

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTATE OF REBECCA POWELL,
THROUGH BRIAN POWELL, AS
SPECIAL ADMINISTRATOR; DARCI
CREECY, INDIVIDUALLY AND AS
HEIR; TARYN CREECY,
INDIVIDUALLY AND AS HEIR;
ISAIAH KHOSROF, INDIVIDUALLY
AND AS HEIR; AND LLOYD
CREECY, INDIVIDUALLY,

Appellants,

vs.

VALLEY HEALTH SYSTEM, LLC,
D/B/A CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER, A
FOREIGN LIMITED LIABILITY
COMPANY,

Respondent.

Supreme Court No. 84861
District Court Case No. A-19-788787-C

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Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT'S MOTION TO REQUIRE POSTING OF OR
INCREASING AMOUNT OF SUPERSEDEAS BOND BY APPELLANTS**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Respondent (“VHS”) obtained a judgment as against Appellants (“Plaintiffs”) served with notice of entry on June 7, 2022 (**Appendix Vol. I Exh “A”, pp. 1-49¹**). Plaintiffs filed their notice of appeal and case appeal statement on June 7, 2022 (**Vol. I, Exhibit “B”, pp. 50-57**). Neither the docket sheet from the District Court (**Vol. I, Exhibit “C”, pp. 58-97**), nor the docket sheet from this Court (**Vol. I, Exhibit “D”, pp. 98-99**) reflects that any supersedeas bond was ever posted in this case by Plaintiffs as required by NRAP 7.

On September 27, 2022, one day prior to a scheduled judgment debtors’ examination, and two weeks after the District Court ordered Plaintiffs to supply documentary evidence of their respective assets (**Vol. I, Exhibit “E”, pp. 100-107**), Plaintiffs filed a motion to stay execution of judgment in District Court (**Vol. I, Exhibit “F”, pp. 108-243**). In direct contravention of the District Court’s order, Plaintiffs failed to appear for the judgment debtors’ examination and failed to provide the court ordered documentary evidence two weeks earlier. A transcript of that appearance is annexed hereto (**Vol. I, Exhibit “G”, pp. 244-261**).

At the date of the originally scheduled hearing for the judgment debtors’

¹ Page references to Vol. I, Vol. I, Exhibits are to the Bates numbers of Appendix Volumes 1 & 2 filed conterminously herewith.

examination on September 28, 2022, the District Court set a hearing on Plaintiffs' stay motion for November 9, 2022, which the District Court continued on its own until November 16, 2022. A copy of the transcript from that hearing is annexed hereto (**Vol. I, Exhibit "H", pp. 262-282**). VHS opposed Plaintiffs' motion and countermoved for contempt and costs (**Vol. II, Exhibit "I", pp. 283-524**), to which Plaintiffs interposed an improper reply and opposition, raising for the first time issues not raised in their original motion and not addressed to the countermotion before the District Court (**Vol. II, Exhibit "J", pp. 525-547**). Instead of addressing the improprieties of Plaintiffs' conduct, the contempt issues, the improperly interposed legal argument on reply, and the Plaintiffs' misstatement and misapplication of multiple legal arguments, the District Court summarily denied VHS's countermotion and granted Plaintiffs' motion to stay enforcement proceedings until this Court determined the outcome of Plaintiffs' appeal.

At the same hearing, VHS requested that Plaintiffs post an appeal bond equivalent to the amount of the judgment (**Vol. I, Exhibit "H", pp. 278:24 – 280:7**), based upon Plaintiffs' counsel's representations in court (**Vol. I, Exhibit "G", p. 255:14-19**), in his motion and reply that Plaintiffs lacked even the available funds to appear in Nevada (**Vol. I, Exhibit "F", pp. 119-120; Vol. II, Exhibit "J", pp. 540:22-24; 546-547**), thus demonstrating a clear inability to pay the judgment should Plaintiffs' appeal prove unsuccessful. Plaintiffs maintained throughout the

aforenoted motion practice that no appeal bond was even necessary (**Vol. I, Exhibit “F”, pp. 119-120**). At that time, the District Court indicated that an appeal bond in the amount of \$500 was posted July 7, 2022 (**Vol. I Vol. I, Exhibit “H”, p. 279:4-6**). As evidenced from the docket sheets from both the District Court and this Court (**Vol. I, Exhibits “C” and “D”, pp. 58-99**), reflects that any appeal bond was ever posted. VHS represented to the District Court that it was never served with nor notified that any appeal bond had been posted to which the District Court noted that it would not be reflected in any of the filings to which VHS would have been notified (**Vol. I, Exhibit “H”, p. 279:7-15**). At that point, VHS requested that an order be issued to increase the bond amount to the amount of the judgment, plus accrued interest (**Vol. I, Exhibit “H”, pp. 279:16 – 280:1**). VHS’s request was denied as the District Court questioned whether it even had jurisdiction to make that determination given the appellate posture of the case (**Vol. I, Exhibit “H”, pp. 278:10-19; 280:15-17**). Moreover, Plaintiffs’ counsel even had the temerity to assert that VHS’s request to increase the bond amount was improper since VHS came to the hearing unprepared on the issue (**Vol. I, Exhibit “H”, p. 280:2-11**), the fact of which was completely absurd since it was readily apparent that VHS was never notified of the bond’s posting nor served with it, the District Court acknowledged that such a filing was not reflected in any public record of which VHS would have been made aware, and Plaintiffs continually asserted that they were

exempt from posting a bond.

II. LEGAL ARGUMENT

NRAP 7 states in pertinent part:

(a) When Bond Required. In a civil case, unless an appellant is exempted by law, or has filed a supersedeas bond or other undertaking that includes security for the payment of costs on appeal, the appellant shall file a bond for costs on appeal or equivalent security in the district court with the notice of appeal. But a bond shall not be required of an appellant who is not subject to costs.

(b) Amount of Bond. The bond or equivalent security shall be in the sum or value of \$500 unless the district court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the Supreme Court or Court of Appeals may direct if the judgment is modified. If a bond or equivalent security in the sum or value of \$500 is given, no approval thereof is necessary.

(c) Objections. After a bond for costs on appeal is filed, a respondent may raise for determination by the district court clerk objections to the form of the bond or to the sufficiency of the surety.

NRAP 8 ordinarily requires that motions pertaining to stay and bond postings are to be made first in the District Court, unless deemed impracticable. In this case, as demonstrated above, VHS was never informed about Plaintiffs' supersedeas bond posting until the November 16, 2022 hearing along with Plaintiffs' representations that no such bond was ever even required. VHS was never provided an opportunity

to object to the amount of the bond given the lack of notice of its posting. Upon being informed by the District Court of this “shadow filing” and subsequent VHS request to increase it to the amount of the judgment, the District Court denied that request, essentially “punting” the matter to this Court. Despite the fact that a district court maintains jurisdiction during an appeal to adjust the security as appropriate. *See, e.g.*, NRS 108.2425(3) (for lien release bond), the District Court in this case chose to divest itself of jurisdiction over any further actions pending the appeal resolution.

Thus, VHS’s request was both denied and a further motion in District Court would be impracticable since the District Court essentially divested itself of jurisdiction on the remaining issues pending the appeal’s determination by this Court, making this motion jurisdictionally proper.

NRS § 20.037 states in pertinent part:

1. Notwithstanding any other provision of law or court rule, and except as otherwise provided in this section and NRS 20.035, if an appeal is taken of a judgment in a civil action in which an appellant is required to give a bond in order to secure a stay of execution of the judgment during the pendency of any or all such appeals, the total cumulative sum of all the bonds required from all the appellants involved in the civil action must not exceed the lesser of \$50,000,000 or the amount of the judgment.

NRS § 20.037 obligates a party who is otherwise obligated to post a bond for appeal (Plaintiffs so qualify), to post a bond for at least the amount of the judgment entered,

which is \$118,906.78 plus post judgment interest from June 2, 2022 (\$3,552.54), the date of the judgment up through and including the date of the hearing (November 16, 2022) for a total amount of \$122,459.32.

Additionally, NRCP 62 states in pertinent part:

(a) Automatic Stay; Exceptions for Injunctions and Receiverships.

(1) In General. Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after service of written notice of its entry, unless the court orders otherwise.

* * *

(d) Stay Pending an Appeal.

(1) By Supersedeas Bond. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.

(2) By Other Bond or Security. If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

“The purpose of security for a stay pending appeal is to protect the judgment creditor’s ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay.” *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005); *see also McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983) (“The purpose of a supersedeas bond is to protect

the prevailing party from loss resulting from a stay of execution of the judgment.”).

A bond is usually set in an amount that will permit full satisfaction of the judgment. *See Nelson, supra*, 121 Nev. at 834–35, 122 P.3d at 1253; see also NRS 108.2415 (in the context of a mechanic’s lien release pending appeal, setting minimum bond amount at 1.5 times the judgment). A bond may be set in a lesser amount, or other security may be permitted, where other appropriate and reliable alternatives exist for maintaining the status quo and protecting the judgment creditor during the appeal. *See Nelson, supra* 121 Nev. at 834–35, 122 P.3d at 1253; *see, e.g., Ries v. Olympian*, 103 Nev. 709, 711, 747 P.2d 910, 911 (1987) (suggesting that a discretionary stay could be appropriate when “the prevailing party retained title and possession of collateral far exceeding the amount of the judgment”).

Alternate security in lieu of a bond may be acceptable if it is adequate to “maintain the status quo and protect the judgment creditor pending appeal.” *See Nelson, supra* 121 Nev. at 835–36, 122 P.3d at 1254 (doing away with the “unusual circumstances” requirement and providing a framework of five factors to consider when determining security for a stay). However, this Court clarified its prior opinion of *McCulloch v. Jeakins*, 99 Nev. 122, 659 P.2d 302 (1983) which allowed for alternate security (other than a supersedeas bond), only in “unusual circumstances.” As to when a full supersedeas bond could be waived and/or alternate security substituted, this Court adopted a five factor analysis set forth by the *United States*

Seventh Circuit Court in Dillon v. City of Chicago, 866 F.2d 902 (7th Cir. 1988). In general, those factors were applied with respect to the unique circumstances of each case.

The five factors to be considered are: (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position. *See Nelson, supra* 121 Nev. at 835–36, 122 P.3d at 1254.

Taking each point in seriatim, the collection process is incredibly complicated. The Creecy Plaintiffs each reside in Ohio, and in two different counties. The Khosrof Plaintiff resides in Massachusetts. The Estate is a Nevada entity. A considerable effort will be needed to authenticate and obtain full faith and credit for the Nevada judgments in the respective jurisdictions, not to mention collection.

Second, the amount of time to obtain judgment after appeal is unknown at this time, however, as *Nelson* advised, when considering this factor, the time within which the case is scheduled to be on appeal needs to be factored. Plaintiffs filed

their notice of appeal on June 14, 2022. After obtaining two extensions to file their brief, it is now due January 9, 2023. At the earliest, the case will not be fully submitted until March 13, 2023, possibly longer. It is likely, given the average time for appeals to make their way through this Court, that an additional 6 months to 1 year from the submission of all briefing would a decision render, extending the execution of any judgment for nearly two years of obtaining same. Such a time period is extreme and endangers the viability of collection without some safeguard to guarantee payment.

Third, the degree of confidence that the Court has in the availability of funds to pay the judgment, is completely unknown. Plaintiffs' represented that they lacked funds necessary to travel to Nevada to testify at a judgment debtors' proceeding (**Vol. I, Exhibit "F", pp. 119-120; Vol. II, Exhibit "J", pp. 540:22-24; 546-547**), leading to the logical conclusion that they lack sufficient funds to pay the over \$120,000 judgment. The very purpose of the now flouted judgment debtors' examination was to ascertain Plaintiffs ability to pay. This factor weighs heavily in favor of VHS.

Fourth, the judgment debtors' ability to pay, is most definitely a question. As previously stated, if Plaintiffs are as destitute as Plaintiffs' counsel would have everyone believe, this factor weighs astonishingly high in VHS's favor.

Fifth, whether the judgment debtors' financial position is so precarious as to

place other creditors at risk, is also an open question. For all of the reasons cited above, this factor weighs heavily in VHS's favor.

Given the above statutory and case authority, the supersedeas bond should be posted by Plaintiffs for the amount of the judgment plus post-judgment interest to at least the date of the hearing on the Plaintiffs' motion to stay enforcement (November 16, 2022) in the amount of \$122,459.32.

III. CONCLUSION

Due to the absence of notice to VHS of an insufficient bond posting by Plaintiffs, the District Court's refusal to entertain any further proceedings pending the appeal of this matter, and the procedural posture of the appeal itself, the law obligates Plaintiffs to post a bond in the amount of the pending judgment now entered plus post judgment interest all totaling at least \$122,459.32 as security while the pending appeal is being briefed and decided.

DATED this 2nd day of December, 2022. LEWIS BRISBOIS BISGAARD &
SMITH LLP

By /s/ Adam Garth

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IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTATE OF REBECCA POWELL,
THROUGH BRIAN POWELL, AS
SPECIAL ADMINISTRATOR; DARCI
CREECY, INDIVIDUALLY AND AS
HEIR; TARYN CREECY,
INDIVIDUALLY AND AS HEIR;
ISAIAH KHOSROF, INDIVIDUALLY
AND AS HEIR; AND LLOYD
CREECY, INDIVIDUALLY,

Appellants,

vs.

VALLEY HEALTH SYSTEM, LLC,
D/B/A
CENTENNIAL HILLS HOSPITAL
MEDICAL
CENTER, A FOREIGN LIMITED
LIABILITY
COMPANY,

Respondent.

Supreme Court No. 84861
District Court Case No. A-19-788787-C

**APPENDIX TO RESPONDENT'S MOTION TO REQUIRE POSTING OF
OR INCREASING AMOUNT OF SUPERSEDEAS BOND BY
APPELLANTS VOLUME I**

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INDEX TO DEFENDANT'S APPENDIX

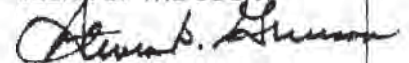
Exhibit	Document	Date	Page Nos.
A	Notice of Entry of Judgment and Defendant Valley Health System LLC's Judgment of Costs and Attorneys' Fees Per NRS 18.020, 18.005, 18.110, 17.117 and NRCPC 68(f) as Against Plaintiffs	6/7/2022	1-49
B	Plaintiff's Notice of Appeal	6/7/2022	50-57
C	Nevada District Court Docket for Powell v. Centennial Hills, Case No. A-19-788787-C	11/16/2022	58-97
D	Nevada Supreme Court Docket for Powell v. Centennial Hills, Case No. 84861	11/16/2022	98-99
E	Notice of Entry of Order and Order Directing Examination of Judgment Debtors	8/19/2022	100-107
F	Plaintiffs' Motion to Stay Execution on Judgment for Attorneys' Fees and Costs Including Stay of Examination of Judgment Debtors and Production of Documents	9/27/2022	108-243
G	Recorder's Transcript of Hearing: Hearing for Examination of Judgment Debtor	9/28/2022	244-261
H	Recorder's Transcript of Hearing: All Pending Motions	11/16/2022	262-282

DATED this 2nd day of December, 2022.

LEWIS BRISBOIS BISGAARD &
SMITH LLP

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EXHIBIT A



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8 *Center*

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISIAHA KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,
15

16 Plaintiffs,

17 vs.

18 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
19 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
20 JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
21 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;,
22

23 Defendants.
24
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Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF JUDGMENT

1 PLEASE TAKE NOTICE that the Defendant Valley Health System LLC' Judgment of Costs
2 and Attorneys' Fees per NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) as Against
3 Plaintiffs was entered on June 2, 2022, a true and correct copy of which is attached hereto as **Exhibit**
4 **A.**

5
6 DATED this 7th day of June, 2022

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8 By /s/ Adam Garth

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16 *Attorneys for Attorneys for Defendant Valley*

17 *Health System, LLC dba Centennial Hills Hospital*
18 *Medical Center*

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22 JUN - 8 2022

23 CERTIFIED COPY
24 DOCUMENT ATTACHED IS A
25 TRUE AND CORRECT COPY
26 OF THE ORIGINAL ON FILE

27 *Adam L. Johnson*
28 CLERK OF THE COURT

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 7th day of June, 2022, a true and correct copy of **NOTICE OF**
3 **ENTRY OF JUDGMENT** was served by electronically filing with the Clerk of the Court using the
4 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have
5 agreed to receive electronic service in this action.

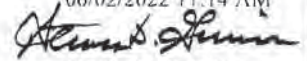
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Shah, M.D.

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16 By /s/ Maria T. San Juan
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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EXHIBIT A


CLERK OF THE COURT

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13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
14 TARYN CREECY, individually and as an
15 Heir; ISAAH KHOSROF, individually and as
16 an Heir; LLOYD CREECY, individually;

17 Plaintiffs,

18 vs.

19 VALLEY HEALTH SYSTEM, LLC (doing
20 business as "Centennial Hills Hospital Medical
21 Center"), a foreign limited liability company;
22 UNIVERSAL HEALTH SERVICES, INC., a
23 foreign corporation; DR. DIONICE S.
24 JULIANO, M.D., an individual; DR.
25 CONRADO C.D. CONCIO, M.D., an
26 individual; DR. VISHAL S. SHAH, M.D., an
27 individual; DOES 1-10; and ROES A-Z;

28 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM LLC'S JUDGMENT OF COSTS
AND ATTORNEYS' FEES PER NRS
18.020, 18.005, 18.110, 17.117, and N.R.C.P.
68(f) AS AGAINST PLAINTIFFS**

23 Pursuant to the Order granting Defendant Valley Health System, LLC's motion for summary
24 judgment dated and entered on November 19, 2021 (**Exhibit "A"**), the Order granting Defendant
25 Valley Health System, LLC's motion for reconsideration regarding motion for attorneys' fees dated
26 and entered on May 4, 2022 (**Exhibit "B"**), and pursuant to Defendant Valley Health System, LLC's
27 notice of withdrawal of appeal dated and filed in the Nevada Supreme Court on May 12, 2022
28

1 (Exhibit "C"),

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

3 That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

4 Defendants Valley Health System, LLC shall be awarded their reasonable costs and
5 attorneys' fees pursuant to NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) in the amounts
6 of \$110,849.85 for attorneys' fees, and costs of \$8,056.93, for a total of \$118,906.78 in accordance
7 with the Court's orders attached hereto as Exhibits "A" and "B" based upon the withdrawal of
8 Defendant's appeal as attached hereto as Exhibit "C".

9 DATED this ____ day of _____, 2022.

Dated this 2nd day of June, 2022

10
11
12 DISTRICT COURT JUDGE

13 Respectfully Submitted By: **7B8 6E9 6A6B C7E9**
14 LEWIS BRISBOIS BISGAARD & SMITH LLP
15 **Jerry A. Wiese**
16 **District Court Judge**

17 By Is/ Adam Garth

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23 Las Vegas, Nevada 89118
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25 *Attorneys for Attorneys for Defendant Valley*
26 *Health System, LLC dba Centennial Hills Hospital*
27 *Medical Center*
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1 Agreed as to form and substance by:

2

Refused to sign

3

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Attorneys for Plaintiffs

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on this ____ day of May, 2022, a true and correct copy of **DEFENDANT**
3 **VALLEY HEALTH SYSTEM LLC'S JUDGMENT OF COSTS AND ATTORNEYS' FEES**
4 **PER NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) AS AGAINST PLAINTIFFS** was
5 served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system
6 and serving all parties with an email-address on record, who have agreed to receive electronic service
7 in this action.

8 Paul S. Padda, Esq.
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12 *Attorneys for Plaintiffs*

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15 By /s/ Heidi Brown
16 An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP
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From: [Paul Padda](#)
To: [Garth, Adam](#); [Srilata Shah](#)
Cc: [Vogel, Brent](#); [Brown, Heidi](#); [San Juan, Maria](#)
Subject: [EXT] RE: Powell v Valley - CHH's Judgment for Costs #2.pdf
Date: Monday, May 16, 2022 1:26:18 PM
Attachments: [_image001.png](#)
[_image002.png](#)
[_image003.png](#)
[_image004.png](#)
[_image005.png](#)
[_image006.png](#)



We cannot agree to this. Thanks.

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PAUL PADDALAW

IT'S NOT ABOUT THE INJURY. IT'S ABOUT THE RECOVERY.

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Thursday, May 12, 2022 12:43 PM

To: Paul Padda <psp@paulpaddalaw.com>; Srilata Shah <sri@paulpaddalaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Brown, Heidi <Heidi.Brown@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>

Subject: Powell v Valley - CHH's Judgment for Costs #2.pdf

Counsel,

Please see attached. Please advise if we may affix your e-signature to the judgment.

Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

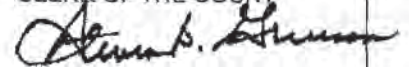
T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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EXHIBIT A



1 NEOJ
2 S. BRENT VOGEL
3 Nevada Bar No. 06858
4 Brent.Vogel@lewisbrisbois.com
5 ADAM GARTH
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 T: 702.893.3383
12 F: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
14 TARYN CREECY, individually and as an
15 Heir; ISAIAH KHOSROF, individually and as
16 an Heir; LLOYD CREECY, individually;
17 Plaintiffs,

18 vs.

19 VALLEY HEALTH SYSTEM, LLC (doing
20 business as "Centennial Hills Hospital Medical
21 Center"), a foreign limited liability company;
22 UNIVERSAL HEALTH SERVICES, INC., a
23 foreign corporation; DR. DIONICE S.
24 JULIANO, M.D., an individual; DR.
25 CONRADO C.D. CONCIO, M.D., an
26 individual; DR. VISHAL S. SHAH, M.D., an
27 individual; DOES 1-10; and ROES A-Z;,
28 Defendants.

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
25 captioned matter on the 19th day of November 2021, a copy of which is attached hereto.

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DATED this 19th day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
Nevada Bar No. 06858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
702.893.3383
*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19th day of November, 2021, a true and correct copy of
3 **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the
4 Court using the Odyssey E-File & Serve system and serving all parties with an email-address on
5 record, who have agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
7 PAUL PADDA LAW, PLLC
8 4560 S. Decatur Blvd., Suite 300
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10 Tel: 702.366.1888
11 Fax: 702.366.1940
12 psp@paulpaddalaw.com
13 *Attorneys for Plaintiffs*

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Brad Shipley, Esq.
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bshipleyr@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

14
15
16 By /s/ Roya Rokni
17 An Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
19
20
21
22
23
24
25
26
27
28

1 **ORDR**

2 S. BRENT VOGEL

3 Nevada Bar No. 6858

4 Brent.Vogel@lewisbrisbois.com

5 ADAM GARTH

6 Nevada Bar No. 15045

7 Adam.Garth@lewisbrisbois.com

8 LEWIS BRISBOIS BISGAARD & SMITH LLP

9 6385 S. Rainbow Boulevard, Suite 600

10 Las Vegas, Nevada 89118

11 Telephone: 702.893.3383

12 Facsimile: 702.893.3789

13 *Attorneys for Defendant Valley Health System,*

14 *LLC dba Centennial Hills Hospital Medical*

15 *Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

16 ESTATE OF REBECCA POWELL, through
17 BRIAN POWELL, as Special Administrator;
18 DARCI CREECY, individually and as Heir;
19 TARYN CREECY, individually and as an
20 Heir; ISAAH KHOSROF, individually and as
21 an Heir; LLOYD CREECY, individually;;

22 Plaintiffs,

23 vs.

24 VALLEY HEALTH SYSTEM, LLC (doing
25 business as "Centennial Hills Hospital Medical
26 Center"), a foreign limited liability company;
27 UNIVERSAL HEALTH SERVICES, INC., a
28 foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**ORDER VACATING PRIOR ORDER
DENYING DEFENDANT VALLEY
HEALTH SYSTEM, LLC DBA
CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING SAID DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
PER MANDAMUS OF NEVADA
SUPREME COURT**

25 This matter, coming before this Honorable Court on November 18, 2021 at 10:30 a.m. in
26 accordance with the order granting the petition for a writ of mandamus issued by the Nevada
27 Supreme Court dated October 18, 2021, directing that this Court vacate its order of October 29,
28 2020, which previously denied Defendant VALLEY HEALTH SYSTEM, LLC's motion for

1 summary judgment and co-defendants Concio and Shah's joinder thereto (collectively
2 "Defendants"), and ordering this Court to issue an order entering summary judgment in favor of
3 said Defendants due to the expiration of the statute of limitations, with Paul S. Padda, Esq. and
4 Srilata Shah, Esq. of PAUL PADDA LAW, PLLC, appearing on behalf of Plaintiffs, Adam Garth,
5 Esq., S. Brent Vogel, Esq. and Shady Sirsy, Esq., of the Law Offices of LEWIS BRISBOIS
6 BISGAARD & SMITH LLP, appearing on behalf of the Defendant VALLEY HEALTH SYSTEM,
7 LLC and John H. Cotton, Esq. and Brad Shipley, Esq. of JOHN H. COTTON AND ASSOCIATES,
8 appearing on behalf of DR. CONRADO C.D. CONCIO, M.D. and DR. VISHAL S. SHAH, M.D.,
9 with the Honorable Court having reviewed the order of the Nevada Supreme Court, finds and orders
10 as follows:

11 THE COURT FINDS that Defendants argued that undisputed evidence demonstrated
12 Plaintiffs were on inquiry notice of their alleged professional negligence, wrongful death, and
13 negligent infliction of emotional distress claims by June 11, 2017, at the latest, and

14 THE COURT FURTHER FINDS that Defendants contended that Plaintiffs' February 4,
15 2019 complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an
16 action for injury or death based on the negligence of a health care provider within three years of the
17 date of injury and within one year of discovering the injury, whichever occurs first), and

18 THE COURT FURTHER FINDS that the term injury in NRS 41A.097 means "legal injury."
19 *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury
20 when he knows or, through the use of reasonable diligence, should have known of facts that would
21 put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A
22 plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an
23 ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*,
24 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th
25 ed. 2009)), and

26 THE COURT FURTHER FINDS that while the accrual date for NRS 41A.097(2)'s one-
27 year period is generally a question for the trier of fact, this Court may decide the accrual date as a
28 matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462, and

1 THIS COURT FURTHER FINDS that here, irrefutable evidence demonstrated that
2 Plaintiffs were on inquiry notice by June 11, 2017, at the latest, when Plaintiff Brian Powell, special
3 administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged
4 that the decedent, Rebecca Powell, "went into respiratory distress" and her health care providers did
5 not appropriately monitor her, abandoning her care and causing her death, and

6 THIS COURT FURTHER FINDS that Brian Powell's own allegations in the aforesaid
7 Board complaint demonstrate that he had enough information to allege a prima facie claim for
8 professional negligence-that in treating Rebecca Powell, her health care providers failed "to use the
9 reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained
10 and experienced providers of health care." NRS 41A.015 (defining professional negligence); *Winn*,
11 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a "plaintiffs general belief that someone's
12 negligence may have caused his or her injury" triggers inquiry notice), and

13 THIS COURT FURTHER FINDS that the evidence shows that Plaintiff Brian Powell was
14 likely on inquiry notice even earlier than the aforesaid Board complaint, wherein Plaintiffs alleged
15 they had observed in real time, following a short period of recovery, the rapid deterioration of
16 Rebecca Powell's health while in Defendants' care, and

17 THIS COURT FURTHER FINDS that Plaintiff Brian Powell filed a complaint with the
18 Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar
19 to the Nursing Board complaint, this complaint alleged facts, such as the Defendants' failure to
20 upgrade care, sterilize sutures properly, and monitor Rebecca Powell, all of which suggest he already
21 believed, and knew of facts to support his belief, that negligent treatment caused Rebecca Powell's
22 death by the time he made these complaints to NDHHS and the Nursing Board, and

23 THIS COURT FURTHER FINDS that even though Plaintiffs received Rebecca Powell's
24 death certificate 17 days later, erroneously listing her cause of death as suicide, that fact did not
25 change the conclusion that Plaintiffs received inquiry notice prior to that date, and

26 THE COURT FURTHER FINDS that Plaintiffs did not adequately address why tolling
27 should apply under NRS 41A.097(3) (providing that the limitation period for a professional
28 negligence claim "is tolled for any period during which the provider of health care has concealed

1 any act, error or omission upon which the action is based”), and

2 THIS COURT FURTHER FINDS that even if Plaintiffs did adequately address the tolling
3 issue, such an argument would be unavailing, as the medical records provided were sufficient for
4 their expert witness to conclude that petitioners were negligent in Rebecca Powell’s care. *See Winn*,
5 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate
6 where the intentionally concealed medical records were “material” to the professional negligence
7 claims), and

8 THE COURT FURTHER FINDS that the doctrine of equitable tolling has not been extended
9 to NRS 41A.097(2), and

10 THIS COURT FURTHER FINDS that Plaintiffs did not adequately address whether such
11 an application of equitable tolling is appropriate under these facts. *See Edwards v. Emperor’s*
12 *Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider
13 arguments that a party did not cogently argue or support with relevant authority). and

14 THE COURT FURTHER FINDS that Plaintiffs had until June 11, 2018, at the latest, to file
15 their professional negligence claim, making Plaintiffs’ February 4, 2019 complaint untimely, and

16 THE COURT FURTHER FINDS that given the uncontroverted evidence demonstrating that
17 Defendants were entitled to judgment as a matter of law because the complaint was time-barred
18 under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing
19 that courts must grant summary judgment when the pleadings and all other evidence on file, viewed
20 in a light most favorable to the nonmoving party, “demonstrate that no genuine issue as to any
21 material fact [remains] and that the moving party is entitled to a judgment as a matter of law”
22 (internal quotations omitted));

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court’s prior order
24 of October 29, 2020 denying VALLEY HEALTH SYSTEM, LLC’s motion for summary judgment
25 and co-defendants’ joinder thereto is vacated in its entirety, and

26 ///

27 ///

28 ///

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
2 VALLEY HEALTH SYSTEM, LLC's motion for summary judgment and co-defendants' joinders
3 thereto are granted in their entirety due to the untimely filing of this action by Plaintiffs.

Dated this 19th day of November, 2021

4
5 Dated: _____


DISTRICT COURT JUDGE

6
7
8 DATED this ____ day of November, 2021.

DATED this 18th day of November, 2021
Jerry A. Wiese
District Court Judge

9
10 *UNSIGNED*

11 _____
Paul S. Padda, Esq.
Srilata Shah, Esq.
12 PAUL PADDALAW, PLLC
4560 S. Decatur Blvd., Suite 300
13 Las Vegas, NV 89103
Tel: 702.366.1888
14 Fax: 702.366.1940
15 psp@paulpaddalaw.com
Attorneys for Plaintiffs

16
17 DATED this 18th day of November, 2021

18 _____
/s/ Brad Shipley
19 John H. Cotton, Esq.
Brad Shipley, Esq.
20 JOHN H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
21 Las Vegas, NV 89117
22 Tel: 702.832.5909
Fax: 702.832.5910
23 jhcotton@jhcottonlaw.com
bshipley@jhcottonlaw.com
24 Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
25 Shah, M.D.

/s/ Adam Garth
S. BRENT VOGEL, ESQ.
Nevada Bar No. 6858
ADAM GARTH, ESQ.
Nevada Bar No. 15045
SHADY SIRSY, ESQ.
Nevada Bar No. 15818
LEWIS BRISBOIS BISGAARD & SMITH
LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center

From: Brad Shipley
To: Garth, Adam; Srilata Shah; Paul Padda
Cc: Vogel, Brent; Rokni, Roya; Sirsy, Shady; San Juan, Maria
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 10:00:14 AM
Attachments: image001.png

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Adam,

I believe the bracketed word [proposed] in the title caption should be removed before submission to the court, but please use my e-signature with or without making that change. Thank you for taking the time to draft the order.

Brad Shipley, Esq.
John H. Cotton & Associates, Ltd.
7900 W. Sahara ave. #200
Las Vegas, NV 89117
bshipley@jhcottonlaw.com
702 832 5909

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Friday, November 12, 2021 8:50 AM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; John Cotton <jhcotton@jhcottonlaw.com>
Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Importance: High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Tuesday, November 9, 2021 10:33 AM

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

Adam Garth
Partner
Las Vegas Rainbow
702.693.4335 or x7024335

From: [Garth, Adam](#)
To: [Paul Padda](#); [Srilata Shah](#); [Brad Shipley](#)
Cc: [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#); [jhcotton@jhcottonlaw.com](#)
Subject: RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 9:59:40 AM
Attachments: [image001.png](#)
[image002.png](#)

We are not willing to do that. As you were unwilling to stay anything at our request, we will return the courtesy.

From: Paul Padda <psp@paulpaddalaw.com>
Sent: Friday, November 12, 2021 9:56 AM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

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As you know, there is a motion for rehearing pending in the Supreme Court. Given that fact, and the lack of prejudice to Defendants, please advise if Defendants are willing to stay enforcement of the Supreme Court's decision which is the subject of a motion for rehearing?
Thanks.

Paul S. Padda, Esq.
PAUL PADDALAW, PLLC
Websites: [paulpaddalaw.com](#)

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4560 South Decatur Blvd., Suite 300
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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Friday, November 12, 2021 8:50 AM

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSI and Ordering SJ on SOL"

Importance: High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Tuesday, November 9, 2021 10:33 AM

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSI and Ordering SJ on SOL"

Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

Adam Garth

Partner
Las Vegas Rainbow
702.693.4335 or x7024335

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

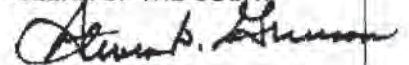
12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/19/2021

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
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EXHIBIT B



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7 LLC dba Centennial Hills Hospital Medical
Center*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISAIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,
15

16 Plaintiffs,

17 vs.

18 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
19 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
20 JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
21 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;,
22

23 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that the Order Regarding Valley Health System's Motion for
25 Reconsideration Regarding Motion for Attorneys' Fees was entered on May 4, 2022, a true and
26 correct copy of which is attached hereto.

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DATED this 4th day of May, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth
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Medical Center*

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2022, a true and correct copy of **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

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By /s/ Heidi Brown
an Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

Heather L. Smith
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

ESTATE OF REBECCA POWELL, through)
BRIAN POWELL, as Special Administrator;)
DARCI CREECY, individually and as an Heir;)
TARYN CREECY, individually and as an Heir;)
ISAIAH KHOSROF, individually and as an)
Heir; LLOYD CREECY, individually,)

Plaintiffs,)

vs.)

VALLEY HEALTH SYSTEM, LLC (doing)
Business as "Centennial Hills Hospital)
Medical Center"), a foreign limited liability)
Company; UNIVERSAL HEALTH SERVICES,)
INC., a foreign corporation; DR. DIONICE)
S. JULIANO, M.D., an individual; DR.)
CONRADO C.D. CONCIO, M.D., an individual;)
DR. VISHAL S. SHAH, M.D., an individual;)
DOES 1-10; and ROES A-Z,)

Defendants.)

CASE NO.: A-19-788787-C
DEPT. NO.: XXX

**ORDER RE: VALLEY
HEALTH SYSTEM'S
MOTION FOR
RECONSIDERATION RE
MOTION FOR
ATTORNEYS' FEES**

INTRODUCTION

The above-referenced matter was scheduled for a hearing on ^{4/1/22}~~3/30/22~~, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Reconsideration of the Court's Order re: Defendant's Motion for Attorneys' Fees. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs. This Court
19 entered an Order on 2/15/22 denying Valley's Motion for Fees and Countermotion for
20 Fees and Costs. Thereafter, Valley filed an Appeal dealing specifically with the Court's
21 denial of fees and costs. Consequently, this Court no longer has jurisdiction to address
22 the issue of fees and costs. If the Court were inclined to reconsider its previous
23 decision, the most it could do would be to enter a *Honeycutt* Order (See *Honeycutt v.*
24 *Honeycutt*, 94 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall*, 126 Nev. 49, 228
25 P.3d 453 (2010)), indicating its intention.

26 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

27 Valley Health System, d/b/a Centennial Hills Hospital (CHH) requests that the
28 Court reconsider its 2/15/22 Order denying attorneys' fees and costs and award it
\$110,930.85 in attorneys' fees per N.R.C.P. 68 and NRS § 17.117, plus \$58,514.36 in
pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR
7.60. Additionally, CHH requests this Court sign the judgment already submitted for
the undisputed \$42,492.03.

1 CHH contends that this Court conflated two issues- (1) the memorandum of
2 costs and disbursements previously submitted totaling \$42,492.038, "an amount which
3 is undisputed, and for which this Court has refused to sign a judgment," and (2) the
4 additional costs, disbursements and attorneys' fees addressed by CHH's instant motion
5 and the initial motion which sought \$110,930.85 in attorneys' fees per N.R.C.P. 68 and
6 N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to
7 N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

8 With regard to first "issue," CHH argues that because the Court denied Plaintiff's
9 Motion to Extend Time to Retax Costs, the \$42,492.03 claimed in CHH's Verified
10 Memorandum of Costs is undisputed and therefore judgment must be signed and
11 entered. CHH stated that, "[t]his Court cannot revisit an issue which has been finally
12 decided and therefore, at a minimum, a judgment for the unchallenged \$42,492.03 in
13 statutory costs and disbursements must be signed.

14 The majority of CHH's Motion for Reconsideration concentrates on the second
15 "issue," that this Court's decision to deny CHH's request for an additional \$169,445.21
16 in costs, disbursements and attorneys' fees was clearly erroneous. See *Masonry & Tile*
17 *Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).
18 As a preliminary matter, CHH is concerned by the Court's comparison to the Motion
19 for Fees filed by Drs. Concio and Shaw. Further, CHH contends it is "more concerning,"
20 that the Court's prior order stated, "Finally, in considering the result, the Court notes
21 that although the Court found insufficient evidence to establish irrefutably that the
22 statute of limitations had expired, Defense counsel was successful in convincing the
23 Supreme Court of that, and consequently, Defendants prevailed." According to CHH,
24 "the record needs to be corrected here- there was no convincing the Supreme Court of
25 anything."

26 CHH argues that although the Court correctly found that CHH's offer of
27 judgment was made in good faith and its timing was proper, it erroneously found
28 "Plaintiffs' decision to reject the offer and proceed to trial was not grossly unreasonable
or in bad faith. Plaintiffs believed they had a valid claim, and the Court cannot find
that wanting some recovery, as opposed to \$0.00, to be 'grossly unreasonable' or in
'bad faith'." CHH contends that this finding is unreasonable in light of the Nevada
Supreme Court's determination that Plaintiffs were on notice of any alleged malpractice

1 no more than one month after decedent's death. Similarly, CHH argues that this Court
2 incorrectly found Plaintiffs' decision to reject the Offer of Judgment was not made in
3 bad faith and was not grossly unreasonable.

4 As for the reasonableness of the attorneys' fees requested pursuant to NRCP 68,
5 CHH states that it offered to present the Court supporting documentation for in camera
6 review, but, "instead of granting a hearing to which Plaintiffs could interpose whatever
7 opposition they may have had, the Court rejected this offer and suggestion." In
8 addition, Plaintiffs did not oppose the amount of costs and fees incurred in the original
9 motion, even without the attached bills. Additionally, CHH provides that, "[s]ince this
10 Court insisted that the bills be attached, CHH has provided the entirety thereof for
judicial review and review by Plaintiffs."

11 In Opposition, Plaintiffs argue that CHH's Motion must be summarily denied,
12 without the Court addressing the merits of the Motion because CHH did not present
13 any new or substantially different evidence than what it had the opportunity to present
14 when it filed its Verified Memorandum of Costs and separate Motion for Attorney's
15 Fees on 11/22/21. Further, Plaintiffs contend that CHH's Motion for Reconsideration is
16 "clearly a transparent attempt to bolster a potential appeal by inviting the Court to
17 engage with the merits," because a motion for reconsideration is only appealable if
18 decided on the merits. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589
(2010).

19 Further, Plaintiffs argue that CHH falsely claims that it attached evidence to its
20 Motion for Reconsideration that "was originally submitted to this Court." Plaintiffs also
21 state that CHH's Motion lacks any authority showing the Court's denial of costs was
22 clearly erroneous, and it does not even engage with the authorities cited on pages 7
23 through 9 of the Court's 2/15/22 Order. Plaintiffs argue they should not be liable for
24 CHH's negligence in failing to follow both the statutory and common law requirements
25 for establishing entitlement to costs. Plaintiffs argue that this Court was thus correct in
26 denying CHH costs in their entirety for lack of proper documentation and reliable
evidence.

27 With regard to CHH's request to reconsider the denial of fees, Plaintiffs note that
28 the Court's denial was based upon its finding that (1) Plaintiffs did not act in bad faith
or in a grossly unreasonable manner when they rejected CHH zero dollar Offer of

Judgment and (2) the documentation in support of the request for attorney's fees was lacking. While the first finding by itself ends the inquiry into whether fees can be awarded, in this case the Court also found that "[a]lthough the Defendant [CHH] has offered to submit a billing ledger to the Court in camera, it would have been necessary for the Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so that the reasonableness could have been addressed by all parties, and by the Court." Plaintiffs argue that since this never happened, there was no reasonable basis for this Court to assess the reasonableness of fees being claimed by CHH. Plaintiffs argue that CHH merely rehashes the same arguments presented in its original Motion for Fees.

Moreover, Plaintiffs argue that the Court's decision to deny fees was not clearly erroneous because the disposition of this case turned on a legal question, which the Nevada Supreme Court decided, well after the time Plaintiffs rejected the Offer of Judgment. It would be ridiculous to expect Plaintiffs, grieving the death of their mother, to anticipate the legal issue and foresee its resolution by the Nevada Supreme Court when they rejected the Offer of Judgment. CHH itself acknowledges this fact when it admits, "[m]edical malpractice cases are complex and require an in-depth understanding of both unique legal issues as well as the medical care and course that is at issue." VHS' Motion for Reconsideration, p. 21 (lines 1-2).

Finally, Plaintiffs argue that the CHH fails to address the deficiency of withholding a billing ledger when it made its fee request and instead asking the Court to rely only upon the declaration of its counsel.

In Reply, CHH argues that Plaintiff incorrectly asserts CHH "has not presented any new or substantially different evidence than what it had the opportunity to present when it filed its original Verified Memorandum of Costs and separate Motion for Attorneys' Fees..." CHH's instant motion is predicated on this Court's clearly erroneous decision to: (1) refuse to sign a judgment for an undisputed amount of legally awardable costs to which CHH is entitled, and (2) to deny additional costs and attorneys' fees stemming from Plaintiff's commencement and maintenance of an action that the Supreme Court found was not only untimely, but that this Court's decision to deny summary judgment in light of the evidence was a manifest abuse of discretion.

1 Noting that the Court decided the underlying Motion on the papers and without
2 oral argument, CHH contends that this Court ignored the request for in camera review
3 of any evidence it required, with Plaintiffs' opportunity to review same as well. The
4 Court also denied any request for statutorily permitted costs and fees, which was never
5 opposed by Plaintiffs, and denied the discretionary motion for attorneys' fees and costs
6 predicated on other legal and statutory bases. CHH suggests that these denials were
7 based upon this Court's abuse of its discretion and refusal to accept the underlying
8 findings of the Supreme Court pertaining to the evidence Plaintiffs knowingly
9 possessed which demonstrated clear inquiry notice within one month of the decedent's
10 death.

11 CHH argues that this Court erroneously concluded that CHH submitted no
12 documentary evidence or explanation of costs attendant to the verified memorandum
13 of costs. However, the verified memorandum of costs contained not only a complete
14 listing of disbursements which are allowable under the law for these purposes, but the
15 declaration explained that the expenses were accurate and were incurred and were
16 reasonable. Moreover, the memorandum explained and justified each of the costs,
17 supported by case authority and an application of the respective factors considered to
18 the specific facts and circumstances of this case. As such, CHH claims there was more
19 than ample evidentiary justification for the costs claimed including court filing fees and
20 the expert fees which were justified by the explanations contained in the verified
21 memorandum. For this Court to somehow assert complete ignorance of the legal and
22 appellate history of this case was clearly erroneous.

23 Moreover, CHH states that Plaintiffs never disputed, nor to this day dispute, the
24 veracity and accuracy of the costs contained in the verified memorandum of costs. CHH
25 argues that, "There was no absence of evidence justifying the costs. The Court just
26 chose to ignore it and improperly declared they were insufficient, citing to the
27 aforenoted authority." CHH argues that the authority does stand for the proposition for
28 which they are cited or was misapplied by the Court. The authority cited involved no
evidence or documentation. CHH not only provided evidence, it justified the costs,
especially of the voluminous number of experts needed for retention due to the
blunderbuss of allegations.

CHH further states:

Rather than accepting the Supreme Court's decision and rationale, this Court's denial of CHH's motion and the rationale behind that decision continues to perpetuate the false notion that the action was either brought or maintained in good faith, a fact completely dispelled by the Supreme Court's decision. Thus, denying costs and attorneys' fees in light of the Supreme Court's decision is not only clearly erroneous, it is also a manifest abuse of discretion which the instant motion seeks to redress.

Again, this Court possessed admissible evidence of the work, time and expenses on the original motion. This Court wanted more than that. This motion gives the Court everything it could possibly need. Moreover, all of this could have been obviated by a hearing with an opportunity for all parties to participate to consider the totality of the evidence which has now been submitted, and would have been submitted had the in camera inspection thereof been considered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to EDCR 2.24(a), "[n]o motion once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced by reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties."

Nevada courts have inherent authority to reconsider their prior orders. See, *Trail v. Faretto*, 91 Nev. 401 (1975). A party may, "for sufficient cause shown ... request that a court ... amend, correct, resettle, modify, or vacate, as the case may be, an order previously made and entered ... in the case or proceeding. *Id.* at 403. A court may exercise its discretion to revisit and reverse a prior ruling if any one of five circumstances is present: (1) a clearly erroneous ruling; (2) an intervening change in controlling law; (3) substantially different evidence; (4) other changed circumstances; or (5) that manifest injustice would result if the prior ruling is permitted to stand. *United States v. Real Prop_*. *Located at Incline Village*, 976 F. Supp. 1327, 1353 (D.Nev. 1997). A motion for reconsideration should be granted where new issues of fact or law are raised which support a "ruling contrary to the ruling already reached." *Moore v. City of Las Vegas*, 92 Nev. 402, 405 (1976).

Although the Defendants take offense at the language the Court used in its previous Order, this Court intended nothing negative by indicating that Defendants were able to "convince" the Supreme Court of their position. Such statement was made

1 simply to convey the “fact” that the Supreme Court was “convinced” that the
2 Defendant’s position was correct. Defendants argue that the Court’s denial of fees and
3 costs was somehow a continuation of the Court’s position in favor of the Plaintiff, but
4 this is also incorrect. In fact, the Court found that the *Beattie* and *Brunzell* factors
5 weighed in favor of the Defense, but since the Defense had not supported its request for
6 fees and costs, as required by the Nevada Supreme Court, this Court was unable to
7 award fees and costs. *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983);
8 *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969).

