S. Dist. LEXIS 91849 (E.D. Va. Nov. 12, 2008) (holding plaintiff's medical bills were irrelevant as to plaintiff's pain and suffering); *Roark v. Wal-Mart La., LLC*, 2012, U.S. Dist. LEXIS 69830 (D. La. May 18, 2012) ("The primary factors in assessing quantum for [physical pain and suffering] are the severity and duration of the pain and suffering"); *Harper v. Bolton*, 239 S.C. 541, 124 S.E.2d 54 (1962) ("Damages for pain and suffering are unliquidated and indeterminate in character and the assessment of unliquidated damages must rest in the sound discretion of the jury, controlled by the discretion of the trial judge. Pain and suffering have no market price.")

[1] However, Nevada's wrongful death statute appears to recognize that damages for pain or suffering have no correlation to medical bills. NRS 41.085 allows an heir to bring a wrongful death suit and the statute expressly allows for the heir to sue for "pain, suffering, or disfigurement of the decedent." NRS 41.08(4). However, "special damages, such as medical expenses, which the decedent incurred or sustained before the decedent's death" are reserved solely for the estate of the decedent. NRS 41.085(5)(a). The heir cannot sue for these damages on behalf of the heir. In other words, the heir can bring suit for pain, suffering, or disfigurement of the decedent without having to bring suit for medical expenses incurred by the decedent.

In *Payne*, the U.S. District Court for the Eastern District of Virginia provided a thorough, and instructive analysis of this issue. Payne, the plaintiff in that case, had filed for Chapter 7 bankruptcy nine months after being involved in an automobile collision with a vehicle owned by Wyeth Pharmaceuticals. *Id.* Payne listed his pre-bankruptcy petition medical bills in his bankruptcy schedules, and Wyeth alleged that Payne omitted some of his pre-bankruptcy petition medical bills. *Id.* The bankruptcy court discharged Payne's debt on April 7, 2008, approximately a month after Payne filed the personal injury suit against Wyeth. *Id.* Payne intended to move his medical bills into evidence, and Wyeth moved *in limine* to have them excluded on the grounds that they were not relevant to prove pain and suffering. In its opinion, the *Payne* court held that the medical bills are not relevant to pain and suffering. In reaching this conclusion, the Court is persuaded by the analysis of *Carlson v. Bubash*, 639 A.2d 458, 462 (Pa. 1994). As that court reasoned:

> It is immediately apparent that there is no logical or experiential correlation between the monetary value of medical services required to treat a given injury and the quantum of pain and suffering endured as a result of that injury. First, the mere dollar amount assigned to medical services masks the difference in severity between various types of injuries. A very painful injury may be untreatable, or, on the other hand, may require simpler and less costly treatment than a less painful one. The same disparity in treatment may exist between different but equally painful injuries. Second, given identical injuries, the method or extent of treatment sought by the patient or prescribed by the physician may vary from patient to patient and from physician to physician. Third, even where injury and treatment are identical, the reasonable value of that treatment may vary considerably depending upon the medical facility and community in which care is provided and the rates of physicians and other health care personnel involved. Finally, even given identical injuries, treatment and cost, the fact remains that pain is subjective and varies from individual to individual.

Payne, 2008 U.S. Dist. LEXIS 91849 (footnote omitted).

> The court in *Payne* continued:
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> Furthermore, "a single figure representing the total amount of an individual's medical bills does not demonstrate the number of times the person received treatment or the nature of the treatment." *Barkley*, 595 S.E.2d at 274-75 (Kinser, J., concurring in part and dissenting in part) ("In some instances, one noninvasive diagnostic test can cost as much as many visits to a physical therapist or chiropractor."). Therefore, the medical bills have no tendency to establish Payne's claim that he experienced pain and suffering as a result of the accident. The Court accordingly holds that the medical bills are inadmissible pursuant to Fed. R. Evid.

401 and 402.

Id. In the instant case, as in *Payne*, Plaintiff's medical bills have no tendency to establish his claim that he experienced pain and suffering as a result of the crash. Plaintiff anticipates waiving some of the medical specials claimed in her disclosures and does not intend to seek recovery for any such waived expenses incurred for his past medical treatment and does not intend to introduce his medical bills for such waived specials into evidence. Similarly, some may be granted by summary judgment. Therefore, Defendants have no reason to seek to introduce Plaintiff's waived past medical bills or the awarded medical bills or their amounts. This evidence in no way supports any of Defendant's affirmative defenses and Defendant cannot present evidence that Plaintiff's past medical bills are unreasonable. Therefore, any of Plaintiff's waived past medical bills should be excluded from introduction at trial.