9 Additionally, Defendants argue that because they submitted a Memorandum of
10 Costs, which was not timely objected to, they are “entitled” to whatever they asked for.
11 This is also incorrect. A party is only entitled to costs if they are substantiated, and the
12 Court finds that such costs were reasonable, and incurred in the subject litigation.
13 *Frazier v. Drake*, 131 Nev. 632, 357 P.3d 365 (NV.Ct.of App., 2015); *Bobby Berosini,*
14 *Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383
(1998); *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015).

15 Finally, Defendants suggest that the Court would have been able to review the
16 supporting documents, which Defendant failed to initially provide, if the Court had
17 held a “hearing” and allowed the Defendant to present such documents. Part of the
18 Court’s previous inability to award fees was based on the Defendant’s failure to provide
19 support for the fees requested, although such documentation was offered to the Court
20 “in camera.” It is simply not “fair” to an opposing party, to offer supporting documents
21 “in camera,” implying that the opposing party will not have the opportunity to
22 challenge such documents. Based on the Defendant’s suggestion that they would make
23 billing records available to the Court “in camera,” the Court was led to believe that such
documents would not be provided to the Plaintiff.

24 The Defendant has now submitted documentation supporting the claim for
25 attorney’s fees. Because the Court has now been presented with substantially different
or additional evidence, reconsideration is appropriate.

26 Defendant has now provided billing records indicating the following:

27	5/27/20	\$725.00
28	6/1/20-6/28/20	\$3,510.00
	7/1/20-7/31/20	\$10,192.50
	8/10/20-8/28/20	\$8,865.00
	9/1/20-9/25/20	\$19,642.50

10/1/20-10/29/20	\$12,559.50
11/2/20-11/30/20	\$14,392.80
12/1/20-12/22/20	\$3,690.00
1/5/21-1/21/21	\$4,449.00
2/4/21-2/19/21	\$1,489.50
3/4/21-3/30/21	\$2,150.00
4/2/21-4/30/21	\$11,200.00
5/5/21-5/21/21	\$905.00
6/4/21-6/25/21	\$6,629.50
7/7/21-7/29/21	\$1,026.50
8/3/21-8/31/21	\$5,841.50
9/8/21-9/30/21	\$4,375.00
10/1/21-10/27/21	\$10,700.00
11/9/21-11/23/21	\$2,826.50
12/2/21-12/29/21	\$7,975.00
1/3/22-1/25/22	<u>\$4,925.00</u>
Total:	\$138,069.80

Defendant has now provided documentation supporting the following costs:

American Legal Investigation	\$27.43
Ruffalo & Associates	\$4,350.00
	\$1,800.00
	\$10,350.00
Abraham Ishaaya, M.D.	\$6,710.00
	\$1,375.00
	\$6,187.50
	\$2,970.00
	\$3,437.50
	\$4,675.00
Cohen Volk Economic Counseling	\$688.50
	\$3,855.60
JAMS	\$3,000.00
Filing Fees	<u>\$529.50</u>
Total:	\$49,956.03

Defendant argues that it is entitled to \$42,492.03, and \$110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant to N.R.C.P. 68, N.R.S. 17.1151, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d 1050 (2019) for a waiver of any presently or potentially recoverable costs in full and final settlement of the matter. At the time of the Offer,

1 Defendants' expended costs and fees totaled \$58,514.36. The Offer was not accepted by
2 Plaintiff and expired on September 11, 2020.

3 Since the date of the Offer of Judgment, Defendant argues that it incurred
4 \$106,619.85 in attorney's fees, and paralegal's fees in the amount of \$4,230.00. This
5 Court finds and concludes that the fees incurred by Defendant were reasonable and
6 necessarily incurred in the defense of the case. This Court adopts by reference its prior
7 reasoning and analysis relating to the requested attorney's fees, and now that the Court
8 has been provided with the documentary support of such fees, and finds that such fees
9 were reasonable, pursuant to *Beattie* and *Brunzell*, the Court finds and concludes that
10 such fees are appropriate and recoverable. The Court further finds that the Defendant
11 has now met the requirements of *Frazier*, with regard to documenting the costs
12 incurred. The Court is still not convinced that the expert fees, in addition to the \$1,500
13 recoverable by statute, are necessary or recoverable. Consequently, in reducing each of
14 the expert's fees to \$1,500.00, the above-referenced costs, which have been
documented, must be reduced to \$8,056.93.

15 **CONCLUSION/ORDER**

16 Based upon the foregoing, and good cause appearing,

17 This Court now indicates its intention, pursuant to *Huneycutt v. Huneycutt*, 94
18 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453
19 (2010), that if this Court had jurisdiction to decide this matter, the Court would now
award attorney's fees of \$110,849.85, and costs of \$8,056.93.

20 Because this matter has been decided on the pleadings, any future hearings
21 relating to this matter are taken off calendar. The Court requests that counsel for
22 Defendant prepare and process a Notice of Entry with regard to this matter, and convey
23 this Decision to the Supreme Court, pursuant to *Huneycutt* and *Dingwall*.

24 Dated this 4th day of May, 2022

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26

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28 **0D9 DD7 5826 D5EB**
Jerry A. Wiese
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
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 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: 5/4/2022

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EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,

Appellant,

vs.

ESTATE OF REBECCA POWELL, DARCI
CREECY, TARYN CREECY, ISAIAH
KHOSROF, and LLOYD CREECY,

Respondents.

Supreme Court No.: 84402

Electronically Filed

May 12 2022 10:56 a.m.

District Court No. A-19-788787-C
Elizabeth A. Brown
Clerk of Supreme Court

NOTICE OF WITHDRAWAL OF APPEAL

VALLEY HEALTH SYSTEM, LLC, appellant named above, hereby
moves to voluntarily withdraw the appeal mentioned above.

I, Adam Garth, Esq., as counsel for the appellant, explained and informed
VALLEY HEALTH SYSTEM, LLC of the legal effects and consequences of this
voluntary withdrawal of this appeal, including that VALLEY HEALTH SYSTEM,
LLC cannot hereafter seek to reinstate this appeal and that any issues that were or
could have been brought in this appeal are forever waived. Having been so
informed, VALLEY HEALTH SYSTEM, LLC hereby consents to a voluntary
dismissal of the above-mentioned appeal.

VERIFICATION

I recognize that pursuant to N.R.A.P. 3C I am responsible for filing a notice of withdrawal of appeal and that the Supreme Court of Nevada may sanction an attorney for failing to file such a notice. I therefore certify that the information provided in this notice of withdrawal of appeal is true and complete to the best of my knowledge, information and belief.

DATED this 12th day of May, 2022

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
Nevada Bar No. 006858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2022, a true and correct copy of **NOTICE OF WITHDRAWAL OF APPEAL** was served upon the following parties by electronic service through this Court's electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

By /s/ Heidi Brown
An Employee of
LEWIS BRISBOIS BISGAARD &
SMITH LLP

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
10 Defendant(s)

11 AUTOMATED CERTIFICATE OF SERVICE
12

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

15 Service Date: 6/2/2022

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpincombe@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Paul Padda	civil@paulpaddalaw.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
24 Adam Garth	Adam.Garth@lewisbrisbois.com
25 Srilata Shah	sri@paulpaddalaw.com

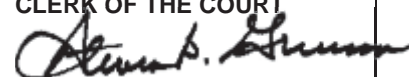
26
27
28

1	Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
2		
3	Shelbi Schram	shelbi@paulpaddalaw.com
4	Maria San Juan	maria.sanjuan@lewisbrisbois.com
5	Karen Cormier	karen@paulpaddalaw.com
6	Kimberly DeSario	kimberly.desario@lewisbrisbois.com
7	Shelbi Schram	shelbi@paulpaddalaw.com
8	Heidi Brown	Heidi.Brown@lewisbrisbois.com
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EXHIBIT B

PAUL PADDALAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

Electronically Filed
6/7/2022 2:21 PM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Jun 14 2022 03:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS
PAUL S. PADDALAW, ESQ.
Nevada Bar No. 10417
Email: psp@paulpaddalaw.com
PAUL PADDALAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator;
DARCI CREECY, individually; TARYN
CREECY, individually; ISALAH KHOSROF,
individually; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT. XXX (30)

PLAINTIFFS' NOTICE OF APPEAL

Pursuant to the provisions of Nevada Rules of Appellate Procedure 3 and 4, Plaintiffs
hereby appeal to the Nevada Supreme Court from the Judgment entered by this Court on June
2, 2022 awarding costs and attorney's fees in favor of Defendant Valley Health System, LLC

1

Estate of Rebecca Powell, et. al. vs. Valley Health System, LLC, et. al.
Eighth Judicial District Court, Case No. A-19-788787-C (Dept. 30)
Plaintiffs' Notice Of Appeal
PPL #201297-25-01

(Notice of which was entered on June 7, 2022). This appeal encompasses all interlocutory orders leading to the entry of the monetary Judgment that is the subject of this appeal, including the Court's May 4, 2022 Order granting reconsideration of its prior denial of attorney's fees and costs to Valley Health System, LLC.

PAUL PADDA LAW

/s/ Paul S. Padda

Paul S. Padda, Esq.
Nevada Bar No. 10417
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103

Attorney for Plaintiffs

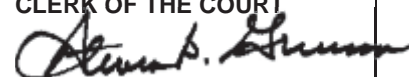
Dated: June 7, 2022

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this day, June 7, 2022, a copy of **PLAINTIFFS' NOTICE OF APPEAL** was served upon all parties/counsel in the above-entitled matter through the Court's electronic filing system.

/s/ Karen Cormier

Karen Cormier, Paralegal
PAUL PADDA LAW



ASTA
PAUL S. PADDALAW, ESQ.
Nevada Bar No. 10417
Email: psp@paulpaddalaw.com
PAUL PADDALAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

Attorneys for Plaintiffs/Appellants

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator;
DARCI CREECY, individually; TARYN
CREECY, individually; ISIAH KHOSROF,
individually; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT. XXX (30)

**PLAINTIFFS' CASE APPEAL
STATEMENT**

Plaintiffs, by and through their undersigned counsel of record, hereby submit this Case
Appeal Statement as follows:

• • •

1. Name of appellants filing this case appeal statement:

Estate of Rebecca Powell, Darci Creecy, Taryn Creecy, Isaiah Khosrof and Lloyd Creecy.

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

The Honorable Jerry A. Wiese, Eighth Judicial District Court of the State of Nevada (Clark County).

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

Appellants are Estate of Rebecca Powell, Darci Creecy, Taryn Creecy, Isaiah Khosrof And Lloyd Creecy. Counsel for Appellants is Paul S. Padda, Esq. of Paul Padda Law, 4560 South Decatur Blvd., Suite 300, Las Vegas, Nevada 89103.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Respondent is Valley Health Systems, LLC. Counsel for this party is S. Brent Vogel, Esq. and Adam Garth, Esq. of Lewis Brisbois Bisgaard & Smith, 6385 South Rainbow Blvd., Suite 600, Las Vegas, Nevada 89118.

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

All attorneys identified in response to questions 3 and 4 are licensed to practice in the State of Nevada.

Each appellant was represented by retained counsel in the district court action.

Appellants are represented by retained counsel acting *pro bono*.

No.

The Complaint was filed on February 4, 2019.

This case arises from an alleged wrongful death. Plaintiffs contend that Rebecca Powell died on account of medical malpractice.

3

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

See Valley Health System, LLC, et. al. v. The Eighth Judicial District Court, et. al., Case No. 82250 (NV Supreme Court).

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

No.

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

It is unlikely this case will result in a settlement given Valley Health System, LLC's posture during prior settlement proceedings in the Nevada Supreme Court.

PAUL PADDA LAW, PLLC

/s/ Paul S. Padda

Paul S. Padda, Esq.
Nevada Bar No. 10417
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103

Attorney for Plaintiffs

Dated: June 7, 2022

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure 5, the undersigned certifies that on this day, June 7, 2022, a copy of the foregoing **PLAINTIFFS' CASE APPEAL STATEMENT** was filed with the Court and served upon all parties/counsel of record in the above-entitled matter through the Court's electronic filing system - efileNV eservice.

/s/ Karen Cormier

Karen Cormier, Paralegal
PAUL PADDA LAW

EXHIBIT C

Case Information

A-19-788787-C | Estate of Rebecca Powell, Plaintiff(s) vs. Valley Health System, LLC, Defendant(s)

Case Number	Court	Judicial Officer
A-19-788787-C	Department 7	Bell, Linda Marie
File Date	Case Type	Case Status
02/04/2019	Malpractice - Medical/Dental	Closed

Party

Special Administrator
Powell, Brian

Plaintiff
Estate of Rebecca Powell

Active Attorneys ▼
Lead Attorney
Padda, Paul S.
Retained

Attorney
Shah, Srilata Rao
Retained

Plaintiff
Khosrof, Isaiah

Active Attorneys ▼
Lead Attorney
Padda, Paul S.
Retained

Attorney
Shah, Srilata Rao
Retained

Plaintiff
Creecy, Lloyd

Active Attorneys ▼
Lead Attorney
Padda, Paul S.
Retained

Attorney
Shah, Srilata Rao
Retained

Plaintiff
Creecy, Taryn

Active Attorneys ▼
Lead Attorney
Padda, Paul S.
Retained

Attorney
Shah, Srilata Rao
Retained

Plaintiff
Creecy, Darci

Active Attorneys ▼
Lead Attorney
Padda, Paul S.
Retained

Attorney
Shah, Srilata Rao
Retained

Defendant
Valley Health System, LLC

Aliases
DBA Centennial Hills Hospital Medical Center

Active Attorneys ▼
Lead Attorney
Garth, Adam
Retained

Disposition Events

12/05/2019 Judgment ▼

Judicial Officer

Wiese, Jerry A.

Judgment Type

Order of Dismissal Without Prejudice

Monetary Judgment

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Judgment: 12/05/2019 Docketed: 12/05/2019

10/29/2020 Judgment ▼

Judicial Officer

Wiese, Jerry A.

Judgment Type

Summary Judgment

Monetary Judgment

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Judgment: 10/29/2020 Docketed: 11/04/2020

10/29/2020 Judgment ▼

Judicial Officer

Wiese, Jerry A.

Judgment Type
Order of Dismissal Without Prejudice

Monetary Judgment

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Judgment: 10/29/2020 Docketed: 11/04/2020

02/15/2022 Judgment ▼

Judicial Officer
Wiese, Jerry A.

Judgment Type
Order

Monetary Judgment

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Judgment: 02/15/2022 Docketed: 02/16/2022

Total Judgment: \$21,057.28

06/02/2022 Judgment ▼

Judicial Officer
Wiese, Jerry A.

Judgment Type
Judgment

Monetary Judgment

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Creditors: Valley Health System, LLC (Defendant)

Judgment: 06/02/2022 Docketed: 06/03/2022

Total Judgment: \$118,906.78

06/02/2022 Judgment ▼

Judicial Officer
Wiese, Jerry A.

Judgment Type
Order of Dismissal

Monetary Judgment

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Creditors: Valley Health System, LLC (Defendant)

Judgment: 06/02/2022 Docketed: 06/03/2022

07/20/2022 Judgment ▼

Judicial Officer
Bell, Linda Marie

Judgment Type
Clerk's Certificate

Monetary Judgment

Debtors: Estate of Rebecca Powell (Plaintiff), Isaiah Khosrof (Plaintiff), Lloyd Creecy (Plaintiff), Taryn Creecy (Plaintiff), Darci Creecy (Plaintiff)

Judgment: 07/20/2022 Docketed: 07/20/2022

Comment: Supreme Court No. 84424; Appeal Dismissed

Events and Hearings

02/04/2019 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment

[1] Initial Appearance Fee Disclosure

02/04/2019 Complaint ▼

Complaint - COMP (CIV)

Comment

[2] Complaint

05/30/2019 Summons Electronically Issued - Service Pending ▼

Comment

[3] Summons - Valley Health System, LLC

05/30/2019 Summons Electronically Issued - Service Pending ▼

Comment

[4] Summons - Valley Health System, LLC (1)

05/30/2019 Summons Electronically Issued - Service Pending ▼

Comment

[5] Summons - Dr. Dionice S. Juliano, M.D.

05/30/2019 Summons Electronically Issued - Service Pending ▼

Comment

[6] Summons- Dr. Conrad C.D. Concio, M.D.

05/30/2019 Summons Electronically Issued - Service Pending ▼

Comment

[7] Summons- Dr. Vishal S. Shah M.D.

06/03/2019 Ex Parte Motion ▼

Ex Parte Motion - EXMT (CIV)

Comment

[8] Plaintiffs' ExParte Motion To Extend Time To Serve

06/04/2019 Affidavit of Service ▼

Affidavit of Service - AOS (CIV)

Comment

[9] Affidavit of Service - Universal Health Services, Inc.

06/04/2019 Affidavit of Service ▼

Affidavit of Service - AOS (CIV)

Comment

[10] AOS - Dr. Canrado C.D. Concio, MD

06/04/2019 Affidavit of Service ▼

Affidavit of Service - AOS (CIV)

Comment

[11] AOS -Valley Health System, LLC

06/11/2019 Order ▼

Order - ORDR (CIV)

Comment

[12] Order Granting Plaintiffs' Exparte Motion to Extend Time For Service

06/11/2019 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[13] Notice of Entry of Order Granting Plaintiffs' Exparte Motion to Extend Time For Service

06/12/2019 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[14] Defendant Conrado Concio, M.D. and Dionice Juliano, M.D's Motion to Dismiss

06/12/2019 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment

[15] Initial Appearance Fee Disclosure

06/12/2019 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[16] Notice of Hearing

06/13/2019 Joinder ▼

Joinder - JOIN (CIV)

Comment

[17] Defendant Vishal Shah, M.D.'s Joinder to Defendants Concio and Juliano's Motion to Dismiss

06/13/2019 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment

[18] Initial Appearance Fee Disclosure

06/19/2019 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[19] Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint

06/19/2019 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment

[20] Defendant Centennial Hills Hospital's Initial Appearance Fee Disclosure

06/20/2019 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[21] Notice of Hearing

06/25/2019 Waiver ▼

Waiver - WAIV (CIV)

Comment

[22] Waiver of Service of Summons Under Rule 4.1 of the Nevada Rules of Civil Procedure As To Dr. Dionice S. Juliano, M.D.

06/25/2019 Waiver ▼

Waiver - WAIV (CIV)

Comment

[23] Waiver of Service of Summons Under Rule 4.1 of the Nevada Rules of Civil Procedure As To Dr. Vishal S. Shah, M.D.

06/26/2019 Joinder ▼

Joinder - JOIN (CIV)

Comment

[24] DEFENDANT CENTENNIAL HILLS HOSPITAL S JOINDER TO DEFENDANTS CONRADO CONCIO, MD, AND DIONICE JULIANO, MD S MOTION TO DISMISS

06/28/2019 Minute Order ▼

Minute Order

Judicial Officer

Escobar, Adriana

Hearing Time

7:30 AM

Result

Recused

Comment

Recusal

06/28/2019 Notice of Department Reassignment ▼

Notice of Department Reassignment - NODR (CIV)

Comment

[25] Notice of Department Reassignment

07/08/2019 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

[26] Stipulation and Order To Reset Hearing And Briefing Schedule For Defendants' Motions To Dismiss

07/08/2019 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[27] Notice of Entry of Order re Stipulation and Order to Reset Hearing and Briefing Schedule For Defendants Motions To Dismiss

07/22/2019 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

[28] Stipulation and Order to Reset Hearing and Briefing Schedule for Defendants' Motion to Dismiss and Related Joinders

07/22/2019 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[29] Notice of Entry of Order - Stipulation and Order to Reset Hearing and Briefing Schedule for Defendants' Motion to Dismiss and Related Joinders

08/13/2019 Notice of Appearance ▼

Notice of Appearance - NOTA (CIV)

Comment

[30] Notice of Appearance

08/13/2019 Opposition to Motion to Dismiss ▼

Opposition - OPPS (CIV)

Comment

[31] Plaintiffs' Opposition to Motion to Dismiss Filed by Defendants Dr. Conrado C.D. Concio, M.D. and Dr. Dionice S. Juliano, M.D.

09/17/2019 Reply ▼

Reply - RPLY (CIV)

Comment

[32] Defendant Conrado Concio, MD, Vishal Shah, MD, and Dionice Juliano, MD's Reply in Support of Motion to Dismiss and Joinder thereto

09/18/2019 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[33] Defendant Centennial Hills Hospital's Reply in Support of Motion to Dismiss Plaintiff's Complaint

09/23/2019 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[34] Defendant Universal Health Services, Inc.'s Motion to Dismiss or, Alternatively, Motion for Summary Judgment for Lack of Jurisdiction

09/23/2019 Joinder To Motion ▼

Joinder To Motion - JMOT (CIV)

Comment

[35] Defendant Universal Health Services, Inc.'s Joinder to Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint and Joinder to Defendants Conrado Concio, MD, and Dionice Juliano, MD's Motion to Dismiss

09/24/2019 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[36] Notice of Hearing

09/25/2019 Motion to Dismiss ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Denied

Comment
Defendant Conrado Concio, MD, and Dionice Juliano, MD's Motion to Dismiss

09/25/2019 Joinder ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Denied

Comment
Defendant Vishal Shah, M.D. Joinder to Defendant's Concio and Juliano's Motion to dismiss

09/25/2019 Motion to Dismiss ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Denied

Comment
Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint

09/25/2019 Joinder ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Denied

Comment
Defendant Centennial Hills Hospital's Joinder to Defendants Conrado Concio, MD and Dionice Juliano, MD's Motion to Dismiss

09/25/2019 Joinder ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Denied

Comment
Defendant Universal Health Services, Inc.'s Joinder to Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint and Joinder to Defendants Conrado Concio, MD, and Dionice Juliano, MD's Motion to Dismiss

09/25/2019 Joinder ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Denied

Comment
Defendant Universal Health Services, Inc.'s Joinder to Defendant Centennial Hills Hospital's Motion to Dismiss Plaintiffs' Complaint and Joinder to Defendants Conrado Concio, MD, and Dionice Juliano, MD's Motion to Dismiss

09/25/2019 All Pending Motions ▼

All Pending Motions

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Matter Heard

Parties Present ▲

Plaintiff

Attorney: Padda, Paul S.

Plaintiff

Attorney: Padda, Paul S.

Plaintiff

Attorney: Padda, Paul S.

Plaintiff

Attorney: Padda, Paul S.

Plaintiff

Attorney: Padda, Paul S.

10/01/2019 Notice of Change of Address ▼

Notice of Change of Address - NCOA (CIV)

Comment

[37] Notice of Change of Address

10/02/2019 Answer to Complaint ▼

Answer - ANS (CIV)

Comment

[38] Defendants Conrado Concio, MD, Dionice Juliano, MD, and Vishal Shah, MD's Answer to Plaintiffs' Complaint

10/02/2019 Demand for Jury Trial ▼

Demand for Jury Trial - DMJT (CIV)

Comment

[39] Defendants Donice S. Juliano, MD, Contrado Concio, MD and Vishal Shah, MD's Demand for Jury Trial

10/30/2019 Motion to Dismiss ▼

Motion to Dismiss

Minutes - Motion to Dismiss

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Result

Matter Continued

Comment

Defendant Universal Health Services, Inc.'s Motion to Dismiss or, Alternatively, Motion for Summary Judgment for Lack of Jurisdiction

10/30/2019 Opposition to Motion to Dismiss ▼

Opposition to Motion to Dismiss - OMD (CIV)

Comment

[40] Plaintiffs' Opposition To Defendant Universal Health Services, INC.'s, Motion to Dismiss Or, In The Alternative, For Summary Judgment

10/30/2019 Motion to Withdraw As Counsel ▼

Motion to Withdraw As Counsel - MWCN (CIV)

Comment

[41] Plaintiffs' Motion For Withdrawal of Suneel Nelson, Esq., Joshua Y. Ang, Esq., And Michael Lafia, Esq., As Retained Counsel

10/31/2019 Clerk's Notice of Nonconforming Document ▼

Clerk's Notice of Nonconforming Document - CNND (CIV)

Comment

[42] Clerk's Notice of Nonconforming Document

11/18/2019 Disclosure Statement ▼

Disclosure Statement - DSST (CIV)

Comment

[43] DEFENDANT VALLEY HEALTH SYSTEM, LLC, dba CENTENNIAL HILLS HOSPITAL MEDICAL CENTER S NRCP 7.1 DISCLOSURE STATEMENT

12/05/2019 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

[44] Stipulation and Order to Dismiss Universal Health Services, Inc. without Prejudice

12/05/2019 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[45] Notice of Entry of Stipulation and Order to Dismiss Universal Health Services, Inc. without Prejudice

02/21/2020 Notice of Appearance ▼

Notice of Appearance - NOTA (CIV)

Comment

[46] Notice of Appearance By Brandon C. Verde, Esq.

03/10/2020 Substitution of Attorney ▼

Substitution of Attorney - SUBT (CIV)

Comment

[47] Substitution of Counsel

03/16/2020 Order to Show Cause ▼

Order - ORDR (CIV)

Comment

[48] Order to Show Cause

03/16/2020 Notice of Early Case Conference ▼

Notice of Early Case Conference - NECC (CIV)

Comment

[49] Notice of NRCP 16.1(b) (1) Early Case Conference_Estate of Rebecca Powell, et. al., v. Valley Health System, et. al.

03/20/2020 Joint Case Conference Report ▼

Joint Case Conference Report - JCCR (CIV)

Comment

[50] Joint Case Conference Report

03/23/2020 Mandatory Rule 16 Conference Order ▼

Order - ORDR (CIV)

Comment

[51] Mandatory Rule 16 Conference Order

03/24/2020 Minute Order ▼

Minute Order

Judicial Officer

Wiese, Jerry A.

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

04/01/2020 Show Cause Hearing ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated

Comment

Show Cause Hearing - Failure to Conduct Rule 16.1 ECC and/or file JCCR

04/13/2020 Notice of Association of Counsel ▼

Notice of Association of Counsel - NOAC (CIV)

Comment

[52] Notice of Association of Counsel

04/15/2020 Answer to Complaint ▼

Answer - ANS (CIV)

<p>Comment</p> <p>[53] Defendant Valley Health System, Llc, Dba Centennial Hills Hospital Medical Center s Answer To Plaintiffs Complaint</p>
<p>04/15/2020 Demand for Jury Trial ▼</p> <p>Demand for Jury Trial - DMJT (CIV)</p> <p>Comment</p> <p>[54] Demand for Jury Trial</p>
<p>04/29/2020 Motion to Associate Counsel ▼</p> <p>Motion to Associate Counsel - MASS (CIV)</p> <p>Comment</p> <p>[55] Defendant Valley Health System, Llc Dba Centennial Hills Hospital Medical Center's Motion to Associate Richard Douglas Carroll as Counsel</p>
<p>04/29/2020 Clerk's Notice of Hearing ▼</p> <p>Clerk's Notice of Hearing - CNOC (CIV)</p> <p>Comment</p> <p>[56] Notice of Hearing</p>
<p>05/05/2020 Mandatory Rule 16 Conference ▼</p> <p>Mandatory Rule 16 Conference</p> <p>Judicial Officer</p> <p>Wiese, Jerry A.</p> <p>Hearing Time</p> <p>12:00 PM</p> <p>Result</p> <p>Trial Date Set</p>
<p>05/05/2020 Substitution of Attorney ▼</p> <p>Substitution of Attorney - SUBT (CIV)</p> <p>Comment</p> <p>[57] Substitution of Attorneys</p>
<p>05/06/2020 Scheduling and Trial Order ▼</p> <p>Scheduling and Trial Order - SCHTO (CIV)</p> <p>Comment</p> <p>[58] Scheduling Order and Order Setting</p>
<p>06/02/2020 Order Admitting to Practice ▼</p> <p>Order - ORDR (CIV)</p>

Comment

[59] Order Admitting to Practice

06/03/2020 Motion to Associate Counsel ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated

Comment

Defendant Valley Health System, Llc Db a Centennial Hills Hospital Medical Center's Motion to Associate Richard Douglas Carroll as Counsel

06/08/2020 Substitution of Attorney ▼

Substitution of Attorney - SUBT (CIV)

Comment

[60] Substitution Of Attorney For Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center

08/07/2020 Motion for Summary Judgment ▼

Motion for Summary Judgment - MSJD (CIV)

Comment

[61] Defendant Juliano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims

08/10/2020 Non Opposition ▼

Non Opposition - NONO (CIV)

Comment

[62] Defendants Valley Health Systems' Non-Opposition to Defendant Juliano's Motion for Summary Judgment and Joinder to Defendant Concio and Shah's Motion for Partial Summary Judgment

08/24/2020 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[63] Notice of Hearing

08/24/2020 Stipulation and Order ▼

Stipulation and Order

Comment

[64] Stipulation and Order Regarding Plaintiffs' Responses to Defendants Juliano, Concio and Shah's Interrogatories and Requests for Production

08/24/2020 Stipulation and Order ▼

Stipulation and Order

Comment

[65] Stipulation and Order Regarding Defendant Juliano's Motion for Summary Judgment and Defendant Concio And Shah's Motion for Partial Summary Judgment on Emotional Distress Claims

09/02/2020 Motion for Summary Judgment ▼

Comment

[66] Valley Health System, LLC and Universal Health Services, Inc.'s Motion for Summary Judgment Based Upon the Expiration of The Statute of Limitations

09/02/2020 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[67] Notice of Hearing

09/02/2020 Redacted Version ▼

Redacted Version

Comment

[83] Redacted version of Motion for Summary Judgment per Order 10/28/20

09/03/2020 Joinder to Motion For Summary Judgment ▼

Joinder To Motion - JMOT (CIV)

Comment

[68] Defendants Dionice Juliano, MD, Conrado Concio, MD and Vishal Shah, MD's Joinder to Defendant's Motion for Summary Judgment on the Statute of Limitations

09/04/2020 Filing Fee Remittance ▼

Comment

[69] Filing Fee Remittance

09/16/2020 Opposition to Motion For Summary Judgment ▼

Opposition to Motion For Summary Judgment - OMSJ (CIV)

Comment

[70] Plaintiffs Opposition to Valley Health System, LLC s Motion For Summary Judgment Seeking Dismissal on Statute of Limitations Grounds

10/13/2020 Opposition and Countermotion ▼

Opposition to Motion For Summary Judgment - OMSJ (CIV)

Comment

[71] Plaintiffs' Opposition to Defendant Juliano's Motion for Summary Judgment, And Defendants' Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims and Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Request for Admissions

10/21/2020 Minute Order ▼

Minute Order

Judicial Officer

Wiese, Jerry A.

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

10/21/2020 Reply to Opposition ▼

Reply to Opposition - ROPP (CIV)

Comment

[72] Defendants Valley Health System, LLC and Universal Health Services, Inc. s Reply To Plaintiffs Opposition To Defendants Motion For Summary Judgment Based Upon The Expiration Of The Statute Of Limitations

10/21/2020 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[73] Defendants Valley Health Systems, LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Systems, Inc. s Reply To Plaintiffs Opposition To Defendant Juliano s Motion For Summary Judgment, Reply To Plaintiffs Opposition To Valley Health s Joinder Of Defendants Concio and Shah s Motion For Partial Summary Judgment On Emotional Distress Claims, and Opposition To Plaintiffs Countermotion To Amend Or Withdraw Plaintiffs Responses To Defendants Requests For Admission

10/21/2020 Joinder ▼

Joinder - JOIN (CIV)

Comment

[74] Joinder to Defendants Valley Health System, LLC and Universal Health Services, Inc.'s Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations

10/21/2020 Joinder ▼

Joinder - JOIN (CIV)

Comment

[75] Joinder to Defendant Valley Health System's Reply in Support of Defendant Juliano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotion Distress Claims

10/21/2020 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[76] Reply in Support of Defendant Julano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims

10/26/2020 Minute Order ▼

Minutes - Minute Order

Judicial Officer

Wiese, Jerry A.

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

10/26/2020 Ex Parte Application ▼

Ex Parte Application - EPAP (CIV)

Comment

[77] Defendants' Application to Strike Non-Conforming Document Pursuant to EDCR 8.03 and Replace Non-Conforming Document on Defendants' Motion for Summary Judgment Based Upon Expiration of Statute of Limitations

10/26/2020 Ex Parte ▼

Ex Parte - EXPT (CIV)

Comment

[78] Defendants Valley Health System, LLC And Universal Health Services, Inc. s Amended Ex Parte Application To Strike Non-Conforming Document Pursuant To EDCR 8.03 And Replace Non-Conforming Pages With Conforming Document On Defendants Motion For Summary Judgment Based Upon Expiration Of Statute Of Limitations

10/28/2020 Order ▼

Order

Comment

[79] ORDER GRANTING DEFENDANTS VALLEY HEALTH SYSTEM, LLC AND UNIVERSAL HEALTH SERVICES, INC.'S EX PARTE APPLICATION TO STRIKE NON-CONFORMING DOCUMENT PURSUANT TO EDCR 8.03 AND REPLACE NON CONFORMING PAGES WITH CONFORMING DOCUMENT ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED UPON EXPIRATION OF STATUTE OF LIMITATIONS

10/28/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

<p>Comment</p> <p>[80] Notice of Entry of Order</p>
<p>10/29/2020 Order ▼</p> <p>Order</p> <p>Comment</p> <p>[81] Order</p>
<p>11/02/2020 Notice of Entry of Order ▼</p> <p>Notice of Entry of Order - NEOJ (CIV)</p> <p>Comment</p> <p>[82] Notice of Entry of Order</p>
<p>11/03/2020 Order Shortening Time ▼</p> <p>Order Shortening Time</p> <p>Comment</p> <p>[84] Powell v Valley - Motion for Stay Pending Writ (continued revisions #2)</p>
<p>11/04/2020 Motion for Summary Judgment ▼</p> <p>Judicial Officer</p> <p>Wiese, Jerry A.</p> <p>Hearing Time</p> <p>9:00 AM</p> <p>Cancel Reason</p> <p>Vacated</p> <p>Comment</p> <p>Defendant Juliano's Motion for Summary Judgment, and Defendant Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims</p>
<p>11/04/2020 Motion for Summary Judgment ▼</p> <p>Judicial Officer</p> <p>Wiese, Jerry A.</p> <p>Hearing Time</p> <p>9:00 AM</p> <p>Cancel Reason</p> <p>Vacated</p> <p>Comment</p> <p>Valley Health System, LLC and Universal Health Services, Inc.'s Motion for Summary Judgment Based Upon the Expiration of The Statute of Limitations</p>
<p>11/04/2020 Joinder ▼</p>

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Cancel Reason
Vacated

Comment
Defendants Dionice Juliano, MD, Conrado Concio, MD and Vishal Shah, MD's Joinder to Defendant's Motion for Summary Judgment on the Statute of Limitations

11/04/2020 Opposition and Countermotion ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Cancel Reason
Vacated

Comment
Plaintiffs' Opposition to Defendant Juliano's Motion for Summary Judgment, And Defendants' Concio and Shah's Motion for Partial Summary Judgment on Emotional Distress Claims and Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Request for Admissions

11/05/2020 Motion ▼

Order

Comment
[85] Defendant Valley Health System LLC's Motion for Stay on Order Shortening Time

11/19/2020 Opposition to Motion ▼

Opposition - OPPS (CIV)

Comment
[86] Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion for Stay of Proceedings

11/20/2020 Reply to Opposition ▼

Reply to Opposition - ROPP (CIV)

Comment
[87] Defendant Valley Health System LLC s Reply To Plaintiff s Opposition To Motion For Stay On Order Shortening Time

11/23/2020 Minute Order ▼

Minute Order

Judicial Officer
Wiese, Jerry A.

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

11/25/2020 Motion to Stay ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated - Previously Decided

Comment

Defendant VHS's Motion for Stay on OST

12/17/2020 Order ▼

Order

Comment

[88] Order Denying Defendant Valley Health System, LLC's Motion to Stay on Order Shortening Time

12/17/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[89] Notice of Entry of Order

01/01/2021 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

[90] Recorders Transcript of Hearing: All Pending Motions

01/21/2021 Stipulation and Order ▼

Stipulation and Order

Comment

[91] Stipulation and Order to Continue Status Check Hearing

01/21/2021 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[92] Notice of Entry of Order

02/04/2021 Order ▼

Order - ORDR (CIV)

Comment

[93] ORDER RESETTING STATUS CHECK HEARING AS TELECONFERENCE

02/06/2021 Order ▼

Order

Comment

[94] Order Denying Defendants Conrado Concio, M.D. and Dionice Juliano, M.D.'s Motion to Dismiss Plaintiff's Complaint

02/06/2021 Order ▼

Order

Comment

[95] Order Denying Defendant Centennial Hills Hospital Medical Center's Motion to Dismiss Plaintiff's Complaint

02/10/2021 Status Check ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated

Comment

Status Check: Submission/Filing of Order from 09/25/19 hearing

03/10/2021 Notice ▼

Notice - NOTC (CIV)

Comment

[96] Notice of Appearance

04/06/2021 Motion to Reconsider ▼

Motion to Reconsider - MRCN (CIV)

Comment

[97] Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus

04/06/2021 Exhibits ▼

Exhibits - EXHS (CIV)

Comment

[98] Exhibits G-M to Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus

04/06/2021 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[99] Notice of Hearing

04/07/2021 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[100] Notice of Entry of Order Denying Defendant Centennial Hills Hospital Medical Center's Motion to Dismiss Plaintiffs' Complaint

04/07/2021 Notice of Entry of Order ▼

Notice of Entry - NEO (CIV)

Comment

[101] Notice of Entry of Order Denying Defendants Conrado Concio M.D. and Dionice Juilano, M.D.'s Motion to Dismiss Plaintiffs' Complaint

04/09/2021 Order Shortening Time ▼

Order Shortening Time

Comment

[102] Order Shortening Time to Hear Motion to Reconsider Stay Pending Writ of Mandamus

04/09/2021 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[103] Notice of Entry of Order

04/15/2021 Opposition ▼

Opposition - OPPS (CIV)

Comment

[104] Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus

04/16/2021 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[105] Defendant Valley Health System LLC's Reply In Further Support Of Its Motion To Reconsider Motion For Stay Pending Petition For Writ Of Mandamus And In Reply To Plaintiffs Opposition

04/20/2021 Minute Order ▼

Minute Order

Judicial Officer

Wiese, Jerry A.

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

04/21/2021 Motion to Reconsider ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated - Previously Decided

Comment

Defendant Valley Health System LLC's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus

04/28/2021 Order ▼

Order

Comment

[106] Order Denying Defendant Valley Health System, LLC's Motion to Reconsider Motion to Stay Pending Petition for Writ of Mandamus on Order Shortening Time

04/28/2021 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[107] Notice of Entry of Order Denying Defendant Valley Health System, LLC's Motion to Stay Pending Petition for Writ of Mandamus on Order Shortening Time

06/04/2021 Order ▼

Order

Comment

[108] Confidentiality Agreement and Protective Order

06/04/2021 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[109] Notice of Entry of Order

06/18/2021 Initial Expert Disclosure ▼

Initial Expert Disclosure - IED (CIV)

Comment

[110] Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center s Initial Expert Disclosure

08/18/2021 Status Report ▼

Status Report - SR (CIV)

Comment

[111] Joint Status Report

09/07/2021 Minute Order ▼

Minute Order

Judicial Officer

Wiese, Jerry A.

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

10/05/2021 Notice ▼

Notice - NOTC (CIV)

Comment

[112] Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center's Notice of Trial Conflict

11/03/2021 Order ▼

Order - ORDR (CIV)

Comment

[113] Order Setting Further Proceedings Re: Supreme Court Order

11/18/2021 Further Proceedings ▼

Original Type

Further Proceedings

Further Proceedings

Judicial Officer

Wiese, Jerry A.

Hearing Time

10:00 AM

Result

Matter Heard

Comment

Further Proceedings: Writ of Mandamus

11/19/2021 Order ▼

Order

Comment

[114] Order Vacating Prior Order Denying Valley Health System, LLC dba Centennial Hills Hospital Medical Center's Motion for Summary Judgment and Granting Said Defendant's Motion for Summary Judgment Per Mandamus of Nevada Supreme Court

11/19/2021 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[115] Notice of Entry of Order

11/22/2021 Memorandum ▼

Memorandum of Costs and Disbursements - MEMC (CIV)

Comment

[116] Defendant Valley Health System LLC's Verified Memorandum of Costs

11/22/2021 Motion for Attorney Fees ▼

Motion for Attorney Fees - MATF (CIV)

Comment

[117] Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for Attorneys' Fees Pursuant to N.R.C.P. 68, N.R.S. 17.117, 7.085, 18.010(2), and EDCR 7.60

11/23/2021 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[118] Notice of Hearing

11/23/2021 Memorandum of Costs and Disbursements ▼

Memorandum of Costs and Disbursements - MEMC (CIV)

Comment

[119] Defendants Conrado Concio, MD and Vishal Shah, MD's Memorandum of Costs and Disbursements

12/01/2021 Status Check: Settlement/Trial Setting ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason Vacated - Case Closed
<p>12/03/2021 Motion to Extend ▼</p> <p>Motion to Extend - MEX (CIV)</p> <p>Comment [120] Plaintiffs' Motion to Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs</p>
<p>12/06/2021 Clerk's Notice of Hearing ▼</p> <p>Clerk's Notice of Hearing - CNOC (CIV)</p> <p>Comment [121] Notice of Hearing</p>
<p>12/06/2021 Application ▼</p> <p>Application - APPL (CIV)</p> <p>Comment [122] Plaintiffs Application for Order Shortening Time on Plaintiffs Motion to Extend Time to Respond to Defendant's Memorandum for Costs</p>
<p>12/10/2021 Order ▼</p> <p>Order</p> <p>Comment [123] Order Shortening Time Regarding Plaintiff's Motion to Extend Time to Respond to Defendant's Memorandums of Costs</p>
<p>12/10/2021 Motion for Attorney Fees and Costs ▼</p> <p>Motion for Attorney Fees and Costs - MAFC (CIV)</p> <p>Comment [124] Defendants Conrado Concio, MD and Vishal Shah, MD's Motion for Attorneys' Fees and Costs</p>
<p>12/11/2021 Order Setting Medical/Dental Malpractice Status Check ▼</p> <p>Order Setting Medical/Dental Malpractice Status Check</p> <p>Comment [125] Order Setting Medical/Dental Malpractice Status Check and Trial Setting Conference</p>
<p>12/13/2021 Clerk's Notice of Hearing ▼</p> <p>Clerk's Notice of Hearing - CNOC (CIV)</p> <p>Comment [126] Notice of Hearing</p>

12/16/2021 Opposition ▼

Opposition - OPPS (CIV)

Comment

[127] Plaintiff's Opposition to Defendant Valley Health System LLC'S Motion for Attorney's Fees

12/20/2021 Opposition and Countermotion ▼

Opposition and Countermotion - OPPC (CIV)

Comment

[128] Defendant Valley Health System, LLC dba Centennial Hills Hospital's Opposition to Plaintiff's Motion to Retax Costs and Countermotion for Costs and Fees Pursuant to EDCR 7.60

12/21/2021 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

[129] Defendants Conrado Concio, MD and Vishal Shah, MD's Opposition to Plaintiff's Motion to Extend Time

12/23/2021 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

[130] Plaintiffs' Opposition to Defendants aConrado Concio. M.D. and Vishal Sha, M.D.'s Motion for Attorneys' Fee and Costs

12/27/2021 Reply to Opposition ▼

Reply to Opposition - ROPP (CIV)

Comment

[131] Plaintiffs' Reply to Defendant Valley Health System, LLC DBA Centennial Hills Hospital's Opposition to Plaintiffs' Motion to Extend Time to Retax Costs and Opposition to Countermotion for Costs and Fees Pursuant to EDCR 7.60

12/27/2021 Reply to Opposition ▼

Reply to Opposition - ROPP (CIV)

Comment

[132] Plaintiffs Reply to Defendant Conrado Concio, M.D. and Vishal Shah, M.D.'s Opposition to Plaintiffs Motion to Extend Time to Retax Cost

01/11/2022 Status Check: Medical/Dental Malpractice ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

8:00 AM

Cancel Reason

Vacated - Case Closed

01/24/2022 Order ▼

Order

Comment

[133] Order Re: Plaintiffs' Motion to Extend Time to Respond To Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Fishal S. Shah's Memoranda of Costs

01/25/2022 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[134] NOTICE OF ENTRY OF ORDER

01/26/2022 Motion ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

3:00 AM

Cancel Reason

Vacated

Comment

Plaintiffs' Motion to Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs

02/02/2022 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[135] DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS HOSPITAL MEDICAL CENTER S REPLY IN FURTHER SUPPORT OF MOTION FOR ATTORNEYS FEES PURSUANT TO N.R.C.P. 68, N.R.S. 17.117, 7.085, 18.010(2), AND EDCR 7.60

02/02/2022 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[136] Defendants Conrado Concio, MD and Vishal Shah, MD's Reply in Support of Their Motion for Fees and Costs

02/09/2022 Opposition and Countermotion ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated - per Order

Comment

Defendant Valley Health System, LLC dba Centennial Hills Hospital's Opposition to Plaintiff's Motion to Retax Costs and Countermotion for Costs and Fees Pursuant to EDCR 7.60

02/15/2022 Order ▼

Order

Comment

[137] ORDER RE: CONCIO'S AND SHAH'S MOTION FOR FEES AND COSTS

02/15/2022 Order ▼

Order

Comment

[138] ORDER RE: VALLEY HEALTH SYSTEM'S MOTION FOR FEES AND COUNTERMOTION FOR FEES AND COSTS

02/16/2022 Notice of Entry of Decision and Order ▼

Notice of Entry of Decision and Order - NOED (CIV)

Comment

[139] Notice of Entry of Order and Decision Regarding Valley Health System's Motion for Fees and Countermotion for Fees and Costs

02/16/2022 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[140] Notice of Entry of Order Re: Concio's and Shah's Motion for Fees and Costs

02/18/2022 Motion for Attorney Fees ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated - per Order

Comment

Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for Attorneys' Fees Pursuant to N.R.C.P. 68, N.R.S. 17.117, 7.085, 18.010(2), and EDCR 7.60

02/18/2022 Motion for Attorney Fees and Costs ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Cancel Reason
Vacated - per Order

Comment
Defendants Conrado Concio, MD and Vishal Shah, MD's Motion for Attorneys' Fees and Costs

02/23/2022 Motion to Reconsider ▼

Motion to Reconsider - MRCN (CIV)

Comment
[141] Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for Reconsideration Regarding its Motion for Attorneys' Fees Pursuant to N.R.C.P. 6, N.R.S. 17.117, 7.085, 18.010(2), and EDCR 7.60

02/23/2022 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment
[142] Notice of Hearing

03/09/2022 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment
[143] Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Reconsideration of the Court's Denial of its Application for Fees and Costs

03/14/2022 Notice of Appeal ▼

Notice of Appeal - NOAS (CIV)

Comment
[144] Defendant Valley Health System LLC DBA Centennial Hills Hospital Medical Center's Notice of Appeal

03/14/2022 Case Appeal Statement ▼

Case Appeal Statement - ASTA (CIV)

Comment
[145] DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS HOSPITAL MEDICAL CENTER S CASE APPEAL STATEMENT

03/17/2022 Notice of Appeal ▼

Notice of Appeal - NOAS (CIV)

Comment

[146] Plaintiff's Notice of Appeal

03/17/2022 Case Appeal Statement ▼

Case Appeal Statement - ASTA (CIV)

Comment

[147] Plaintiffs Case Appeal Statement

03/23/2022 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[148] Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center's Reply in Further Support of Motion for Reconsideration Regarding its Motion for Attorneys' Fees Pursuant to N.R.C.P. 68, N.R.S. 17.117, 7.085, 18.010(2), and EDCR 7.60

04/01/2022 Motion For Reconsideration ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

3:00 AM

Cancel Reason

Vacated - per Order

Comment

Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for Reconsideration Regarding its Motion for Attorneys' Fees Pursuant to N.R.C.P. 6, N.R.S. 17.117, 7.085, 18.010(2), and EDCR 7.60

04/25/2022 Pre Trial Conference ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated - Case Closed

05/04/2022 Order ▼

Order

Comment

[149] Order RE: Valley Health System's Motion for Reconsideration RE: Motion for Attorney's Fees

05/04/2022 Notice of Entry of Order ▼

Notice of Entry - NEO (CIV)

<p>Comment</p> <p>[150] Notice of Entry of Order</p>
<p>05/16/2022 Calendar Call ▼</p> <p>Judicial Officer</p> <p>Wiese, Jerry A.</p> <p>Hearing Time</p> <p>9:00 AM</p> <p>Cancel Reason</p> <p>Vacated - Case Closed</p>
<p>05/23/2022 Jury Trial - FIRM ▼</p> <p>Judicial Officer</p> <p>Wiese, Jerry A.</p> <p>Hearing Time</p> <p>10:30 AM</p> <p>Cancel Reason</p> <p>Vacated - Case Closed</p>
<p>06/02/2022 Judgment ▼</p> <p>Judgment</p> <p>Comment</p> <p>[151] DEFENDANT VALLEY HEALTH SYSTEM LLC'S JUDGMENT OF COSTS AND ATTORNEYS' FEES PER NRS 18.020, 18.005, 18.110, 17.117, AND N.R.C.P. 68(f) AS AGAINST PLAINTIFFS</p>
<p>06/07/2022 Notice of Entry of Judgment ▼</p> <p>Notice of Entry of Judgment - NJUD (CIV)</p> <p>Comment</p> <p>[152] Notice of Entry of Judgment</p>
<p>06/07/2022 Notice of Appeal ▼</p> <p>Notice of Appeal - NOAS (CIV)</p> <p>Comment</p> <p>[153] Plaintiffs' Notice of Appeal</p>
<p>06/07/2022 Case Appeal Statement ▼</p> <p>Case Appeal Statement - ASTA (CIV)</p> <p>Comment</p> <p>[154] Plaintiffs' Case Appeal Statement</p>
<p>07/05/2022 Case Reassigned to Department 7 ▼</p>

Comment

Pursuant to Administrative Order 22-09 - Case Reassigned from Judge Jerry A. Wiese to Judge Linda Marie Bell

07/19/2022 Ex Parte Application for Examination of Judgment Debtor ▼

Ex Parte Application for Examination of Judgment Debtor - EAJD (CIV)

Comment

[155] Ex Parte Application for Judgment Debtors Examination and Production of Documents

07/20/2022 NV Supreme Court Clerks Certificate/Judgment - Dismissed ▼

NV Supreme Court Clerks Certificate/Judgment - Dismissed

Comment

[156] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed

08/18/2022 Order for Examination of Judgment Debtor ▼

Order for Examination of Judgment Debtor

Comment

[157] Order Directing Examination of Judgment Debtors and Production of Documents

08/19/2022 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[158] NOTICE OF ENTRY OF ORDER

09/27/2022 Motion for Stay of Execution ▼

Motion for Stay of Execution - MSTE (CIV)

Comment

[159] Plaintiffs Motion To Stay Execution On Judgment For Attorneys Fees And Costs Including Stay Of Examination Of Judgment Debtors And Production Of Documents

09/27/2022 Exhibits ▼

Exhibits - EXHS (CIV)

Comment

[160] Exhibits 1 to 6 to Plaintiffs' Motion to Stay Execution on Judgment for Attorneys' Fees and Costs Including Stay of Examination of Judgment Debtors and Production of Documents

09/28/2022 Hearing for Examination of Judgment Debtor ▼

Minutes - Hearing for Examination of Judgment Debtor

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Result

Matter Heard

Parties Present ▲

Plaintiff

Attorney: Padda, Paul S.

Plaintiff

Attorney: Padda, Paul S.

Plaintiff

Attorney: Padda, Paul S.

Plaintiff

Attorney: Padda, Paul S.

Plaintiff

Attorney: Padda, Paul S.

Defendant

Attorney: Garth, Adam

09/29/2022 Notice of Intent ▼

Notice of Intent - NI (CIV)

Comment

[161] NOTICE OF INTENT TO APPEAR ELECTRONICALLY

10/28/2022 Opposition and Countermotion ▼

Opposition and Countermotion - OPPC (CIV)

Comment

[162] Defendant/Judgment Creditor Valley Health System, LLCs Opposition To Plaintiffs Motion To Stay Execution On Judgment For Attorneys Fees And Costs Including Stay Of Examination Of Judgment Debtors And Production Of Documents And Countermotion For Contempt And Attorneys Fees

10/28/2022 Appendix ▼

Appendix - APEN (CIV)

Comment

[163] Appendix to Defendant/Judgment Creditor Valley Health System, LLCs Opposition To Plaintiffs Motion To Stay Execution On Judgment For Attorneys Fees And Costs Including Stay Of Examination Of Judgment Debtors And Production Of Documents And Countermotion For Contempt And Attorneys Fees

11/04/2022 Response ▼

Response - RSPN (CIV)

Comment

[164] Plaintiffs' Response to Defendant Valley Health System, LLC's Opposition to Motion to Stay Execution on Judgment for Attorneys' Fee and Costs (Including Stay of Judgment Debtors and Production of Documents) and Plaintiffs Opposition to Defendants Countermotion for Contempt and Attorney's Fees

11/04/2022 Appendix ▼

Appendix - APEN (CIV)

Comment

[165] Appendix in Support of Plaintiffs' Motion to Stay Judgment and Response to VHS's Opposition and Countermotion

11/08/2022 Minute Order ▼

Minute Order

Judicial Officer

Bell, Linda Marie

Hearing Time

3:15 PM

Result

Minute Order - No Hearing Held

11/08/2022 Notice ▼

Notice - NOTC (CIV)

Comment

[166] Plaintiff's Notice of Filing Consent to Use Electronic Signature of Lloyd Creecy

11/09/2022 Notice of Intent ▼

Notice of Intent - NI (CIV)

Comment

[167] NOTICE OF INTENT TO APPEAR ELECTRONICALLY

11/16/2022 Motion for Stay of Execution ▼

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Comment

[159] PLAINTIFFS MOTION TO STAY EXECUTION ON JUDGMENT FOR ATTORNEYS FEES AND COSTS INCLUDING STAY OF EXAMINATION OF JUDGMENT DEBTORS AND PRODUCTION OF DOCUMENTS

11/16/2022 Opposition and Countermotion ▼

Judicial Officer
Bell, Linda Marie

Hearing Time
9:00 AM

Comment
Defendant/Judgment Creditor Valley Health System, LLCs Opposition To Plaintiffs Motion To Stay Execution On Judgment For Attorneys Fees And Costs Including Stay Of Examination Of Judgment Debtors And Production Of Documents And Countermotion For Contempt And Attorneys Fees

11/16/2022 Motion to Set Aside ▼

Motion to Set Aside - MSTA (CIV)

Comment
[168] PLAINTIFFS' MOTION TO SET ASIDE JUDGMENT AND RELATED RELIEF AND EXHIBITS 1 to 6

EXHIBIT D

Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing. For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1000.

Combined Case Information: 84801

Short Caption	ESTATE OF POWELL VS. VALLEY HEALTH SYS. LLC
Lower Court Case(s)	Civil Co. - Eighth Judicial District - A-768787
Disqualification	
Replacements	
For SP/Judge	06/21/2022 (Haller) Maglen
Oral Arguments	
Submission Date	

Supreme Court	82230 84402 84424
Related Case(s)	Civil Appeal - General - Other
Classification	Writing Testimony
Case Status	Filed
Panel Assigned	Completed
SP Status	
Oral Argument Location	
How Submitted	

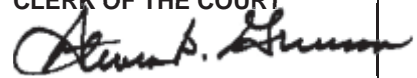
Party Information

Due Items

Docket Entries

Date	Type	Description	Pending?	Document
06/14/2022	Filing Fee	Filing Fee due for Appeal (SC)		
06/14/2022	Notice of Appeal Document	Filed Notice of Appeal. Appeal awarded to the Supreme Court this day. (SC)		22-18097
06/14/2022	Notice of Appeal	Issued Notice to Pay Supreme Court Filing Fee. The amount will be taken on this matter until this fee is paid. (Due Date: 7 days) (SC)		22-18088
06/21/2022	Filing Fee	Filing Fee Paid: \$250.00 from Paul Padua Law. Check no. 12208 (SC)		
06/21/2022	Notice of Appeal	Issued Notice of Appeal to Settlement Program. This appeal (s) is assigned to the settlement program. The parties are requesting transcripts and filing fees are stayed. Depending on the status of the appeal, the parties (s) may be required to pay the settlement fee. (Due Date: 7 days) (SC)		22-18046
06/21/2022	Settlement Notice	Issued Notice of Settlement Program. Issued Assignment Notice to (FRAP) to Settlement Program. Settlement Judge: Stephen E. Hallerfield (SC)		22-18073
06/21/2022	Settlement Program Report	Filed EICAT/Appellate for Settlement Program. This case is appropriate for mediation and a settlement conference is scheduled for July 10, 2022 at 9:30 AM (SC)		22-20070
07/13/2022	Notice of Appeal	Issued Notice to the Docketing Statement. Due date: 7 days (SC)		22-22002
07/20/2022	Docketing Statement	Filed Docketing Statement Civil Appeal (SC)		22-22038
07/27/2022	Settlement Program Report	Filed Final Report for Settlement. The parties were unable to agree to a settlement of this matter (SC)		22-22054
07/28/2022	Settlement Order/Transcript	Filed Order for Settlement/Transcript. The parties were unable to agree to a settlement. Appellate, 18 days transcript request, 30 days appeal brief and appendix (SC)		22-22719
08/01/2022	Transcript Received	Filed Certificate of No Transcript Received (SC)		22-23081
08/27/2022	Oral Argument	Filed Order Granting Transcript Extension. Appellate's Opening Brief and Appellate due November 8, 2022 (SC)		22-30216
10/31/2022	Motion	Filed Appellate Joint Motion to Permit Appellate's Subsequent Trial to File an Opening Brief (SC)		22-34026
11/04/2022	Order/Transcript	Filed Order Granting Motion. Appellate's opening brief and appellate due January 8, 2023 (SC)		22-34712

EXHIBIT E



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ADAM GARTH
3 Nevada Bar No. 15045
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4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
Telephone: 702.893.3383
6 Facsimile: 702.893.3789
*Attorneys for Defendant Valley Health System,
7 LLC dba Centennial Hills Hospital Medical
Center*
8

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISAIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,
15

16 Plaintiffs,

17 vs.

18 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
19 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
20 JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
21 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;,
22

23 Defendants.
24
25
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Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

1 PLEASE TAKE NOTICE that the Order Directing Examination of Judgment Debtors and
2 Production of Documents was entered on August 18, 2022, a true and correct copy of which is
3 attached hereto.

4 DATED this 19th day of August, 2022

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6 By /s/ Adam Garth

7 S. BRENT VOGEL

8 Nevada Bar No. 6858

9 ADAM GARTH

10 Nevada Bar No. 15045

11 6385 S. Rainbow Boulevard, Suite 600

12 Las Vegas, Nevada 89118

13 Tel. 702.893.3383

14 *Attorneys for Attorneys for Defendant Valley*

15 *Health System, LLC dba Centennial Hills Hospital*

16 *Medical Center*

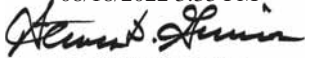
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19th day of August, 2022, a true and correct copy of **NOTICE**
3 **OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the
4 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have
5 agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
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9 Las Vegas, NV 89103
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11 Fax: 702.366.1940
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13 *Attorneys for Plaintiffs*

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Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

14
15
16 By /s/ Heidi Brown
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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CLERK OF THE COURT

ORDJ

S. BRENT VOGEL

Nevada Bar No. 6858

Brent.Vogel@lewisbrisbois.com

ADAM GARTH

Nevada Bar No. 15045

Adam.Garth@lewisbrisbois.com

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*Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z,;

Defendants.

Case No. A-19-788787-C

Dept. No.: 7

**ORDER DIRECTING EXAMINATION OF
JUDGMENT DEBTORS AND
PRODUCTION OF DOCUMENTS**

After having reviewed the Judgment Creditor's Motion for Examination of Judgment Debtors and good cause otherwise appearing:

IT IS HEREBY ORDERED that Judgment Debtors Estate of Rebecca Powell, through Brian Powell as Special Administrator, Darci Creecy, Taryn Creecy, Isaiah Khosrof, and Lloyd Creecy

1 shall each appear before this Court located at _____ in Courtroom 5B of the _____ on Wednesday, September 28, 2022
2 beginning at 9:00 am and on such further days as the Court shall determine, if
3 necessary, to then and there answer upon oath concerning their respective property and assets as
4 identified in the Judgment Creditor's Ex Parte Examination of Judgment Debtors. The Judgment
5 Debtors are hereby forbidden in the meantime from selling, transferring, or otherwise disposing of
6 any property or assets not exempt from execution pursuant to NRS 21.005, *et seq.*

7 IT IS HEREBY FURTHER ORDERED that Judgment Debtors Estate of Rebecca Powell,
8 through Brian Powell as Special Administrator, Darci Creecy, Taryn Creecy, Isaiah Khosrof, and
9 Lloyd Creecy shall each individually respond to each of the Requests for Production set forth in
10 Judgment Creditor's Ex Parte Application for Examination of Judgment Debtors and shall produce
11 the requested information, documents, and other materials **no later than fourteen (14) days** prior
12 to the date of the examination as set forth herein. The information, documents, and other materials
13 shall be produced to the law offices of **Lewis Brisbois Bisgaard & Smith LLP, located at 6385 S.**
14 **Rainbow Boulevard, Suite 600, Las Vegas, Nevada 89118.**

15 Failure to produce the requested materials or failure to appear for the examination at the
16 dates and times specified above may result in an Order to Show Cause being issued.

17 DATED this ____ day of _____, 2022. **Dated this 18th day of August, 2022**

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DISTRICT COURT JUDGE

20 **FC8 154 0748 30FD**
21 **Linda Marie Bell**
22 **District Court Judge**
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 7

9 Valley Health System, LLC,
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 for Examination of Judgment Debtor was served via the court's
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as
16 listed below:

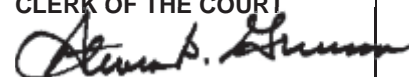
17 Service Date: 8/18/2022

18 Paul Padda	psp@paulpaddalaw.com
19 S. Vogel	brent.vogel@lewisbrisbois.com
20 Jody Foote	jfoote@jhcottonlaw.com
21 Jessica Pincombe	jpinnacle@jhcottonlaw.com
22 John Cotton	jhcotton@jhcottonlaw.com
23 Brad Shipley	bshipley@jhcottonlaw.com
24 Paul Padda	civil@paulpaddalaw.com
25 Tony Abbatangelo	Tony@thevegaslawyers.com
26 Adam Garth	Adam.Garth@lewisbrisbois.com
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EXHIBIT F



MTSE
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator;
DARCI CREECY, individually; TARYN
CREECY, individually; ISALAH KHOSROF,
individually; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT. 7

PLAINTIFFS' MOTION TO STAY
EXECUTION ON JUDGMENT FOR
ATTORNEYS' FEES AND COSTS
INCLUDING STAY OF EXAMINATION
OF JUDGMENT DEBTORS AND
PRODUCTION OF DOCUMENTS

Plaintiffs, by and through their undersigned counsel of record, hereby submit their
Motion to Stay Execution on Judgment for Attorneys' Fees and Costs, including, stay of
Examination of Judgment Debtors and Production of Documents based on Defendants

1

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
Eighth Judicial District Court, Case No. A-19-788787-C (Dept. 7)

*Plaintiffs' Motion to Stay Execution on Judgment for Attorneys' Fees & Costs Including Stay of Judgment Debtors
Examination*

PPL #201297-15-04

(purported Judgment Creditors’) failure to comply with requirements of Nevada probate statutes governing claims/judgments against a decedent’s estate, its special administrator, and/or other beneficiaries, particularly where there is an open, pending probate case established for the administration of debts and assets of the decedent’s estate. As such, Defendants’ efforts to execute the judgment for attorney’s fees and costs, including, efforts to take *judgment debtor examinations of individual beneficiaries and the special administrator of the decedent’s estate must be stayed, pending compliance with probate requirements* and Plaintiffs’ appeal to the Nevada Supreme Court. This Motion is based on the points and authorities and Exhibits attached hereto, the papers and pleadings on file herein, and any argument the Court may choose to entertain in this matter.

PAUL PADDALAW, PLLC

/s/ Paul S. Padda

Paul S. Padda, Esq.
Nevada Bar No. 10417
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103

Attorney for Plaintiffs

Dated: September 27, 2022

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks an immediate stay of Defendant Valley Health System LLC’s, (the purported Judgment Creditor), and its aggressive efforts to circumvent the statutory requirements

of Nevada's probate laws by compelling several individuals, including the court-appointed Special Administrator of the decedent's estate, to appear for several judgment debtor examinations in an apparent effort to hold each collectively and/or individually personally accountable for a money judgment award of attorneys' fees and costs, outside of the open, pending probate case, styled *In the Matter of the Estate of Rebecca Powell, Deceased*, No. P-19-098361-E, created by the Probate Court for purposes of administering the assets **and debts** of the decedent's estate.

Defendant moved for reconsideration after initially being denied its attorneys' fees and costs and subsequently obtained an award of attorney fees and costs for the total amount of **\$118,906.78** against the Plaintiffs (hereinafter "Attorneys' Fees Judgment"). The Defendants were awarded fees and costs as a result of a summary judgment order entered in their favor in a lawsuit commenced by Plaintiffs against Defendant/Judgment Creditors alleging negligence claims, wrongful death, and medical malpractice.

This request for a stay of execution of judgment includes a stay of the judgment debtor examinations presently scheduled for September 28, 2022 at 9:00 a.m. in Courtroom 5B of the Regional Justice Center, District Court.

A stay of execution of the Attorneys' Fees Judgment and the judgment debtor examinations are warranted because (1) Defendant and its counsels failed to follow procedures for asserting judgments or claims against the Estate; (2) the Special Administrator of the Estate, Brian Powell, cannot, by statute, be personally held responsible for debts of the Estate; (3) the Order for Judgment Debtor Depositions is defective insofar as it is based on the Attorneys' Fees

Judgment which failed to assert “joint and several liability” among the several purported Judgment Debtors, failed to apportion judgment amount as to between the Estate and the individual heirs of decedent, and failed to state factual findings necessary to support money judgment against the Special Administrator of the Estate and the individual Plaintiffs; (4) the Defendant/Judgment Creditor, who is represented by counsels, failed to file their judgment or file a claim with the Probate Case prior to seeking an order for judgment debtor examination with the District Court and (5) the application was filed *ex parte* depriving Plaintiffs proper notice.

For these reasons, and in the interests of justice pending Plaintiffs’ appeal of said Judgment to the Nevada Supreme Court (Case No. 84861), Plaintiffs respectfully request that this Court stay all efforts to execute upon said judgment, including, a stay on the multiple judgment debtors’ depositions scheduled for September 28, 2022, at 9:00 a.m.

II. RELEVANT PROCEDURAL FACTS

A. The Plaintiffs/Alleged Judgment Creditors

On February 4, 2019, a civil action was filed against several Defendants by Plaintiff “Estate of Rebecca Powell” which “administers the affairs of Rebecca Powell (“Rebecca”) who died in Clark County, Nevada on May 11, 2017.” See Complaint, at ¶3; ¶4. Plaintiff “Brian Powell” is identified in the Complaint in his capacity as “ex-husband of Rebecca as well as the Special Administrator of Rebecca’s Estate.” **Exhibit “1,”** Petition for Appointment of Special Administrator filed 2/21/2019. The remaining Plaintiffs are the surviving father and adult children, respectively, and heirs of the decedent, Rebecca. See Complaint, at ¶6-9. Notably, Brian Powell was “nominated by the Decedent’s father, Lloyd Creecy, to serve as Special

Administrator,” to which Mr. Powell consented. **Exhibit “2,”** Order Approving Petition for Appointment of Special Administrator, at p. 1-2, ¶3; ¶4. Pursuant to the Order of Appointment, Mr. Powell was empowered by the Probate Court, **without bond,** to “investigate, marshal, secure, and account for any assets in the name of Decedent for administration...” **Ex. 2** (emphasis added).

On February 21, 2019, a Petition for Special Letters of Administration was filed with the Eighth Judicial District Probate Court (“Probate”) requesting the appointment of Brian Powell as Special Administrator of the Estate of Rebecca Powell, resulting in the creation of Probate Case **No. P-19-098361-E, *In the Matter of Rebecca Powell, Deceased*** before Judge Gloria Sturman (hereinafter the “Probate Case”). **Ex. 1.**

On March 25, 2019, Probate issued Letters of Special Administration “appointing Brian Powell as Special Administrator of the Decedent’s Estate,” with the Order including “a directive for no bond,” and “[a] directive for all liquid assets to be deposited in the Trust Account of Shannon L. Evans, Esq.,” **Ex. 2**¹

B. The “Reconsidered” Order Awarding Attorney’s Fees

On June 2, 2022, Defendant filed its “Judgment of Costs and Attorneys’ Fees Per NRS 18.020, 10.005, 18.110, 17.117, and NRCP 68(f) as against Plaintiffs.” **Exhibit “3,”** Notice of Entry of Judgment, at Exhibit “A.” The Order provided that:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

¹ Plaintiff Taryn Creecy, an alleged Judgment Debtor, also filed a Petition with Probate Court, Case No. P-17-091793-E, *In the Matter of Rebecca Powell, Deceased*.

Defendants Valley Health System, LLC shall be awarded their reasonable costs and attorneys' fees ... in the amounts of \$110,849.85 for attorneys' fees, and costs of \$8,056.93, for a total of \$118,906.78 in accordance with the Court's orders...

Ex. 3, at Ex. A, p. 2, lines 2-7.

In doing so, the District Court issued two orders: First, an order vacating its prior order initially denying Defendant's motion for summary judgment. Second, an order regarding Defendant's Motion for Reconsideration re: Motion for Attorneys' Fees. **Ex. 3**, at p. 3, lines 7-8.

Significantly, nowhere within the Order itself is there any indication whatsoever that the "Plaintiffs" were "jointly and severally liable" for the total judgment amount. **Ex. 3**. Nor did the Order apportion liability for the total money judgment among the Plaintiffs. **Ex. 3**. In fact, the Order itself makes no specific references to any of the individually named Plaintiffs. **Ex. 2**.

The First Order contains findings of fact to support summary judgment in Defendant's favor and sets forth specific "court findings" that repeatedly identify Brian Powell, the court-appointed Special Administrator, as follows:

- 1) "Plaintiffs were on inquiry notice by June 11, 2017, at the latest, when Plaintiff Brian Powell, special administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged that the decedent, Rebecca Powell, 'went into respiratory distress' ... **Ex. 3**, at Ex. A, p. 3, lines 2-4.
- 2) that "Brian Powell's own allegations in the aforesaid complaint demonstrate that he had enough information to allege a prima facie claim for professional negligence..." **Ex. 3**, at Ex. A, p. 3, lines 6-9;
- 3) "Plaintiff Brian Power was likely on inquiry notice even earlier than the aforesaid Board complaint, wherein Plaintiffs alleged they had observed in real time..." **Ex. 3**, at p. 3, lines 13-15;
- 4) "Plaintiff Brian Powell filed a complaint with the Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017." **Ex. 3**, at p. 3, lines 17-18.

Notably, apart from the above specific reference to Mr. Powell, there are no specific references or findings of fact with respect to the individual Plaintiffs other than generalizing them as “Plaintiffs.” **Ex. 3.** Therefore, the Order is vague and it does not distinguish between the liability of the Estate, the Special Administrator of the Estate, whether liability is joint or several or apportioned while asking Judgment Debtor Plaintiffs to answer questions about “the property and assets of each of the Judgment Debtors,” and produce “information and materials” so that “Judgment Creditor may identify property and assets so as to satisfy the Judgment.” See Exhibit “6,” Defendant’s Ex Parte Motion for Judgment Debtor Examination (without Exhibits), at p. 6, lines 17-21.

C. Order Granting Judgment Debtor Depositions

After entry of the above orders, Defendant, through its attorneys, quickly filed a notice of entry of an order for judgment debtor examinations, as follows:

“**Judgment Debtors Estate of Rebecca Powell, through Brian Powell as Special Administrator**, Darci Creecy, Taryn Creecy, Isaiah Khosrof, and Lloyd Creecy shall appear before this Court...” to “answer upon oath concerning their respective property and assets as identified in Judgment Creditors Ex Party examination of Judgment Debtors.” **Exhibit “4,”** at p. 1, 27-28, p. 2, lines 1-4, “Order Directing Examination of Judgment Debtors and Production of Documents.” In the same Order, “[t]he Judgment Debtors are hereby forbidden in the meantime from selling, transferring, or otherwise disposing of any property or assets not exempt from execution pursuant to NRS 21.005 *et. seq.*” **Ex. 4**, p. 1, lines 27-28; p. 2, lines 1-6.

D. Pending Appeal of Attorneys' Fees Judgment

On June 7, 2022, Plaintiffs' filed their Notice of Appeal from "judgment entered on June 2, 2022, awarding costs and attorney's fees in favor of Defendant Valley Health System, LLC (Notice of which was entered on June 7, 2022)" with the "appeal encompass(ing) all interlocutory orders leading to the entry of the monetary Judgment that is the subject of this appeal, including the Court's May 4, 2022 Order granting reconsideration of its prior denial of attorney's fees and costs to Valley Health System, LLC." **Exhibit "5,"** Plaintiffs' Notice of Appeal. By filing this Motion, Plaintiffs make no concession concerning the validity of the Attorneys' Fees Judgment.

III. ARGUMENT

The Probate Court first assumed jurisdiction over property and debts of the Powell Estate and therefore "is entitled to maintain and exercise its jurisdiction, to the exclusion of any other court, even to the point of enjoining proceedings in the other court." *Bergeron v. Loeb*, 100 Nev. 54, 58 (1984) (citing *Kline v. Burke Const. Co.*, 260 U.S. 226, 229, 43 S.Ct. 79, 81, 67 L.Ed. 226 (1922)). "Probate matters are 'in the nature of an 'in rem' proceeding and therefore 'the court acquires jurisdiction over the estate and all persons for the purpose of determining their rights to any portion of the estate.'" *Id.* at 58. Moreover, Nevada Probate laws prohibit execution on claims or money judgments against an estate and govern the disposition of any judgment entered against an estate, in probate, as follows:

1. **The effect of a judgment rendered against a personal representative upon a claim for money against the estate of the decedent is only to establish the claim in the same manner as if it had been allowed by the personal representative, and the judgment must be that the personal representative pay, in due course of administration, the amount ascertained to be due.**
2. A certified copy of the judgment must be filed in the estate proceedings.
3. **No execution may issue upon the judgment, nor does it create any lien upon the property of the estate, nor give the judgment creditor any priority of payment.**

...

Nev. Rev. Stat. § 147.200(1)-(3) (emphasis added).

1 A. SPECIAL ADMINISTRATOR NOT LIABLE TO ESTATE JUDGMENT
2 CREDITORS

3 Here, Defendant impermissibly appears to seek to hold the Estate’s court-appointed
4 Special Administrator, Brian Powell, liable or otherwise accountable to Defendant for its
5 Attorneys’ Fees Judgment, and thus compels Mr. Powell to attend a judgment debtor examination
6 without clarifying whether he would appear in his individual, representative capacity, or as one
7 with “joint or several liability” to Defendant. As stated above, it is apparent that Defendant seeks
8 to ask questions about Mr. Powell’s assets and property, not just that of the Estate, without ever
9 specifying any facts or legal basis as a foundation to hold Mr. Powell, as Special Administrator,
10 personally liable to Defendant for the Attorneys’ Fees Judgment. **Ex. 6.**

11 In fact, Defendant’s Attorney’s Fees Judgment cannot reach the Special Administrator of
12 a Decedent’s estate. “[A]lthough a special administrator has authority to act regarding wrongful
13 death claims, **a special administrator is not liable to estate creditors and cannot pay**
14 **creditors’ claims.**” *Jacobson v. Estate of Clayton*, 121 Nev. 518, 521, 119 P.2d 132, 133 (2005)
15 (emphasis added); see also Nev. Rev. Stat. 140.040(3)(a)-(b) (“A special administrator is not
16 liable: (a) [t]o any creditor on any claim against the estate; or (b) [f]or any claim against the
17 decedent except a claim involving wrongful death, personal injury or property damage if the estate
18 contains no other assets other than a policy of liability insurance”); Nev. Rev. Stat. § 147.230
19 (“No personal representative is chargeable upon any special promise to assume liability for
20 damages or to pay the debts of the decedent from his or her own assets,” except under written
21 agreement signed by the personal representative).

For this reason, Defendant should not be permitted pursuant to an overly broad, unspecified judgment to execute upon assets of Mr. Powell or otherwise compel Mr. Powell to sit for a judgment deposition, particularly when Defendant failed to comply with mandates of Nevada probate statutes, as set forth herein.

B. JUDGMENT CREDITOR OF ESTATE MUST FOLLOW PROBATE PROCEDURES INCLUDING NRS CHAPTER 147, *et. seq.*

The Powell Estate, through its court-appointed special administrator, Brian Powell is charged with the administration, receipt of assets, and payment of debts or judgments, if any, of the Powell Estate. Nev. Rev. Stat. § 147.195(1)-(9). The debts of the Estate, include any judgments entered against the Estate, and such judgments are among the lowest priority in terms of order of payment by the Estate, with order or payment priority in order as follows:

1. Expenses of administration,
2. Funeral Expenses.
3. The expenses of the last illness
4. Family allowance,
5. Debts having preference by laws of the United States.
6. Money owed to the Department of Health and Human Services as a result of the payment of benefits of Medicaid.
7. Wages to the extent of \$600, of each employee of decedent, for work done or personal services rendered within 3 months before the death of the employer. If there is no sufficient money with which to pay all such labor claims in full, the money available must be distributed among claimants in accordance with the amounts of their respective claims.
8. Judgments rendered against the decedent in his or her lifetime, and mortgages in order of their date....
9. **All other demands against the estate.**

Nev. Rev. Stat. § 147.195(1)-(9) (emphasis added).

To this end, the Nevada Supreme Court further held where “the estate stands to be diminished if the creditor makes a successful claim,” **the procedures of NRS Chapter 147**

1 **“must be followed**...[u]nder NRS 147.040, **the claimant must first file a claim with the**
2 **administrator.”** *Id.*, at 512; Nev. Rev. Stat. § 147, *et. seq.* (NRS Chapter 147 governing “Priority
3 Of Payment” Of Debts And Charges Of The Estate, Including Judgments Against The Estate)
4 (emphasis added).

5
6 **C. A SUPERSEDEAS BOND IS UNNECESSARY TO STAY THESE**
7 **PROCEEDINGS UNDER APPLICABLE PROBATE STATUTES AND**
8 **THE FIVE CRITERIA ESTABLISHED BY THE NEVADA SUPREME**
9 **COURT**

10 Generally, “the power to stay proceedings is incidental to the power inherent in every
11 court to control the disposition of the causes on its docket with economy of time and effort for
12 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Moreover,
13 NRCP Rule 62 provides for stays pending appeal by giving a supersedeas bond. Nev. R. Civ. P.
14 (NRCP) Rule 62(d). The Nevada Supreme Court looks at five factors in determining whether “a
15 full supersedeas bond may be waived and/or alternate security substituted, as follows:

- 16 (1) [T]he complexity of the collection process; (2) the amount of time required to obtain
17 a judgment after it is affirmed on appeal; (3) the degree of confidence the district court
18 has in the availability of funds to pay the judgment; (4) whether the defendant’s ability
19 to pay the judgment is so plain that the cost of a bond would be a waste of money; and
20 (5) whether the defendant is in such a precarious financial situation that the
21 requirement to post a bond would place other creditors of the defendant in an insecure
22 position.

23 *Nelson v. Heer*, 121 Nev. 832, 835-836 (2006).

24 Here, an analysis of the five factors supports a stay of execution of judgment without
25 bond. First, the collection process is not complicated. The claim procedures are specifically
26 provided for in the Nevada probate laws governing claims and judgments against an estate of the
27 decedent. Defendant simply did not follow these procedures before compelling Plaintiffs, based

1 upon a self-styled “*ex parte* application,” to collectively appear for judgment debtor
2 examinations. Second, little if any time will be required to obtain a judgment after it is affirmed
3 on appeal because the judgment has been entered. Third, in considering “the degree of confidence
4 the district court has in the availability of funds to pay the judgment,” the Court should take into
5 consideration that the Defendant is and has been on notice, even before filings its motion for
6 reconsideration, that there are presently no assets in the Estate. Knowing this, and without going
7 through proper probate procedures, Defendant nevertheless sought to obtain its judgment, without
8 indicating apportionment among Plaintiffs and *why* the individual Plaintiffs are individually
9 liable to Defendant for said fees and costs. Fourth, the Plaintiffs’ ability to pay the judgment is
10 made irrelevant by the fact that the probate court has specifically ordered Mr. Powell, as Special
11 Administrator, to serve without bond. Coupled with probate statutes prohibition against the
12 execution of Estate assets prior to administration, it is clear under the facts of this case that a stay
13 of proceedings bond should be waived pending appeal. Finally, publicly available information
14 indicates that Defendant Valley Health System’s annual revenues are “\$10-\$50 million,” with
15 “100-500 employees.” See [https://incfact.com/company/valleyhealthsystems-huntington-](https://incfact.com/company/valleyhealthsystems-huntington-wv/#fastfacts)
16 [wv/#fastfacts](https://incfact.com/company/valleyhealthsystems-huntington-wv/#fastfacts). On the other hand, individual Plaintiffs are in a precarious financial situation that
17 would place their other creditors in an insecure position. Mr. Lloyd Creecy is an elderly
18 gentleman in his seventies that survives on social security payments. Darci and Taryn Creecy, as
19 well as Isaiah Khosroff (Rebecca Powell’s children) each have limited financial resources.

20 All of the *Nelson* factors favor staying judgment and waiving the requirement of a
21 supersedeas bond.
22

D. DEFECTS IN JUDGMENT SUPPORT STAY OF EXECUTION

The Attorneys' Fees Judgment does not apportion the amounts of judgment attributable to the Plaintiffs, including the Estate and the individual Plaintiffs and heirs of the decedent. Nor does the Attorneys Fee Judgment specify that liability for said Attorneys' Fees Judgment is "joint and several." Instead, the Attorneys' Fees Judgment simply lumps all Plaintiffs into a set of "Judgment Debtors," requiring all individual plaintiffs to appear for Judgment Debtor deposition together with the Special Administrator of the Estate, Brian Powell, who as stated above is not subject to personal liability for the debts of the Estate.

IV. CONCLUSION

For the foregoing reasons, this Court should stay all Defendant/Judgment Creditor efforts to execute upon the Attorneys' Fees Judgment and stay execution of said Judgment, including, ordering a stay of judgment debtor examinations, pending the outcome the of Plaintiffs' pending appeal, based on for failure of Defendant to comply with Nevada probate statutes in relation to judgments obtained against an Estate in probate and/or otherwise stay all judgment enforcement proceedings, without bond, as set forth herein above.

Respectfully submitted,

/s/ Paul S. Padda

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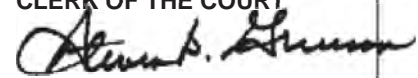
Dated: September 27, 2022

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure 5, the undersigned certifies that on this 27th day of September 2022, a copy of the foregoing **PLAINTIFFS' MOTION TO STAY EXECUTION ON JUDGMENT FOR ATTORNEYS' FEES AND COSTS INCLUDING STAY OF EXAMINATION OF JUDGMENT DEBTORS AND PRODUCTION OF DOCUMENTS** was filed with the Court and served upon all parties/counsel of record (identified on the master service list) in the above-entitled matter through the Court's electronic filing system - efileNV e-service.

/s/ Lani Esteban

An employee of
PAUL PADDA LAW, PLLC



APEN
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Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator;
DARCI CREECY, individually and as heir;
TARYN CREECY, individually and as heir;
ISAAH KHOSROF, individually and as heir;
LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT. 7

APPENDIX IN SUPPORT OF
PLAINTIFFS' MOTION TO STAY
JUDGMENT AND RESPONSE TO VHS'
OPPOSITION AND COUNTERMOTION

This Appendix is submitted and filed in support of Plaintiffs' motion to stay execution of judgment and judgment debtor examinations, as well as in support of Plaintiffs' response to Valley Health System, LLC's opposition to that motion and counter-motion for contempt.

1

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
Eighth Judicial District Court, Case No. A-19-788787-C (Dept. 7)
Plaintiffs' Response To Defendant VHS' Opposition to Motion To Stay
And Opposition To Defendant's Counter-motion
PPL #201297-15-04

Respectfully submitted,

/s/ Paul S. Padda

Paul S. Padda, Esq.
Counsel for Plaintiffs

Dated: November 4, 2022

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure, the undersigned certifies that on this day, November 4, 2022, a copy of the foregoing **APPENDIX IN SUPPORT OF PLAINTIFFS' MOTION TO STAY JUDGMENT AND RESPONSE TO VHS' OPPOSITION AND COUNTERMOTION** was filed with the Court and served upon all parties/counsel of record (identified on the master service list) in the above-entitled matter through the Court's electronic filing system - efileNV e-service.

/s/ Ashley Pourghareman

Ashley Pourghareman, Paralegal
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APPENDIX

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Attorneys for Plaintiffs

CLARK COUNTY DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL,
through BRIAN POWELL, as Special
Administrator; DARCI CREECY,
individually and as an Heir; TARYN
CREECY, individually and as an Heir;
ISAIAH KHOSROF, individually and as an
Heir; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC.,
a foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;

Defendants.

A-19-788787-C

Case No.

Department 14

Dept No.

COMPLAINT

JURY TRIAL DEMANDED

SUBJECT TO AUTOMATIC
ARBITRATION EXEMPTION –

1. Pursuant To N.A.R. 3(A)-
Medical Malpractice
2. Amount In Controversy Exceeds
\$50,000.00

1 This is a civil action seeking monetary damages for the death of Rebecca Powell. In
2 support of this Complaint, Plaintiffs rely upon the Affidavit of Dr. Sami Hashim, M.D.
3 (incorporated by reference herein and attached to this Complaint as Exhibit A) and allege as
4 follows:

5
6 I.

7 ARBITRATION EXEMPTION

8 1. Nevada Revised Statute ("N.R.S.") 38.250 requires that "[a]ll civil actions filed in
9 district court for damages, if the cause of action arises in the State of Nevada and the amount in
10 issue does not exceed \$50,000 per plaintiff, exclusive of attorney's fees, interest and court costs,
11 must be submitted to nonbinding arbitration . . ."

12
13 2. This case is automatically exempt from the arbitration program because "the
14 amount in issue" (i.e. damages) for Plaintiffs significantly exceeds \$50,000.00, and because it is
15 a medical malpractice matter.

16
17 II.

18 JURISDICTION, VENUE AND LEGAL BASIS FOR THIS ACTION

19 3. This civil action is brought by Plaintiffs pursuant to the statutory and common law
20 of the State of Nevada. Venue is appropriate in this Court because all events giving rise to the
21 present cause of action occurred in Clark County, Nevada. The amount in controversy in this
22 case is well in excess of the statutorily required amount of \$15,000.00.

23
24 ...

25 ...

III.

THE PARTIES

4. Plaintiff, "Estate of Rebecca Powell" administers the affairs of Rebecca Powell ("Rebecca") who died in Clark County, Nevada on May 11, 2017. At the time of her death, Rebecca, an adult female, was approximately 42-years old. Rebecca was born on May 30, 1975.

5. Plaintiff Brian Powell ("Brian") is an adult male and the ex-husband of Rebecca as well as the Special Administrator of Rebecca's Estate. At all time periods relevant to this lawsuit, Brian was a resident of Clark County, Nevada.

6. Plaintiff Darci Creecy ("Darci") is an adult female and the daughter of Rebecca. At all time periods relevant to this lawsuit, Darci was a resident of Ohio.

7. Plaintiff Taryn Creecy ("Taryn") is an adult female and the daughter of Rebecca. At all time periods relevant to this lawsuit, Taryn was a resident of Ohio.

8. Plaintiff Isaiah Khosrof ("Khosrof") is an adult male and the son of Rebecca. At all time periods relevant to this lawsuit, Khosrof was a resident of Massachusetts.

9. Plaintiff Lloyd Creecy ("Lloyd") is an adult male and the father of Rebecca. At all time periods relevant to this lawsuit, Lloyd was a resident of Ohio.

10. Defendant Valley Health System, LLC (doing business as "Centennial Hills Hospital Medical Center") ("VHS") is a for-profit healthcare company, upon information and belief, headquartered in Nevada, that operates approximately 6 hospitals in Nevada. Upon information and belief, VHS owns and operates "Centennial Hills Hospital Medical Center"

1 located in Las Vegas, Nevada. VHS is a Delaware limited liability company registered to transact
2 business in Nevada.

3 11. Defendant Universal Health Services, Inc. ("UHS") is, upon information and
4 belief, a for-profit healthcare company headquartered in King of Prussia, Pennsylvania. Upon
5 further information and belief, UHS, through subsidiarie(s)/intermediarie(s) owns and operates
6 "Centennial Hills Hospital Medical Center" located in Las Vegas, Nevada, through
7 ownership/control of Valley Health System, LLC. UHS is a foreign corporation registered in
8 Delaware.
9

10 12. Defendant Dr. Dionice S. Juliano, M.D. ("Dr. Juliano") is an adult male individual
11 that, upon information and belief, was a resident of Clark County, Nevada for all time periods
12 relevant to this lawsuit. Dr. Juliano is licensed to practice medicine in the State of Nevada.
13

14 13. Defendant Dr. Conrado C.D. Concio, M.D. ("Dr. Concio") is an adult male
15 individual that, upon information and belief, was a resident of Clark County, Nevada for all time
16 periods relevant to this lawsuit. Dr. Concio is licensed to practice medicine in the State of Nevada.
17

18 14. Defendant Dr. Vishal S. Shah, M.D. ("Dr. Shah") is an adult male individual that,
19 upon information and belief, was a resident of Clark County, Nevada for all time periods relevant
20 to this lawsuit. Dr. Shah is licensed to practice medicine in the State of Nevada.

21 15. Plaintiffs are informed and believe, and thereupon allege, that each of the
22 Defendants designated as Does 1 through 10, inclusive, are responsible in some manner for the
23 events and happenings herein referred to and negligently and/or intentionally caused injuries and
24 damages to Plaintiffs. Plaintiffs further allege that they cannot currently ascertain the identity of
25

1 each of the Doe Defendants and Plaintiffs will therefore seek leave of Court to amend this
2 Complaint to insert the true names and capacities of Doe Defendants when they have been
3 ascertained, together with appropriate charging allegations and to join such Defendants in this
4 action.

5
6 16. Plaintiffs are informed and believe, and thereupon allege, that each of the
7 Defendants designated as Roes A through Z, inclusive, is responsible in some manner for the
8 events and happenings herein referred to and negligently and/or intentionally caused injuries and
9 damages to Plaintiffs. Plaintiffs are further informed and believe that each of the Roes is either a
10 corporation, related subsidiary, parent entity, group, partnership, holding company, owner,
11 predecessor entity, successor entity, joint venture, related association, insurer or business entity,
12 the true names of which are currently unknown to Plaintiffs at this time. Additionally, Plaintiffs
13 allege that they cannot currently ascertain the identity of each of the Roe Defendants and Plaintiffs
14 will therefore seek leave of Court to amend this Complaint to insert the true names and capacities
15 of Roe Defendants when they have been ascertained, together with appropriate charging
16 allegations and to join such Defendants in this action.
17
18

19 IV.

20 FACTUAL BACKGROUND

21 17. Centennial Hills Hospital Medical Center ("CHHMC") (operated by VHS and
22 UHS) advertises itself on its website as a hospital that offers various healthcare services, including
23 emergency care, heart care, stroke services, imaging services, gastroenterology and oncology,
24 among other things. UHS, the parent corporation of VHS, and through VHS, the owner and
25
26

operator of CHHMC, in or around April 2018, was reported to have set aside approximately \$35 million for the potential settlement of alleged False Claims Act violations.