B. <u>EVEN IF PLAINTIFF'S MEDICAL BILLS THAT ARE WAIVED OR GRANTED ARE SOMEHOW RELEVANT, THE INTRODUCTION OF ANY WAIVED MEDICAL BILLS SHOULD BE PRECLUDED UNDER NRS 48.035</u>

Even if this Court concludes Plaintiff's waived medical bills or granted medical bills are somehow relevant to the issues at trial, this Court should still preclude them pursuant to NRS 48.035 as any probative value they have is "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." The *Payne* court addressed this issue as well:

> Even if the Court were to conclude the medical bills are relevant and admissible, the medical bills are nevertheless inadmissible pursuant to Fed. R. Evid. 403. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. **Here, there is a substantial possibility of jury confusion if the medical bills were introduced to prove pain and suffering. The jury may be tempted to treat the medical bills as recoverable special damages rather than to only assess the medical bills as evidence that Payne experienced pain and suffering. The jury may also be confused by the medical bills' characterization of the treatment Payne allegedly underwent because the treatment is described in the bills in summary, imprecise terms. These ill-defined terms, presented right beside their cost in dollar figures, with little explanation to guide the jury, would unfairly prejudice Wyeth Pharmaceuticals.** To cure this prejudice, and thus to

> clarify the meaning of the terms in the medical bills, Payne would likely have to call a witness from each medical office from which a bill was issued to testify regarding, among other things, the terms in the bill and whether a doctor or administrator labeled the procedures and treatments. Such a process could unduly delay the trial. **Furthermore, introduction of the medical bills into evidence would be overly cumulative: whatever tendency they would have to prove pain and suffering may already be amply demonstrated by other, more probative evidence, such as the testimony of Payne and his doctors.** On the other side of the scale, the medical bills are of limited probative value for many of the reasons discussed in the relevance analysis, *supra.* For all these reasons individually, and for all of them together, the Court holds that Payne's medical bills fail Rule 403 analysis and are therefore inadmissible to prove pain and suffering.

Payne, 2008 U.S. Dist. LEXIS 91849 (emphasis added) (footnote omitted). Because Plaintiff's waived medical bills or granted bills would not be claimed as damages at trial, and there would be no jury instruction about them, their introduction into evidence will confuse the jury about the true issues they will have to decide.

As in *Payne*, introducing waived medical expenses or granted medical expenses would unfairly and unduly prejudice Plaintiffs because of the risk that the jurors would substitute the waived or granted bill for the amounts for pain and suffering. There is also a substantial risk that the jury would improperly attempt to use the waived or granted medical expenses and the amount of waived or granted medical care Plaintiff received after the incident as a basis to establish his pain or suffering damages. As recognized by the court in *Payne*, "there is no logical or experiential correlation between the monetary value of medical services required to treat a given injury and the quantum of pain and suffering endured as a result of that injury." *Id.* at ¶ 6.

In addition to being precluded from introducing Plaintiff's waived or granted medical bills, or the amounts of the waived or granted bills, Defendant should be precluded from making any statements, suggestions or arguments that the jury should base their damage award for Plaintiff's pain or suffering on the value or cost of the medical care he received following the incident. Allowing the jury to hear evidence about Plaintiff's waived or granted medical bills would only confuse and mislead the jury. Therefore, even if this Court determines Plaintiff's waived or granted bills are somehow relevant, any reference to those medical bills and amounts should nevertheless be precluded under NRS 48.035.

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IV. CONCLUSION

Based upon the foregoing, this Court should enter an order that Exclude Evidence of Any Granted or Waived Past Medical Specials and Medical Bills.

DATED this 4th day of March 2022

BY: _____

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Attorney for Plaintiff

THE SCHNITZER LAW FIRM

CERTIFICATE OF SERVICE

In accordance with Rule 9 of the N.E.F.C.R., I, the undersigned hereby certify that on the 4th day of March 2022, I served a true and correct copy of the foregoing **PLAINTIFF'S MOTION IN LIMINE NO. 2: TO EXCLUDE EVIDENCE OF ANY GRANTED OR WAIVED PAST MEDICAL SPECIALS AND MEDICAL BILLS** to the above-entitled Court for electronic service upon the Court's Service List to the following counsel:

J. Bruce Alverson, Esq.
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