18. On May 3, 2017, Rebecca was found by emergency medical services (“EMS”) at home, unconscious with labored breathing, and with vomitus on her face. It was believed she had ingested an over-amount of Benadryl, Cymbalta and Ambien. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 6A). EMS intubated Rebecca and transported her to the Emergency Department (“ED”) of CHHMC. *Id.* At the ED, Rebecca was evaluated and diagnosed with: (a) Respiratory Failure and low blood pressure; (b) “Overdose on unknown amount of Benadryl, Cymbalta and ethyl alcohol”; (c) Sinus Tachycardia – no ectopy; and (d) Acidosis, among other things. *Id.*

19. Notwithstanding the Death Certificate stating that the only cause of death was “Complications of Cymbalta Intoxication,” Rebecca did not, and with high probability could not have died from this. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 6B). Instead, Rebecca died as a direct consequence of respiratory failure directly due to below standard of care violations as indicated by her medical records and reinforced by the Department of Health and Human Services—Division of Health Quality and Compliance’s (“DHHS”) Investigative Report. *Id.* After being admitted to Centennial Hills Hospital on March 3, 2017, Rebecca’s health status steadily improved over the course of almost a week to a point where a pulmonologist consultation stated that Rebecca felt well and wanted to go home, while making no note to delay discharge. *Id.* Plaintiffs were also told by healthcare providers that Rebecca was doing much better and “would be discharged soon.” *Id.* Metabolically, Cymbalta has a half-shelf life of approximately

1 12-24 hours and up to 48 hours if an excessive amount is ingested. Rebecca's health status did
2 not deteriorate, and was in fact improving, until 150 hours plus had transpired. *Id.* Therefore, the
3 possibility that Rebecca died of Cymbalta intoxication or of complications arising therefrom, is
4 not realistic. *Id.* A bronchoscopy and bronchoalveolar lavage on May 4, 2017 excluded any
5 aspiration of vomitus, and toxicology reports did not find evidence of the ingestion of Ambien,
6 Benadryl or ethyl alcohol. *Id.*

8 20. By May 9, 2017, it was noted that Rebecca "had significantly improved and was
9 expected to be discharged." *Id.* However, Rebecca's health status began to deteriorate the next
10 day, on May 11, 2017. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 6C). The initial
11 changes were not critical, nor overly concerning. *Id.* However, Defendants' conduct in providing
12 healthcare services to Rebecca fell below the appropriate standard of care; this included
13 inadequate and absent monitoring, a lack of diagnostic testing and improper treatment, all of
14 which were directly related to Rebecca's acutely failing health status and ultimately her death
15 early in the morning of May 11, 2017. *Id.*

18 21. The day before, on May 10, 2017 in the wee hours of the morning, Rebecca started
19 coughing and complained of shortness of breath, weakness and a "drowning" feeling. *Id.* Pursuant
20 to this, the drug Ativan was ordered to be administered to Rebecca by Dr. Shah via IV push. *Id.*
21 Various tests including x-rays were administered, which showed possible infiltrates or edema. *Id.*

22 22. On May 11, 2017, Dr. Concio ordered two consecutive doses of the drug Ativan
23 to be administered to Rebecca via IV push. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D.
24 ¶ 6D). A CT Scan of Rebecca's chest was also ordered, but said scan was aborted due to
25

1 Rebecca's shortness of breath and "anxiety." *Id.* At the very least, a portable x-ray should have
2 been ordered when the patient was returned to her room, but it was not. *Id.* Later, an RT-Tech
3 noted that Rebecca needed to be monitored by a "sitter" due to her attempting to remove her
4 oxygen mask. *Id.* However, no sitter was assigned, nor was Rebecca moved to another room with
5 adequate monitoring capabilities. *Id.* Indeed, the camera monitor of the room Rebecca was in
6 noted that the resolution of the camera/monitor did not allow him to see the patient enough to
7 discern when she attempted to remove the mask. *Id.* Rebecca was mis-diagnosed with 'anxiety
8 disorder' by an unqualified healthcare provider and there was no differential diagnosis presented
9 by any physician at any time on May 11, 2017 when the patient was suffering from respiratory
10 insufficiency. *Id.* Given that Rebecca had been receiving daily doses of Midazolam,
11 Acetylcysteine and at least four other drugs known to cause adverse respiratory side effects, and
12 that Rebecca went into Code Blue status within 90 minutes after Ativan dosing, it is highly
13 probable that the administration of back-to-back doses of Ativan via IV Push to her (while she
14 was already in respiratory distress), alongside the inadequate and absent monitoring, and other
15 act or omissions falling below standard of care, as notes by the DHHS Investigative Report, all
16 directly led to Rebecca's acute respiratory failure resulting in the final cardiorespiratory event
17 and her death. *Id.*

21 23. Dr. Juliano, Dr. Concio and Dr. Shah all breached their duty as professionals
22 providing medical services to Rebecca. See **Exhibit A**, (Affidavit of Dr. Sami Hashim, M.D. ¶
23 7). All three of them were aware of the patient's acutely declining health status and were
24 responsible (and should have) ordered alternative diagnostic imaging such as a portable x-ray to
25

1 detect any significant pulmonary changes when an attempt to conduct a CT scan failed due to
2 “anxiety.” See **Exhibit A**, (Affidavit of Dr. Sami Hashim, M.D. ¶ 7A). In addition, based on
3 Rebecca’s stable condition until late May 10, 2017 and her acute decline in health status on May
4 11, 2017, these three physicians should have made a differential diagnosis that included the
5 possibility of side effect(s) and adverse reaction(s) from the numerous medications being
6 administered to Rebecca known to have side effects directly related to her symptoms manifesting
7 during the deterioration of her health status on May 10 and 11, 2017. *Id.* The nature of the sudden
8 onset of Rebecca’s symptoms should have triggered the three doctors to review drug side effects
9 and interactions as a likely cause of her symptoms and declining health status, but this possibility
10 was ignored by them. *Id.* All three physicians were aware of the decision to administer more
11 Ativan via IV-Push to Rebecca multiple times in rapid succession to treat the her symptom of
12 anxiety, and allowed this administration in dereliction of their responsibility to have been aware
13 that administering Ativan to a respiratory-compromised patient poses significant risks related to
14 serious pulmonary/respiratory function. *Id.* Indeed, the FDA provides warnings of such risks. *Id.*

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16
17
18 24. Had the three physicians reviewed Rebecca’s drug regimen, they would have
19 realized a large number of these drugs caused shortness of breath, associated anxiety, cough,
20 labored breathing, weakness and other related symptoms exhibited by Rebecca. *Id.* They would
21 have further recognized that Ativan is known to potentially cause and/or increase respiratory
22 depression and would not have administered it, especially not by IV-Push, which is fast-acting.

23 *Id.*

24 ...
25
26
27
28

25. In concert with, and in addition to the above-articulated failures, a DHHS report dated February 5, 2018 (received by Special Administrator Brian Powell on February 9, 2018) found a plethora of violations falling below the standard of care. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). Among other things, the report criticized the fact that no specific differential diagnosis was shown in the records related to Rebecca's complaints and abnormal findings between May 10 and 11, 2017. *Id.* It also notes that the records state numerous times that physician notification, elevation to a higher level of care and/or closer monitoring was required but did not occur. *Id.* For example, at one point in time the respiratory therapist concluded the physician should have been notified, the Rapid Response Team ("RRT") activated, and the level of care upgraded, but the physician was not notified, the RRT was not activated and the level of care was not elevated. *Id.* Further, Rebecca was never moved to a different room for closer monitoring as earlier advised. *Id.* Instead, for at least one hour while she was in severe respiratory distress, no RN or CNA checked on her, which was grossly inadequate. *Id.* Also falling far below the standard of care was the fact that Rebecca did not receive any cardiac monitoring until she entered Code Blue status. *Id.* Any patient in respiratory distress needing a re-breather mask and receiving the same medications as Rebecca, must be on telemetry to monitor cardiac status. *Id.* In Rebecca's case, this was critically important given the fact she had been administered multiple IV Push doses of Ativan, a drug known to depress the respiratory system. *Id.*

...

...

...

V.

FIRST CAUSE OF ACTION

[On Behalf Of The Estate Of Rebecca Powell (Through Special Administrator Brian), Dacri, Taryn and Isaiah Against All Defendants]
Negligence / Medical Malpractice

26. Plaintiffs The Estate Of Rebecca Powell (through Special Administrator Brian), Dacri, Taryn, and Isaiah reallege and incorporate by reference the allegations set forth in paragraphs 1 through 25 above.

27. Under Nevada law, specifically the provisions of Nevada Revised Statute ("NRS") sections 41A, a plaintiff may recover for medical malpractice by showing the following: (i) defendant(s) (i.e. hospital, physician or employee of hospital) failed in rendering services to use reasonable care, skill or knowledge ordinarily used in similar circumstances; (ii) defendant's conduct was the actual and proximate cause of plaintiff's injuries; and (iii) plaintiff suffered damages. Under NRS 41A.071, a suit alleging medical malpractice requires an affidavit from a "medical expert."

28. In this case, Defendants (physicians, medical personnel and medical services corporations in the business of operating/providing services at Centennial Hills Hospital Medical Center) owed Rebecca a duty of care to provide her with medical services in a reasonable and safe manner. Defendants breached their duty of care towards Rebecca by providing her with medical services that fell below the acceptable standards of practice and care. *See Exhibit A* (attached in compliance with NRS 41A.071 and fully incorporated by reference herein). Specifically, Defendants acted below the standard of care when, among other things detailed in *Exhibit A*, they failed to recognize and consider the differential diagnosis of drug-induced

1 respiratory distress, inappropriately administering and/or allowing the administration of
2 additional Ativan via IV Push which further depressed Rebecca's respiration, contributing to her
3 death. This was compounded by numerous instances of failure to notify a physician, failure to
4 elevate to a higher level of care, failure to conduct necessary tests and failure to conduct closer
5 monitoring, all falling below the standard of care. Defendants also failed to recognize the fact that
6 Cymbalta could not be the cause of Rebecca's acute health deterioration due to its short half-shelf
7 life. Any other failures by Defendants to adhere to the standard of care while treating Rebecca
8 not described herein are realleged and incorporated by reference herein, as set forth in **Exhibit A**
9 and paragraphs 1 to 27 above.

11 29. Based upon the foregoing, it was entirely foreseeable that administering several
12 doses of Ativan via IV Push in quick succession to Rebecca, who was already experiencing
13 respiratory distress, and who was already on a cocktail of other drugs also known to have negative
14 respiratory effects, in conjunction with the various failures of care describes above and in **Exhibit**
15 **A**, could have caused (and in all probability did cause) severe respiratory symptoms, ultimately
16 putting Rebecca into Code Blue status and killing her. **Exhibit A**, ¶ 7 and 8. Thus, Defendants'
17 breach of their duty was both the actual and proximate cause of Rebecca's death.

20 30. Plaintiffs Dacri, Taryn and Isaiah, the heirs of Rebecca, as well as her Estate, have
21 suffered damages, including but not limited to significant pain and suffering, as a result of
22 Defendants' negligence in excess of \$15,000.00.

24 ...

25 ...

1 35. Under NRS 41.085, the heirs and personal representative of a decedent's estate
2 may respectively maintain independent causes of action against another where that person/party
3 has caused the decedent's death by wrongful act or neglect.

4 36. In this case, Rebecca's Estate (through Brian its Special Administrator) and her
5 heirs (her children Dacri, Taryn, and Isaiah) may each seek appropriate damages permitted by
6 Nevada law (NRS 41.085) based upon the death of Rebecca. This includes, but is not limited to,
7 damages for grief, sorrow, loss of probable support, companionship, society, comfort and
8 consortium, medical/funeral expenses and damages for pain/suffering/emotional distress of
9 Rebecca. Additionally, these Plaintiffs may also seek any special damages permitted by law.

10 37. Defendants acted wrongfully and neglectfully when they breached their duty of
11 care towards Rebecca by providing her with medical service that fell below the acceptable
12 standards of practice and care. See **Exhibit A** (fully incorporated by reference herein).
13 Specifically, Defendants acted below the standard of care when, among other things detailed in
14 **Exhibit A**, they failed to recognize and consider the differential diagnosis of drug-induced
15 respiratory distress, inappropriately administering and/or allowing the administration of
16 additional Ativan via IV Push which further depressed Rebecca's respiration, contributing to her
17 death. This was compounded by numerous instances of failure to notify a physician, failure to
18 elevate to a higher level of care, failure to conduct necessary tests and failure to conduct closer
19 monitoring, all falling below the standard of care. Defendants also failed to recognize the fact that
20 Cymbalta could not be the cause of Rebecca's acute health deterioration due to its short half-shelf
21 life. Any other failures by Defendants to adhere to the standard of care while treating Rebecca
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1 not described herein are realleged and incorporated by reference herein, as set forth in **Exhibit A**
2 and paragraphs 1 to 36 above.

3 38. These **Plaintiffs**, the heirs of Rebecca, as well as her Estate, have suffered
4 respective damages as a result of Defendants' negligence in excess of \$15,000.00.

5 39. That the conduct of Defendants rose to the level of oppression, fraud or malice,
6 express or implied. That Defendants consciously disregarded the welfare and safety of Rebecca
7 and these Plaintiffs in providing substandard care to Rebecca, leading to her death. Further,
8 Defendants committed fraud where notes and records by RN(s) and/or CNAs were contradicted
9 by a note indicating that Rebecca was not checked on for an hour on May 11, 2017 while she was
10 in critical condition. See **Exhibit A**, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). These Plaintiffs
11 further reallege and incorporate any further applicable acts or omissions of Defendants while
12 treating Rebecca not described herein, as set forth in Exhibit A and paragraphs 1 to 38 above.
13 That these Plaintiffs are entitled to punitive/exemplary damages due to said acts or omissions.
14

15 40. As a result of Defendants' negligence, these Plaintiffs have been required to obtain
16 the services of an attorney to prosecute this action. These Plaintiffs are entitled to an award of
17 attorney's fees and costs of suit incurred herein.
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20 **VII.**

21 **THIRD CAUSE OF ACTION**

22 ***[On Behalf Of Darci, Taryn and Isaiah Against All Defendants]***
23 **Negligent Infliction Of Emotional Distress**

24 41. These Plaintiffs reallege and incorporate by reference the allegations set forth in
25 paragraphs 1 through 40 above.

1 42. A plaintiff may recover for negligent infliction of emotional distress (bystander
2 theory) under Nevada law by showing the following: (i) defendant negligently committed an
3 injury upon another; (ii) plaintiff is closely related to the victim of the accident; (iii) plaintiff was
4 located near the scene of the accident; and (iv) plaintiff suffered a shock resulting from the sensory
5 and contemporaneous observance of the accident.
6

7 43. In this case, Defendants (physicians and medical services corporations operating
8 a for-profit hospital) owed Rebecca a duty of care to provide reasonable and safe services. They
9 breached this duty of care towards Rebecca by providing her with medical service that fell below
10 the acceptable standards of practice and care. See Exhibit A (fully incorporated by reference
11 herein). Specifically, Defendants acted below the standard of care when, among other things
12 detailed in Exhibit A, they failed to recognize and consider the differential diagnosis of drug-
13 induced respiratory distress, inappropriately administering and/or allowing the administration of
14 additional Ativan via IV Push which further depressed Rebecca's respiration, contributing to her
15 death. This was compounded by numerous instances of failure to notify a physician, failure to
16 elevate to a higher level of care, failure to conduct necessary tests and failure to conduct closer
17 monitoring, all falling below the standard of care. Defendants also failed to recognize the fact that
18 Cymbalta could not be the cause of Rebecca's acute health deterioration due to its short half-shelf
19 life. Any other failures by Defendants to adhere to the standard of care while treating Rebecca
20 not described herein are realleged and incorporated by reference herein, as set forth in Exhibit A
21 and paragraphs 1 to 42 above.
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1 44. As a direct and proximate result of the negligence of Defendants, these Plaintiffs
2 suffered shock and serious emotional distress when they observed the condition of their mother
3 Rebecca precipitously deteriorate (ultimately leading to her rapid death) at CHHMC on May 10
4 and 11 of 2017.

5 45. These Plaintiffs contemporaneously observed the direct and proximate results of
6 Defendants' negligence when their mother Rebecca, who previously appeared to be recovering,
7 rapidly deteriorated before their eyes and died. These Plaintiffs suffered a shock and serious
8 emotional distress from sensory, contemporaneous observance of this tragic and unfortunate
9 event, all directly and proximately caused by Defendants' negligence. That said, this severe
10 emotional distress had an adverse impact on their physical health and well-being.
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12 46. These Plaintiffs, and each of them, have suffered damages as a result of
13 Defendants' actions in excess of \$15,000.00.
14

15 47. That the conduct of Defendants rose to the level of oppression, fraud or malice,
16 express or implied. That Defendants consciously disregarded the welfare and safety of Rebecca
17 and these Plaintiffs in providing substandard care to Rebecca, leading to her death. Further,
18 Defendants committed fraud where notes and records by RN(s) and/or CNAs were contradicted
19 by a note indicating that Rebecca was not checked on for an hour on May 11, 2017 while she was
20 in critical condition. *See Exhibit A*, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). These Plaintiffs
21 further reallege and incorporate any further applicable acts or omissions of Defendants while
22 treating Rebecca not described herein, as set forth in Exhibit A and paragraphs 1 to 46 above.
23 That these Plaintiffs are entitled to punitive/exemplary damages due to said acts or omissions.
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1 48. As a result of Defendants' actions, these Plaintiffs have been required to obtain
2 the services of an attorney to prosecute this action. These Plaintiff is entitled to an award of
3 attorney's fees and costs of suit incurred herein.

4 VIII.

5
6 **FOURTH CAUSE OF ACTION**
7 ***[On Behalf Of Lloyd Creecy Against All Defendants]***
8 **Negligent Infliction Of Emotional Distress**

9 49. This Plaintiff realleges and incorporates by reference the allegations set forth in
10 paragraphs 1 through 48 above.

11 50. A plaintiff may recover for negligent infliction of emotional distress (bystander
12 theory) under Nevada law by showing the following: (i) defendant negligently committed an
13 injury upon another; (ii) plaintiff is closely related to the victim of the accident; (iii) plaintiff was
14 located near the scene of the accident; and (iv) plaintiff suffered a shock resulting from the sensory
15 and contemporaneous observance of the accident.

16 51. In this case, Defendants (physicians and medical services corporations operating
17 a for-profit hospital) owed Rebecca a duty of care to provide reasonable and safe services. They
18 breached this duty of care towards Rebecca by providing her with medical service that fell below
19 the acceptable standards of practice and care. See **Exhibit A** (fully incorporated by reference
20 herein). Specifically, Defendants acted below the standard of care when, among other things
21 detailed in **Exhibit A**, they failed to recognize and consider the differential diagnosis of drug-
22 induced respiratory distress, inappropriately administering and/or allowing the administration of
23 additional Ativan via IV Push which further depressed Rebecca's respiration, contributing to her
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26

1 death. This was compounded by numerous instances of failure to notify a physician, failure to
2 elevate to a higher level of care, failure to conduct necessary tests and failure to conduct closer
3 monitoring, all falling below the standard of care. Defendants also failed to recognize the fact that
4 Cymbalta could not be the cause of Rebecca's acute health deterioration due to its short half-shelf
5 life. Any other failures by Defendants to adhere to the standard of care while treating Rebecca
6 not described herein are realleged and incorporated by reference herein, as set forth in Exhibit A
7 and paragraphs 1 to 50 above.

9 52. As a direct and proximate result of the negligence of Defendants, this Plaintiff
10 suffered shock and serious emotional distress when he observed the condition of his daughter
11 Rebecca precipitously deteriorate (ultimately leading to her rapid death) at CHHMC on May 10
12 and 11 of 2017.

14 53. This Plaintiff contemporaneously observed the direct and proximate results of
15 Defendants' negligence when his daughter Rebecca, who previously appeared to be recovering,
16 rapidly deteriorated before his eyes and died. This Plaintiff suffered a shock and serious
17 emotional distress from sensory, contemporaneous observance of this tragic and unfortunate
18 event, all directly and proximately caused by Defendants' negligence. That said, this severe
19 emotional distress had an adverse impact on his physical health and well-being.

21 54. This Plaintiff has suffered damages as a result of Defendants' actions in excess of
22 \$15,000.00.

24 55. That the conduct of Defendants rose to the level of oppression, fraud or malice,
25 express or implied. That Defendants consciously disregarded the welfare and safety of Rebecca

1 and these Plaintiffs in providing substandard care to Rebecca, leading to her death. Further,
2 Defendants committed fraud where notes and records by RN(s) and/or CNAs were contradicted
3 by a note indicating that Rebecca was not checked on for an hour on May 11, 2017 while she was
4 in critical condition. See Exhibit A, (Affidavit of Dr. Sami Hashim, M.D. ¶ 8). These Plaintiffs
5 further reallege and incorporate any further applicable acts or omissions of Defendants while
6 treating Rebecca not described herein, as set forth in Exhibit A and paragraphs 1 to 54 above.
7 That these Plaintiffs are entitled to punitive/exemplary damages due to said acts or omissions.
8

9 56. As a result of Defendants' actions, this Plaintiff has been required to obtain the
10 services of an attorney to prosecute this action. This Plaintiff is entitled to an award of attorney's
11 fees and costs of suit incurred herein.
12

13 IX.

14 RELIEF REQUESTED

15 57. Wherefore, in light of the foregoing, Plaintiffs request that the Court enter the
16 following relief in this matter:
17

- 18 a. Set this matter for trial by jury on a date certain;
- 19 b. Award Plaintiffs compensatory and special damages in amounts exceeding
20 \$15,000.00 for each cause of action set forth herein;
- 21 c. Award Plaintiffs interest (pre-judgment and post-judgment) on all sums
22 permitted by law;
- 23 d. Award Plaintiff reasonable attorney's fees and costs for having to
24 prosecute this matter;
- 25 ...

- 1 e. Punitive/Exemplary Damages for each cause of action; and
2
3 f. Award all other just and proper relief.

4 DATED this 4th day of February 2019.

5 Respectfully submitted by:

6 PAUL PADDA LAW, PLLC

7
8 By: 

9 PAUL S. PADDA, ESQ.
10 JOSHUA Y. ANG, ESQ.
11 4560 South Decatur Blvd., Suite 300
12 Las Vegas, Nevada 89103

13 Attorneys for Plaintiffs
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EXHIBIT A

EXHIBIT A

AFFIDAVIT OF DR. SAMI HASHIM, M.D.

STATE OF NEW YORK }
COUNTY OF WESTCHESTER }

The undersigned affiant, Dr. Sami Hashim, M.D., being first duly sworn, hereby deposes and says:

1. I have reviewed the medical records pertaining to Rebecca Powell (Date of Birth: May 30, 1975 / Date of Death: May 11, 2017).
2. This affidavit is offered based upon my personal and professional knowledge. I am over the age of eighteen and competent to testify to the matters set forth herein if called upon to do so.
3. I am a medical doctor and senior attending physician in the Division of Endocrinology and Metabolism at St. Luke's Hospital/Medical Center at Mount Sinai in New York, New York. I have been a Professor of Endocrinology, Internal Medicine, Metabolism & Nutritional Medicine at Columbia University College of Physicians & Surgeons since the early 1970's and was Chief of Metabolic Research from 1971 to 1997. I have published over 200 papers in peer-reviewed journals and am a recognized expert in the fields of internal medicine (including general medicine, which includes cardiology, neurology, pulmonology and other specialties), endocrinology, metabolism and nutrition. I have served on research review committees of the National Institute of Health. I earned my MD degree from the State University of New York, with post graduate training at Harvard University.
4. I have worked as a senior attending physician and professor at St. Luke's Hospital and Medical Center, a Mount Sinai Medical Center affiliate hospital (previously affiliated with Columbia University) for over 20 years. As a professor, I teach medical students, interns, residents all aspects of internal and general medicine, in-patient and out-patient medical care. I complete medical rounds each day seeing patients with and without medical students, interns, residents and I train Fellows in many different specialties including Emergency Medicine, Cardiology, and Pulmonary Medicine. I also attend to private patients at St. Luke's.
5. As a senior attending physician and Professor with decades of teaching and training medical students, Interns, Residents and Fellows as well as attending to my own private patients, I can attest that following Standard of Care ("SOC") protocols is crucial and essential for proper diagnosis, treatment and care management. Obviously, there are numerous SOC protocols, which begin from the time the patient is first seen and examined at a hospital/medical center, post-admission, at time of discharge and following discharge. Many of the protocols are basic, yet of critical importance to the patient's overall health welfare and ultimate recovery during the recuperation period following discharge. That is why all hospitals/medical centers respect and adhere to strict guidelines and protocols described & defined by each healthcare facility and even by federal law(s). Certainly, real-time information stated

and revealed in a patient's medical records such as all chart notes, must be carefully evaluated and considered as primary SOC as part of patient care management. Disregard of even basic protocols can lead to catastrophic events and outcomes.

6. I have reviewed the available medical records, summary reports and the HHS-Investigative Report pertaining to Rebecca Powell. Evaluation of her medical records and reconstruction of an accurate timeline was available in part (all records were requested, not all records were provided by Centennial Hills Hospital & Medical Center). In my opinion, stated to a reasonable degree of medical probability, the conduct of *Centennial Hills Hospital & Medical Center* (including its hospitalists/nurses and other healthcare providers including *Dr. Julianio Dionice, M.D., Dr. C. Concio, M.D., Dr. Vishal Shah* - presumed employees)—fell below the appropriate standards of care that were owed to Rebecca Powell. The medical records and additional medical related information I have reviewed reveal the following:

- A. On May 3, 2017 at 3:27PDT, Rebecca Powell, a 41-year old adult female, was found by EMS at home, unconscious with labored breathing and vomitus on her face. It was believed she ingested an over-amount of Benadryl, Cymbalta and Ambien. EMS intubated Ms. Powell and transported her to Centennial Hills Hospital—Emergency Department (ED). At ED, patient was evaluated and diagnosed with:
- Respiratory Failure and low BP
 - “Overdose on unknown amount of Benadryl, Cymbalta and ETOH”
 - Review of Systems: “Within Normal Limits” (WNL)
 - Sinus Tachycardia – no ectopy
 - Lab results consistent with respiratory failure and over-dosage of suspected medications
 - Acidosis
- B. Notwithstanding clear evidence of intentional over-dosing of the substances mentioned, the Death Certificate noted the *only* cause of death was due to: “Complications of Cymbalta Intoxication.” Based on medical records, the patient did not and with high probability could not have died from the cause of death stated in the Death Certificate. The patient died as a direct consequence of respiratory failure directly due to below standard of care violations as indicated by her medical records and reinforced by the Department of Health and Human Services—Division of Health Quality and Compliance Investigative Report. Furthermore:
- After being admitted to Centennial Hills Hospital on 05/03/17, the patient's health status steadily improved over the course of almost a week.
 - Patient was extubated in the ICU and moved to a medical floor.
 - Patient's lab results improved daily.
 - Pulmonologist consultation stated that the patient felt well enough and wanted to go home. The specialist made no note to delay discharge.
 - Healthcare providers told family members from out-of-town that the patient was doing much better and “would be discharged soon.” Family returned to their homes out-of-state based on the information they received.

- Metabolically, Cymbalta has a half-shelf life of approximately 12-24 hours, up to 48 hours if an over-amount is ingested. The patient didn't have a downward health status until 150 hours+ had transpired. *Therefore, the possibility that she died from Cymbalta intoxication or complication of, is not realistic.*
 - There was no medical evidence of the patient ingesting Ambien, Benadryl or ETOH, nor did toxicology reports reveal any of those substances.
 - On 05/04/17, the patient underwent a bronchoscopy and bronchoalveolar lavage. The report stated, *"There was no foreign material or deciduous matter evidenced."* Had the patient aspirated vomitus, there would have been some endotracheal or bronchial evidence of foreign or deciduous matter.
 - From 05/07/17 – 05/11/17 – Over a period of nearly five days, medical records state the patient steadily improved.
 - 05/07/17– PROGRESS NOTES state *"Patient alert and stable"* and *"Can upgrade diet to GI soft."*
 - 05/08/17 – *"Patient vitals remain stable"* and *"No significant event during shifts."*
 - 05/09/17 – PROGRESS NOTES (stating the patient had significantly improved and was expected to be discharged)
 - *"Patient eager to go home. Denies any shortness of breath. No cough, shortness of breath or sputum production."*
 - Review of Systems – Normal
 - Vitals – Normal
- C. Late on 05/10/17 and early hours of 05/11/17, the patient's health status changed. Initially, the changes were not even approaching critical by any stretch of consideration or concern. However, the *below standard of care related to inadequate and absent monitoring, lack of diagnostic testing and improper treatment were directly related to the patient's acutely failing health status and ultimately her pronounced death at 6:57 AM on 05/11/17.*
- On 05/10/17 at 2AM, patient started coughing and complained of SOB. Patient was receiving O2-2L/NC
 - At 10:51AM – Patient's SO2 dropped to 92%
 - At 3:11PM – *Patient complained of continued SOB and weakness*
 - At 4:11PM – Patient complaining of increased labor for breathing, states she feels like she's *"drowning"*
 - Order for breathing treatment and *Ativan IV Push* ordered by *Dr. Shah* & administered for anxiety with no improvement.
 - Dr. Shah contacted who ordered STAT ABG and 2 view x-ray – Results showed possible infiltrates or edema.
- D. On 05/11/17, the patient's health status markedly declined.
- At 2AM – A STAT CT scan of chest was ordered.
 - At 2:20AM – *Ativan IV Push* (.5mg) was ordered by *Dr. Concio* & administered.
 - At 2:40AM – *CT Lab called to state patient was being returned to her room (701) and CT could not be completed due to patient's complaint of SOB and anxiety.*
 - (Note: At the very least, a portable x-ray should have been ordered when the patient was returned to her room. It wasn't.)
 - At 3:27AM – *Ativan IV Push* was again ordered by *Dr. Concio* & administered.

- At 3:45AM – RT-Tech (Venessa) was called to assess the patient. Indicated that the patient was not cooperative and kept removing the O2 mask. Also stated the patient needed to be monitored with a “sitter.” Karen contacted House Supervisor David to explain that a sitter was needed. He suggested placing the patient in wrist restraints. When asked to closely monitor the patient, the camera monitor (John) noted that the resolution of the camera/monitor did not allow him to see the patient enough to discern when she attempted to remove the mask. He advised moving the patient to a room with better video capability. The patient did not receive a “sitter” nor was she moved to another room with adequate monitoring capability.
- The patient was mis-diagnosed with ‘anxiety disorder’ by an unqualified healthcare provider and there was no differential diagnosis presented by any physician at any time on 05/11/17 when the patient was suffering from respiratory insufficiency.
- Based on the administration of multiple doses of Ativan IV Push, the fact that the patient had been receiving daily doses of Midazolam (another Benzodiazepine causing respiratory depression), Acetylcysteine (can also cause respiratory symptoms), (at least four other drugs with side effects of SOB, labored breathing and cough) and the period of time from Ativan dosing to Code Blue was within less than 90 minutes. Given the medication regimen the patient was on, it’s highly probable that administering the back to back doses of Ativan IV Push to this patient (already in respiratory distress), the inadequate and absent monitoring of the patient and other below standards of care as verified in the Investigative Report, were all directly related to the patient’s acute respiratory failure leading to the final cardiorespiratory event and death.

7. Dr. Dionice, Dr. Concio and Dr. Shah, in my expert opinion, each one breached their duty.

A. Based on radiological reports as late as 05/10/17, stating there were no significant changes from 05/08/17, noting “possible infiltrates or edema.” This is extremely relevant in diagnosing and treating the patient’s sudden respiratory change in health status late 05/10/17 and 05/11/17.

- Since the patient was unable to undergo a CT scan due to “anxiety”, at the very least a portable x-ray should have been ordered to determine if and what significant pulmonary changes were present based on the presence of acute signs & symptoms. Each of the three physicians aforementioned were aware of the patient’s acutely declining health status and were responsible for not only ordering an alternative diagnostic imaging such as a portable x-ray, but also obtaining & reporting the results to determine pulmonary involvement based on her symptoms. Medical records do not reveal a portable x-ray ordered when the CT scan was unable to be completed, nor any results of any x-ray ordered after the attempted CT scan when the patient was returned to her room.
- Based on the patient’s stable condition until late 05/10/17 and her acute decline in health status on 05/11/17, an immediate differential diagnosis should have been made, which absolutely should have included the possibility of side effect(s) and adverse reaction(s) from medications being administered. Given the nature of the sudden onset of the patient’s symptoms, drug side effects and interactions should have been reviewed by each of the three physicians aforementioned. The patient had been receiving six drugs, including Ativan administered on 05/09/17 and 05/10/17, all having side effects directly

related to the symptoms and findings displayed by the patient at the time her health acutely worsened on 05/10/17 & 05/11/17.

- Without consideration of the probable drug side effects, adverse reactions and interactions, which were most probably directly related to the patient's acute symptoms, *the three physicians aforementioned ignored even the possibility that her medications might be the cause of her symptoms & declining health status. Consequently, not one of the three physicians aforementioned even placed drug's side effects/adverse reactions on any differential diagnosis.*
- *Instead of performing their professional duty related to prescribed and administered medications, all three of the physicians aforementioned were aware of the decision to administer even more Ativan IV-Push, multiple times in a short period of time to treat the patient's symptom of anxiety. It was the responsibility of each of the three physicians to have been aware and knowledgeable that administering Ativan to a respiratory compromised patient has significant risks related to serious pulmonary/respiratory function.* The FDA provides warnings with the use of benzodiazepines of such risk. Interactions with other drugs (not only when used concomitantly with opiates) can compound the seriousness of the risk(s).
- *Had any of the three physicians aforementioned, reviewed the patient's drug regimen, they would have realized that several of the drugs caused, shortness of breath (SOB) and associated anxiety, cough, labored breathing, weakness and other related symptoms exhibited by the patient. Had any of the three aforementioned physicians, reviewed the side effects, Ativan (known to potentially cause and/or increase respiratory depression) would not have been administered, especially not by IV-Push (the effects are much faster and more dramatically pronounced).*

8. Department of Health and Human Services—NV Bureau of Health Quality and Compliance Investigative Report, not only reinforced my findings, but revealed many other below standard of care violations, all related directly to the wrongful death of the patient. The information below, provides examples of other below standard of care violations found in the medical records and as part of the HHS—NV Bureau's Investigation:

- There was no specific differential diagnosis shown in the records related to her complaints and abnormal findings between 05/10/17 to 05/11/17.
- The records stated numerous times that the patient needed to be elevated to a higher level of care and required close monitoring. *Neither were provided.*
- **Respiratory Therapist** – (“...the RT concluded the physician should have been notified, the RRT activated and the level of care upgraded.”) *The physician was not notified, the RRT was not activated and the level of care was not elevated.*
- **Registered Nurse** – (“...RN explained normal vital signs were: B/P: 100/60, HR: no more than 100 bpm, RR: 16-20 br/m and SPO2 no less than 92%. If a patient with a HR of 130 bpm and RR of 30 br/m, the physician must be notified immediately and the RRT activated.”) *The patient had a HR of 130, SPO2 below 92% while receiving 3+ liters of oxygen and a respiratory rate of 30 bpm..”) The physician was not notified.*
- **The Legal 2000 Patient Frequency Observation Record** – (“...they could not see the incident on monitor and again advised to change the patient to room 832 (with working camera). The record revealed at 6:10 AM, Code Blue was announced. The record indicated the patient “last appeared to be sitting in close to upright position with fingers

possible in mouth for approximately one hour.") **IMPORTANT NOTE** – The patient was not changed to a different room as earlier advised. Hence, she was not being adequately monitored, which was of critical importance. *The last sentence in this record reveals that for at least one hour the patient was in severe respiratory distress and during that hour, no RN or CNA checked on the patient. This contradicts other records and statements made by the RN and the CNA.*

- **Chief of Nursing Operations** – ("...the Chief of Nursing Operations (CNO) indicated that the patient should have been monitored closely based on the vital signs and condition. The CNO acknowledged the Rapid Response Team (RRT) should have been activated and the patient upgraded to a higher level of care.") **The RRT was not activated nor was the patient elevated to a higher level of care.**
- **Process Improvement Manager** – ("...the facility Process Improvement Manager indicated the patient was not monitored by telemetry and the cardiac monitoring documentation available for 05/11/17 was the EKG performed during the Code Blue.") **The patient was already known to be in respiratory distress before she coded. According to this record-note, the patient was not receiving any cardiac monitoring and was only monitored during the code. (This is a shameful and gross example of below standard of care. Any patient in respiratory distress needing a re-breather mask and receiving the same medications for the present acute health status, must be on telemetry to monitor cardiac status. In this patient's case, it was critically important given the fact she had been administered multiple IV PUSH doses of ATIVAN, a drug known to depress the respiratory system.**
- **Respiratory Therapy Supervisor** – ("...RT Supervisor confirmed according to the vital signs documented in the record on 05/11/17 at 4:08 AM and 4:47 AM, the patient was in respiratory distress and required an upgrade of the level of care.") **On more than one occasion during the same hour, the patient required being upgraded to a higher level of care, but wasn't upgraded. This note also indicates that during that hour between 4:00 AM – 5 AM, no RN or CNA checked on the patient. This contradicts other records and statements made by the RN and the CNA.**

9. In my expert opinion, stated to a reasonable degree of medical probability, the failure to properly diagnose the patient before she became acutely critical on 05/11/17, the failure of the healthcare provider staff to adequately monitor the patient (also stated in the HHS-Investigative Report), the failure to properly diagnose the patient, the failure to provide proper treatment (***lacking review of the patient's medications***) and administering the drug (*Ativan*) several times IV-Push in a respiratory compromised patient, inclusively & directly led to the patient's wrongful death. Additionally, there were many other below Standard of Care violations as revealed and reported by the Department of Health and Human Services. Nevada—Bureau of Health Care Quality and Compliance – Investigation Report (Complaint Number - NV00049271) also related directly to Rebecca's Powell's wrongful death.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. I reserve the right to change my opinions pending production and review of additional medical records.

Sami Hashim
Dr. Sami Hashim, M.D.

Dated: 1/23/2019

Sworn to me before this 23rd day

of January, 2019.

Bonnie Leung
Notary Public



[Signature]
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

ESTATE OF REBECCA POWELL, through)
BRIAN POWELL, as Special Administrator;)
DARCI CREECY, individually and as an Heir;)
TARYN CREECY, individually and as an Heir;)
ISAIAH KHOSROF, individually and as an)
Heir; LLOYD CREECY, individually,)
Plaintiffs,)

vs.)

VALLEY HEALTH SYSTEM, LLC (doing)
Business as "Centennial Hills Hospital)
Medical Center"), a foreign limited liability)
Company; UNIVERSAL HEALTH SERVICES,)
INC., a foreign corporation; DR. DIONICE)
S. JULIANO, M.D., an individual; DR.)
CONRADO C.D. CONCIO, M.D., an individual;)
DR. VISHAL S. SHAH, M.D., an individual;)
DOES 1-10; and ROES A-Z,)
Defendants.)

CASE NO.: A-19-788787-C
DEPT. NO.: XXX

ORDER

The above-referenced matter was scheduled for a hearing on November 4, 2020, with regard to Defendant Valley Health System LLC's (Valley's) and Universal Health Services, Inc.'s (Universal's) Motion for Summary Judgment Based upon the Expired Statute of Limitations. Defendants Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D. joined the Motion for Summary Judgment. Additionally, Defendant, Juliano's Motion for Summary Judgment and Defendants Concio and Shaw's Motion for Partial Summary Judgment on Emotional Distress Claims is on calendar. Finally, Plaintiff's Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Requests for Admissions is on calendar. Pursuant to A.O. 20-01 and subsequent administrative orders, these matters are deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it

1 would be appropriate to decide these matters on the papers, and consequently, this
2 Order issues.

3 **Defendants, Valley's and Universal's Motion for Summary Judgment Based**
4 **upon the Expiration of the Statute of Limitations.**

5 On May 3, 2017 Rebecca Powell ("Plaintiff") was taken to Centennial Hills
6 Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant")
7 by EMS services after she was discovered with labored breathing and vomit on her face.
8 Plaintiff remained in Defendant's care for a week, and her condition improved.
9 However, on May 10, 2017, Plaintiff complained of shortness of breath, weakness, and
10 a drowning feeling. In response to these complaints, Defendant Doctor Vishal Shah
11 ordered Ativan to be administered via IV push. Plaintiff's condition did not improve.
12 Defendant, Doctor Conrado Concio twice more ordered Ativan to be administered via
13 IV push, and Plaintiff was put in a room with a camera in order to better monitor her
14 condition. At 3:27 AM on May 11, 2017, another dose of Ativan was ordered. Plaintiff
15 then entered into acute respiratory failure, resulting in her death.

16 Plaintiff brought suit on February 4, 2019 alleging negligence/medical
17 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
18 emotional distress. Defendant previously filed a Motion to Dismiss these claims, which
19 was denied on September 25, 2019. The current Motion for Summary Judgment was
20 filed on September 2, 2020. Defendants Dionice Juliano, MD, Conrado Concio, MD,
21 and Vishal Shah, MD joined in this Motion on September 3, 2020. Plaintiff filed their
22 opposition September 16, 2020. Defendant filed its reply on October 21, 2020 and
23 Defendants Dionice Juliano, MD, Conrado Concio, MD, and Vishal Shah, MD joined
24 the reply on October 22, 2020.

25 Defendant claims that, pursuant to NRS 41A.097 Plaintiff's claims were brought
26 after the statute of limitations had run. In pertinent part, NRS 41A.097 states in
27 pertinent part: "an action for injury or death against a provider of health care may not
28 be commenced more than 3 years after the date of injury or 1 year after the plaintiff
discovers or through the use of reasonable diligence should have discovered the injury,
whichever occurs first." NRS 41A.097(2). There appears to be no dispute that the
Complaint was filed within 3 years after the date of injury (or death). The issue is
whether the Complaint was filed within 1 year after the Plaintiffs knew or should have

1 known of the injury. Defendants claim that they fall under the definition of a “provider
2 of health care” under NRS 41A.017 and that all of Plaintiff’s claims sound in
3 professional negligence. Therefore, all the claims are subject to NRS 41A.097.

4 Defendant claims that Plaintiff was put on inquiry notice of the possible cause of
5 action on or around the date of Plaintiff’s death in May of 2017 and therefore the suit,
6 brought on February 4, 2019, was brought after the statute of limitations had tolled.
7 Defendant makes this claim based on several theories. Defendant claims that since
8 Plaintiffs are suing for Negligent Infliction of Emotional Distress, and an element of
9 that claim is contemporaneous observation, that Plaintiff was put on notice of the
10 possible claim on the date of Ms. Powell’s death. Alternatively, Defendant argues that
11 since Plaintiff ordered and received Ms. Powell’s medical records no later than June
12 2017, they were put on notice upon the reception of those records. Finally, Defendant
13 argues that since Plaintiffs made two separate complaints alleging negligence, they
14 were aware of the possible claim for negligence and thus on inquiry notice. (On May 23,
15 2017, Defendants provide an acknowledgement by the Nevada Department of Health
16 and Human Services (“HHS”) that they received Plaintiff Brian Powell’s complaint
17 made against Defendants. And on June 11, 2017, Plaintiff Brian Powell filed a
18 complaint with the Nevada State Board of Nursing alleging negligence in that Decedent
19 was not properly monitored.)

20 Plaintiff argues that the date of accrual for the statute of limitations is a question
21 of fact for the jury and summary judgment is not appropriate at this stage where there
22 are factual disputes. Plaintiffs claim they were not put on inquiry notice of Defendant’s
23 negligence until they received the February 5, 2018, HHS report and therefore the
24 complaint, filed on February 4, 2019, was brought within the one-year statute of
25 limitations. Plaintiff makes this claim based on several pieces of evidence. First, while
26 the medical records were mailed to Plaintiffs on June 29, 2017, there is no evidence
27 that shows the records were ever received. Additionally, on June 28, 2017, Plaintiffs
28 were informed via the Certificate of Death, that Ms. Powell’s death was determined to
be a suicide. This prevented Plaintiff from ever considering negligence contributed to
her death. Plaintiffs argue the first time they could have suspected negligence was
when they received the report from HHS on February 5, 2018, that stated the facility

1 had committed violations with rules and/or regulations and deficiencies in the medical
2 care provided to Decedent.

3 Plaintiff claims that Defendant's present Motion for Summary Judgment is just
4 a regurgitation of Defendant's prior Motion to Dismiss on the same facts in violation of
5 Eighth Judicial District Court Rule (EJDCR) 2.24(a). Plaintiff claims this Motion is a
6 waste of time, money, and resources that rehashes the same arguments that the court
7 had already decided, and the Motion should be denied pursuant to EJDCR 2.24(a).

8 Summary judgment is appropriate if the pleadings, depositions, answers to
9 interrogatories, and admissions on file, together with the affidavits, if any, show that
10 there is no genuine issue as to any disputed material fact and that the moving party is
11 entitled to a judgment as a matter of law. NRCP 56(c). The tolling date ordinarily
12 presents a question of fact for the jury. *Winn v. Sunrise Hospital and Medical Center*,
13 128 Nev. 246, 252 (2012). "Only when the evidence irrefutably demonstrates that a
14 plaintiff was put on inquiry notice of a cause of action should the district court
15 determine this discovery date as a matter of law." *Id.* A plaintiff discovers an injury
16 when "he knows or, through the use of reasonable diligence, should have known of facts
17 that would put a reasonable person on inquiry notice of his cause of action." *Massey v.*
18 *Linton*, 99 Nev. 723 (1983). The time does not begin when the plaintiff discovers the
19 precise facts pertaining to his legal theory but when there is a general belief that
20 negligence may have caused the injury. *Id.* at 728.

21 There is a suggestion in the Defendants' Reply Brief that the Plaintiffs may have
22 been arguing that any delay in filing the Complaint may have been due to a fraudulent
23 concealment of the medical records, and that such a defense needs to be specifically
24 pled. This Court has not interpreted the Plaintiff's position to be one that the records
25 were "fraudulently concealed," only that there was no evidence that they had timely
26 received them. This Court will not take a position on this issue at this time, as it is not
27 necessary as part of the Court's analysis, and it does not change the opinion of the
28 Court either way.

29 Although the Complaints filed by Brian Powell, suggest that Plaintiff may have at
30 least been on inquiry notice in 2017, the fact that the family was notified shortly after
31 the decedent's death that the cause of death was determined to be a "suicide," causes
32 this Court some doubt or concern about what the family knew at that time period.

1 Since the family did not receive the report from the State Department of Health and
2 Human Services, indicating that their previously determined cause of death was in
3 error, it is possible that the Plaintiffs were not on inquiry notice until February 4, 2019.
4 This Court is not to grant a Motion to Dismiss or a Motion for Summary Judgment on
5 the issue of a violation of the Statute of Limitations, unless the facts and evidence
6 irrefutably demonstrate that Plaintiff was put on inquiry notice more than one year
7 prior to the filing of the complaint. This Court does not find that such evidence is
8 irrefutable, and there remains a genuine issue of material fact as to when the Plaintiffs
9 were actually put on inquiry notice. Such issue is an issue of fact, appropriate for
10 determination by the trier of fact. Consequently, Summary Judgment would not be
11 appropriate, and the Motion for Summary Judgment, and the Joinders thereto, must
12 be denied.

13 **Defendant, Juliano's Motion for Summary Judgment, and Defendant**
14 **Concio and Shah's Motion for Partial Summary Judgment on Emotional**
15 **Distress Claims.**

16 On or about 05/03/17, 41-year-old Rebecca Powell was transported to
17 Centennial Hospital. Rebecca ultimately died on 05/11/17. Plaintiffs allege that the
18 death was due to inadequate and absent monitoring, a lack of diagnostic testing, and
19 improper treatment. Furthermore, Plaintiffs allege that Rebecca Powell's negligent
20 death caused them Negligent Infliction of Emotional Harm.

21 Defendant, Doctor Dionice Juliano, argues that based on the discovery which
22 has taken place, the medical records, and specifically his own affidavit, there are no
23 material facts suggesting he was responsible for the care and treatment of Rebecca
24 Powell after May 9, 2017.¹ Further, Defendant argues that for a claim for Negligent
25 Infliction of Emotional to survive, the plaintiff must be physically present for the act
26 which is alleged to have inflicted that emotional distress.

27 Defendants further argue that Summary Judgment is warranted because the
28 Plaintiff failed to timely respond to Requests for Admission, and consequently,

¹ Dr. Dionice Juliano's Affidavit indicates that the patient was admitted on May 3, 2017, by the physician working the night shift. Dr. Juliano saw her for the first time on May 4, 2017, and was her attending physician, until he handed her off at the end of a "week-on, week-off" rotation on Monday, May 8, 2017. He had no responsibility for her after May 8, as he was off duty until Tuesday, May 16, 2017. The Plaintiffs' Complaint is critical of the acts or omissions which occurred on May 10 and 11, 2017.

1 pursuant to NRCP 36, they are deemed admitted. Defendants argue that Plaintiffs have
2 no good cause for not responding.

3 Plaintiffs argue that Defendants prematurely filed their motions since there is
4 over a year left to conduct discovery. Moreover, Plaintiffs argue that Defendants acted
5 in bad faith during a global pandemic by sending the admission requests and by not
6 working with Defendants' counsel to remind Plaintiffs' counsel of the missing
7 admission requests. Moreover, since Defendants have not cited any prejudice arising
8 from their mistake of submitting its admission requests late, this Court should deem
9 Plaintiffs' responses timely or allow them to be amended or withdrawn. Plaintiffs ask
10 this Court to deny the premature motions for Summary Judgment and allow for
11 discovery to run its natural course.

12 Pursuant to NRCP 56, and the relevant case law, summary judgment is
13 appropriate when the evidence establishes that there is no genuine issue of material
14 fact remaining and the moving party is entitled to judgment as a matter of law. All
15 inferences and evidence must be viewed in the light most favorable to the non-moving
16 party. A genuine issue of material fact exists when a reasonable jury could return a
17 verdict for the non-moving party. See NRCP 56, *Ron Cuzze v. University and*
18 *Community College System*, 123 Nev. 598, 172 P.3d 131 (2008), and *Golden Nugget v.*
19 *Ham*, 95 Nev. 45, 589 P.2d 173 (1979), and *Oehler v. Humana, Inc.*, 105 Nev. 348
20 (1987). While the pleadings are construed in the light most favorable to the non-
21 moving party, however, that party is not entitled to build its case on "gossamer threads
22 of whimsy, speculation, and conjecture." *Miller v. Jones*, 114 Nev. 1291 (1998).

23 With regard to the Requests for Admissions, NRCP 36(a)(3) provides that a
24 matter is deemed admitted unless, within 30 days after being served, the party sends
25 back a written answer objecting to the matters. Here, Plaintiff's counsel failed to
26 respond to Defendants' counsel request for admissions during the allotted time.
27 Defendants' counsel argues that Plaintiffs should not be able to withdraw or amend
28 their responses because their attorney was personally served six different times and
emailed twice as notice that they were served the admission requests. On the other
hand, Plaintiffs' counsel argued that their late response was due to consequences from
the unprecedented global pandemic that affected their employees and work. NRCP
36(b) allows the Court to permit the admission to be withdrawn or amended if it would

1 promote the presentation of the merits. Since Nevada courts, as a public policy, favor
2 hearing cases on its merits, and because this Court finds that the global pandemic
3 should count as “good cause,” this Court will allow Plaintiffs’ late responses to be
4 recognized as timely responses. They were filed approximately 40 days late, but the
5 Court finds that the delay was based on “good cause,” and that they will be recognized
6 as if they had been timely responses.

7 Under *State v. Eaton*, 101 Nev. 705, 710 P.2d 1370 (1985), to prevail in a claim
8 for Negligent Infliction of Emotional Distress, the following elements are required: (1)
9 the plaintiff was located near the scene; (2) the plaintiff was emotionally injured by the
10 contemporaneous sensory observance of the accident; and (3) the plaintiff was closely
11 related to the victim. The Plaintiffs argue that although there has been a historical
12 precedent requiring the plaintiff to have been present at the time of the accident. This
13 Court previously held in this case that the case of *Crippens v. Sav On Drug Stores*, 114
14 Nev., 760, 961 P.2d 761 (1998), precluded the Court from granting a Motion to Dismiss.
15 Although the burden for a Motion for Summary Judgment is different, the Court is still
16 bound by the Nevada Supreme Court’s decision in *Crippins*, which indicated, “it is not
17 the precise position of plaintiff or what the plaintiff saw that must be examined. The
18 overall circumstances must be examined to determine whether the harm to the plaintiff
19 was reasonably foreseeable. Foreseeability is the cornerstone of this court’s test for
20 negligent infliction of emotional distress.” *Id.* The Court still believes that the
21 “foreseeability” element is more important than the location of the Plaintiffs, pursuant
22 to the Court’s determination in *Crippins*, and such an analysis seems to be a factual
23 determination for the trier of fact. Consequently, Summary Judgment on the basis of
24 the Plaintiff’s failure to be present and witness the death of the decedent, seems
25 inappropriate.

26 With regard to the argument that Dr. Juliano did not participate in the care of
27 the Plaintiff during the relevant time period, the Plaintiff’s objection simply indicates
28 that the motion is premature, but fails to set forth any facts or evidence to show that
29 Dr. Juliano was in fact present or involved in the care of the decedent during the
30 relevant time period. The Court believes that this is what the Nevada Supreme Court
31 was referring to when it said that a Plaintiff is not entitled to build its case on
32 “gossamer threads of whimsy, speculation, and conjecture.” *Miller v. Jones*, 114 Nev.

1 1291 (1998). As the Plaintiffs have been unable to establish or show any facts or
2 evidence indicating that Dr. Juliano was present during the relevant time period, the
3 Court believes that no genuine issues of material fact remain in that regard and Dr.
4 Juliano is entitled to Summary Judgment. With regard to all other issues argued by the
5 parties, the Court finds that genuine issues of material fact remain, and summary
6 judgment would therefore not be appropriate.

7 Based upon the foregoing, and good cause appearing,

8 **IT IS HEREBY ORDERED** that Defendants Valley's and Universal's Motion
9 for Summary Judgment Based upon the Expiration of the Statute of Limitations, and
all Joinders thereto are hereby **DENIED**.

10 **IT IS FURTHER ORDERED** that Defendant Juliano's Motion for Summary
11 Judgment is hereby **GRANTED**, and Dr. Juliano is hereby Dismissed from the Action,
without prejudice.

12 **IT IS FURTHER ORDERED** that the Defendants, Concio and Shah's Motion
13 for Partial Summary Judgment on the Negligent Infliction of Emotional Distress
14 Claims is hereby **DENIED**. All joinders are likewise **DENIED**.

15 **IT IS FURTHER ORDERED** that because the Court has ruled on these
16 Motions on the papers, the hearing scheduled for November 4, 2020, with regard to the
foregoing issues is now moot, and will be taken off calendar.

17 Dated this 28th day of October, 2020.

Dated this 29th day of October, 2020

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21 JERRY A. WIESE II
22 DISTRICT COURT JUDGE
23 EIGHTH JUDICIAL DISTRICT COURT
24 DENVER, COLORADO 80202
25 Jerry A. Wiese
26 District Court Judge
27
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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6 Estate of Rebecca Powell,
Plaintiff(s)

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

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9 Valley Health System, LLC,
Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 10/29/2020

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9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 **ESTATE OF REBECCA POWELL**, through
13 **BRIAN POWELL**, as Special Administrator;
14 **DARCI CREECY**, individually and as Heir;
15 **TARYN CREECY**, individually and as an
16 Heir; **ISAIAH KHOSROF**, individually and as
17 an Heir; **LLOYD CREECY**, individually,;

18 **Plaintiffs,**

19 **vs.**

20 **VALLEY HEALTH SYSTEM, LLC** (doing
21 business as "Centennial Hills Hospital Medical
22 Center"), a foreign limited liability company;
23 **UNIVERSAL HEALTH SERVICES, INC.**, a
24 foreign corporation; **DR. DIONICE S.**
25 **JULIANO, M.D.**, an individual; **DR.**
26 **CONRADO C.D. CONCIO, M.D.**, an
27 individual; **DR. VISHAL S. SHAH, M.D.**, an
28 individual; **DOES 1-10**; and **ROES A-Z**;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**ORDER VACATING PRIOR ORDER
DENYING DEFENDANT VALLEY
HEALTH SYSTEM, LLC DBA
CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING SAID DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
PER MANDAMUS OF NEVADA
SUPREME COURT**

25 This matter, coming before this Honorable Court on November 18, 2021 at 10:30 a.m. in
26 accordance with the order granting the petition for a writ of mandamus issued by the Nevada
27 Supreme Court dated October 18, 2021, directing that this Court vacate its order of October 29,
28 2020, which previously denied Defendant VALLEY HEALTH SYSTEM, LLC's motion for

1 summary judgment and co-defendants Concio and Shah's joinder thereto (collectively
2 "Defendants"), and ordering this Court to issue an order entering summary judgment in favor of
3 said Defendants due to the expiration of the statute of limitations, with Paul S. Padda, Esq. and
4 Srilata Shah, Esq. of PAUL PADDA LAW, PLLC, appearing on behalf of Plaintiffs, Adam Garth,
5 Esq., S. Brent Vogel, Esq. and Shady Sirsy, Esq., of the Law Offices of LEWIS BRISBOIS
6 BISGAARD & SMITH LLP, appearing on behalf of the Defendant VALLEY HEALTH SYSTEM,
7 LLC and John H. Cotton, Esq. and Brad Shipley, Esq. of JOHN H. COTTON AND ASSOCIATES,
8 appearing on behalf of DR. CONRADO C.D. CONCIO, M.D. and DR. VISHAL S. SHAH, M.D,
9 with the Honorable Court having reviewed the order of the Nevada Supreme Court, finds and orders
10 as follows:

11 THE COURT FINDS that Defendants argued that undisputed evidence demonstrated
12 Plaintiffs were on inquiry notice of their alleged professional negligence, wrongful death, and
13 negligent infliction of emotional distress claims by June 11, 2017, at the latest, and

14 THE COURT FURTHER FINDS that Defendants contended that Plaintiffs' February 4,
15 2019 complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an
16 action for injury or death based on the negligence of a health care provider within three years of the
17 date of injury and within one year of discovering the injury, whichever occurs first), and

18 THE COURT FURTHER FINDS that the term injury in NRS 41A.097 means "legal injury."
19 *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury
20 when he knows or, through the use of reasonable diligence, should have known of facts that would
21 put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A
22 plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an
23 ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*,
24 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th
25 ed. 2009)), and

26 THE COURT FURTHER FINDS that while the accrual date for NRS 41A.097(2)'s one-
27 year period is generally a question for the trier of fact, this Court may decide the accrual date as a
28 matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462, and

1 THIS COURT FURTHER FINDS that here, irrefutable evidence demonstrated that
2 Plaintiffs were on inquiry notice by June 11, 2017, at the latest, when Plaintiff Brian Powell, special
3 administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged
4 that the decedent, Rebecca Powell, “went into respiratory distress” and her health care providers did
5 not appropriately monitor her, abandoning her care and causing her death, and

6 THIS COURT FURTHER FINDS that Brian Powell’s own allegations in the aforesaid
7 Board complaint demonstrate that he had enough information to allege a prima facie claim for
8 professional negligence—that in treating Rebecca Powell, her health care providers failed “to use the
9 reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained
10 and experienced providers of health care.” NRS 41A.015 (defining professional negligence); *Winn*,
11 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a “plaintiffs general belief that someone’s
12 negligence may have caused his or her injury” triggers inquiry notice), and

13 THIS COURT FURTHER FINDS that the evidence shows that Plaintiff Brian Powell was
14 likely on inquiry notice even earlier than the aforesaid Board complaint, wherein Plaintiffs alleged
15 they had observed in real time, following a short period of recovery, the rapid deterioration of
16 Rebecca Powell’s health while in Defendants’ care, and

17 THIS COURT FURTHER FINDS that Plaintiff Brian Powell filed a complaint with the
18 Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar
19 to the Nursing Board complaint, this complaint alleged facts, such as the Defendants’ failure to
20 upgrade care, sterilize sutures properly, and monitor Rebecca Powell, all of which suggest he already
21 believed, and knew of facts to support his belief, that negligent treatment caused Rebecca Powell’s
22 death by the time he made these complaints to NDHHS and the Nursing Board, and

23 THIS COURT FURTHER FINDS that even though Plaintiffs received Rebecca Powell’s
24 death certificate 17 days later, erroneously listing her cause of death as suicide, that fact did not
25 change the conclusion that Plaintiffs received inquiry notice prior to that date, and

26 THE COURT FURTHER FINDS that Plaintiffs did not adequately address why tolling
27 should apply under NRS 41A.097(3) (providing that the limitation period for a professional
28 negligence claim “is tolled for any period during which the provider of health care has concealed

1 any act, error or omission upon which the action is based”), and

2 THIS COURT FURTHER FINDS that even if Plaintiffs did adequately address the tolling
3 issue, such an argument would be unavailing, as the medical records provided were sufficient for
4 their expert witness to conclude that petitioners were negligent in Rebecca Powell’s care. *See Wirm*,
5 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate
6 where the intentionally concealed medical records were “material” to the professional negligence
7 claims), and

8 THE COURT FURTHER FINDS that the doctrine of equitable tolling has not been extended
9 to NRS 41A.097(2), and

10 THIS COURT FURTHER FINDS that Plaintiffs did not adequately address whether such
11 an application of equitable tolling is appropriate under these facts. *See Edwards v. Emperor's*
12 *Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider
13 arguments that a party did not cogently argue or support with relevant authority), and

14 THE COURT FURTHER FINDS that Plaintiffs had until June 11, 2018, at the latest, to file
15 their professional negligence claim, making Plaintiffs’ February 4, 2019 complaint untimely, and

16 THE COURT FURTHER FINDS that given the uncontroverted evidence demonstrating that
17 Defendants were entitled to judgment as a matter of law because the complaint was time-barred
18 under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing
19 that courts must grant summary judgment when the pleadings and all other evidence on file, viewed
20 in a light most favorable to the nonmoving party, "demonstrate that no genuine issue as to any
21 material fact [remains] and that the moving party is entitled to a judgment as a matter of law"
22 (internal quotations omitted));

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court’s prior order
24 of October 29, 2020 denying VALLEY HEALTH SYSTEM, LLC’s motion for summary judgment
25 and co-defendants’ joinder thereto is vacated in its entirety, and

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1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
2 VALLEY HEALTH SYSTEM, LLC's motion for summary judgment and co-defendants' joinders
3 thereto are granted in their entirety due to the untimely filing of this action by Plaintiffs.

4
5 Dated: _____

Dated this 19th day of November, 2021



DISTRICT COURT JUDGE

6
7
8 DATED this ____ day of November, 2021.

DATED this 18th day of November, 2021

Jerry A. Wiese
District Court Judge

9
10 *UNSIGNED*

/s/ Adam Garth

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6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
*Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center*

DATED this 18th day of November, 2021

/s/ Brad Shipley

19 John H. Cotton, Esq.
20 Brad Shipley, Esq.
21 JOHN H. COTTON & ASSOCIATES
22 7900 W. Sahara Ave., Suite 200
23 Las Vegas, NV 89117
24 Tel: 702.832.5909
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28 *Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.*

From: Brad Shipley
To: Garth, Adam; Srilata Shah; Paul Padda
Cc: Vogel, Brent; Rokni, Roya; Sirsy, Shady; San Juan, Maria
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 10:00:14 AM
Attachments: image001.png

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Adam,

I believe the bracketed word [proposed] in the title caption should be removed before submission to the court, but please use my e-signature with or without making that change. Thank you for taking the time to draft the order.

Brad Shipley, Esq.
John H. Cotton & Associates, Ltd.
7900 W. Sahara ave. #200
Las Vegas, NV 89117
bshipley@jhcottonlaw.com
702 832 5909

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Friday, November 12, 2021 8:50 AM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; John Cotton <jhcotton@jhcottonlaw.com>
Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Importance: High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth

 **LEWIS
BRISBOIS**
Adam Garth
Partner
Adam.Garth@lewisbrisbois.com
T: 702.693.4335 F: 702.366.9563

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POWELL APP. 045

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Tuesday, November 9, 2021 10:33 AM

To: Sriyata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter

Adam Garth

Adam Garth
Partner
Las Vegas Rainbow
702.693.4335 or x7024335

From: Garth, Adam
To: ~~Paul Padda~~; Srilata Shah; Brad Shipley
Cc: Vogel, Brent; Rokni, Roya; Sirsy, Shady; San Juan, Maria; jhcotton@jhcottonlaw.com
Subject: RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 9:59:40 AM
Attachments: image001.png
image002.png

We are not willing to do that. As you were unwilling to stay anything at our request, we will return the courtesy.

From: Paul Padda <psp@paulpaddalaw.com>
Sent: Friday, November 12, 2021 9:56 AM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

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As you know, there is a motion for rehearing pending in the Supreme Court. Given that fact, and the lack of prejudice to Defendants, please advise if Defendants are willing to stay enforcement of the Supreme Court's decision which is the subject of a motion for rehearing? Thanks.

Paul S. Padda, Esq.
PAUL PADDALAW, PLLC
Websites: paulpaddalaw.com

Nevada Office:
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

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One California Plaza
300 South Grand Avenue, Suite 3840
Los Angeles, California 90071
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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

POWELL APP. 047

Sent: Friday, November 12, 2021 8:50 AM

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

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Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com
T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

Adam Garth

POWELL APP. 048

Partner
Las Vegas Rainbow
702.693.4335 or x7024335

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Estate of Rebecca Powell,
Plaintiff(s)

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

8
9 Valley Health System, LLC,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/19/2021

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpincombe@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Paul Padda	civil@paulpaddalaw.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
24 Adam Garth	Adam.Garth@lewisbrisbois.com
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1	Diana Escobedo	diana@paulpaddalaw.com
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3	Srilata Shah	sri@paulpaddalaw.com
4	Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
5	Maria San Juan	maria.sanjuan@lewisbrisbois.com
6	Karen Cormier	karen@paulpaddalaw.com

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1 NOED

2 PAUL S. PADDA, ESQ. (NV Bar #10417)

3 Email: psp@paulpaddalaw.com

4 SRILATA SHAH, ESQ. (NV Bar #6820)

5 Email: sri@paulpaddalaw.com

6 PAUL PADDA LAW, PLLC

7 4560 South Decatur Boulevard, Suite 300

8 Las Vegas, Nevada 89103

9 Tele: (702) 366-1888

10 Fax: (702) 366-1940

11 Attorneys for Plaintiffs

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 ESTATE OF REBECCA POWELL, through
15 BRIAN POWELL, as Special Administrator;
16 DARCI CREECY, individually and as an Heir;
17 TARYN CREECY, individually and as an
18 Heir; ISAIAH KHOSROF, individually and as
19 an Heir; LLOYD CREECY, individually;

20 Plaintiffs,

21 vs.

22 VALLEY HEALTH SYSTEM, LLC (doing
23 business as "Centennial Hills Hospital Medical
24 Center"), a foreign limited liability company;
25 UNIVERSAL HEALTH SERVICES, INC., a
26 foreign corporation; DR. DIONICE S.
27 JULIANO, M.D., an individual; DR.
28 CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No. XXX (30)

NOTICE OF ENTRY OF ORDER AND
DECISION REGARDING VALLEY
HEALTH SYSTEM'S MOTION FOR
FEES AND COUNTERMOTION FOR
FEES AND COSTS

1

Estate of Rebecca Powell v. Valley Health System, LLC, et. al..
Eighth Judicial District Court, Case No. A-19-788787-C (Dept. 30)
Notice Of Entry Of Order And Decision Regarding Valley Health System's Motion For Fees
PPL #201297-15-06

Case Number: A-19-788787-C

POWELL APP. 052

PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
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Tele: (702) 366-1888 • Fax (702) 366-1940

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Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

1 Notice is hereby provided that the Court filed an Order and Decision pertaining to
2 Valley Health System's Motion for Fees and the Countermotion for Fees and Costs. A copy of
3 that Order and Decision is attached hereto as Exhibit A.
4

5 Respectfully submitted,
6

7 /s/ Paul S. Padda

8 Paul S. Padda, Esq.
9 Srilata Shah, Esq.
10 PAUL PADDALAW, PLLC
11 4560 South Decatur Blvd., #300
12 Las Vegas, Nevada 89103
13 Tele: (702) 366-1888

14 Counsel for Plaintiffs

15 Dated: February 16, 2022
16
17
18
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21
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23
24
25

1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to the Nevada Rules of Civil Procedure, the undersigned hereby certifies that
4 on this day, February 16, 2022, a copy of the foregoing **NOTICE OF ENTRY OF ORDER**
5 **AND DECISION REGARDING VALLEY HEALTH SYSTEM'S MOTION FOR FEES**
6 **AND COUNTERMOTION FOR FEES AND COSTS** was filed and served through the
7 Court's electronic filing system upon all parties and counsel identified on the Court's master e-
8 service list.

9 */s/ Shelbi Schram*

10 Shelbi Schram, Litigation Assistant
11 PAUL PADDA LAW

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PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

EXHIBIT A

EXHIBIT A


 CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

ESTATE OF REBECCA POWELL, through)
 BRIAN POWELL, as Special Administrator;)
 DARCI CREECY, individually and as an Heir;)
 TARYN CREECY, individually and as an Heir;)
 ISAIAH KHOSROF, individually and as an)
 Heir; LLOYD CREECY, individually,)

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing)
 Business as "Centennial Hills Hospital)
 Medical Center"), a foreign limited liability)
 Company; UNIVERSAL HEALTH SERVICES,)
 INC., a foreign corporation; DR. DIONICE)
 S. JULIANO, M.D., an individual; DR.)
 CONRADO C.D. CONCIO, M.D., an individual;)
 DR. VISHAL S. SHAH, M.D., an individual;)
 DOES 1-10; and ROES A-Z,)

Defendants.

CASE NO.: A-19-788787-C
 DEPT. NO.: XXX

**ORDER RE: VALLEY
 HEALTH SYSTEM'S
 MOTION FOR FEES
 AND COUNTERMOTION
 FOR FEES AND COSTS**

INTRODUCTION

The above-referenced matter is scheduled for a hearing on 2/18/22, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Attorneys' Fees and Countermotion for Fees and Costs. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, these matters may be decided with or without oral argument. This Court has determined that it would be appropriate to decide these matters on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems', Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs.

19 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

20 Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical
21 Center (CHH) seeks attorneys' fees pursuant to NRCP 68(f) and NRS 17.117(10). CHH
22 argues that it is entitled to an award of attorneys' fees because Plaintiffs rejected CHH's
23 Offer of Judgment and then failed to obtain a more favorable judgment. See *Albias v.*
Horizon Cmty., Inc., 122 Nev. 409, 417, 132 P.3d 1022 (2006); *Logan v. Abe*, 131 Nev.
24 260, 268, 350 P.3d 1139 (2015).

25 CHH states that it served an Offer of Judgment on Plaintiffs for a waiver of any
26 presently or potentially recoverable costs, in full and final settlement of the Plaintiff's
27 claims. Plaintiffs rejected this Offer of Judgment by failing to accept it within 14 days.
28 N.R.C.P. 68(e) and N.R.S. 17.117(6). As this Court was directed by the Supreme Court to
vacate its order denying summary judgment to CHH and instead issue an order
granting CHH's summary judgment motion, Plaintiffs failed to obtain more a favorable
judgment than the one offered to them in CHH's Offer of Judgment. Thus, pursuant to

1 N.R.C.P. 68 and N.R.S. 17.117, this Court has discretion to award CHH its attorneys'
2 fees.

3 CHH cites to *Schouweiler v. Yancey Co.*, for the proposition that a Court must
4 consider the following factors in exercising its discretion to award fees: (1) whether
5 the offeree brought his claims in good faith; (2) whether the offeror's offer of judgment
6 was also brought in good faith in both timing and amount; (3) whether the offeree's
7 decision to reject the offer of judgment was in bad faith or grossly unreasonable; and
8 (4) whether the amount of offeror's requested fees is reasonable and justified.

9 *Schouweiler*, 101 Nev. 827, 833, 917 P.2d 786 (1985). CHH argues that all of the
10 Schouweiler factors weigh in favor of CHH.

11 As to the first factor, CHH notes that the Supreme Court determined Plaintiffs
12 were on notice of any alleged malpractice in this case, in possession of records long
13 before the statute of limitations expired, and knowingly initiated complaints to State
14 agencies manifesting definitive knowledge and belief of malpractice. Nevertheless,
15 CHH argues, Plaintiffs chose to initiate a lawsuit "which was dead on arrival,
16 continued to maintain it even after irrefutable evidence demonstrated its untenability,
17 and then used every opportunity to prevent the expenditure of additional resources in
18 order to prove the impropriety of the lawsuit." Accordingly, Plaintiffs' claims were not
19 brought in good faith.

20 With regard to the second factor, CHH argues that its Offer of Judgment was
21 brought in good faith in both timing and amount. At the time of the Offer, CHH had
22 incurred over \$58,000.00 in costs defending Plaintiffs' claims. The Offer was served
23 several days prior to CHH's Motion for Summary Judgment and about one and a half
24 years after the lawsuit's commencement. Before the Motion for Summary Judgment
25 was filed, Plaintiffs were in possession of documents that demonstrated irrefutable
26 evidence of inquiry notice. Plaintiffs were on notice of the statute of limitations issues
27 as early as July 2019 when CHH's prior counsel filed a Motion to Dismiss. Therefore,
28 given Plaintiffs' likelihood of losing on merits, the offered waiver of the right to seek
reimbursement of costs was reasonable in both timing and amount.

For similar reasons, CHH argues that Plaintiffs' decision to reject the offer of
judgment was in bad faith and grossly unreasonable. Instead of abandoning their

1 untimely filed action, Plaintiffs' decision to pursue an untenable case caused CHH to
2 incur substantial legal costs and expenses to seek dismissal.

3 CHH argues that the fourth factor regarding the reasonableness of CHH's
4 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may
5 recover their attorneys' fees from the date of service of the Offer of Judgment to the end
6 of the matter. In this case, CHH served an Offer of Judgment on 8/28/20 that expired
7 on 9/11/20. CHH states it incurred a total of \$110,930.85 in attorneys' fees alone (not
8 inclusive of expenses) from 8/28/20 to the present billing cycle (which does not
9 include all fees incurred in October 2021). Additionally, CHH incurred \$31,401.10 in
disbursements including expert fees and other expenses since 8/28/20.

10 CHH argues that the amount of its bills is reasonable, given the amount of time
11 and energy needed to defend this case, engage in extensive written discovery, extensive
12 motions and appeals practice, and, expert time and expenses, due to Plaintiffs' refusal
13 to stipulate to stay the litigation while the summary judgment issue made its way
14 through the court system. Additionally, medical malpractice cases are complex, involve
15 substantial amounts of expert testimony, and require a great deal of preparation. CHH
16 states that documents are available for in camera review by this Court, but were not
17 attached to the Motion in order to preserve attorney-client privilege and protect
information contained within the descriptions of the attorney billing.

18 With regard to the *Brunzell vs. Golden Gate* analysis, CHH indicates that
19 attorneys Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on
20 medical malpractice. Both have practiced many years and are partners at Lewis
21 Brisbois. They both billed \$225/hour on this matter. Where appropriate, work was also
22 assigned to associate attorneys (\$193.50/hour) and paralegals (\$90/hour).

23 CHH notes that medical malpractice cases are complex and require an in-depth
24 understanding of both unique legal issues as well as the medical care and course that is
25 at issue. Plaintiffs claimed that they were entitled to \$105,000,000.00 in damages
26 including \$172,728.04 billed by CHH as a recoverable expense, plus a loss of earning
capacity of \$1,348,596.

27 There were multiple highly skilled expert witnesses presented by both parties.
28 Further, nearly 14 months have passed since CHH's Offer of Judgment expired,
including the participation in motion practice regarding a motion for summary

1 judgment, two motions to stay proceedings (one in this Court and one in Supreme
2 Court), a writ petition to the Nevada Supreme Court, as well as extensive written
3 discovery. CHH argues that its requested attorneys' fees are well below the amounts
4 Nevada courts have found reasonable. Defendants are only requesting attorneys' fees at
5 a rate of \$225 and \$193.50 per hour, and a paralegal rate of \$90 per hour. CHH argues
6 that a consideration of the *Brunzell* factors shows that the recovery of the entire billed
7 amount of fees from August 28, 2020 to present is entirely appropriate. *Brunzell*, 85
8 Nev. 345, 455 P.2d 31 (1969).

9 In addition to all NRCP Rule 68 post offer fees and costs, CHH requests that
10 sanctions be imposed against Plaintiffs' counsel for all pre-NRCP Rule 68 costs and fees
11 totaling \$58,514.36 in accordance with NRS 7.085. CHH cites to EDCR 7.60, which
12 provides a further avenue of deterrence to attorneys, like Plaintiffs' counsel who engage
13 in these unnecessary and flagrantly frivolous lawsuits, which are dead before they are
14 even filed. Accordingly, CHH argues that an award of \$110,930.85 in attorneys' fees per
15 N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and
16 expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60, is justified. CHH
17 argues that it is entitled to an award of his attorney's fees and costs under NRS
18 §18.010(2)(b), as Plaintiffs maintained the lawsuit without reasonable grounds or to
19 harass the Defendants.

20 CHH's separately filed a Verified Memorandum of Costs indicates that it seeks
21 costs, pursuant to NRS 18.005 and 18.020, as well as NRCP 68 and NRS 17.117, in the
22 amount of \$42,492.03. A majority of the costs requested (\$41,724.10) are for expert
23 fees. CHH argues that the experts all meet the factors set forth in *Frazier v. Drake*.

24 In Opposition, Plaintiffs argue that the medical malpractice, wrongful death, and
25 negligent infliction of emotional distress claims on behalf of the estate and surviving
26 children of Rebecca Powell were not frivolous, and the claims for wrongful
27 death/medical malpractice and negligent infliction of emotional distress were brought
28 in good faith. Because this Court denied several dispositive motions before the Nevada
Supreme Court ultimately directed this Court to vacate its Order denying CHH's
Motion for Summary Judgment and enter judgment in favor of all the Defendants,
CHH did not "win" this matter on the merits.

1 Plaintiffs argue that the dismissal of the case on an incorrect interpretation of
2 the facts and application of inquiry notice to all the named Plaintiffs by the Supreme
3 Court does not make the claims of Plaintiffs any less meritorious. Further, pursuant to
4 NRCP 68, and NRS 17.117(10), a party is not entitled to attorney's fees simply because it
5 served an offer of judgment on the opposing party and that party failed to achieve a
6 more favorable verdict. The purpose of NRCP 68 is to encourage settlement; it is not to
7 force Plaintiffs' unfairly to forego legitimate claims. See *Beattie v. Thomas*, 99 Nev.
8 579, 668 P.2d 268 (1983).

9 Plaintiffs argue that their claims were brought in good faith, as HHS determined
10 that there were deficiencies in Ms. Powell's care and the death certificate was
11 inaccurate. Additionally, this Court repeatedly found merit in Plaintiffs' Complaint and
12 their causes of action for wrongful death, medical malpractice, and negligent infliction
13 of emotional harm.

14 Plaintiffs argue that Defendant's Offer of Judgment, to waive costs and fees, of
15 \$58,514.36 was not reasonable and nor was it in good faith considering Plaintiffs'
16 causes of action for medical malpractice, wrongful death, and negligent infliction of
17 emotional harm. Plaintiffs lost their mother, who was only 41 years old at the time of
18 her death. It was reasonable for Plaintiffs to reject Defendant's Offer of Judgment, as
19 the terms of the Offer of Judgment did not provide for any monetary recovery to
20 Plaintiffs to compensate them for the loss of their mother. CHH indicated at the time it
21 had incurred \$53,389.90 in fees and \$5,124.46 in costs, but no supporting documents
22 were provided. Moreover, this Court denied the Motion for Summary Judgment.
23 Therefore, CHH incorrectly states that given the likelihood of losing on this issue, the
24 offered waiver of right to seek reimbursement of costs was reasonable in both timing
25 and amount. Further, Plaintiffs contend that their decision to reject the Offer of
26 Judgment was not grossly unreasonable nor in bad faith because no amount was being
27 offered in damages to the Plaintiffs.

28 With regard to the fees sought, Plaintiffs argue that CHH won on a technicality
at the Supreme Court, and not on the merits or by way of a jury verdict in favor of
Defendants. Plaintiffs argue that CHH incurred so much in fees because it continued
filing motions based on the same statute of limitations theory. Thus, CHH's fees are
unreasonable and unjustified. Plaintiffs also claim they are unable to properly evaluate

1 the reasonableness of CHH's attorney's fees because Defendant only presented a
2 summary of the fees that were incurred.

3 Plaintiffs argue that it is absurd for CHH to suggest that the provisions of NRS
4 7.085 even apply to the facts of this case, and that Plaintiffs' attorneys violated NRS
5 18.010(2), NRCP 11 or EDCR 7.60. Plaintiffs further argue that CHH has not provided
6 factual support to support the request for pre-NRCP 68 costs and fees pursuant to NRS
7 7.085. Plaintiffs ask that this Court deny the application for fees and costs as the
8 Plaintiffs did not submit frivolous or vexatious claims and did not over burden the
9 limited judicial resources nor did it hinder the timely resolution of meritorious claims.
10 Similarly, Plaintiffs contend that CHH has not provided any factual support for its
11 request for attorneys' fees pursuant to EDCR 7.60 or 18.010(2).

12 In Reply, CHH argues that Plaintiffs' entire opposition is predicated on the false
13 assertion that they possessed a viable case in the first instance. CHH argues that,
14 "Plaintiffs' entire argument is that because this Court repeatedly denied dismissal
15 attempts by the respective defendants despite clear, convincing, and irrefutable
16 evidence of inquiry notice which each and every plaintiff possessed, they are somehow
17 absolved from either their malpractice or unethical practice of pursuing a case which
18 was dead on arrival when filed."

19 CHH argues that the Nevada Supreme Court held that the "district court
20 manifestly abused its discretion when it denied summary judgment." CHH argues that
21 this matter should have been dismissed a year ago at the latest.

22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23 With regard to the requested costs, in *Frazier v. Drake*, 131 Nev. 632, 357 P.3d
24 365 (NV.Ct.of App., 2015), the Court noted that NRS 18.005(5) provides for the
25 recovery of "reasonable fees of not more than five expert witnesses in an amount of not
26 more than \$1,500 for each witness unless the court allows a larger fee after
27 determining that the circumstances surrounding the expert's testimony were of such
28 necessity as to require the larger fee." *Id.*, at 644. The Court went on to state the
following:

... we conclude that any award of expert witness fees in excess of \$1,500
per expert under NRS 18.005(5) must be supported by an express,
careful, and preferably written explanation of the court's analysis of
factors pertinent to determining the reasonableness of the requested fees
and whether "the circumstances surrounding the expert's testimony were

1 of such necessity as to require the larger fee." See NRS 18.005(5); cf.
2 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780
3 (1990) (requiring an "express, careful and preferably written explanation"
4 of the district court's analysis of factors pertinent to determining whether
5 a dismissal with prejudice is an appropriate discovery sanction). *In*
6 *evaluating requests for such awards, district courts should*
7 *consider the importance of the expert's testimony to the*
8 *party's case; the degree to which the expert's opinion aided*
9 *the trier of fact in deciding the case; whether the expert's*
10 *reports or testimony were repetitive of other expert witnesses;*
11 *the extent and nature of the work performed by the expert;*
12 *whether the expert had to conduct independent investigations*
13 *or testing; the amount of time the expert spent in court,*
14 *preparing a report, and preparing for trial; the expert's area*
15 *of expertise; the expert's education and training; the fee*
16 *actually charged to the party who retained the expert; the fees*
17 *traditionally charged by the expert on related matters;*
18 *comparable experts' fees charged in similar cases; and, if an*
19 *expert is retained from outside the area where the trial is held,*
20 *the fees and costs that would have been incurred to hire a*
21 *comparable expert where the trial was held.*

22 *Id.*, at 650-651.

23 The Defendant, CHH, argues the importance of the testimony of each of the
24 witnesses, and how their respective opinions were necessary for the Defendant's case.
25 CHH argues that the medical experts expended "many hours," and "prepared two
26 written reports." There was no discussion in the briefing about repetitiveness, whether
27 they had to conduct independent investigations or testing, the amount of time spent in
28 court, preparing reports, or preparing for trial, the fees charged to the Defendant, and
the fees traditionally charged, and what they charge compared to other experts, etc.
Consequently, the Court could allow the expert fee of \$1,500.00, for up to 5 expert
witnesses, if the Court were able to find that the experts were relevant and the fees
incurred, but the Court cannot allow expert fees in excess of \$1,500.00 without a
Frazier analysis.

Additionally, the Court notes that any costs awarded need to be itemized and
documented. The Nevada Supreme Court has stated that without "itemization or
justifying documentation," the Court is "unable to ascertain whether such costs were
accurately assessed." *Bobby Berosini, Ltd. V. People for the Ethical Treatment of*
Animals, 114 Nev. 1348, 1353, 971 P.2d 383 (1998). Further, when the "memorandum

1 of costs is completely void of any specific itemization,” and a “lack of supporting
2 documentation,” it is an abuse of discretion on the part of the Court if it awards the
3 requested costs. *Id.* The Supreme Court has further indicated that “‘justifying
4 documentation’ must mean something more than a memorandum of costs.” *Cadle Co.*
5 *v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015). The Court has
6 further indicated that “Without evidence to determine whether a cost was reasonable
7 and necessary, a district court may not award costs.” *Id.*, citing *Peta*, 114 Nev. at 1353,
8 971 P.2d at 386. In this case, Defendant produced a “Disbursement Diary,” but based
9 on the above-referenced cases, this is insufficient to support the requested costs. There
10 is insufficient evidence submitted for the Court to determine whether the requested
11 costs were reasonable and necessary, there was no specific itemization, other than the
12 Disbursement Diary, and there were no supporting documents.

13 Based upon the foregoing, the Court cannot award costs.

14 NRCP 68 provides in pertinent part as follows:

15 **Rule 68. Offers of Judgment**

16 (a) The Offer. At any time more than 21 days before trial, any party
17 may serve an offer in writing to allow judgment to be taken in accordance
18 with its terms and conditions. Unless otherwise specified, an offer made
19 under this rule is an offer to resolve all claims in the action between the
20 parties to the date of the offer, including costs, expenses, interest, and if
21 attorney fees are permitted by law or contract, attorney fees.

22 **....**
(d) Acceptance of the Offer and Dismissal or Entry of Judgment.

23 (1) Within 14 days after service of the offer, the offeree may accept
24 the offer by serving written notice that the offer is accepted.

25 (2) Within 21 days after service of written notice that the offer is
26 accepted, the obligated party may pay the amount of the offer and obtain
27 dismissal of the claims, rather than entry of a judgment.

28 (3) If the claims are not dismissed, at any time after 21 days after
service of written notice that the offer is accepted, either party may file
the offer and notice of acceptance together with proof of service. The clerk
must then enter judgment accordingly. The court must allow costs in
accordance with NRS 18.110 unless the terms of the offer preclude a
separate award of costs. Any judgment entered under this section must be
expressly designated a compromise settlement.

(e) Failure to Accept Offer. If the offer is not accepted within 14
days after service, it will be considered rejected by the offeree and deemed
withdrawn by the offeror. . . . Any offeree who fails to accept the offer
may be subject to the penalties of this rule.

(f) Penalties for Rejection of Offer.

1 (1) In General. If the offeree rejects an offer and fails to obtain a
2 more favorable judgment:

3 (A) the offeree cannot recover any costs, expenses, or attorney
4 fees and may not recover interest for the period after the service of the
5 offer and before the judgment; and

6 (B) the offeree must pay the offeror's post-offer costs and
7 expenses, including a reasonable sum to cover any expenses incurred by
8 the offeror for each expert witness whose services were reasonably
9 necessary to prepare for and conduct the trial of the case, applicable
10 interest on the judgment from the time of the offer to the time of entry of
11 the judgment and reasonable attorney fees, if any be allowed, actually
12 incurred by the offeror from the time of the offer. If the offeror's attorney
13 is collecting a contingent fee, the amount of any attorney fees awarded to
14 the party for whom the offer is made must be deducted from that
15 contingent fee.

16

17 **NRCP 68.**

18 NRCP 68 provides that the Defendant would be entitled to "reasonable attorney
19 fees, if any be allowed." The language of the Rule specifically provides that Court with
20 "discretion," as it relates to attorney's fees, and the Court's discretion will not be
21 disturbed absent a clear abuse of such discretion. *Armstrong v. Riggi*, 92 Nev. 280,
22 549 P.2d 753 (1976); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985);
23 *Bidart v. American Title Ins. Co.*, 103 Nev. 175, 734 P.3d 732 (1987).

24 In evaluating whether to grant an award of attorney's fees, pursuant to
25 *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the Court must
26 consider: "(1) whether plaintiff's claim was brought in good faith; (2) whether
27 defendant's offer of judgment was brought in good faith in both its timing and amount;
28 (3) whether plaintiff's decision to reject the offer and proceed to trial was grossly
unreasonable or in bad faith; and (4) whether fees sought by the offeror are reasonable
and justified in amount." *Schouweiler* at 833, citing *Beattie v. Thomas*, 99 Nev. 579,
588, 668 P.2d 268 (1983)(the "Beattie Factors").

In analyzing whether to award attorneys' fees, the factors which need to be
considered pursuant to *Brunzell*, include the following: (1) the qualities of the advocate:
his ability, training, education, experience, professional standing and skill; (2) the
character of the work to be done: its difficulty, intricacy, importance, the time and skill
required, the responsibility imposed and the prominence and character of the parties
when they affect the importance of the litigation; (3) the work actually performed by
the lawyer: the skill, time and attention given to the work; and (4) the result: whether

1 the attorney was successful and what benefits were derived. *Schouweiler* at 833-834,
2 citing to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969)
3 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144, 146 (1959)).

4 With regard to the attorney's fees requested, this Motion is different from the
5 Motion for Fees filed by Drs. Concio and Shaw, in that CHH contends that it incurred
6 \$110,930.85 in attorney's fees since 8/28/20 (roughly twice the fees incurred by Drs.
7 Concio and Shaw). In considering the *Beattie* factors, the Court finds and concludes
8 that the plaintiff's claim was brought in good faith. The Court finds and concludes that
9 Defendant's offer of judgment, in the amount of \$0.00, (offering to waive
10 approximately \$58,500.00 in fees and costs), was brought in good faith in both its
11 timing and amount. The Court acknowledges that the parties disagree about this issue,
12 but as much as the Plaintiffs believed they had a valid case, the Defendants disputed
13 any liability. The Court further finds and concludes that Plaintiff's decision to reject the
14 offer and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs
15 believed they had a valid claim, and the Court cannot find that wanting some recovery,
16 as opposed to \$0.00, to be "grossly unreasonable" or in "bad faith. With regard to a
17 determination of whether the fees sought by the Defendants are reasonable and
18 justified in amount, a *Brunzell* analysis is required. *Beattie v. Thomas*, 99 Nev. 579,
19 588, 668 P.2d 268 (1983).

20 In determining the reasonableness of the fees requested, the Court has analyzed
21 the *Brunzell* factors, as follows: The Court finds that the qualities of defense counsel,
22 his ability, training, education, experience, professional standing and skill, favor an
23 award of fees. When considering the character of the work to be done - its difficulty,
24 intricacy, importance, the time and skill required, (when dealing with a professional
25 negligence/medical malpractice case), and finding that the character or prominence of
26 the parties was unremarkable, the complexity of the case warrants an award of fees.
27 The Court cannot evaluate the work actually performed by the lawyers, in this case, and
28 the skill, time and attention given to the work, without a detailed billing statement.
Although the Defendant has offered to submit a billing ledger to the Court in camera, it
would have been necessary for the Defendant to have submitted such ledger, and
disclosed it to the Plaintiff so that the reasonableness could have been addressed by all
parties, and by the Court. Finally, in considering the result, the Court notes that

1 although the Court found insufficient evidence to establish irrefutably that the statute
2 of limitations had expired, Defense counsel was successful in convincing the Supreme
3 Court of that, and consequently, Defendants prevailed. *Brunzell v. Golden Gate Nat'l*
4 *Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969). Based upon this NRCP 68 analysis, with
5 the exception of being able to analyze the reasonableness of the fees allegedly incurred,
6 the Court would likely have awarded at least some fees to the Defendant, at least for the
7 period of time after rejection of the Offer of Judgment. Without any evidence of the
8 fees actually accrued, and based on the amount requested, the Court cannot make a
9 finding as to the reasonableness of such fees, and consequently, the Court has no choice
under *Brunzell* and *Beattie*, to deny the request for Fees.

10 **CONCLUSION / ORDER**

11 Based upon the foregoing, and good cause appearing,

12 **IT IS HEREBY ORDERED** that the Defendants' Motion for Fees and Costs is
13 **DENIED.**

14 The Court requests that Plaintiff's counsel prepare and process a Notice of Entry
15 with regard to this Order.

16 Because this matter has been decided on the pleadings, the hearing scheduled
17 for 2/18/22 will be taken off calendar, and consequently, there is no need for any
18 parties or attorneys to appear.

19 Dated this 15th day of February, 2022

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23 **99B B52 25DC 68DD**
24 **Jerry A. Wiese**
25 **District Court Judge**
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 2/15/2022

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11 Telephone: 702.893.3383
12 Facsimile: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **ESTATE OF REBECCA POWELL**, through
12 **BRIAN POWELL**, as Special Administrator;
13 **DARCI CREECY**, individually and as Heir;
14 **TARYN CREECY**, individually and as an
15 Heir; **ISAIAH KHOSROF**, individually and as
16 an Heir; **LLOYD CREECY**, individually;

17 **Plaintiffs,**

18 **vs.**

19 **VALLEY HEALTH SYSTEM, LLC** (doing
20 business as "Centennial Hills Hospital Medical
21 Center"), a foreign limited liability company;
22 **UNIVERSAL HEALTH SERVICES, INC.**, a
23 foreign corporation; **DR. DIONICE S.**
24 **JULIANO, M.D.**, an individual; **DR.**
25 **CONRADO C.D. CONCIO, M.D.**, an
26 individual; **DR. VISHAL S. SHAH, M.D.**, an
27 individual; **DOES 1-10**; and **ROES A-Z**;

28 **Defendants.**

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM, LLC DBA CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER'S
NOTICE OF APPEAL**

23 Notice is hereby given that Defendant **VALLEY HEALTH SYSTEM, LLC**, through its
24 counsel, **Lewis Brisbois Bisgaard & Smith LLP**, hereby appeals to the Supreme Court of Nevada
25 from the following District Court, Clark County, Nevada order in this matter:

26 The District Court's Order denying Defendant Valley Health System, LLC's Motion For
27 Attorneys' Fees Pursuant To N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), and EDCR 7.60,
28

1 entered February 16, 2022, attached hereto as Exhibit A.

2 DATED this 14th day of March, 2022

3
4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6 By /s/ Adam Garth

7 S. BRENT VOGEL

8 Nevada Bar No. 6858

9 ADAM GARTH

10 Nevada Bar No. 15045

11 6385 S. Rainbow Boulevard, Suite 600

12 Las Vegas, Nevada 89118

13 Tel. 702.893.3383

14 *Attorneys for Attorneys for Defendant Valley*

15 *Health System, LLC dba Centennial Hills Hospital*

16 *Medical Center*

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2022, a true and correct copy of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS HOSPITAL MEDICAL CENTER'S NOTICE OF APPEAL** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

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Shah, M.D.*

By /s/ Heidi Brown
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT A



NOED

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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as an Heir;
TARYN CREECY, individually and as an
Heir; ISALIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No. XXX (30)

**NOTICE OF ENTRY OF ORDER AND
DECISION REGARDING VALLEY
HEALTH SYSTEM'S MOTION FOR
FEES AND COUNTERMOTION FOR
FEES AND COSTS**

1

Estate of Rebecca Powell v. Valley Health System, LLC et al.
Eighth Judicial District Court, Case No. A-19-788787-C (Dept. 30)
Notice Of Entry Of Order And Decision Regarding Valley Health System's Motion For Fees
PPL #201297-15-06

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1 Notice is hereby provided that the Court filed an Order and Decision pertaining to
2 Valley Health System's Motion for Fees and the Countermotion for Fees and Costs. A copy of
3 that Order and Decision is attached hereto as Exhibit A.
4

5 Respectfully submitted,

6 /s/ Paul S. Padda
7

8 Paul S. Padda, Esq.
9 Srilata Shah, Esq.
10 PAUL PADDA LAW, PLLC
11 4560 South Decatur Blvd., #300
12 Las Vegas, Nevada 89103
13 Tele: (702) 366-1888
14

15 Counsel for Plaintiffs

16 Dated: February 16, 2022
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1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to the Nevada Rules of Civil Procedure, the undersigned hereby certifies that
4 on this day, February 16, 2022, a copy of the foregoing **NOTICE OF ENTRY OF ORDER**
5 **AND DECISION REGARDING VALLEY HEALTH SYSTEM'S MOTION FOR FEES**
6 **AND COUNTERMOTION FOR FEES AND COSTS** was filed and served through the
Court's electronic filing system upon all parties and counsel identified on the Court's master e-
service list.

7
8 /s/ *Shelbi Schram*

9
10 Shelbi Schram, Litigation Assistant
PAUL PADDA LAW

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EXHIBIT A

EXHIBIT A


 CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

ESTATE OF REBECCA POWELL, through)
 BRIAN POWELL, as Special Administrator;)
 DARCI CREECY, individually and as an Heir;)
 TARYN CREECY, individually and as an Heir;)
 ISAIAH KHOSROF, individually and as an)
 Heir; LLOYD CREECY, individually,)

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing)
 Business as "Centennial Hills Hospital)
 Medical Center"), a foreign limited liability)
 Company; UNIVERSAL HEALTH SERVICES,)
 INC., a foreign corporation; DR. DIONICE)
 S. JULIANO, M.D., an individual; DR.)
 CONRADO C.D. CONCIO, M.D., an individual;)
 DR. VISHAL S. SHAH, M.D., an individual;)
 DOES 1-10; and ROES A-Z,)

Defendants.

CASE NO.: A-19-788787-C
 DEPT. NO.: XXX

**ORDER RE: VALLEY
 HEALTH SYSTEM'S
 MOTION FOR FEES
 AND COUNTERMOTION
 FOR FEES AND COSTS**

INTRODUCTION

The above-referenced matter is scheduled for a hearing on 2/18/22, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Attorneys' Fees and Countermotion for Fees and Costs. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, these matters may be decided with or without oral argument. This Court has determined that it would be appropriate to decide these matters on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs.

19 SUMMARY OF LEGAL AND FACTUAL ARGUMENTS

20 Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical
21 Center (CHH) seeks attorneys' fees pursuant to NRCP 68(f) and NRS 17.117(10). CHH
22 argues that it is entitled to an award of attorneys' fees because Plaintiffs rejected CHH's
23 Offer of Judgment and then failed to obtain a more favorable judgment. See *Albias v.*
24 *Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022 (2006); *Logan v. Abe*, 131 Nev.
25 260, 268, 350 P.3d 1139 (2015).

26 CHH states that it served an Offer of Judgment on Plaintiffs for a waiver of any
27 presently or potentially recoverable costs, in full and final settlement of the Plaintiff's
28 claims. Plaintiffs rejected this Offer of Judgment by failing to accept it within 14 days.
N.R.C.P. 68(e) and N.R.S. 17.117(6). As this Court was directed by the Supreme Court to
vacate its order denying summary judgment to CHH and instead issue an order
granting CHH's summary judgment motion, Plaintiffs failed to obtain more a favorable
judgment than the one offered to them in CHH's Offer of Judgment. Thus, pursuant to

1 N.R.C.P. 68 and N.R.S. 17.117, this Court has discretion to award CHH its attorneys'
2 fees.

3 CHH cites to *Schouweiler v. Yancey Co.*, for the proposition that a Court must
4 consider the following factors in exercising its discretion to award fees: (1) whether
5 the offeree brought his claims in good faith; (2) whether the offeror's offer of judgment
6 was also brought in good faith in both timing and amount; (3) whether the offeree's
7 decision to reject the offer of judgment was in bad faith or grossly unreasonable; and
8 (4) whether the amount of offeror's requested fees is reasonable and justified.
9 *Schouweiler*, 101 Nev. 827, 833, 917 P.2d 786 (1985). CHH argues that all of the
10 Schouweiler factors weigh in favor of CHH.

11 As to the first factor, CHH notes that the Supreme Court determined Plaintiffs
12 were on notice of any alleged malpractice in this case, in possession of records long
13 before the statute of limitations expired, and knowingly initiated complaints to State
14 agencies manifesting definitive knowledge and belief of malpractice. Nevertheless,
15 CHH argues, Plaintiffs chose to initiate a lawsuit "which was dead on arrival,
16 continued to maintain it even after irrefutable evidence demonstrated its untenability,
17 and then used every opportunity to prevent the expenditure of additional resources in
18 order to prove the impropriety of the lawsuit." Accordingly, Plaintiffs' claims were not
19 brought in good faith.

20 With regard to the second factor, CHH argues that its Offer of Judgment was
21 brought in good faith in both timing and amount. At the time of the Offer, CHH had
22 incurred over \$58,000.00 in costs defending Plaintiffs' claims. The Offer was served
23 several days prior to CHH's Motion for Summary Judgment and about one and a half
24 years after the lawsuit's commencement. Before the Motion for Summary Judgment
25 was filed, Plaintiffs were in possession of documents that demonstrated irrefutable
26 evidence of inquiry notice. Plaintiffs were on notice of the statute of limitations issues
27 as early as July 2019 when CHH's prior counsel filed a Motion to Dismiss. Therefore,
28 given Plaintiffs' likelihood of losing on merits, the offered waiver of the right to seek
reimbursement of costs was reasonable in both timing and amount.

For similar reasons, CHH argues that Plaintiffs' decision to reject the offer of
judgment was in bad faith and grossly unreasonable. Instead of abandoning their

1 untimely filed action, Plaintiffs' decision to pursue an untenable case caused CHH to
2 incur substantial legal costs and expenses to seek dismissal.

3 CHH argues that the fourth factor regarding the reasonableness of CHH's
4 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may
5 recover their attorneys' fees from the date of service of the Offer of Judgment to the end
6 of the matter. In this case, CHH served an Offer of Judgment on 8/28/20 that expired
7 on 9/11/20. CHH states it incurred a total of \$110,930.85 in attorneys' fees alone (not
8 inclusive of expenses) from 8/28/20 to the present billing cycle (which does not
9 include all fees incurred in October 2021). Additionally, CHH incurred \$31,401.10 in
disbursements including expert fees and other expenses since 8/28/20.

10 CHH argues that the amount of its bills is reasonable, given the amount of time
11 and energy needed to defend this case, engage in extensive written discovery, extensive
12 motions and appeals practice, and, expert time and expenses, due to Plaintiffs' refusal
13 to stipulate to stay the litigation while the summary judgment issue made its way
14 through the court system. Additionally, medical malpractice cases are complex, involve
15 substantial amounts of expert testimony, and require a great deal of preparation. CHH
16 states that documents are available for in camera review by this Court, but were not
17 attached to the Motion in order to preserve attorney-client privilege and protect
information contained within the descriptions of the attorney billing.

18 With regard to the *Brunzell vs. Golden Gate* analysis, CHH indicates that
19 attorneys Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on
20 medical malpractice. Both have practiced many years and are partners at Lewis
21 Brisbois. They both billed \$225/hour on this matter. Where appropriate, work was also
22 assigned to associate attorneys (\$193.50/hour) and paralegals (\$90/hour).

23 CHH notes that medical malpractice cases are complex and require an in-depth
24 understanding of both unique legal issues as well as the medical care and course that is
25 at issue. Plaintiffs claimed that they were entitled to \$105,000,000.00 in damages
26 including \$172,728.04 billed by CHH as a recoverable expense, plus a loss of earning
capacity of \$1,348,596.

27 There were multiple highly skilled expert witnesses presented by both parties.
28 Further, nearly 14 months have passed since CHH's Offer of Judgment expired,
including the participation in motion practice regarding a motion for summary

1 judgment, two motions to stay proceedings (one in this Court and one in Supreme
2 Court), a writ petition to the Nevada Supreme Court, as well as extensive written
3 discovery. CHH argues that its requested attorneys' fees are well below the amounts
4 Nevada courts have found reasonable. Defendants are only requesting attorneys' fees at
5 a rate of \$225 and \$193.50 per hour, and a paralegal rate of \$90 per hour. CHH argues
6 that a consideration of the *Brunzell* factors shows that the recovery of the entire billed
7 amount of fees from August 28, 2020 to present is entirely appropriate. *Brunzell*, 85
8 Nev. 345, 455 P.2d 31 (1969).

9 In addition to all NRCP Rule 68 post offer fees and costs, CHH requests that
10 sanctions be imposed against Plaintiffs' counsel for all pre-NRCP Rule 68 costs and fees
11 totaling \$58,514.36 in accordance with NRS 7.085. CHH cites to EDCR 7.60, which
12 provides a further avenue of deterrence to attorneys, like Plaintiffs' counsel who engage
13 in these unnecessary and flagrantly frivolous lawsuits, which are dead before they are
14 even filed. Accordingly, CHH argues that an award of \$110,930.85 in attorneys' fees per
15 N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and
16 expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60, is justified. CHH
17 argues that it is entitled to an award of his attorney's fees and costs under NRS
18 §18.010(2)(b), as Plaintiffs maintained the lawsuit without reasonable grounds or to
19 harass the Defendants.

20 CHH's separately filed a Verified Memorandum of Costs indicates that it seeks
21 costs, pursuant to NRS 18.005 and 18.020, as well as NRCP 68 and NRS 17.117, in the
22 amount of \$42,492.03. A majority of the costs requested (\$41,724.10) are for expert
23 fees. CHH argues that the experts all meet the factors set forth in *Frazier v. Drake*.

24 In Opposition, Plaintiffs argue that the medical malpractice, wrongful death, and
25 negligent infliction of emotional distress claims on behalf of the estate and surviving
26 children of Rebecca Powell were not frivolous, and the claims for wrongful
27 death/medical malpractice and negligent infliction of emotional distress were brought
28 in good faith. Because this Court denied several dispositive motions before the Nevada
Supreme Court ultimately directed this Court to vacate its Order denying CHH's
Motion for Summary Judgment and enter judgment in favor of all the Defendants,
CHH did not "win" this matter on the merits.

1 Plaintiffs argue that the dismissal of the case on an incorrect interpretation of
2 the facts and application of inquiry notice to all the named Plaintiffs by the Supreme
3 Court does not make the claims of Plaintiffs any less meritorious. Further, pursuant to
4 NRCP 68, and NRS 17.117(10), a party is not entitled to attorney's fees simply because it
5 served an offer of judgment on the opposing party and that party failed to achieve a
6 more favorable verdict. The purpose of NRCP 68 is to encourage settlement; it is not to
7 force Plaintiffs' unfairly to forego legitimate claims. See *Beattie v. Thomas*, 99 Nev.
8 579, 668 P.2d 268 (1983).

9 Plaintiffs argue that their claims were brought in good faith, as HHS determined
10 that there were deficiencies in Ms. Powell's care and the death certificate was
11 inaccurate. Additionally, this Court repeatedly found merit in Plaintiffs' Complaint and
12 their causes of action for wrongful death, medical malpractice, and negligent infliction
13 of emotional harm.

14 Plaintiffs argue that Defendant's Offer of Judgment, to waive costs and fees, of
15 \$58,514.36 was not reasonable and nor was it in good faith considering Plaintiffs'
16 causes of action for medical malpractice, wrongful death, and negligent infliction of
17 emotional harm. Plaintiffs lost their mother, who was only 41 years old at the time of
18 her death. It was reasonable for Plaintiffs to reject Defendants' Offer of Judgment, as
19 the terms of the Offer of Judgment did not provide for any monetary recovery to
20 Plaintiffs to compensate them for the loss of their mother. CHH indicated at the time it
21 had incurred \$53,389.90 in fees and \$5,124.46 in costs, but no supporting documents
22 were provided. Moreover, this Court denied the Motion for Summary Judgment.
23 Therefore, CHH incorrectly states that given the likelihood of losing on this issue, the
24 offered waiver of right to seek reimbursement of costs was reasonable in both timing
25 and amount. Further, Plaintiffs contend that their decision to reject the Offer of
26 Judgment was not grossly unreasonable nor in bad faith because no amount was being
27 offered in damages to the Plaintiffs.

28 With regard to the fees sought, Plaintiffs argue that CHH won on a technicality
at the Supreme Court, and not on the merits or by way of a jury verdict in favor of
Defendants. Plaintiffs argue that CHH incurred so much in fees because it continued
filing motions based on the same statute of limitations theory. Thus, CHH's fees are
unreasonable and unjustified. Plaintiffs also claim they are unable to properly evaluate

1 the reasonableness of CHH's attorney's fees because Defendant only presented a
2 summary of the fees that were incurred.

3 Plaintiffs argue that it is absurd for CHH to suggest that the provisions of NRS
4 7.085 even apply to the facts of this case, and that Plaintiffs' attorneys violated NRS
5 18.010(2), NRCP 11 or EDCR 7.60. Plaintiffs further argue that CHH has not provided
6 factual support to support the request for pre-NRCP 68 costs and fees pursuant to NRS
7 7.085. Plaintiffs ask that this Court deny the application for fees and costs as the
8 Plaintiffs did not submit frivolous or vexatious claims and did not over burden the
9 limited judicial resources nor did it hinder the timely resolution of meritorious claims.
10 Similarly, Plaintiffs contend that CHH has not provided any factual support for its
11 request for attorneys' fees pursuant to EDCR 7.60 or 18.010(2).

12 In Reply, CHH argues that Plaintiffs' entire opposition is predicated on the false
13 assertion that they possessed a viable case in the first instance. CHH argues that,
14 "Plaintiffs' entire argument is that because this Court repeatedly denied dismissal
15 attempts by the respective defendants despite clear, convincing, and irrefutable
16 evidence of inquiry notice which each and every plaintiff possessed, they are somehow
17 absolved from either their malpractice or unethical practice of pursuing a case which
18 was dead on arrival when filed."

19 CHH argues that the Nevada Supreme Court held that the "district court
20 manifestly abused its discretion when it denied summary judgment." CHH argues that
21 this matter should have been dismissed a year ago at the latest.

22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23 With regard to the requested costs, in *Frazier v. Drake*, 131 Nev. 632, 357 P.3d
24 365 (NV.Ct.of App., 2015), the Court noted that NRS 18.005(5) provides for the
25 recovery of "reasonable fees of not more than five expert witnesses in an amount of not
26 more than \$1,500 for each witness unless the court allows a larger fee after
27 determining that the circumstances surrounding the expert's testimony were of such
28 necessity as to require the larger fee." *Id.*, at 644. The Court went on to state the
following:

... we conclude that any award of expert witness fees in excess of \$1,500
per expert under NRS 18.005(5) must be supported by an express,
careful, and preferably written explanation of the court's analysis of
factors pertinent to determining the reasonableness of the requested fees
and whether "the circumstances surrounding the expert's testimony were

1 of such necessity as to require the larger fee." See NRS 18.005(5); cf.
2 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780
3 (1990) (requiring an "express, careful and preferably written explanation"
4 of the district court's analysis of factors pertinent to determining whether
5 a dismissal with prejudice is an appropriate discovery sanction). *In*
6 *evaluating requests for such awards, district courts should*
7 *consider the importance of the expert's testimony to the*
8 *party's case; the degree to which the expert's opinion aided*
9 *the trier of fact in deciding the case; whether the expert's*
10 *reports or testimony were repetitive of other expert witnesses;*
11 *the extent and nature of the work performed by the expert;*
12 *whether the expert had to conduct independent investigations*
13 *or testing; the amount of time the expert spent in court,*
14 *preparing a report, and preparing for trial; the expert's area*
15 *of expertise; the expert's education and training; the fee*
16 *actually charged to the party who retained the expert; the fees*
17 *traditionally charged by the expert on related matters;*
18 *comparable experts' fees charged in similar cases; and, if an*
19 *expert is retained from outside the area where the trial is held,*
20 *the fees and costs that would have been incurred to hire a*
21 *comparable expert where the trial was held.*

22 *Id.*, at 650-651.

23 The Defendant, CHH, argues the importance of the testimony of each of the
24 witnesses, and how their respective opinions were necessary for the Defendant's case.
25 CHH argues that the medical experts expended "many hours," and "prepared two
26 written reports." There was no discussion in the briefing about repetitiveness, whether
27 they had to conduct independent investigations or testing, the amount of time spent in
28 court, preparing reports, or preparing for trial, the fees charged to the Defendant, and
the fees traditionally charged, and what they charge compared to other experts, etc.
Consequently, the Court could allow the expert fee of \$1,500.00, for up to 5 expert
witnesses, if the Court were able to find that the experts were relevant and the fees
incurred, but the Court cannot allow expert fees in excess of \$1,500.00 without a
Frazier analysis.

Additionally, the Court notes that any costs awarded need to be itemized and
documented. The Nevada Supreme Court has stated that without "itemization or
justifying documentation," the Court is "unable to ascertain whether such costs were
accurately assessed." *Bobby Berosini, Ltd. V. People for the Ethical Treatment of*
Animals, 114 Nev. 1348, 1353, 971 P.2d 383 (1998). Further, when the "memorandum

1 of costs is completely void of any specific itemization," and a "lack of supporting
2 documentation," it is an abuse of discretion on the part of the Court if it awards the
3 requested costs. *Id.* The Supreme Court has further indicated that "justifying
4 documentation' must mean something more than a memorandum of costs." *Cadle Co.*
5 *v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015). The Court has
6 further indicated that "Without evidence to determine whether a cost was reasonable
7 and necessary, a district court may not award costs." *Id.*, citing *Peta*, 114 Nev. at 1353,
8 971 P.2d at 386. In this case, Defendant produced a "Disbursement Diary," but based
9 on the above-referenced cases, this is insufficient to support the requested costs. There
10 is insufficient evidence submitted for the Court to determine whether the requested
11 costs were reasonable and necessary, there was no specific itemization, other than the
12 Disbursement Diary, and there were no supporting documents.

13 Based upon the foregoing, the Court cannot award costs.

14 NRCP 68 provides in pertinent part as follows:

15 **Rule 68. Offers of Judgment**

16 (a) The Offer. At any time more than 21 days before trial, any party
17 may serve an offer in writing to allow judgment to be taken in accordance
18 with its terms and conditions. Unless otherwise specified, an offer made
19 under this rule is an offer to resolve all claims in the action between the
20 parties to the date of the offer, including costs, expenses, interest, and if
21 attorney fees are permitted by law or contract, attorney fees.

22 **....**
(d) Acceptance of the Offer and Dismissal or Entry of Judgment.

23 (1) Within 14 days after service of the offer, the offeree may accept
24 the offer by serving written notice that the offer is accepted.

25 (2) Within 21 days after service of written notice that the offer is
26 accepted, the obligated party may pay the amount of the offer and obtain
27 dismissal of the claims, rather than entry of a judgment.

28 (3) If the claims are not dismissed, at any time after 21 days after
service of written notice that the offer is accepted, either party may file
the offer and notice of acceptance together with proof of service. The clerk
must then enter judgment accordingly. The court must allow costs in
accordance with NRS 18.110 unless the terms of the offer preclude a
separate award of costs. Any judgment entered under this section must be
expressly designated a compromise settlement.

(e) Failure to Accept Offer. If the offer is not accepted within 14
days after service, it will be considered rejected by the offeree and deemed
withdrawn by the offeror. . . . Any offeree who fails to accept the offer
may be subject to the penalties of this rule.

(f) Penalties for Rejection of Offer.

1 (1) In General. If the offeree rejects an offer and fails to obtain a
2 more favorable judgment:

3 (A) the offeree cannot recover any costs, expenses, or attorney
4 fees and may not recover interest for the period after the service of the
5 offer and before the judgment; and

6 (B) the offeree must pay the offeror's post-offer costs and
7 expenses, including a reasonable sum to cover any expenses incurred by
8 the offeror for each expert witness whose services were reasonably
9 necessary to prepare for and conduct the trial of the case, applicable
10 interest on the judgment from the time of the offer to the time of entry of
11 the judgment and reasonable attorney fees, if any be allowed, actually
12 incurred by the offeror from the time of the offer. If the offeror's attorney
13 is collecting a contingent fee, the amount of any attorney fees awarded to
14 the party for whom the offer is made must be deducted from that
15 contingent fee.

16

17 NRCP 68.

18 NRCP 68 provides that the Defendant would be entitled to "reasonable attorney
19 fees, if any be allowed." The language of the Rule specifically provides that Court with
20 "discretion," as it relates to attorney's fees, and the Court's discretion will not be
21 disturbed absent a clear abuse of such discretion. *Armstrong v. Riggi*, 92 Nev. 280,
22 549 P.2d 753 (1976); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985);
23 *Bidart v. American Title Ins. Co.*, 103 Nev. 175, 734 P.3d 732 (1987).

24 In evaluating whether to grant an award of attorney's fees, pursuant to
25 *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the Court must
26 consider: "(1) whether plaintiff's claim was brought in good faith; (2) whether
27 defendant's offer of judgment was brought in good faith in both its timing and amount;
28 (3) whether plaintiff's decision to reject the offer and proceed to trial was grossly
unreasonable or in bad faith; and (4) whether fees sought by the offeror are reasonable
and justified in amount." *Schouweiler* at 833, citing *Beattie v. Thomas*, 99 Nev. 579,
588, 668 P.2d 268 (1983)(the "Beattie Factors").

In analyzing whether to award attorneys' fees, the factors which need to be
considered pursuant to *Brunzell*, include the following: (1) the qualities of the advocate:
his ability, training, education, experience, professional standing and skill; (2) the
character of the work to be done: its difficulty, intricacy, importance, the time and skill
required, the responsibility imposed and the prominence and character of the parties
when they affect the importance of the litigation; (3) the work actually performed by
the lawyer: the skill, time and attention given to the work; and (4) the result: whether

1 the attorney was successful and what benefits were derived. *Schouweiler* at 833-834,
2 citing to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969)
3 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144, 146 (1959)).

4 With regard to the attorney's fees requested, this Motion is different from the
5 Motion for Fees filed by Drs. Concio and Shaw, in that CHH contends that it incurred
6 \$110,930.85 in attorney's fees since 8/28/20 (roughly twice the fees incurred by Drs.
7 Concio and Shaw). In considering the *Beattie* factors, the Court finds and concludes
8 that the plaintiff's claim was brought in good faith. The Court finds and concludes that
9 Defendant's offer of judgment, in the amount of \$0.00, (offering to waive
10 approximately \$58,500.00 in fees and costs), was brought in good faith in both its
11 timing and amount. The Court acknowledges that the parties disagree about this issue,
12 but as much as the Plaintiffs believed they had a valid case, the Defendants disputed
13 any liability. The Court further finds and concludes that Plaintiff's decision to reject the
14 offer and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs
15 believed they had a valid claim, and the Court cannot find that wanting some recovery,
16 as opposed to \$0.00, to be "grossly unreasonable" or in "bad faith. With regard to a
17 determination of whether the fees sought by the Defendants are reasonable and
18 justified in amount, a *Brunzell* analysis is required. *Beattie v. Thomas*, 99 Nev. 579,
19 588, 668 P.2d 268 (1983).

20 In determining the reasonableness of the fees requested, the Court has analyzed
21 the *Brunzell* factors, as follows: The Court finds that the qualities of defense counsel,
22 his ability, training, education, experience, professional standing and skill, favor an
23 award of fees. When considering the character of the work to be done - its difficulty,
24 intricacy, importance, the time and skill required, (when dealing with a professional
25 negligence/medical malpractice case), and finding that the character or prominence of
26 the parties was unremarkable, the complexity of the case warrants an award of fees.
27 The Court cannot evaluate the work actually performed by the lawyers, in this case, and
28 the skill, time and attention given to the work, without a detailed billing statement.
Although the Defendant has offered to submit a billing ledger to the Court in camera, it
would have been necessary for the Defendant to have submitted such ledger, and
disclosed it to the Plaintiff so that the reasonableness could have been addressed by all
parties, and by the Court. Finally, in considering the result, the Court notes that

1 although the Court found insufficient evidence to establish irrefutably that the statute
2 of limitations had expired, Defense counsel was successful in convincing the Supreme
3 Court of that, and consequently, Defendants prevailed. *Brunzell v. Golden Gate Nat'l*
4 *Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969). Based upon this NRCP 68 analysis, with
5 the exception of being able to analyze the reasonableness of the fees allegedly incurred,
6 the Court would likely have awarded at least some fees to the Defendant, at least for the
7 period of time after rejection of the Offer of Judgment. Without any evidence of the
8 fees actually accrued, and based on the amount requested, the Court cannot make a
9 finding as to the reasonableness of such fees, and consequently, the Court has no choice
10 under *Brunzell* and *Beattie*, to deny the request for Fees.

11 **CONCLUSION/ORDER**

12 Based upon the foregoing, and good cause appearing,

13 **IT IS HEREBY ORDERED** that the Defendants' Motion for Fees and Costs is
14 **DENIED.**

15 The Court requests that Plaintiff's counsel prepare and process a Notice of Entry
16 with regard to this Order.

17 Because this matter has been decided on the pleadings, the hearing scheduled
18 for 2/18/22 will be taken off calendar, and consequently, there is no need for any
19 parties or attorneys to appear.

20 Dated this 15th day of February, 2022

21 

22 99B B52 25DC 68DD
23 Jerry A. Wiese
24 District Court Judge
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1 **CSERV**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

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5
6 **Estate of Rebecca Powell,**
7 **Plaintiff(s)**

CASE NO: A-19-788787-C

8 **vs.**

DEPT. NO. Department 30

9 **Valley Health System, LLC,**
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 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: 2/15/2022**

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7 LLC dba Centennial Hills Hospital Medical
Center*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISALAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
18 business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
19 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
20 JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
21 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z,;

22 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that the Order Regarding Valley Health System's Motion for
25 Reconsideration Regarding Motion for Attorneys' Fees was entered on May 4, 2022, a true and
26 correct copy of which is attached hereto.

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DATED this 4th day of May, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth

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Attorneys for Attorneys for Defendant Valley

Health System, LLC dba Centennial Hills Hospital

Medical Center


CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2022, a true and correct copy of **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

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Shah, M.D.*

By /s/ Heidi Brown
an Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP


 CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

ESTATE OF REBECCA POWELL, through)
 BRIAN POWELL, as Special Administrator;)
 DARCI CREECY, individually and as an Heir;)
 TARYN CREECY, individually and as an Heir;)
 ISAIAH KHOSROF, individually and as an)
 Heir; LLOYD CREECY, individually,)

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing)
 Business as "Centennial Hills Hospital)
 Medical Center"), a foreign limited liability)
 Company; UNIVERSAL HEALTH SERVICES,)
 INC., a foreign corporation; DR. DIONICE)
 S. JULIANO, M.D., an individual; DR.)
 CONRADO C.D. CONCIO, M.D., an individual;)
 DR. VISHAL S. SHAH, M.D., an individual;)
 DOES 1-10; and ROES A-Z,)

Defendants.

CASE NO.: A-19-788787-C
 DEPT. NO.: XXX

**ORDER RE: VALLEY
 HEALTH SYSTEM'S
 MOTION FOR
 RECONSIDERATION RE
 MOTION FOR
 ATTORNEYS' FEES**

INTRODUCTION

The above-referenced matter was scheduled for a hearing on ^{4/1/22}~~3/30/22~~, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Reconsideration of the Court's Order re: Defendant's Motion for Attorneys' Fees. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs. This Court
19 entered an Order on 2/15/22 denying Valley's Motion for Fees and Countermotion for
20 Fees and Costs. Thereafter, Valley filed an Appeal dealing specifically with the Court's
21 denial of fees and costs. Consequently, this Court no longer has jurisdiction to address
22 the issue of fees and costs. If the Court were inclined to reconsider its previous
23 decision, the most it could do would be to enter a *Honeycutt* Order (See *Honeycutt v.*
24 *Honeycutt*, 94 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall*, 126 Nev. 49, 228
25 P.3d 453 (2010)), indicating its intention.

26 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

27 Valley Health System, d/b/a Centennial Hills Hospital (CHH) requests that the
28 Court reconsider its 2/15/22 Order denying attorneys' fees and costs and award it
\$110,930.85 in attorneys' fees per N.R.C.P. 68 and NRS § 17.117, plus \$58,514.36 in
pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR
7.60. Additionally, CHH requests this Court sign the judgment already submitted for
the undisputed \$42,492.03.

1 CHH contends that this Court conflated two issues- (1) the memorandum of
2 costs and disbursements previously submitted totaling \$42,492.038, "an amount which
3 is undisputed, and for which this Court has refused to sign a judgment," and (2) the
4 additional costs, disbursements and attorneys' fees addressed by CHH's instant motion
5 and the initial motion which sought \$110,930.85 in attorneys' fees per N.R.C.P. 68 and
6 N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to
7 N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

8 With regard to first "issue," CHH argues that because the Court denied Plaintiff's
9 Motion to Extend Time to Retax Costs, the \$42,492.03 claimed in CHH's Verified
10 Memorandum of Costs is undisputed and therefore judgment must be signed and
11 entered. CHH stated that, "[t]his Court cannot revisit an issue which has been finally
12 decided and therefore, at a minimum, a judgment for the unchallenged \$42,492.03 in
13 statutory costs and disbursements must be signed.

14 The majority of CHH's Motion for Reconsideration concentrates on the second
15 "issue," that this Court's decision to deny CHH's request for an additional \$169,445.21
16 in costs, disbursements and attorneys' fees was clearly erroneous. See *Masonry & Tile*
17 *Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).
18 As a preliminary matter, CHH is concerned by the Court's comparison to the Motion
19 for Fees filed by Drs. Concio and Shaw. Further, CHH contends it is "more concerning,"
20 that the Court's prior order stated, "Finally, in considering the result, the Court notes
21 that although the Court found insufficient evidence to establish irrefutably that the
22 statute of limitations had expired, Defense counsel was successful in convincing the
23 Supreme Court of that, and consequently, Defendants prevailed." According to CHH,
24 "the record needs to be corrected here- there was no convincing the Supreme Court of
25 anything."

26 CHH argues that although the Court correctly found that CHH's offer of
27 judgment was made in good faith and its timing was proper, it erroneously found
28 "Plaintiffs' decision to reject the offer and proceed to trial was not grossly unreasonable
or in bad faith. Plaintiffs believed they had a valid claim, and the Court cannot find
that wanting some recovery, as opposed to \$0.00, to be 'grossly unreasonable' or in
'bad faith'." CHH contends that this finding is unreasonable in light of the Nevada
Supreme Court's determination that Plaintiffs were on notice of any alleged malpractice

1 no more than one month after decedent's death. Similarly, CHH argues that this Court
2 incorrectly found Plaintiffs' decision to reject the Offer of Judgment was not made in
3 bad faith and was not grossly unreasonable.

4 As for the reasonableness of the attorneys' fees requested pursuant to NRCP 68,
5 CHH states that it offered to present the Court supporting documentation for in camera
6 review, but, "instead of granting a hearing to which Plaintiffs could interpose whatever
7 opposition they may have had, the Court rejected this offer and suggestion." In
8 addition, Plaintiffs did not oppose the amount of costs and fees incurred in the original
9 motion, even without the attached bills. Additionally, CHH provides that, "[s]ince this
10 Court insisted that the bills be attached, CHH has provided the entirety thereof for
judicial review and review by Plaintiffs."

11 In Opposition, Plaintiffs argue that CHH's Motion must be summarily denied,
12 without the Court addressing the merits of the Motion because CHH did not present
13 any new or substantially different evidence than what it had the opportunity to present
14 when it filed its Verified Memorandum of Costs and separate Motion for Attorney's
15 Fees on 11/22/21. Further, Plaintiffs contend that CHH's Motion for Reconsideration is
16 "clearly a transparent attempt to bolster a potential appeal by inviting the Court to
17 engage with the merits," because a motion for reconsideration is only appealable if
18 decided on the merits. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589
(2010).

19 Further, Plaintiffs argue that CHH falsely claims that it attached evidence to its
20 Motion for Reconsideration that "was originally submitted to this Court." Plaintiffs also
21 state that CHH's Motion lacks any authority showing the Court's denial of costs was
22 clearly erroneous, and it does not even engage with the authorities cited on pages 7
23 through 9 of the Court's 2/15/22 Order. Plaintiffs argue they should not be liable for
24 CHH's negligence in failing to follow both the statutory and common law requirements
25 for establishing entitlement to costs. Plaintiffs argue that this Court was thus correct in
26 denying CHH costs in their entirety for lack of proper documentation and reliable
evidence.

27 With regard to CHH's request to reconsider the denial of fees, Plaintiffs note that
28 the Court's denial was based upon its finding that (1) Plaintiffs did not act in bad faith
or in a grossly unreasonable manner when they rejected CHH zero dollar Offer of

1 Judgment and (2) the documentation in support of the request for attorney's fees was
2 lacking. While the first finding by itself ends the inquiry into whether fees can be
3 awarded, in this case the Court also found that "[a]lthough the Defendant [CHH] has
4 offered to submit a billing ledger to the Court in camera, it would have been necessary
5 for the Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so
6 that the reasonableness could have been addressed by all parties, and by the Court."
7 Plaintiffs argue that since this never happened, there was no reasonable basis for this
8 Court to assess the reasonableness of fees being claimed by CHH. Plaintiffs argue that
9 CHH merely rehashes the same arguments presented in its original Motion for Fees.

10 Moreover, Plaintiffs argue that the Court's decision to deny fees was not clearly
11 erroneous because the disposition of this case turned on a legal question, which the
12 Nevada Supreme Court decided, well after the time Plaintiffs rejected the Offer of
13 Judgment. It would be ridiculous to expect Plaintiffs, grieving the death of their
14 mother, to anticipate the legal issue and foresee its resolution by the Nevada Supreme
15 Court when they rejected the Offer of Judgment. CHH itself acknowledges this fact
16 when it admits, "[m]edical malpractice cases are complex and require an in-depth
17 understanding of both unique legal issues as well as the medical care and course that is
18 at issue." VHS' Motion for Reconsideration, p. 21 (lines 1-2).

19 Finally, Plaintiffs argue that the CHH fails to address the deficiency of
20 withholding a billing ledger when it made its fee request and instead asking the Court
21 to rely only upon the declaration of its counsel.

22 In Reply, CHH argues that Plaintiff incorrectly asserts CHH "has not presented
23 any new or substantially different evidence than what it had the opportunity to present
24 when it filed its original Verified Memorandum of Costs and separate Motion for
25 Attorneys' Fees..." CHH's instant motion is predicated on this Court's clearly erroneous
26 decision to: (1) refuse to sign a judgment for an undisputed amount of legally
27 awardable costs to which CHH is entitled, and (2) to deny additional costs and
28 attorneys' fees stemming from Plaintiff's commencement and maintenance of an action
that the Supreme Court found was not only untimely, but that this Court's decision to
deny summary judgment in light of the evidence was a manifest abuse of discretion.

1 Noting that the Court decided the underlying Motion on the papers and without
2 oral argument, CHH contends that this Court ignored the request for in camera review
3 of any evidence it required, with Plaintiffs' opportunity to review same as well. The
4 Court also denied any request for statutorily permitted costs and fees, which was never
5 opposed by Plaintiffs, and denied the discretionary motion for attorneys' fees and costs
6 predicated on other legal and statutory bases. CHH suggests that these denials were
7 based upon this Court's abuse of its discretion and refusal to accept the underlying
8 findings of the Supreme Court pertaining to the evidence Plaintiffs knowingly
9 possessed which demonstrated clear inquiry notice within one month of the decedent's
10 death.

11 CHH argues that this Court erroneously concluded that CHH submitted no
12 documentary evidence or explanation of costs attendant to the verified memorandum
13 of costs. However, the verified memorandum of costs contained not only a complete
14 listing of disbursements which are allowable under the law for these purposes, but the
15 declaration explained that the expenses were accurate and were incurred and were
16 reasonable. Moreover, the memorandum explained and justified each of the costs,
17 supported by case authority and an application of the respective factors considered to
18 the specific facts and circumstances of this case. As such, CHH claims there was more
19 than ample evidentiary justification for the costs claimed including court filing fees and
20 the expert fees which were justified by the explanations contained in the verified
21 memorandum. For this Court to somehow assert complete ignorance of the legal and
22 appellate history of this case was clearly erroneous.

23 Moreover, CHH states that Plaintiffs never disputed, nor to this day dispute, the
24 veracity and accuracy of the costs contained in the verified memorandum of costs. CHH
25 argues that, "There was no absence of evidence justifying the costs. The Court just
26 chose to ignore it and improperly declared they were insufficient, citing to the
27 aforenoted authority." CHH argues that the authority does stand for the proposition for
28 which they are cited or was misapplied by the Court. The authority cited involved no
evidence or documentation. CHH not only provided evidence, it justified the costs,
especially of the voluminous number of experts needed for retention due to the
blunderbuss of allegations.

1 CHH further states:

2 Rather than accepting the Supreme Court's decision and rationale, this
3 Court's denial of CHH's motion and the rationale behind that decision
4 continues to perpetuate the false notion that the action was either
5 brought or maintained in good faith, a fact completely dispelled by the
6 Supreme Court's decision. Thus, denying costs and attorneys' fees in light
7 of the Supreme Court's decision is not only clearly erroneous, it is also a
8 manifest abuse of discretion which the instant motion seeks to redress.

9 Again, this Court possessed admissible evidence of the work, time and
10 expenses on the original motion. This Court wanted more than that. This
11 motion gives the Court everything it could possibly need. Moreover, all of
12 this could have been obviated by a hearing with an opportunity for all
13 parties to participate to consider the totality of the evidence which has
14 now been submitted, and would have been submitted had the in camera
15 inspection thereof been considered.

16 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

17 Pursuant to EDCR 2.24(a), "[n]o motion once heard and disposed of may be
18 renewed in the same cause, nor may the same matters therein embraced by reheard,
19 unless by leave of the court granted upon motion therefor, after notice of such motion
20 to the adverse parties."

21 Nevada courts have inherent authority to reconsider their prior orders. See,
22 *Trail v. Faretto*, 91 Nev. 401 (1975). A party may, "for sufficient cause shown ... request
23 that a court ... amend, correct, resettle, modify, or vacate, as the case may be, an order
24 previously made and entered ... in the case or proceeding. *Id.* at 403. A court may
25 exercise its discretion to revisit and reverse a prior ruling if any one of five
26 circumstances is present: (1) a clearly erroneous ruling; (2) an intervening change in
27 controlling law; (3) substantially different evidence; (4) other changed circumstances;
28 or (5) that manifest injustice would result if the prior ruling is permitted to stand.
United States v. Real Prop_ . Located at Incline Village, 976 F. Supp. 1327, 1353
(D.Nev. 1997). A motion for reconsideration should be granted where new issues of fact
or law are raised which support a "ruling contrary to the ruling already reached."
Moore v. City of Las Vegas, 92 Nev. 402, 405 (1976).

Although the Defendants take offense at the language the Court used in its
previous Order, this Court intended nothing negative by indicating that Defendants
were able to "convince" the Supreme Court of their position. Such statement was made

1 simply to convey the “fact” that the Supreme Court was “convinced” that the
2 Defendant’s position was correct. Defendants argue that the Court’s denial of fees and
3 costs was somehow a continuation of the Court’s position in favor of the Plaintiff, but
4 this is also incorrect. In fact, the Court found that the *Beattie* and *Brunzell* factors
5 weighed in favor of the Defense, but since the Defense had not supported its request for
6 fees and costs, as required by the Nevada Supreme Court, this Court was unable to
7 award fees and costs. *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983);
8 *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969).

9 Additionally, Defendants argue that because they submitted a Memorandum of
10 Costs, which was not timely objected to, they are “entitled” to whatever they asked for.
11 This is also incorrect. A party is only entitled to costs if they are substantiated, and the
12 Court finds that such costs were reasonable, and incurred in the subject litigation.
13 *Frazier v. Drake*, 131 Nev. 632, 357 P.3d 365 (NV.Ct.of App., 2015); *Bobby Berosini,*
14 *Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383
15 (1998); *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015).

16 Finally, Defendants suggest that the Court would have been able to review the
17 supporting documents, which Defendant failed to initially provide, if the Court had
18 held a “hearing” and allowed the Defendant to present such documents. Part of the
19 Court’s previous inability to award fees was based on the Defendant’s failure to provide
20 support for the fees requested, although such documentation was offered to the Court
21 “in camera.” It is simply not “fair” to an opposing party, to offer supporting documents
22 “in camera,” implying that the opposing party will not have the opportunity to
23 challenge such documents. Based on the Defendant’s suggestion that they would make
24 billing records available to the Court “in camera,” the Court was led to believe that such
25 documents would not be provided to the Plaintiff.

26 The Defendant has now submitted documentation supporting the claim for
27 attorney’s fees. Because the Court has now been presented with substantially different
28 or additional evidence, reconsideration is appropriate.

Defendant has now provided billing records indicating the following:

5/27/20	\$725.00
6/1/20-6/28/20	\$3,510.00
7/1/20-7/31/20	\$10,192.50
8/10/20-8/28/20	\$8,865.00
9/1/20-9/25/20	\$19,642.50

10/1/20-10/29/20	\$12,559.50
11/2/20-11/30/20	\$14,392.80
12/1/20-12/22/20	\$3,690.00
1/5/21-1/21/21	\$4,449.00
2/4/21-2/19/21	\$1,489.50
3/4/21-3/30/21	\$2,150.00
4/2/21-4/30/21	\$11,200.00
5/5/21-5/21/21	\$905.00
6/4/21-6/25/21	\$6,629.50
7/7/21-7/29/21	\$1,026.50
8/3/21-8/31/21	\$5,841.50
9/8/21-9/30/21	\$4,375.00
10/1/21-10/27/21	\$10,700.00
11/9/21-11/23/21	\$2,826.50
12/2/21-12/29/21	\$7,975.00
1/3/22-1/25/22	<u>\$4,925.00</u>
Total:	\$138,069.80

Defendant has now provided documentation supporting the following costs:

American Legal Investigation	\$27.43
Ruffalo & Associates	\$4,350.00
	\$1,800.00
	\$10,350.00
Abraham Ishaaya, M.D.	\$6,710.00
	\$1,375.00
	\$6,187.50
	\$2,970.00
	\$3,437.50
	\$4,675.00
Cohen Volk Economic Counseling	\$688.50
	\$3,855.60
JAMS	\$3,000.00
Filing Fees	<u>\$529.50</u>
Total:	\$49,956.03

Defendant argues that it is entitled to \$42,492.03, and \$110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant to N.R.C.P. 68, N.R.S. 17.1151, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d 1050 (2019) for a waiver of any presently or potentially recoverable costs in full and final settlement of the matter. At the time of the Offer,

1 Defendants' expended costs and fees totaled \$58,514.36. The Offer was not accepted by
2 Plaintiff and expired on September 11, 2020.

3 Since the date of the Offer of Judgment, Defendant argues that it incurred
4 \$106,619.85 in attorney's fees, and paralegal's fees in the amount of \$4,230.00. This
5 Court finds and concludes that the fees incurred by Defendant were reasonable and
6 necessarily incurred in the defense of the case. This Court adopts by reference its prior
7 reasoning and analysis relating to the requested attorney's fees, and now that the Court
8 has been provided with the documentary support of such fees, and finds that such fees
9 were reasonable, pursuant to *Beattie* and *Brunzell*, the Court finds and concludes that
10 such fees are appropriate and recoverable. The Court further finds that the Defendant
11 has now met the requirements of *Frazier*, with regard to documenting the costs
12 incurred. The Court is still not convinced that the expert fees, in addition to the \$1,500
13 recoverable by statute, are necessary or recoverable. Consequently, in reducing each of
14 the expert's fees to \$1,500.00, the above-referenced costs, which have been
15 documented, must be reduced to \$8,056.93.

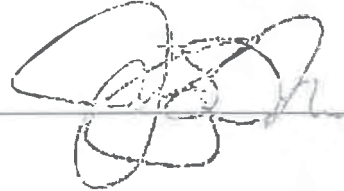
16 **CONCLUSION/ORDER**

17 Based upon the foregoing, and good cause appearing,

18 This Court now indicates its intention, pursuant to *Huneycutt v. Huneycutt*, 94
19 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453
20 (2010), that if this Court had jurisdiction to decide this matter, the Court would now
21 award attorney's fees of \$110,849.85, and costs of \$8,056.93.

22 Because this matter has been decided on the pleadings, any future hearings
23 relating to this matter are taken off calendar. The Court requests that counsel for
24 Defendant prepare and process a Notice of Entry with regard to this matter, and convey
25 this Decision to the Supreme Court, pursuant to *Huneycutt* and *Dingwall*.

26 Dated this 4th day of May, 2022

27 

28 0D9 DD7 5826 D5EB
Jerry A. Wiese
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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6 Estate of Rebecca Powell,
Plaintiff(s)

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

8 Valley Health System, LLC,
9 Defendant(s)


10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 5/4/2022

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISAAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM LLC'S JUDGMENT OF COSTS
AND ATTORNEYS' FEES PER NRS
18.020, 18.005, 18.110, 17.117, and N.R.C.P.
68(f) AS AGAINST PLAINTIFFS**

Pursuant to the Order granting Defendant Valley Health System, LLC's motion for summary judgment dated and entered on November 19, 2021 (**Exhibit "A"**), the Order granting Defendant Valley Health System, LLC's motion for reconsideration regarding motion for attorneys' fees dated and entered on May 4, 2022 (**Exhibit "B"**), and pursuant to Defendant Valley Health System, LLC's notice of withdrawal of appeal dated and filed in the Nevada Supreme Court on May 12, 2022

1 (Exhibit "C"),

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

3 That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

4 Defendants Valley Health System, LLC shall be awarded their reasonable costs and
5 attorneys' fees pursuant to NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) in the amounts
6 of \$110,849.85 for attorneys' fees, and costs of \$8,056.93, for a total of \$118,906.78 in accordance
7 with the Court's orders attached hereto as Exhibits "A" and "B" based upon the withdrawal of
8 Defendant's appeal as attached hereto as Exhibit "C".

9 DATED this ____ day of ___, 2022.

Dated this 2nd day of June, 2022

10

11

12

DISTRICT COURT JUDGE

13

Respectfully Submitted By:
LEWIS BRISBOIS BISGAARD & SMITH LLP
JERRY A. WIESE
District Court Judge

14

15

16

By /s/ Adam Garth

17

S. BRENT VOGEL
Nevada Bar No. 6858
ADAM GARTH

18

Nevada Bar No. 15045
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*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

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28 ///

1 Agreed as to form and substance by:

2

Refused to sign

3

Paul S. Padda, Esq.

4

Srilata Shah, Esq.

5

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Attorneys for Plaintiffs

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this ____ day of May, 2022, a true and correct copy of **DEFENDANT**
3 **VALLEY HEALTH SYSTEM LLC'S JUDGMENT OF COSTS AND ATTORNEYS' FEES**
4 **PER NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) AS AGAINST PLAINTIFFS** was
5 served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system
6 and serving all parties with an email-address on record, who have agreed to receive electronic service
7 in this action.

8 Paul S. Padda, Esq.
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15 *Attorneys for Plaintiffs*

16 By /s/ Heidi Brown
17 An Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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From: Paul Padda
To: Garth, Adam; Srilata Shah
Cc: Vogel, Brent; Brown, Heidi; San Juan, Maria
Subject: [EXT] RE: Powell v Valley - CHH's Judgment for Costs #2.pdf
Date: Monday, May 16, 2022 1:26:18 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)



We cannot agree to this. Thanks.

Paul S. Padda, Esq.

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PAUL PADDALAW
IT'S NOT ABOUT THE INJURY. IT'S ABOUT THE RECOVERY.

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Thursday, May 12, 2022 12:43 PM
To: Paul Padda <psp@paulpaddalaw.com>; Srilata Shah <sri@paulpaddalaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Brown, Heidi <Heidi.Brown@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>
Subject: Powell v Valley - CHH's Judgment for Costs #2.pdf

Counsel,

Please see attached. Please advise if we may affix your e-signature to the judgment.

Adam Garth



Adam Garth
Partner

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IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,
D/B/A CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER, A FOREIGN
LIMITED LIABILITY COMPANY,

Appellant,

vs.

ESTATE OF REBECCA POWELL,
THROUGH BRIAN POWELL, AS
SPECIAL ADMINISTRATOR; DARCI
CREECY, INDIVIDUALLY AND AS AN
HEIR; TARYN CREECY,
INDIVIDUALLY AND AS AN HEIR;
ISAAH KHOSROF, INDIVIDUALLY
AND AS AN HEIR; AND LLOYD
CREECY, INDIVIDUALLY,

Respondents.

No. 84402

FILED

APR 29 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from a postjudgment order denying appellant's motion for attorney fees and costs. Preliminary review of the docketing statement, the documents submitted to this court pursuant to NRAP 3(g), and the district court docket entries reveals a potential jurisdictional defect. Specifically, the notice of appeal appears to be prematurely filed under NRAP 4(a) because it appears that it was filed after the timely filing of a tolling motion for reconsideration and before that motion has been formally resolved. See *AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010) (a motion for reconsideration may be considered a tolling motion to alter or amend); *Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. 923, 314 P.3d 946 (2013) (tolling motions directed at an appealable post-judgment order also toll the period to appeal from that order). A timely tolling motion terminates the 30-day appeal period,

SUPREME COURT
OF
NEVADA

(U) 1947A 

22-13733

and a notice of appeal is of no effect if it is filed after such a tolling motion is filed and before the district court enters a written order finally resolving the motion. See NRAP 4(a)(2).

Accordingly, appellant shall have 30 days from the date of this order within which to show cause why this appeal should not be dismissed for lack of jurisdiction. Failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The briefing schedule in this appeal shall be suspended pending further order of this court. Respondents may file any reply within 14 days from the date that appellant's response is served.

It is so ORDERED.

 C.J.

cc: Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Paul Padua Law, PLLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,

Appellant,

vs.

ESTATE OF REBECCA POWELL, DARCI
CREECY, TARYN CREECY, ISAIAH
KHOSROF, and LLOYD CREECY,

Respondents.

Supreme Court No.: 84402

Electronically Filed

May 12 2022 10:56 a.m.

District Court No.: A-19-788787-C
Elizabeth A. Brown
Clerk of Supreme Court

NOTICE OF WITHDRAWAL OF APPEAL

VALLEY HEALTH SYSTEM, LLC, appellant named above, hereby
moves to voluntarily withdraw the appeal mentioned above.

I, Adam Garth, Esq., as counsel for the appellant, explained and informed
VALLEY HEALTH SYSTEM, LLC of the legal effects and consequences of this
voluntary withdrawal of this appeal, including that VALLEY HEALTH SYSTEM,
LLC cannot hereafter seek to reinstate this appeal and that any issues that were or
could have been brought in this appeal are forever waived. Having been so
informed, VALLEY HEALTH SYSTEM, LLC hereby consents to a voluntary
dismissal of the above-mentioned appeal.

VERIFICATION

I recognize that pursuant to N.R.A.P. 3C I am responsible for filing a notice of withdrawal of appeal and that the Supreme Court of Nevada may sanction an attorney for failing to file such a notice. I therefore certify that the information provided in this notice of withdrawal of appeal is true and complete to the best of my knowledge, information and belief.

DATED this 12th day of May, 2022

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By /s/ Adam Garth

S. BRENT VOGEL

Nevada Bar No. 006858

ADAM GARTH

Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2022, a true and correct copy of **NOTICE OF WITHDRAWAL OF APPEAL** was served upon the following parties by electronic service through this Court's electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

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Attorneys for Plaintiffs

By /s/ Heidi Brown
An Employee of
LEWIS BRISBOIS BISGAARD &
SMITH LLP

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,
D/B/A CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER, A FOREIGN
LIMITED LIABILITY COMPANY,

Appellant,

vs.

ESTATE OF REBECCA POWELL,
THROUGH BRIAN POWELL, AS
SPECIAL ADMINISTRATOR; DARCI
CREECY, INDIVIDUALLY AND AS AN
HEIR; TARYN CREECY,
INDIVIDUALLY AND AS AN HEIR;
ISAIAH KHOSROF, INDIVIDUALLY
AND AS AN HEIR; AND LLOYD
CREECY, INDIVIDUALLY,

Respondents.

No. 84402

FILED

MAY 16 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

Cause appearing, appellant's motion for a voluntary dismissal
of this appeal is granted. This appeal is dismissed. NRAP 42(b).

It is so ORDERED.

CLERK OF THE SUPREME COURT
ELIZABETH A. BROWN

BY: Matthew L. L...

cc: Hon. Jerry A. Wiese, District Judge
Stephen E. Haberfeld, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Paul Padda Law, PLLC
Eighth District Court Clerk

SUPREME COURT
OF
NEVADA

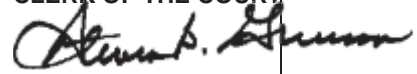
CLERK'S ORDER

10) 1987

22-15332

POWELL APP. 118

EXHIBIT G



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA
POWELL,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM,
LLC,

Defendant.

CASE NO. A-19-788787-C

DEPT. NO. VII

BEFORE THE HONORABLE LINDA MARIE BELL,

DISTRICT COURT JUDGE

WEDNESDAY, SEPTEMBER 28, 2022

RECORDER'S TRANSCRIPT OF HEARING:

HEARING FOR EXAMINATION OF JUDGEMENT DEBTOR

APPEARANCES:

For the Plaintiff: PAUL PADDA, ESQ.,

For the Defendant: ADAM GARTH, ESQ.,

RECORDED BY: KIMBERLY ESTALA, COURT RECORDER

1 Las Vegas, Nevada; Wednesday, September 28, 2022

2 [Hearing commenced at 9:09 a.m.]

3
4 THE COURT: What case?

5 THE COURT RECORDER: The Estate of Rebecca Powel
6 versus Valley Health.

7 THE COURT: Estate of Rebecca Powell versus Valley Health
8 System case number A788787.

9 MR. PADDA: Good Morning, Your Honor, Paul Padda on
10 behalf of plaintiffs.

11 THE COURT: Good Morning.

12 MR. GARTH: Good Morning, Your Honor, Adam Garth bar
13 number 15045 on behalf of the defendant.

14 THE COURT: All right so this is on for -- it was set for a
15 hearing on Examination of Judgement Debtor.

16 MR. GARTH: Yes, Your Honor, if I might put this into some
17 context. You signed an order on the 18th of August. We served it with
18 Notice of Entry on Mr. Padda's office directing that the Judgement
19 Debtors Exam take place today and 14 days prior to today we would
20 receive responses to request for production that were attached to our
21 motion that he also received a copy of. We received no responses
22 whatsoever. At 2:21 yesterday afternoon, my partner and I received an
23 email from Mr. Padda indicating that his clients were not going to show
24 up today. He said that as we well know his clients don't have the funds
25 with which to travel to Nevada. By the way one of those clients is a

1 Nevada resident. And the -- we understood the purpose of today's
2 hearing was to ascertain what funds these folks actually had. So I can't
3 divine what his clients have or don't have. He indicated that none of his
4 clients would be showing up today and that he would be seeking some
5 protection for them in some way, there was some vague reference in the
6 email. At 5:24 yesterday evening, we received a motion that Mr. Padda
7 filed. I took a brief look at it and recognized that it lacks a lot of the basis
8 that he's claiming it lacks -- he's claiming that it has. And basically
9 saying that today's hearing shouldn't take place. He was on notice of the
10 hearing. He did absolutely nothing until yesterday afternoon to
11 communicate with us about anything that was to happen today. He took
12 no action on behalf of his clients, filed no Order to Show Cause, nothing,
13 no Order on Shortened Time. He had done nothing.

14 Now, what makes it worse and really to put this into context
15 because you're relatively new to this file, so if you'd allow me about 2
16 minutes just to give you some context as to why today's breach of a
17 Court order is so egregious it is beyond the pale. This case was started
18 by Mr. Padda quite a long time ago. There were multiple motions, one to
19 dismiss, one for summary judgment. *Summary Judgement Motion* was
20 one that my firm handled; a predecessor defense counsel firm handled
21 the *Motion to Dismiss*. Similar issue but we had gotten definitive
22 evidence that Mr. Padda provided, that he and his clients were in the
23 exclusive possession of that demonstrated when inquiry notice began in
24 this case. They filed this action 8 months beyond the latest time to do so
25 for the statute of limitations. We showed Mr. Padda your own records

1 demonstrate that your clients knew. Now, I couldn't pick a more textbook
2 example of inquiry notice than this case. The case is specifically told that
3 when you obtain sufficient knowledge that some negligence, some
4 medical negligence, may have occurred it is -- your obligation to
5 investigate further.

6 THE COURT: Right.

7 MR. GARTH: Now what did we have in this case --

8 THE COURT: I got it Mr. Garth. And then the Supreme Court
9 ruled in your favor on the issue of the statute of limitations.

10 MR. GARTH: That's correct. And they were extremely
11 emphatic. And I haven't seen too many of these on Summary Judgement
12 Motions where they tell the District Court Judge that it was a manifest
13 abuse of discretion in the light of overwhelming evidence to not grant
14 summary judgement. Now Mr. Padda was given a way out. A Rule 60 --

15 MR. PADDA: What does this have to do with why we're here?

16 THE COURT: I'm not sure Mr. Padda.

17 MR. GARTH: The Rule 68 offer of judgement was filed. They
18 declined it and now were faced, because they lost, with the judgement
19 debtor's exam after having extensive motion practice on the issue. He is
20 now pursuing an appeal of the *Motion for Reconsideration* that Judge
21 Wiese granted, okay. He didn't substantively oppose the motion before
22 Judge Wiese. He said procedurally Judge, don't consider the substance
23 of defendant's motion procedurally don't considerate it this way he can't
24 raise it on appeal. That was disregarded and the Judge granted our
25 *Motion for Reconsideration* and ultimately awarded the costs and fees.

1 We agreed to withdraw our appeal and pursue the judgement that we're
2 seeking enforcement of here. So his appeal is now limited solely to the
3 issue of whether the judge abused his discretion.

4 MR. PADDA: That's not correct.

5 MR. GARTH: Because --

6 THE COURT: I thought the appeal was -- the appeals done
7 right?

8 MR. PADDA: No --

9 MR. GARTH: No the appeal -- he's just gotten an extension of
10 time to until November 9th to file his brief. Months have gone by but he
11 received a 14 day automatic extension from the Supreme Court.

12 THE COURT: Okay, I mean I only have very limited -- I didn't
13 go and look into the Supreme Court file so I have limited things but the
14 last thing I have was that the an appeal was dismissed at some point.

15 MR. PADDA: Yeah.

16 MR. GARTH: Yeah, we dismissed --

17 THE COURT: Okay.

18 MR. GARTH: -- our appeal of the -- of his initial denial of our
19 *Motion for Costs and Fees*.

20 MR. PADDA: May I be heard, Your Honor?

21 THE COURT: Hang on let him finish.

22 MR. GARTH: So, now what we're faced with, with all of the
23 nonsense that has gone on in this case with a plaintiff who defies a
24 Court Order, says I don't have to show up and based on a quick reading
25 of their motion the answer basically is, well Mr. Powell as the Special

1 Administrator doesn't have to show up because his status is governed
2 by the probate court. So it's good enough for Mr. Powell as the Special
3 Administrator to bring a lawsuit here to pursue the lawsuit not to accept
4 a settlement but somehow if you have an order granted against you now
5 we have to go back to probate court. That's not the way it works. We are
6 also not suing Mr. Powell or seeking enforcement against him in his
7 individual capacity. It is abundantly clear in the Judgement as it is in
8 every other paper file that it is only he as Special Administrator. He is
9 obligated to appear before this Court. He is a Nevada resident. The
10 others subjected themselves to jurisdiction here. They brought the
11 lawsuit. They're out of state residents two of which are in Ohio, one of
12 which is in Massachusetts. We have obtained foreign judgements in
13 those jurisdictions based upon the judgement entered here. And they
14 have been filed and they have been served in those jurisdictions and
15 those judgments are now on file in Ohio, Massachusetts, and here in
16 Nevada.

17 So what we wanted to ascertain was what assets, if any, do
18 we have to pursue. That was the purpose of today's hearing. To tell us
19 the mid-afternoon the day before we don't care what the Court Order
20 says we're not coming is not only a slap in the face to us but to this
21 Court. And to not provide us with the requisite documentary evidence
22 that they were supposed to provide us 2 weeks ago is a further violation
23 of a Court Order. So now were faced with Mr. Padda's motion that, I
24 mean were obviously going to vigorously oppose it and since its
25 baseless were going -- I'm going to have to do a quick evaluation to see

1 whether or not were going to have to counter move for further costs and
2 sanctions. We are racking up huge amounts of money and that's the
3 goal here is to frustrate. Now, what could he have done? We waited the
4 requisite 30 days after the -- after we received the judgement. We did
5 absolutely nothing. My partners in their -- in our other offices before
6 enforcing the judgement did nothing. We waited for him to file an appeal
7 bond for the \$118,000.00 plus now additional interest on the judgement
8 that was awarded against us. He filed no appeal bond. He claims he
9 doesn't have to file an appeal bond because the estate, this is now in his
10 motion of yesterday, the estate could proceed without bond. That
11 doesn't mean -- that means you can proceed as an estate without bond
12 in Probate Court it doesn't mean there's no bond you ever have to post
13 of you lose in the District Court, which is what happened here. But once
14 again he's only giving the Court half a story in his motion. We'll deal with
15 that in the opposition. But the -- the reason why I am sort of giving you a
16 broader context here is that this isn't a one off thing. This isn't something
17 where we missed it on the calendar, we made a mistake, this is a
18 pattern of problems with this very case when they are shown definitive
19 evidence of issues they ignore it. They don't pursue their client's rights.
20 They don't do what they need to do to protect their clients and then they
21 keep coming to the Court expecting a judicial cure for practice failures.
22 And we are racking up huge amounts of money having to keep coming
23 to court filing motions, dealing with appeals for things that are relatively
24 simple issues. And this is not only disrespectful to us it's disrespectful to
25 the Court. Mr. Padda can --

1 THE COURT: Mr. Padda.

2 MR. PADDA: Well since he gave you such a lengthy
3 recitation of what this case is about I would like to address that as well,
4 Your Honor.

5 THE COURT: Sure, whatever you want to say.

6 MR. PADDA: Rebecca Powell was a nurse at Nellis Air Force
7 Base. She got sick. She went to Centennial Hills Hospital and she died
8 in their care and custody. After she died the State of Nevada issued a
9 death certificate and the cause of death was listed as suicide. Now that's
10 very odd, you would say well how can a person commit suicide in a
11 hospital when they're under the care and custody of the hospital. That's
12 not a negligent act, that's an intentional act. So what happened was,
13 Brian Powell who was Ms. Powell's ex-husband also a nurse was
14 concerned about how she was treated in the hospital. He filed a
15 complaint with the State of Nevada Department of Health Services
16 which did an investigation and sanctioned and fined Centennial Hills
17 Hospital. Then he also filed a complaint with the nursing board. Now,
18 after a year they came and retained me. I look at the case and I said
19 well wait a minute if the State of Nevada has made a determination that
20 this was a suicide I don't think this inquiry notice issue applies. We
21 brought the case. Judge Wiese agreed with us. Then they made an
22 Offer of Judgement saying let's do a walk away. We'll offer you zero you
23 dismiss your case we won't pursue any fees and costs if we win. At that
24 time there was a pending Writ in the Supreme Court so my clients were
25 in a position of having to decide should we accept or not accept this

1 Offer of Judgement anticipating what the Supreme Court may or may
2 not do. Anyways, they rejected that OJ. Their Writ was granted and it
3 was to me, I mean, I think it was a very poorly considered decision
4 because what the Court decided was, well even though the death
5 certificate said suicide the fact that Brian Powell, the ex-husband, the
6 administrator, filed a complaint with the Nursing Board that means he
7 knew or should have known there was negligence and therefore we're
8 dismissing the entire case. The problem with the decision was Mr.
9 Powell is just the administrator he is not the father of Taryn Creecy,
10 Darci Creecy, or Isaiah Khosrof. Isaiah lives in Boston. The two
11 daughters live in Ohio. Lloyd Creecy who's in his late 70's he lives in
12 Ohio. None of those people live here. And so the problem with the
13 Supreme Court decision was, well wait a minute, how can you impute
14 knowledge from one party to all the other plaintiffs in the absence of any
15 evidence put forth by the defense showing that they were on the
16 complaint, they had knowledge of it. But anyways the Supreme Court
17 just chose to bypass that issue and didn't consider it and so the case
18 was dismissed. Now it comes back to Judge Wiese. Judge Wiese says
19 I'm going to deny the request for -- the *Motion for Fees and Costs*
20 because number 1 its preposterous to think that the plaintiffs could have
21 anticipated what the Supreme Court would do, and number 2 they're
22 decision to turn it down was of course under the legal standard not
23 grossly unreasonable or in bad faith especially given the issues involving
24 the death certificate etcetera. They file a *Motion for Reconsideration* and
25 the principle argument put forward by Mr. Garth is that Judge Wiese

1 you're a pro-plaintiff Judge that's all you ever do is rule in favor of
2 plaintiffs. So the Judge then said okay I'm going to reverse myself and
3 I'm going to now award \$100,000.00 in fees to this multimillion dollar
4 corporation. You have a 70 something year old man, Lloyd Creecy,
5 who's grieving the death of his daughter who just wanted answers. You
6 have -- two plaintiffs Taryn and Darci who are the daughters, both of
7 them are unemployed. Isaiah just turned 21 he got a job. And so these
8 people are now settled with \$100,000.00 award against them. And the
9 Judge didn't change his opinion in the *Motion for Reconsideration* or the
10 order he says I still believe that their decision to reject the OJ was not in
11 bad faith and it wasn't unreasonable but I'm going to award fees under
12 *Brunzell*. Well the problem with that is, you -- he's the analysis is all
13 wrong. So we filed an appeal so that case is now pending in the Nevada
14 Supreme Court.

15 With respect to this *Motion for Attorney Fees*, or the
16 Judgement I would just note, Your Honor, can see it for yourself is that
17 this was filed as an *Ex Parte Application* for judgement. Ex Parte by
18 definition means we don't get to respond. Okay, and so then Your Honor
19 signed the order and we came in and we looked at the case and I filed a
20 Motion yesterday challenging this Court's jurisdiction. Those are
21 legitimate points, he should brief them. And, Your Honor, can see that
22 the probate laws require that this case actually since it involves a claim
23 against an estate it should actually be litigated in Probate Court and all
24 of the other plaintiffs are derivative beneficiaries under that under our
25 wrongful death statute. There coming in here as heirs. This isn't a case

1 that should be litigated, to the extent that, you know, he wants to enforce
2 his judgement, this should be before the Probate Court. And so as, Your
3 Honor, knows even in the Supreme Court you can always challenge
4 subject matter jurisdiction at any time.

5 THE COURT: So I understand that there's been very
6 extensive litigation in this case and there's some pretty strong
7 differences of opinions regarding the facts and circumstances. But at
8 this point I issued an order for an examination of judgement debtor on
9 August 18th and there was no response to that until after business hours
10 yesterday.

11 MR. PADDA: Right.

12 THE COURT: So can we talk about that issue because that's
13 not really procedurally --

14 MR. PADDA: So my representation of the Powell's ended
15 when the case ended and perhaps I should have filed a *Motion to*
16 *Withdraw*. When I saw that order I did contact the Powell's I spoke to Mr.
17 Creecy. He's told me that, look I'm on Social Security Disability. I can't
18 even leave the house. I'm very ill. I have a kidney issue, I can't come to
19 Nevada. And then I said well we have to do another retainer just like
20 they had to do another retainer with me and I'm representing them pro
21 bono in the Supreme Court for the appeal. But the case was technically
22 over, this is now the tail end of once a judgement has already been
23 issued, you're correct perhaps I maybe I should have filed something
24 with respect to your order but I didn't have a chance to respond to the
25 Ex Parte Motion or it's an application. It's Ex Parte --

1 THE COURT: Well so I mean the -- but that's how that goes,
2 right? There's an application. The order is just saying hey you need to
3 appear and provide these documents and then you have at that point
4 the opportunity to respond with a request for a protective order, a
5 request to --

6 MR. PADDA: But when?

7 THE COURT: After the order is filed.

8 MR. PADDA: But the next day or before the order, I mean
9 there's not a time frame. What would I be filing? I filed a *Motion to Set*
10 *Aside and Stay the Order* based on lack of jurisdiction of the Court.

11 THE COURT: Not on an *Order Shortening Time* and I mean
12 within less than 24 hours before -- this hearing, right? So typically you
13 need to file it before there's anything that needs to be done. So this
14 required documents 14 days prior to the examination.

15 MR. PADDA: Right and I explained to you that I was not
16 representing them and I just recently became retained.

17 THE COURT: Well I mean you're still counsel of record, right?
18 You're counsel of record until you're not.

19 MR. PADDA: Right.

20 THE COURT: So you're still responsible for what's happening
21 in the case until --

22 MR. PADDA: Well I'm responsible for notifying the client that
23 this is what's happened.

24 THE COURT: Well as long as you're counsel of record you're
25 still responsible for whatever happens in the case, right? Until you have

1 formally withdrawn. I mean I'm just -- well --

2 MR. PADDA: Well we didn't even have a meaningful
3 opportunity to respond to his application because its Ex Parte by
4 definition how would we --

5 THE COURT: Okay, but Mr. Padda --

6 MR PADDA: So you're just granting an order based on one
7 side.

8 THE COURT: Yes when there's a judgement that's how it
9 works. There's an *Ex Parte Application* for the judgement debtor exam.
10 That Order goes out. You then have the opportunity to take some action
11 to stop that Order from going forward. That's how that works.

12 MR. PADDA: Would that be through a *Motion for*
13 *Reconsideration* or a *Motion to Stay*? I mean there's no time limit.

14 THE COURT: *Motion to Stay, Motion to Quash*, like --

15 MR. PADDA: But where in the local rules does it say here's
16 your time frame?

17 MR. GARTH: Your Honor, if I may?

18 THE COURT: Okay.

19 MR. GARTH: The *Ex Parte Motion* was filed in July. We filed
20 it purposely through the Odyssey system so that Mr. Padda, who was
21 counsel of record, would know that it's out there. This wasn't some
22 surprise. So whether he felt he should respond then or not he had plenty
23 of opportunity, months, to develop some theory to contact us, to do
24 something. And you are correct, when you get the order you have
25 multiple avenues open to you. Do something, don't sit on your hands

1 and do absolutely nothing. We have no way of knowing whether Mr.
2 Padda's representation of the -- of his clients has terminated based on
3 their retainer agreement. I don't see a copy of it. And it's not my
4 business. If he is counsel of record he's going to get the notice. It's his
5 responsibility to do something about it. Now he keeps asking the Court
6 for legal advice on what he's supposed to do and by when he's
7 supposed to do it. Common sense would dictate before you need to act
8 on something, before a Court Order tells, you know, gives you a
9 deadline to do something you do something to counter act it. But no,
10 that's not what happened here. You pointed out correctly, Your Honor,
11 he had 14 days in advance his clients were obligated to provide
12 materials. They didn't do it. He had the 2 week period before then to do
13 something. But until 5:30 last night he did nothing. And we are now here,
14 I mean, according to his email he wanted to spare us the inconvenience.
15 I don't really understand what the -- what sparing us would be. We had
16 to be here. There's a Court Order for us to be here. So this is not only an
17 enormous inconvenience but this Court has definitive jurisdiction to deal
18 with these issues.

19 MR. PADDA: Well that's an open question.

20 MR. GARTH: Because --

21 MR. PADDA: That's the basis of my whole motion is read the
22 probate laws it couldn't be any clearer.

23 MR. GARTH: This -- so I guess what I'm trying to figure out,
24 Your Honor, is that the Probate Court grants a Special Administrator the
25 right to pursue an action in State Court and to represent the estates

1 interest.

2 THE COURT: Okay.

3 MR. GARTH: Moreover these other plaintiffs aren't part of the
4 probate court they -- assuming in their individual capacities --

5 THE COURT: I got it, so hang on Mr. Garth. So what I have
6 right now is I don't have anybody here for the judgement debtor's exam
7 and I have a motion that is not calendared. It is not on for today, and it is
8 not calendared at all because it does not say hearing requested. So I
9 think perhaps the best thing to do at this point is, Mr. Garth, to give you
10 the time that you need to file an opposition and anything else that you
11 want to file in response to all of that. And then I can consider it when I
12 actually have it all in front of me.

13 So how much time do you need to respond to the motion that
14 was filed yesterday?

15 MR. GARTH: If I could have 30 days, Your Honor, I'm loaded
16 up with depositions.

17 THE COURT: Okay. You need 30 days to file your
18 opposition?

19 MR. GARTH: 30 days I mean I may file it sooner and, you
20 know, if I can get to it I just need a break. I need like a body.

21 THE COURT: Okay. No, its fine. And then you want me to set
22 it 45 days out then?

23 MR. GARTH: That sounds fine, Your Honor. He would --

24 MR. PADDA: That's fine.

25 MR. GARTH: -- typically get a week to interpose his reply.

1 THE COURT: Yeah that will give Mr. Padda time to reply.
2 We'll set it in 45 days and then we'll --

3 MR. PADDA: But I would emphasize, Your Honor, this is
4 purely the jurisdictional issue. If you take a look, I mean there's
5 arguments about superstitious bonds but the law couldn't be any clearer.

6 THE COURT: I am -- I just don't know the answer to that
7 right, because I haven't had the time --

8 MR. PADDA: I understand.

9 THE COURT: -- to really consider it. My concern is more the
10 procedural way that this went down. All right so --

11 MR. GARTH: And we also have the issue, I mean, I mean I
12 have citations for the Court, statutory citations, that I'm permitted to and
13 the Court is allowed to you know issue an arrest warrant for contempt for
14 people who fail to show up. And since they -- since certainly the
15 individual defendants, plaintiffs, subjected themselves to jurisdiction
16 here then you pay the piper. That's it, they lost.

17 MR. PADDA: You're asking the judge to arrest the man
18 whose daughter died and he sued because he wanted answers?

19 THE COURT: Okay

20 MR. PADDA: Is that what you're asking?

21 MR. GARTH: Well you can of course pay the judgment on
22 their behalf.

23 THE COURT: Mr. Garth if you want --

24 MR. PADDA: Somethings wrong with you.

25 THE COURT: -- to consider that option feel free to include

1 that in any of your response and pleadings and we will talk about it in 45
2 days.

3 MR. PADDA: Thank you, Your Honor.

4 MR. GARTH: Absolutely.

5 THE COURT CLERK: And that will be on November 9th at
6 9:00 a.m.

7 MR. PADDA: What day is that?

8 THE COURT: November 9th.

9 MR. PADDA: Okay, thank you.

10 THE COURT: Thank you.

11 MR. GARTH: Thank you. Will that be 9:00, Your Honor?

12 THE COURT CLERK: Yes.

13 MR. GARTH: Okay. Have a nice day.

14 THE COURT: You too.

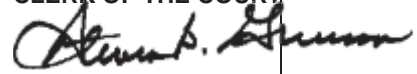
15 [Hearing concluded at 9:34 a.m.]

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20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my
23 ability.

24 
25 Kimberly Estala
Court Recorder/Transcriber

EXHIBIT H



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA
POWELL,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM,
LLC,

Defendant.

CASE NO. A-19-788787-C

DEPT. NO. VII

BEFORE THE HONORABLE LINDA MARIE BELL,

DISTRICT COURT JUDGE

WEDNESDAY, NOVEMBER 16, 2022

RECORDER'S TRANSCRIPT OF HEARING:

ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiff:

PAUL PADDA, ESQ.,

For the Defendant:

ADAM GARTH, ESQ.,
Appeared by Video

RECORDED BY: KIMBERLY ESTALA, COURT RECORDER

1 Las Vegas, Nevada; Wednesday, November 16, 2022

2 [Hearing commenced at 10:17 a.m.]

3
4 THE COURT: Page 17 case number A788787.

5 MR. PADDA: Good Morning, Your Honor, Paul Padda on
6 behalf of plaintiffs.

7 MR. GARTH: Good Morning, Your Honor, Adam Garth on
8 behalf of the defendant judgement creditors.

9 THE COURT: So Mr. Garth -- just because you weren't here
10 because you can't see what happened but Mr. Shetler was fixing Mr.
11 Padda's attire which was --

12 MR. PADDA: A bit ironic.

13 THE COURT: Yes. Yeah okay,

14 MR. GARTH: I don't know if I want to know.

15 THE COURT: All right.

16 MR. GARTH: That may be too much information for this
17 morning but.

18 THE COURT: Okay, so we have this on today for a, hold on,
19 a *Motion for Stay*. All right, so -- Odyssey's being very uncooperative
20 with me this morning. Mr. Padda, go ahead.

21 MR. PADDA: Thank you, Your Honor. We filed -- so Mr.
22 Garth, after we filed our *Motion to Stay* Mr. Garth filed a *Countermotion*
23 *for Contempt* or --

24 THE COURT: Yeah.

25 MR. PADDA: He asked for all kinds of relief including

1 imprisonment of my client. We then filed a reply brief and a lot of the
2 main argument here is in the reply brief and I filed an appendix. And
3 really the record in this case speaks for itself. What happened was
4 Judge Wiese originally denied Valley Health Systems *Motion for Fees*
5 *and Costs*. Then Valley Health System through Mr. Garth filed an appeal
6 to the Nevada Supreme Court. While that appeal was pending he filed a
7 *Motion for Reconsideration* with Judge Wiese. Judge Wiese once a
8 again denied his *Motion for Fees and Costs*, stating I do not have
9 jurisdiction to entertain this matter because it's on appeal. The best I can
10 do is give you a *Huneycutt* Order and you can take this and certify it with
11 the Supreme Court and then they'll give you a limited remand and you
12 can come back here. But I don't have the power to do anything other
13 than that. That's all he did. There was never a decision in this case, of
14 any kind, awarding fees and costs to Mr. Garth's client. Mr. Garth then
15 voluntarily dismissed his appeal in response to a Show Cause Order
16 from the Nevada Supreme Court saying, tell us why we have jurisdiction
17 over this matter. Now he could have said well you have jurisdiction to
18 give me a limited remand based on *Huneycutt* I have a ruling here from
19 Judge Wiese, he chose not to do that. He dismissed his appeal and he
20 put in there, I think it was a declaration or a representation to the
21 Supreme Court that, I realize that by dismissing this appeal my client will
22 waive the right to ever pursue this issue again. So now it comes, the
23 appeal is dismissed. Then what Mr. Garth does is he prepares a
24 judgement. He sends it to me and I refuse to sign it. I said I'm not going
25 to sign this under protest. I said I completely disagree with this. And in

1 his judgement he references the reconsideration order and then sends it
2 to Judge Wiese's chambers. Now, our entire system works on a certain
3 level of trust, right? Judges don't necessarily scrutinize every judgement.
4 If you get something that comes in court staff is going to look at it and
5 what happened here is they affixed Judge Wiese's electronic signature
6 to that judgement awarding \$100,000.00 in fees and costs.

7 THE COURT: Okay but Mr. Padda that's not -- that order the
8 judgment was entered before the appeal was dismissed. I mean the
9 judgment I have in the file was signed by Judge Wiese on June 2nd of
10 2022.

11 MR. PADDA: Well he wouldn't have had jurisdiction to sign it.
12 And he said in his decision I don't have jurisdiction over this.

13 THE COURT: I understand what you're saying --

14 MR. PADDA: So --

15 THE COURT: -- I'm just telling you what I have in the court
16 file is that he issued the Order regarding the *Motion for Reconsideration*
17 on May 4th and in that it goes through everything in quite a bit of detail
18 but the -- it says in the last paragraph this Court now indicates its
19 indication pursuant to *Huneycutt vs Huneycutt* and *Foster vs Dingwall*
20 that if the Court had jurisdiction to decide the matter the Court would
21 now award attorney's fees and costs and it gives the amounts.

22 MR. PADDA: But an intent to do something is not --

23 THE COURT: And there was -- okay so the Court requests
24 counsel prepare a notice -- prepare a *Notice of Entry* and convey the
25 decision to the Supreme Court. So that's May 4th. The -- there is a May

1 16th *Order Dismissing the Appeal* that was filed in the Nevada Supreme
2 Court. And then following that there was a Judgement for the attorney's
3 fees and costs that was sent to the Court and signed on June 2nd after
4 the appeal was dismissed. I don't --

5 MR. PADDA: So that makes it procedurally defective.

6 THE COURT: I don't know if there was a remitter.

7 MR. PADDA: Absolutely not.

8 THE COURT: I don't see that I don't know. But that's -- and
9 then there's a new *Notice of Appeal*. So there was a new *Notice of*
10 *Appeal* from that judgement that you filed on June 2nd but I'm not sure, I
11 mean, there's multiple -- because I don't know what -- I mean one
12 appeal was dismissed and then there's an *Order Dismissing Appeal as*
13 *Abandoned* but I don't know what--

14 MR. PADDA: And that was Mr. Garth's appeal by the way.

15 THE COURT: Okay so what was -- what was voluntarily
16 dismissed?

17 MR. PADDA: Mr. Garth's appeal.

18 THE COURT: Okay --

19 MR. PADDA: So but my basic point is that it's -- its really just
20 is hornbook law 101 that you cannot --

21 THE COURT: So --

22 MR. PADDA: You can't have a judgment unless there's a
23 decision.

24 THE COURT: So then I get -- there's a remitter issued July
25 20th but what is the status of your appeal? Your June 2nd appeal.

1 MR. PADDA: It's still live and pending.

2 THE COURT: Okay.

3 MR. PADDA: And that's what we intend to impart argue in
4 that appeal. Although I have filed -- we filed yesterday because of some
5 technical snafu it didn't get filed so it's going to be -- I think it was filed
6 this morning was a *Motion to Set Aside the Judgement* on the Rule 60.

7 THE COURT: I've got that.

8 MR. PADDA: So that's pending and but the point --

9 THE COURT: Well I don't --

10 MR. PADDA: Yeah.

11 THE COURT: I don't know that I can do anything right now.

12 MR. PADDA: You may not have jurisdiction, Your Honor, but
13 you're in the same position that Judge Wiese was in.

14 THE COURT: Okay --

15 MR. PADDA: And what Judge Wiese said is that this is like
16 the Supreme Court decision that's a seminal authority is *Huneycutt*
17 which is a judge -- and under *Foster v Dingwall* a judge does not have
18 authority to grant a motion but a judge does have authority to deny a
19 motion and once that motion is denied then the proper procedure is you
20 take that and you go back to the Supreme Court and you say now Court
21 can you give me a limited remand so I can go, this is what the judge's
22 intention is. That never happened here.

23 THE COURT: Mr. Garth.

24 MR. GARTH: Lots to unpack, Judge. Okay, in the first
25 instance let me address several issues that were raised by Mr. Padda's

1 reply. Not the least of which was a material misrepresentation that our
2 opposition was late. So we were in court before you on September 28th
3 based upon his after business filing the night before of this nonsensical
4 motion. Once that happened I asked the court --

5 THE COURT: Mr. Garth.

6 MR. GARTH: -- for 30 days to --

7 THE COURT: Mr. Garth. Mr. Garth you've got to do me a
8 favor okay. I'm just trying to sort out this issue --

9 MR. GARTH: Well --

10 THE COURT: If we can just focus on the facts and you know.

11 MR. GARTH: Well the facts are as follows.

12 THE COURT: Okay.

13 MR. GARTH: The issues that Mr. Padda is now raising were
14 not raised until his reply. This is entirely new material that he never
15 addressed on his original motion because what he wanted to do was to
16 sandbag or else he wakes up to gee I didn't --

17 THE COURT: Okay, Mr. Garth there's not --

18 MR. GARTH: This was never addressed in his original motion
19 Judge.

20 THE COURT: Okay, I got that, right, but I don't need the
21 name calling, right. It just doesn't help me. It's very distracting. I want to
22 just try and figure this out. It's very complicated. There's layers of
23 appeals and things that got filed that seem I don't even know if the court
24 had jurisdiction to file. I need to sort that out and when you get upset
25 with Mr. Padda because you disagree with how he handled something

1 that's very distracting to the actual issue that I need to decide. So if we
2 could focus on that without getting into our opinions about peoples
3 arguments or whatever it would be very helpful to me.

4 MR. GARTH: Okay, Your Honor, one of the problems is that
5 all the issues that are being raised here should not even be raised.
6 There's a rule where you are only supposed to be replying to materials
7 that are raised in the opposition. Anything that is new material should
8 have been put into your original motion. So everything, number 1, that
9 Mr. Padda is raising here today is based upon what our -- what we have
10 not been given an opportunity to properly oppose and reply to and other
11 courts have stricken this very -- kind of behavior. So basically what I'm
12 saying is these issues should not even be before you because they
13 weren't raised initially in his motion.

14 THE COURT: Okay, so --

15 MR. GARTH: He only came --

16 THE COURT: So --

17 MR. GARTH: So that's number 1.

18 THE COURT: Okay.

19 MR, GARTH: All right. Then there's a bunch of other things
20 which I can help straighten things out a little bit for you.

21 THE COURT: Sure.

22 MR. GARTH: Okay so then we can make a little bit more
23 sense of it. The citations that he is making to *Huneycutt* and its progeny
24 are inaccurate. And the problem there is that he hasn't quoted the
25 appropriate part of the Supreme Court's decision, which is whether or

1 not the Supreme Court even has jurisdiction to deal with an appeal when
2 a *Motion for Reconsideration* is pending. Now it's quite confusing in the
3 statute and in the appellate rules and I checked Rule 4 of the appellate
4 rules to try to ascertain when an appeal can be done. And a *Motion for*
5 *Reconsideration* is not listed among those. But the Supreme Court never
6 the less is interpreting it that way. And in the *Foster vs Dingwell* case it
7 states specifically the court has repeatedly held that the timely -- filing of
8 a *Notice of Appeal* divest the District Court of jurisdiction to act and vest
9 jurisdiction in this Court. I will refer you, Your Honor, to the decision or
10 the *Order to Show Cause* that was issued by the Nevada Supreme
11 Court on April 29th, and it says specifically the *Notice of Appeal* appears
12 to be prematurely filed under NARP 4a because it appears that it was
13 filed after the timely filing of a tolling *Motion for Reconsideration* and
14 before that motion had been formally resolved. Therefore the Supreme
15 Court was determining that the Notice of Appeal wasn't timely filed
16 because it was prematurely filed. The Supreme Court never had
17 jurisdiction under those circumstances to be dealing with the issue. And
18 even if they did we abandoned the appeal because after receiving Judge
19 Wiese's decision we said okay, he's giving us a hair cut off of what
20 should be over \$200,000.00 in fees but we'll agree to take that and
21 [Indiscernible] take any problems off the table for Judge Wiese we will
22 withdraw our appeal. And we provided Judge Wiese with a copy of the
23 judgement and the prior -- decision that he made. We provided him a
24 copy of the withdrawal notice. There was never at that point, once we
25 withdrew the appeal there was never anything pending in front of the

1 Supreme Court. So when he received the judgment for which Mr. Padda
2 did zero to deal with until today's filing this morning. The judgement
3 stood. There wasn't any hoodwinking of anybody. There wasn't any
4 attempt to mislead anybody. In fact there was no misleading anybody. It
5 was all done out in the open. Mr. Padda was given a copy of the
6 judgment to review and agree to sign. He didn't say, and I have a copy
7 of the email, because I save everything from him. I have a copy of the
8 email, all he said was I won't sign it. There wasn't any commentary or
9 anything, I won't sign it. Okay, I submitted his email to the Court along
10 with the judgement indicating that he refused to sign it. There wasn't
11 anything about jurisdictional problems. There wasn't anything about any
12 problem other than the fact that this was a judgement against his clients
13 which presumably he didn't want filed. Oh well. But we took it off the
14 table by withdrawing the appeal and the Supreme Court itself never had
15 jurisdiction. In other words, Judge Wiese always had jurisdiction to
16 render the decision and render the judgement. Because apparently
17 because of the lack of clarification in the appellate rules we wanted to
18 preserve our clients rights to an appeal so we filed the *Notice of Appeal*
19 and we also filed the *Motion for Reconsideration*. Since the Court -- the
20 Supreme Court is now interpreting that rule and expanding it beyond the
21 statutory provisions of those orders that are listed in there under the
22 sections of the Civil Practice Rules that they say stay any, you know,
23 any need to pursue the appeal. We received the *Order to Show Cause*. I
24 said okay no problem appeal withdrawn, done. So there was no need for
25 the Supreme Court to act. The Supreme Court was indicating that they

1 themselves had no jurisdiction and therefore if they'd ever had
2 jurisdiction in the first place Judge Wiese always had the jurisdiction. So
3 he was supplied with everything. Then for Mr. Padda to suggest that
4 somehow the judge didn't review any of the paperwork I think is a little
5 ridiculous. He had copies of everything. If Mr. Padda had a proposed
6 judgement or an objection he could have filed it when I filed it with the
7 Court. He was copied on it. The judge could have refused to sign it. He
8 was given a copy of the withdrawal notice --

9 THE COURT: Mr. Garth.

10 MR. GARTH: -- a copy of his decision. A copy of the
11 judgement. Everything --

12 THE COURT: Mr. Garth.

13 MR. GARTH: -- was there.

14 THE COURT: Can you explain something to me?

15 MR. GARTH: Sure.

16 THE COURT: I'm a little confused by the May 16, 2022 *Order*
17 *Dismissing Appeal* and then the June 22nd, 2022 *Order Dismissing*
18 *Appeal as Abandoned*.

19 MR. GARTH: There were multiple appeals here, Your Honor,
20 I don't -- I haven't to be honest with you I haven't unpacked all of them.
21 We filed a -- an appeal which you're aware of.

22 THE COURT: Right.

23 MR. GARTH: That led to the *Summary Judgement Motion*.
24 That was one thing disposed of. Then we filed a -- we pursued costs
25 subsequent to that.

1 THE COURT: Okay.

2 MR. GARTH: Mr. Padda did not file an appropriate objection
3 to any of that memorandum of costs and therefore Judge Wiese ordered
4 -- said while he wasn't going to grant costs because he wanted to have
5 some kind of hearing which I volunteered to have. I asked for
6 reconsideration of that motion and supplied over 600 pages to him
7 saying this is what I was going to give Mr. Padda and you for the hearing
8 to show all of the time that we spent on the case, all of the expenses we
9 laid out. He said okay, well I didn't know you were going to do that even
10 though I volunteered to do it in my original papers. But he -- I didn't want
11 to trot out all of my clients expenses and our firms time sheets in the
12 public forum. So I said we would have an in camera hearing to make this
13 determination, certainly Mr. Padda could -- appear for, make any
14 objections he wanted to with respect to any costs that he believed were
15 inappropriate, and not an issue. He didn't object to any of the costs
16 either. Judge Wiese came back after seeing the 6, 700 pages worth of
17 timesheets and expenses that we laid out on behalf of the clients and
18 that's where he issued his decision. Beyond that Mr. Padda then filed an
19 appeal. We filed an appeal originally based upon the denial of the -- of
20 our *Motion for Costs*, which we withdrew and was no longer an issue on
21 the table. And then Mr. Padda filed an appeal. And that's the one that's
22 pending which is also concerning because having taken just a brief
23 gander at his motion and then Rule 60 if his appeal is pending there's
24 no, you can't be filing motions that effect a judgement without first
25 getting permission of the Nevada Supreme Court. So the motion he just

1 filed today is totally out of order as is all of his commentary on the
2 original motion.

3 MR. PADDA: So that --

4 MR. GARTH: So those are I think the 3 appeals that were
5 being handled. One the original one on the summary judgement motion,
6 the second one was based upon our -- appeal which we withdrew, and
7 the third I believe was Mr. Padda's that's now pending with a briefing
8 date of I believe January 9th.

9 THE COURT: Okay. Mr. Padda, I'm sorry you were saying
10 something.

11 MR. PADDA: Let me just start with the argument about the
12 reply. First of all what Mr. Garth filed was an opposition to our *Motion to*
13 *Stay* and then he combined a counter motion for sanctions in that. We
14 filed a response. We filed a response to his opposition and to his
15 counter motion. He had the opportunity to file a reply up until whenever,
16 he's not done that.

17 MR. GARTH: Not true.

18 MR. PADDA: He hasn't filed a reply, there's no reply to his --
19 there's no reply to our opposition to his countermotion. So what you
20 have before you, what he labels only as a reply was also information
21 that I think is pertinent to Your Honor, as far as making a ruling whether
22 there's actually an enforceable judgment in this case and whether you --
23 you were asked here's an *Ex Parte Application* please order all these
24 things and make these people come here and produce all kinds of
25 documents and there's a valid order in place, a judgment. If that's at

1 issue then he could have addressed it in the reply, he didn't do that.

2 Anyways, going back to Judge Wiese's decision on the
3 reconsideration I don't think it could be any clearer. He stated right there
4 and its page 96 of the appendix that I filed, he said that Judge
5 entertained the *Motion for Reconsideration* but did not change his
6 opinion or alter or modify his prior finding that plaintiffs decision to reject
7 the offer of judgement was not grossly unreasonable or in bad faith. And
8 then he went on to say quote I no longer have jurisdiction to address the
9 issue of fees and costs. And so, you know, what Mr. Garth's talking
10 about here as far as well Mr. Padda should -- court doesn't have the
11 jurisdiction to enter a Rule 60b motion, well that's the whole point. That's
12 what Judge Wiese said, he said I can't even grant you any relief all I can
13 do is give you a *Huneycutt* order. If you want to take it in response to the
14 *Order to Show Cause* present it to the Supreme Court, ask for a limited
15 remand that was Mr. Garth's opportunity. Then come back to Judge
16 Wiese and say Judge the Supreme Court has given me the authority to
17 come back to you under *Huneycutt* and now ask you to make this
18 decision. That never happened.

19 THE COURT: Well I mean I'm not -- I suppose I'm not
20 commenting any on the procedural merits of what happened but it
21 appears what happened was that after the appeal was dismissed but it's
22 not clear to me which appeal was dismissed. But one of the appeals was
23 dismissed then Judge Wiese entered a judgement based on his decision
24 to award the fees. So --

25 MR. PADDA: Well again I would say no --

1 THE COURT: I mean --

2 MR. PADDA: Maybe the devils in the details but if a Judge
3 says --

4 THE COURT: Right.

5 MR. PADDA: -- I can't I'm not awarding fees and costs but I
6 might be -- but that might be my intention to do so. And then I should
7 also point out what the Supreme Court said was not that it didn't have
8 jurisdiction it -- that's the whole the clue should have been the title *Order*
9 *to Show Cause* whether we have jurisdiction or not that was Mr. Garth's
10 opportunity to say hey this is what I want to accomplish and instead his
11 response was he didn't respond at all he just said okay I'm going to
12 dismiss my appeal.

13 THE COURT: Yeah so this is what I would like to do at this
14 point because I would like to not make things worse than they already
15 are. I am going to grant the *Motion for Stay of Execution* while the
16 appeal is pending. I'm going to deny the *Motion to Set Aside* because I
17 don't think I can do anything while the appeal is pending and I think if I
18 do were going to cause more problems than already exist. So I don't
19 know if there's a hearing date on that but if there is --

20 MR. PADDA: Well the motion was just filed yesterday.

21 THE COURT: Yeah there's no hearing date set on that. I'm
22 just going to I'm going to --

23 MR. PADDA: That's fine.

24 THE COURT: I'm going to --

25 MR. PADDA: But in denying it will you give us a *Huneycutt*

1 decision -- so basically what --

2 THE COURT: I'm not making any decision at all. I don't think
3 that's going to be helpful at all. I think we need to let the Nevada
4 Supreme Court consider what they have in front of them and make a
5 ruling on that.

6 MR. PADDA: Well you'll be there soon.

7 THE COURT: Well I'm not going to be deciding on this lucky
8 for me. So thank you --

9 MR. PADDA: For many reasons.

10 THE COURT: -- for having this in front of me today. So and
11 then I am going to deny the *Counter Motion for Sanctions* I just think
12 given the -- I understand everybody is frustrated here and I understand
13 why but, you know, I think there's some procedural concerns with this
14 case that have created frustrations on both sides. So *Motion for Stay* is
15 granted. *Counter Motion* is denied. The *Motion to Set Aside* I'm just
16 going to vacate it, I'm not ruling on it. I'm just going to vacate it I don't
17 believe I have jurisdiction to consider it. And then I am happy to set a
18 status check just to see when we get a ruling on from the Nevada
19 Supreme Court in 90 days or something 120 days.

20 MR. PADDA: That would be fair.

21 THE COURT: Or I can just --

22 MR. GARTH: Your Honor, -- if I may.

23 THE COURT: Yes.

24 MR. GARTH: One of the things that we have been asking for
25 is an appeal bond or some guarantee as to costs. There has been no

1 proof whatsoever that he is entitled to proceed without an appeal bond.
2 We've provided ample statutory and case authority indicating that an
3 appeal bond is required.

4 THE COURT: I show --

5 MR. GARTH: And Mr. Padda --

6 THE COURT: -- an appeal bond posted July 7th of 2022.

7 MR. GARTH: There was no -- I don't see anything, Your
8 Honor.

9 THE COURT: Well you wouldn't see it but I have a receipt for
10 it. It's not -- it's filed as a non-docketable event in -- I have it --

11 MR. GARTH: Then -- that's probably why we haven't seen it.
12 Mr. Padda has indicated that he wasn't filing any appeal bond and that
13 he didn't have to file one.

14 THE COURT: Well I have one, I don't know. I have one that
15 was filed, it was filed July 7th it was \$500.00 so that's what I have.

16 MR. GARTH: Okay so I guess at this point -- do you have
17 jurisdiction for us to make a motion since we weren't informed about that
18 bond until literally this second to object to the bond and request that it be
19 increased to the amount of the costs that were awarded in the
20 judgment? We need to be able to protect our client's rights here. We
21 have no means of collection. Mr. Padda -- you've already indicated we
22 can't have a hearing to determine what assets these folks have. Mr.
23 Padda has represented that his clients are indigent. So we have no
24 means of collecting on any judgment should it be affirmed. And that is
25 the very purpose of these appeal bonds. And \$500.00 is far shy of

1 \$120,000.00.

2 MR. PADDA: There are significant jurisdictional issues here,
3 Your Honor. We filed our appeal bond. If he wanted to make an
4 objection he should -- you can't just come to court unprepared and then
5 say well I'm going to make a motion right now. That's not how it works.
6 That's why we are in the mess we are because he didn't even follow
7 proper procedure. But my point is simply that if you don't have
8 jurisdiction on that I think the time has come and gone for him to make a
9 motion on the appeal bond. It is what it is. Supreme Court's going to
10 make a ruling and I'm very confident they're going to rule in our favor
11 and find that not only did Mr. Garth not follow procedure --

12 THE COURT: Yeah well --

13 MR. PADDA: -- but that Judge Wiese the judgement was
14 improperly executed.

15 THE COURT: There was a bond filed I again I'm happy to set
16 a status check or no as you would prefer. I'm not going to address
17 anything else today.

18 MR. GARTH: Well Mr. Padda's original appeal was due, the
19 briefing was originally due on November 9th. He asked me as a courtesy
20 to agree to extend it by 60 days due to some apparently some medical
21 issues that he was going to be --

22 THE COURT: How about -- all right --

23 MR. GARTH: -- and I agreed to do that.

24 THE COURT: -- how about I do a status check in about 6
25 months?

1 MR. PADDA: That sounds great.

2 THE COURT: That way things don't fall through the cracks

3 and it probably won't be done by then but we'll just have it on

4 somebody's radar.

5 MR. PADDA: That makes sense. Judge would you like me to

6 prepare the order?

7 THE COURT: Yes please.

8 MR. PADDA: Thank you

9 THE COURT: Thank you.

10 MR. PADDA: Have a very nice day.

11 THE COURT: Thanks you too.

12 MR. GARTH: Do we have a date for the status check, Your

13 Honor?

14 THE COURT: Yeah hold on just a second the Clerks getting

15 it.

16 THE COURT CLERK: Wednesday, June 7, 2023 at 9:00 a.m.

17 MR. PADDA: I think that's the day my Myers trial starts.

18 THE COURT: All right, well I mean I think it will probably end

19 up getting moved anyway so all right.

20 MR. PADDA: No problem.

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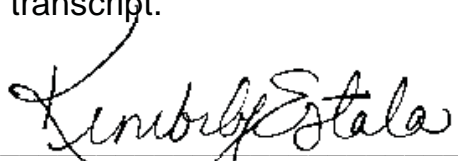
THE COURT: Great thank you.

MR. PADDA: Thank you, Judge.

[Hearing concluded at 10:49 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches which resulted in distortion in the Bluejeans audio/video and/or audio cutting out completely were experienced and are reflected in the transcript.



Kimberly Estala
Court Recorder/Transcriber

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTATE OF REBECCA POWELL,
THROUGH BRIAN POWELL, AS
SPECIAL ADMINISTRATOR; DARCI
CREECY, INDIVIDUALLY AND AS
HEIR; TARYN CREECY,
INDIVIDUALLY AND AS HEIR;
ISAIAH KHOSROF, INDIVIDUALLY
AND AS HEIR; AND LLOYD
CREECY, INDIVIDUALLY,

Appellants,

vs.

VALLEY HEALTH SYSTEM, LLC,
D/B/A
CENTENNIAL HILLS HOSPITAL
MEDICAL
CENTER, A FOREIGN LIMITED
LIABILITY
COMPANY,

Respondent.

Supreme Court No. 84861
District Court Case No. A-19-788787-C

**APPENDIX TO RESPONDENT'S MOTION TO REQUIRE POSTING OF
OR INCREASING AMOUNT OF SUPERSEDEAS BOND BY
APPELLANTS VOLUME I**

S. BRENT VOGEL
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ADAM GARTH
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INDEX TO DEFENDANT'S APPENDIX

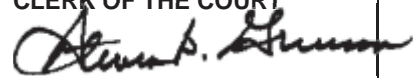
Exhibit	Document	Date	Page Nos.
I	Defendant/Judgment Creditor Valley Health System, LLC's Opposition to Plaintiffs' Motion to Stay Execution on Judgment for Attorneys' Fees and Costs Including Stay of Examination of Judgment Debtors and Production of Documents and Countermotion for Contempt and Attorneys' Fees	10/28/2022	283-524
J	Plaintiffs' Response to Defendant/Judgment Creditor Valley Health System, LLC's Opposition to Plaintiffs' Motion to Stay Execution on Judgment for Attorneys' Fees and Costs Including Stay of Examination of Judgment Debtors and Production of Documents and Countermotion for Contempt and Attorneys' Fees	11/24/2022	525-547

DATED this 2nd day of December, 2022.

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
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EXHIBIT I



OPPC

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*Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISAIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z,;

Defendants.

Case No. A-19-788787-C

Dept. No.: 7

**DEFENDANT/JUDGMENT CREDITOR
VALLEY HEALTH SYSTEM, LLC'S
OPPOSITION TO PLAINTIFFS'
MOTION TO STAY EXECUTION ON
JUDGMENT FOR ATTORNEYS' FEES
AND COSTS INCLUDING STAY OF
EXAMINATION OF JUDGMENT
DEBTORS AND PRODUCTION OF
DOCUMENTS AND COUNTERMOTION
FOR CONTEMPT AND ATTORNEYS'
FEES**

Hearing Date: November 9, 2022

Hearing Time: 9:00 a.m.

Defendant and Judgment Creditor, VALLEY HEALTH SYSTEM, LLC ("VHS"), by
and through its counsel of record, S. Brent Vogel, Esq. and Adam Garth, Esq. of the Law Firm
LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby file their Opposition to Plaintiffs' Motion to
Stay Execution on Judgment for Attorneys' Fees and Costs Including Stay of Examination of
Judgment Debtors and Production of Documents and Countermotion for Contempt and Attorneys'

1 Fees. This opposition and countermotion is based upon the Memorandum of Points and Authorities
2 below, the pleadings and papers on file herein, any oral argument which may be entertained by the
3 Court at the hearing of this matter.

4 DATED this 28th day of October, 2022

5
6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8 By /s/ Adam Garth
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16 *Attorneys for Attorneys for Defendant/Judgment*
17 *Creditor Valley Health System, LLC dba*
18 *Centennial Hills Hospital Medical Center*
19
20
21
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28

1 MEMORANDUM OF LAW

2 I. INTRODUCTION

3 This case has a storied history involving one decision from the Nevada Supreme Court
4 overturning Judge Wiese's denial of summary judgment, and what will be an ill-fated appeal by
5 Plaintiffs to overturn the reconsideration and the award of costs and fees their attorney foisted upon
6 them. It was Plaintiffs' counsel's failure to consider firmly established legal precedent and
7 uncontroverted evidence, in which he was in exclusive possession, demonstrating the commencement
8 of inquiry notice in this case. Plaintiffs were given a graceful means of extricating themselves from
9 this judgment long ago, when they were presented with an offer of judgment for a waiver of all costs
10 and fees in exchange for dismissal of their case after the aforementioned evidence of inquiry notice was
11 presented. They rejected that offer, no doubt on the advice of counsel, and now face the legal
12 consequences of their collective decision.

13 What is even more concerning is the complete contempt Plaintiffs and their counsel have
14 shown this Court in defying multiple court orders to produce documents and records by a date certain,
15 and a failure to appear as ordered by this Court for a judgment debtors' examination. Plaintiffs'
16 counsel did **absolutely nothing** until the day before the judgment debtors' examination scheduled for
17 September 28, 2022. Plaintiffs' ignoring of legal precedent, ignoring facts within their exclusive
18 possession, failing to present evidence they are required to present, and now defying multiple court
19 orders demonstrates a clear pattern of contempt for not only this process, but of the Court itself. It is
20 Plaintiffs and their counsel's utter disregard for professional courtesy and court orders which has
21 continued throughout this litigation because they have not been appropriately stopped and their
22 behavior punished in the past, driven by their counsel's distilled argument that he was winning until
23 he lost. In other words, he was emboldened by multiple incorrect judicial decisions which completely
24 ignored the uncontroverted evidence and ignored Plaintiffs' counsel's abject failure to come forth with
25 any evidence supportive of their legal position in this case. Plaintiffs and their counsel have been
26 afforded multiple judicial passes and lifelines only to now thumb their nose at the Court when their
27 fortunes have turned. It is time that these Plaintiffs and their counsel reap the harvest they have sown
28 – contempt, sanctions, costs and fees.

1 **II. STATEMENT OF FACTS**

2 On July 19, 2022, VHS filed and served its ex parte application for judgment debtors
3 examination and production of documents¹ on Plaintiffs' counsel of record. Plaintiffs and their
4 counsel did nothing in opposition to said application.

5 On August 18, 2022, this Court signed an order directing the judgment debtors examination to
6 take place on September 28, 2022 at 9:00 a.m. and to produce all documents requested in the
7 aforementioned ex parte application no later than September 14, 2022 to counsel for VHS. This order was
8 served with notice of entry upon Plaintiffs' counsel of record on August 19, 2022.² Once again,
9 Plaintiffs and their counsel did nothing in response to the order. They failed to move for a protective
10 order. They failed to file an appeal bond for the amount of the judgment. They failed to take any legal
11 action whatsoever. Moreover, they defied the Court's order and never produced any of the ordered
12 documents by September 14, 2022. Furthermore, they failed to show as ordered for the judgment
13 debtors examination on September 28, 2022.

14 On September 27, 2022 at 2:21 p.m., Plaintiffs' counsel sent an email³ notifying our firm that
15 his clients would be defying a court order and not appearing for their court ordered examination, that
16 his clients had limited financial resources⁴ and would be unable to travel to court for the proceedings,
17 and that he was providing this "advanced notice" "to avoid any inconvenience." This was the first and
18 only communication from Plaintiffs or their counsel since the filing of the July 19, 2022 application.

19 Thereafter, at 5:24 p.m., after the close of business on September 27, 2022, **the day before the**
20 **hearing, and two weeks after their required discovery was due**, Plaintiffs' counsel filed this
21 baseless motion.

22 As the Court is already aware, counsel for VHS and Plaintiffs appeared at 9:00 a.m. on
23 September 28, 2022. When questioned by the Court why his clients failed to appear as ordered, why

24 ¹ **Exhibit A**, Ex Parte Application

25 ² **Exhibit B**, Order Directing Judgment Debtors Examination and Production of Documents

26 ³ **Exhibit C**, Email from Plaintiffs' counsel notifying that Plaintiffs will not show for the court ordered
examination.

27 ⁴ The very purpose of these proceedings is to ascertain what, if any assets, the respective Plaintiffs
28 have to pay the judgment entered against them. Their bold refusal to engage in these proceeding by
the Court's order defeats the very purpose the proceedings were authorized to determine.

1 his clients failed to provide the requisite documentation as ordered, and why he did nothing in advance
2 of any deadlines ordered by the Court to challenge same, he responded that the Court lacked
3 jurisdiction (nonsense) and he also stated that he did not know what to do given that the application
4 was made ex parte (despite his having been served and notified when the application was filed). He
5 proceed to ask the Court what steps he was to have taken, further advising the Court that his
6 representation terminated upon the Supreme Court's dismissal of this case. Again, Plaintiffs' counsel
7 took no steps to disassociate himself from this case, filed no notices that he was no longer counsel of
8 record, and then made a claim that he decided to take the appeal of the award of costs and fees pro
9 bono.⁵ When questioned by this Court why Plaintiffs' counsel took no steps to disassociate himself
10 from representing these Plaintiffs, he had no answer. The Court properly noted that all evidence
11 demonstrated he was and remained counsel of record in this case, making him responsible to act on
12 his clients' behalf. He even was so bold as to improperly request legal advice on how he was
13 expected to have proceeded after being served with the orders to produce and appear.

14 Despite Plaintiffs and their counsel's complete disregard for Court orders or procedure, this
15 Court nonetheless agreed to entertain Plaintiffs late, improper and baseless motion filed literally on the
16 eve of the Court ordered examination in which Plaintiffs so boldly refused to participate or appear. It
17 is presumed that the hearing will be equivalent to an order to show cause as to why an order of
18 contempt and the implications thereof not be imposed upon Plaintiffs for their defiance of multiple
19 court orders.

20 **III. LEGAL ARGUMENT**

21 **A. Plaintiffs Are In Contempt**

22 NRS § 21.270(3) states: "A judgment debtor who is regularly served with an order issued
23 pursuant to this section, and who fails to appear at the time and place specified in the order, may be
24

25 ⁵ His offer of pro bono representation on appeal is more likely to avoid a potential legal malpractice
26 suit stemming from his placement of his clients in the position of judgment debtors due to his pursuit
27 of a case filed so far beyond the statute of limitations and with such clear evidence of the
28 commencement date for inquiry notice that the Supreme Court took the unusual step of chastising
Judge Wiese for a "manifest abuse of discretion" in denying summary judgment in the wake of
overwhelming evidence.

1 punished for contempt by the judge issuing the order.” It is uncontroverted that Plaintiffs failed to
2 appear as ordered. It is also uncontroverted that Plaintiffs defied the Court’s order and did not produce
3 any materials as ordered by September 14, 2022. It is uncontroverted that Plaintiffs filed no appeal
4 bond, nor did they take any legal steps such as filing a timely and a proper legally supported motion
5 addressed to the Court’s order.

6 Disobedience of an order of the master or court in supplementary proceedings is
7 contempt. *See*, NRS § 21.340. Disobedience of a subpoena or a court order directing attendance at
8 supplementary proceedings is also contempt. *See*, NRS § 22.010(3), (4). “Courts have inherent power
9 to enforce their decrees through civil contempt proceedings, and this power cannot be abridged by
10 statute.” *See S. Fork Band of the Te-Moak Tribe v. State Eng'r (in Re Determination of Relative Rights*
11 *of Claimants & Appropriators of Waters of the Humboldt River Stream Sys.*, 118 Nev. 901, 909, 59
12 P.3d 1226, 1231 (2002).

13 A court may issue a bench warrant for the arrest of a person guilty of contempt. NRS § 22.040.
14 Moreover, the person guilty of contempt may be imprisoned until he or she performs the ordered act,
15 if it is within his or her power to perform. *See*, NRS § 22.110. If there is danger of the person
16 absconding, NRS § 21.280 also authorizes the arrest of a person to bring the person to court on
17 supplementary proceedings.

18 A civil contempt order is designed to coerce compliance with a court order and is of a
19 conditional or intermediate nature—ending when the contemnor complies. *See S. Fork Band of the Te-*
20 *Moak Tribe v. State Eng'r (in Re Determination of Relative Rights of Claimants & Appropriators of*
21 *Waters of the Humboldt River Stream Sys.*, 118 Nev. at 909, 59 P.3d at 1231.

22 Arrests may also be used in civil cases in certain limited actions involving fraudulent conduct
23 or concealment of assets. *See*, NRS §§ 31.470–31.550. Specifically, NRS § 31.480 states:

24 The defendant may be arrested, as hereinafter prescribed, in the
25 following cases:

26 1. In an action for the recovery of money or damages on a cause of
27 action arising upon contract, express or implied, when the defendant is
about to depart from the State with intent to defraud the defendant’s
creditors, or when the action is for libel or slander.

28 2. In an action for a fine or penalty, or for money or property

1 embezzled, or fraudulently misapplied or converted to his or her own
2 use by a public officer, or an officer of a corporation, or an attorney,
3 factor, broker, agent or clerk in the course of his or her employment as
4 such or by any other person in a fiduciary capacity, or for misconduct
5 or neglect in office, or in professional employment, or for a willful
6 violation of duty.

7 3. In an action to recover the possession of personal property unjustly
8 detained, when the property, or any part thereof, has been concealed,
9 removed, or disposed of so that it cannot be found or taken by the
10 sheriff.

11 4. When the defendant has been guilty of a fraud in contracting the
12 debt or incurring the obligation for which the action is brought, or in
13 concealing or disposing of the property, for the taking, detention or
14 conversion of which the action is brought.

15 5. When the defendant has removed or disposed of the defendant's
16 property, or is about to do so, with intent to defraud the defendant's
17 creditors.

18 In this case, we have no information whatsoever about the Plaintiffs' assets or whether they are
19 attempting or have disposed of same after learning of the judgment against them, since they defied
20 multiple Court orders to produce information concerning same and refused to appear for their Court
21 ordered examination regarding those very assets. That is contempt on its face. There is more than
22 ample evidence of contempt here, authorizing fines and even justifying a bench warrant for the arrest
23 of the Plaintiffs for their defiance. In anticipation of Plaintiffs' counsel's song and dance about one
24 senior citizen client, he fails to point out that this very senior citizen and his coterie of co-Plaintiff
25 court order defiant ones, demonstrated contempt for this Court and the process, most likely in
26 consultation with their counsel.

27 Additionally, civil contempt orders can also be used to compensate other parties for costs
28 resulting from the contempt. *See, S. Fork Band of the Te-Moak Tribe v. State Eng'r (in Re*
29 *Determination of Relative Rights of Claimants & Appropriators of Waters of the Humboldt River*
30 *Stream Sys.*, 118 Nev. at 909, 59 P.3d at 1231. As noted by the Nevada Supreme Court, the district
31 court is free to exercise its "inherent power to protect dignity and decency in its proceedings, and to
32 enforce its decrees." *S. Fork Band of the Te-Moak Tribe v. State Eng'r (in Re Determination of*
33 *Relative Rights of Claimants & Appropriators of Waters of the Humboldt River Stream Sys.*, 118 Nev.
34 at 906, 59 P.3d at 1229. It is high time that compensation inure to the benefit of the winning party

1 here at the expense of the losing parties and their counsel.

2 A civil contempt order “must be conditional or indeterminate—that is, it
3 must end if the contemnor complies.” . . . Here, the district court
4 ordered that the Tribe would have to post a \$ 10,000 bond only if it
5 violated the injunctions in the contempt order. This condition was
6 designed to coerce the Tribe's compliance. Thus, this is a civil
7 contempt order, regardless of the district court's motive.

8 Courts have inherent power to enforce their decrees through civil
9 contempt proceedings, and this power cannot be abridged by statute. A
10 civil contempt order may be used to compensate the contemnor's
11 adversary for costs incurred because of the contempt.

12 *S. Fork Band of the Te-Moak Tribe v. State Eng'r (in Re Determination of Relative Rights of*
13 *Claimants & Appropriators of Waters of the Humboldt River Stream Sys.)*, 118 Nev. 901, 909, 59 P.3d
14 1226, 1231.

15 VHS asks that this Court proceed in ordering contempt by the Plaintiffs in this action, or
16 alternatively ordering the posting of a bond in sufficient amount to guarantee the full amount of the
17 judgment (\$118,906.78) plus post judgment interest from June 2, 2022 (\$3,398.62), the date of entry
18 of the judgment up through and including the date of the hearing (November 9, 2022) in the total
19 amount of \$122,305.40. Plaintiffs had this as a remedy and an obligation in the first place.

20 NRAP 7 states in pertinent part as follows:

21 **(a) When bond required. In a civil case, unless an appellant is**
22 **exempted by law, or has filed a supersedeas bond or other**
23 **undertaking that includes security for the payment of costs on**
24 **appeal, the appellant shall file a bond for costs on appeal or**
25 **equivalent security in the district court with the notice of appeal. But a**
26 **bond shall not be required of an appellant who is not subject to costs.**

27 **(b) Amount of bond.** The bond or equivalent security shall be in the
28 sum or value of \$500 unless the district court fixes a different amount.
A bond for costs on appeal shall have sufficient surety, and it or any
equivalent security shall be conditioned to secure the payment of costs
if the appeal is finally dismissed or the judgment affirmed, or of such
costs as the Supreme Court or Court of Appeals may direct if the
judgment is modified. If a bond or equivalent security in the sum or
value of \$500 is given, no approval thereof is necessary.

(c) Objections. After a bond for costs on appeal is filed, a respondent
may raise for determination by the district court clerk objections to the
form of the bond or to the sufficiency of the surety.

(emphasis supplied).

Plaintiffs filed a notice of appeal and represented they are pursuing an appeal of the judgment

1 and the underlying decision of Judge Wiese to reconsider and order costs and fees against Plaintiffs.
2 NRAP 7 **requires** the filing of an appeal bond. Again, Plaintiffs and their counsel failed to do so in
3 further defiance of court rules and statutes.

4 Moreover, NRS § 20.037 states in pertinent part:

5 1. Notwithstanding any other provision of law or court rule, and except
6 as otherwise provided in this section and NRS 20.035, **if an appeal is**
7 **taken of a judgment in a civil action in which an appellant is**
8 **required to give a bond in order to secure a stay of execution of the**
9 **judgment during the pendency of any or all such appeals, the total**
10 **cumulative sum of all the bonds required from all the appellants**
11 **involved in the civil action must not exceed the lesser of**
12 **\$50,000,000 or the amount of the judgment.**

13 NRS § 20.037 obligates a party who is otherwise obligated to post a bond for appeal (Plaintiffs
14 so qualify), to post a bond for at least the amount of the judgment entered, which is \$118,906.78 plus
15 post judgment interest from June 2, 2022 (\$3,398.62), the date of entry of the judgment up through
16 and including the date of the hearing (November 9, 2022) for a total amount of \$122,305.40.
17 Plaintiffs defied this statute as well.

18 Additionally, NRCP 62 states in pertinent part:

19 **(a) Automatic Stay; Exceptions for Injunctions and Receiverships.**

20 **(1) In General.** Except as stated in this rule, no execution may issue
21 on a judgment, nor may proceedings be taken to enforce it, until 30
22 days have passed after service of written notice of its entry, unless
23 the court orders otherwise.

24 * * *

25 **(d) Stay Pending an Appeal.**

26 **(1) By Supersedeas Bond.** If an appeal is taken, the appellant may
27 obtain a stay by supersedeas bond, except in an action described in
28 Rule 62(a)(2). The bond may be given upon or after filing the
notice of appeal or after obtaining the order allowing the appeal.
The stay is effective when the supersedeas bond is filed.

(2) By Other Bond or Security. If an appeal is taken, a party is
entitled to a stay by providing a bond or other security. Unless the
court orders otherwise, the stay takes effect when the court
approves the bond or other security and remains in effect for the
time specified in the bond or other security.

Plaintiffs defied NRCP 62 as well. The judgment was docketed on June 2, 2022. VHS waited
the requisite 30 days and did not do anything to seek enforcement during that time. Thereafter, VHS

1 sought enforcement in all jurisdictions in which the respective Plaintiffs reside.⁶ To add further
2 insult to injury, Plaintiffs' counsel fails to properly analyze *Nelson v. Heer*, 121 Nev. 832, 122 P.3d
3 1252 (2005) upon which he relies in an effort to convince this Court that no bond is required to be
4 posted. In *Nelson*, Plaintiff, a buyer of a cabin, discovered it had a preexisting broken water pipe
5 which caused severe mold damage. He sued defendant, the seller, and obtained a large judgment
6 against her. The Nevada District Court granted a stay pending appeal and rejected defendant's request
7 to use of alternate security, in lieu of a supersedeas bond. Defendant then filed a motion in the Nevada
8 Supreme in relation to the supersedeas bond issue.

9 The record showed defendant had difficulty obtaining a supersedeas bond. Further, plaintiff
10 promptly obtained a judgment lien on all of her real property, and he began to execute on the
11 judgment by garnishing her slot route operator income. According to defendant, the garnishment
12 threatened the viability of her businesses, primarily two small bars, for which she had several
13 employees. She asserted that without said income, she would have been unable to pay other creditors
14 and certain mortgages.

15 The Nevada Supreme Court denied defendant's motion, noting the district court was in the best
16 position to weigh the relevant considerations in determining whether "alternate security" was
17 warranted. However, the Supreme Court clarified its prior opinion of *McCulloch v. Jeakins*, 99 Nev.
18 122, 659 P.2d 302 (1983) which allowed for alternate security (other than a supersedeas bond), only in
19 "unusual circumstances." As to when a full supersedeas bond could be waived and/or alternate
20 security substituted, the Supreme Court adopted a five factor analysis set forth by the United States
21 Seventh Circuit Court in *Dillon v. City of Chicago*, 866 F.2d 902 (7th Cir. 1988). In general, those
22 factors were applied with respect to the unique circumstances of each case.

23 Specifically, *Nelson* set forth five factors to consider in determining when a full supersedeas
24 bond may be waived and/or alternate security substituted:

- 25 (1) the complexity of the collection process; (2) the amount of time
26 required to obtain a judgment after it is affirmed on appeal; (3) the
27 degree of confidence that the district court has in the availability of
funds to pay the judgment; (4) whether the defendant's ability to pay

28 ⁶ **Exhibit D**, Judgments filed in respective jurisdictions in which Plaintiffs reside.

1 the judgment is so plain that the cost of a bond would be a waste of
2 money; and (5) whether the defendant is in such a precarious financial
3 situation that the requirement to post a bond would place other
4 creditors of the defendant in an insecure position.

5 We conclude that this framework provides a useful analytical tool, and
6 we adopt it for Nevada. Therefore, **when confronted with a motion to
7 reduce the bond amount or for alternate security, the district court
8 should apply these factors.** In considering the second factor, the
9 district court should take into account the length of time that the case is
10 likely to remain on appeal.

11 *Nelson, supra* 121 Nev. at 836, 122 P.3d at 1254 (emphasis supplied). It is significant that *Nelson*
12 refers to when a motion is pending to either reduce the bond amount or provide for alternate security
13 to consider these factors. Plaintiffs are attempting to use the decision to somehow waive a statutorily
14 imposed obligation to obtain an appropriate guarantee that the judgment at issue will be paid.

15 Taking each point in seriatim, the collection process is incredibly complicated. The Creecy
16 Plaintiffs each reside in Ohio, and in two different counties. The Khosrof Plaintiff resides in
17 Massachusetts. The Estate is a Nevada entity. As evidenced by the judgments in those respective
18 jurisdictions, a considerable effort needed to be employed to authenticate and obtain full faith and
19 credit for the Nevada judgments. Separate enforcement mechanisms in the respective jurisdictions
20 must be employed to obtain judgment enforcement and it is already evident that Plaintiffs have
21 refused to pay the judgments in their respective jurisdictions despite presentment of the judgments for
22 payment. Plaintiffs' nonsensical musings about probate procedures have nothing whatsoever to do
23 with these proceedings to obtain information about assets. Moreover, the claim against the Estate has
24 already been filed in Probate Court.⁷

25 Second, the amount of time to obtain judgment after appeal is unknown at this time, however,
26 as the *Nelson* Court advised, when considering this factor, the time within which the case is scheduled
27 to be on appeal needs to be factored. Plaintiffs filed their notice of appeal on June 14, 2022. They
28 already sought an extension of their briefing time which is now due on November 9, 2022, the date of
the hearing on this motion. At the earliest, the case will not be fully submitted until January 9, 2023,
possibly longer, depending upon whether there is motion practice associated with the filing of

⁷ Exhibit E

1 Plaintiffs' opening brief. It is likely, given the average time for appeals to make their way through the
2 Supreme Court, that an additional 6 months to 1 year from the submission of all briefing would a
3 decision render, extending the execution of any judgment for nearly two years of obtaining same.
4 Such a time period is extreme and endangers the viability of collection without some safeguard to
5 guarantee payment.

6 Third, the degree of confidence that the district court has in the availability of funds to pay the
7 judgment, is completely unknown. Plaintiffs' counsel has not bothered to interpose any evidence of
8 funding sources. The very purpose of this hearing is to ascertain just such information. If Plaintiffs
9 lack the requisite funds to pay a validly obtained judgment, all the more reason to obtain a proper
10 mechanism to secure it. If Plaintiffs' counsel's claims of their virtual "judgment proof" status are
11 correct, the question is raised why bother pursuing a stay and pursuing an appeal. The answer is
12 simple – either Plaintiffs have the resources or posting a bond with the likelihood of a loss by
13 Plaintiffs on appeal will result in the forfeiture of the bond and expenses associated with same.

14 Fourth, the judgment debtors' ability to pay, is most definitely a question. Again, these
15 proceedings are designed to elicit that very information, not for their counsel to profess his opinions.
16 If Plaintiffs are as destitute, as Plaintiffs' counsel would have this Court believe, this factor weighs
17 astonishingly high in VHS's favor.

18 Fifth, whether the judgment debtors' financial position is so precarious as to place other
19 creditors at risk, is also an open question. For all of the reasons cited above, this factor weighs heavily
20 in VHS's favor.

21 Thus, not only was Plaintiffs' counsel's analysis and reference to *Nelson* incomplete, he
22 misconstrued its import, and the factors articulated in that decision so weigh in favor of VHS that to
23 not require a bond or other viable security as a means of collection on the judgment would be
24 tantamount to this Court's overturning of the judgment itself. To agree with Plaintiffs' counsel's
25 assertions, the Plaintiffs cannot pay the judgment and absent some means of enforcing same, it renders
26 a judgment moot.

27 Had Plaintiffs and their counsel even read the law, certainly as Plaintiffs' counsel is obligated
28 to do, it would be clear that he was obligated to file an appeal bond on behalf of his clients long ago,

1 thus obviating the need to proceed with these enforcement proceedings. There can be only a limited
2 number of explanations for this “in your face” defiance: (1) Complete ignorance of the law; (2)
3 Complete disregard for the law; (3) A recognition that the Plaintiffs have no means with which to
4 satisfy a judgment, have little to no chance of success on appeal, and by posting an appeal bond, it is
5 more likely than not that the bond will be executed upon once the Plaintiffs lose the appeal. Any of
6 those scenarios are unacceptable reasons for defiance of legal requirements. Plaintiffs offer no legal
7 basis upon which they failed to fulfill the bond posting requirement or comply directly with multiple
8 court orders. Such conduct can be defined as nothing short of contemptuous.

9 Moreover, as the Supreme Court reminded us in *S. Fork Band of the Te-Moak Tribe v. State*
10 *Eng'r (in Re Determination of Relative Rights of Claimants & Appropriators of Waters of the*
11 *Humboldt River Stream Sys.*, 118 Nev. at 909, 59 P.3d at 1231, civil contempt is a mechanism by
12 which a party seeking the contempt may be recompensed for their costs and fees resulting from the
13 contempt. This would include the attorneys fees associated with the civil enforcement proceedings
14 which Plaintiffs so openly defied as well as the costs associated with this unnecessary and improper
15 motion practice by Plaintiffs’ counsel in a further attempt to distract from his incompetent and failed
16 attempt to prosecute a case which was dead for nearly a year before he filed it. Plaintiffs’ counsel bet
17 and lost. He cost his clients over \$120,000 for his actions and now cries foul to the Court for his own
18 failures. In so doing, he defies Court orders and now seeks a judicial lifeline from the same Court he
19 defied. What more will it take to impose lessons on attorneys in this State who do not comply with
20 rules and orders?

21 **B. Plaintiffs’ Motion Is Baseless**

22 In the first place, Plaintiffs’ counsel attempts to have this Court reconsider Judge Wiese’s
23 reconsideration, which itself is improper. There is no point in rehashing the nonsense in which
24 Plaintiffs’ counsel engaged which brought us to this point. The only issue before this Court is
25 discovery attendant to a judgment validly obtained after Plaintiffs rejected the NRCP 68 offer of
26 judgment for a waiver of costs, and after Plaintiffs’ case was dismissed upon the granting of summary
27 judgment due to their violation of the statute of limitations. All the rest proffered by Plaintiffs’
28 counsel is a smokescreen and attempt to distract from his multiple legal failures and calculations in

1 this case which wound up subjecting his clients to a six figure judgment. If he is so concerned about
2 his clients and their ability pay the judgment he caused due to his legal advice, he or his legal
3 malpractice carrier may feel free to pay on his clients behalf at any time. VHS does not care the
4 legitimate source of the funds so long as they are recompensed for Plaintiffs' counsel's legal folly.

5 **1. Claim of Defective Judgment Regarding Apportionment**

6 Plaintiffs' first assertion is that the judgment against them is defective in that it does not
7 indicate whether the Plaintiffs are jointly and severally liable nor did it apportion liability between and
8 among the respective Plaintiffs.

9 Conspicuously absent from Plaintiffs' motion is reference to the very rule which governs and
10 resulted in the judgment against them, NRCP 68.⁸ NRCP 68 states in pertinent part:

11 **(a) The Offer.** At any time more than 21 days before trial, any party
12 may serve an offer in writing to allow judgment to be taken in
13 accordance with its terms and conditions. Unless otherwise specified,
14 an offer made under this rule is an offer to resolve all claims in the
action between the parties to the date of the offer, including costs,
expenses, interest, and if attorney fees are permitted by law or contract,
attorney fees.

15 * * *

16 **(c) Joint Unapportioned Offers.**

17 * * *

18 **(3) Offers to Multiple Plaintiffs. An offer made to multiple
19 plaintiffs will invoke the penalties of this rule only if:**

20 **(A) the damages claimed by all the offeree plaintiffs are solely
21 derivative, such as where the damages claimed by some
22 offerees are entirely derivative of an injury to the others or
where the damages claimed by all offerees are derivative of an
injury to another; and**

23 **(B) the same entity, person, or group is authorized to decide**

24 ⁸ While it may be impossible to definitively ascribe motive for Plaintiffs' counsel's massive failure to
25 reference this rule, when observed in the totality of the actions taken related to these enforcement
26 proceedings and the predicate conduct which resulted in the imposition of the very judgment at issue,
27 this failure cannot be taken as an isolated incident but rather an attempt to either mislead the Court or
28 a complete disregard for his professional obligations. Nev. Rules of Prof'l Conduct 3.3 "(a) A lawyer
shall not knowingly: . . . (2) Fail to disclose to the tribunal legal authority in the controlling
jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed
by opposing counsel."

whether to settle the claims of the offerees.

(d) Acceptance of the Offer and Dismissal or Entry of Judgment.

- (1) Within 14 days after service of the offer, the offeree may accept the offer by serving written notice that the offer is accepted.
- (2) Within 21 days after service of written notice that the offer is accepted, the obligated party may pay the amount of the offer and obtain dismissal of the claims, rather than entry of a judgment.
- (3) If the claims are not dismissed, at any time after 21 days after service of written notice that the offer is accepted, either party may file the offer and notice of acceptance together with proof of service. The clerk must then enter judgment accordingly. The court must allow costs in accordance with NRS 18.110 unless the terms of the offer preclude a separate award of costs. Any judgment entered under this section must be expressly designated a compromise settlement.

(e) Failure to Accept Offer. If the offer is not accepted within 14 days after service, it will be considered rejected by the offeree and deemed withdrawn by the offeror. Evidence of the offer is not admissible except in a proceeding to determine costs, expenses, and fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. With offers to multiple offerees, each offeree may serve a separate acceptance of the apportioned offer, but if the offer is not accepted by all offerees, the action will proceed as to all. Any offeree who fails to accept the offer may be subject to the penalties of this rule.

(f) Penalties for Rejection of Offer.

- (1) **In General.** If the offeree rejects an offer and fails to obtain a more favorable judgment:
 - (A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and
 - (B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

(emphasis supplied). Furthermore, under NRS § 17.115, unapportioned offers made to multiple plaintiffs mandate the attorney fees and costs penalties once certain requirements are met. As spelled

1 out in NRS § 17.115(9), those sanctions do not apply to:

2 (b) An offer of judgment made to multiple plaintiffs unless the same
3 person is authorized to decide whether to settle the claims of all the
4 plaintiffs to whom the offer is made *and*:

5 (1) There is a single common theory of liability claimed by all the
6 plaintiffs to whom the offer is made;

7 (2) The damages claimed by one or more of the plaintiffs to whom the
8 offer is made are entirely derivative of an injury to the remaining
9 plaintiffs to whom the offer is made; *or*

10 (3) The damages claimed by all the plaintiffs to whom the offer is
11 made are entirely derivative of an injury to another person.

12 As the Supreme Court noted:

13 NRS 17.115 includes an alternative requirement that can be met
14 instead of the derivative damages requirement-an unapportioned offer
15 is also proper if there is a single common theory of liability claimed by
16 all plaintiffs. This language does not appear in NRCP 68.

17 "Apparent conflicts between a court rule and a statutory provision
18 should be harmonized and both should be given effect if possible." We
19 have previously addressed differences between NRCP 68 and NRS
20 17.115 and concluded that when NRCP 68 is silent with respect to
21 something addressed under NRS 17.115, "it should be interpreted
22 harmoniously with the more specific provisions and legislative policy
23 of NRS 17.115." Additionally, when possible, we construe statutes
24 such that no part of the statute is turned to mere surplusage.

25 Under NRCP 68, the defendant must show that the plaintiffs' damages
26 are derivative. NRS 17.115, on the other hand, allows the defendant to
27 show that there is a single common theory of liability *or* that the
28 damages are in some way derivative. To construe NRS 17.115 as
requiring Horizon to show that the injuries were derivative would
render NRS 17.115(9)(b)(1) mere surplusage. Therefore,
reading NRCP 68 and NRS 17.115 in harmony and giving effect to
both, we conclude that Horizon was required to demonstrate either that
the Albioses asserted a single common theory of liability against
Horizon *or* that the damages were derivative. Because the Albioses
jointly sued Horizon under the same constructional defect liability
theory, Horizon satisfied the first requirement necessary for a valid
offer of judgment involving multiple plaintiffs.

24 *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 422, 132 P.3d 1022, 1030-31 (2006).

25 This offer was an unapportioned offer of judgment made to Plaintiffs. On September 28,
26 2022, Plaintiffs' counsel acknowledged that this matter is derivative in nature. In other words,
27 Plaintiffs claims for the death of Rebecca Powell were derivative of the decedent's claims (now her
28 estate's claims) for the alleged wrongful death they were not permitted to prosecute due to the late

1 filing and violation of the statute of limitations. All Plaintiffs in this matter had their fortunes rise and
2 fall together. The offer was made jointly to them. Plaintiffs never responded to the offer and by
3 operation of Rule 68(e), it was deemed rejected collectively within 14 days of its making. The Rule
4 provides for “penalties” for rejection of offers and then a loss upon trial or judgment. That is what
5 occurred here. Rule 68, by its own terms, and NRS § 17.115 specifically provide for this very
6 situation. The plaintiffs jointly pursued a derivative claim against VHS, and jointly rejected the offer
7 to dismiss for a waiver of costs. They jointly rejected the offer. Now, they can be jointly responsible
8 for its payment and can decide between and among themselves how to reimburse one another for their
9 collective miscalculation. However, that is not VHS’s concern. That is between the Plaintiffs and
10 their counsel. VHS just wants partial compensation for the costs and fees which they incurred due to
11 Plaintiffs’ fools’ errand of a late filed lawsuit.

12 Once again, Plaintiffs’ counsel provides no legal authority to support his assertion, just the
13 Music Man’s “think system”, much the same as his personal belief that his clients were confused by
14 Rebecca Powell’s cause of death listed on her death certificate without having interposed one shred of
15 legal evidence to support his personal “out of thin air” conclusion.

16 As further proof of Plaintiffs’ counsel’s lack of genuineness in making this motion is his
17 assertion that it is unclear whether VHS seeks enforcement against Brian Powell, the Estate’s Special
18 Administrator, in his individual capacity or solely as the Estate’s Special Administrator, and therefore
19 only against the Estate.⁹ Plaintiffs brought this action on behalf of the Estate and individually named
20 heirs. Brian Powell was named solely in his capacity as the Special Administrator of the Estate. He
21 was not pursuing any personal claim for damages. His participation in enforcement proceedings is
22 solely as the Special Administrator, without his personal liability, but rather as the Estate’s
23 representative, as the Estate has the debt, not Mr. Powell. Plaintiffs’ counsel’s feigning of ignorance
24 on this issue is belied by the clear language of all captions and documents filed in this case. To
25 suggest otherwise is counsel’s further attempt at distracting from the simple, core issue here – his
26 mistake and that of his clients resulting in a judgment against the clients.

27 ⁹ Just so there is no confusion, the judgment is against the Estate and the individually named plaintiffs
28 only.

1 **2. Probate Procedures Are Irrelevant to These Proceedings**

2 In yet another attempt to hoodwink this Court, Plaintiffs selectively cite to NRS §147.195
3 which states in its entirety:

4 **The debts and charges of the estate must be paid in the following**
5 **order:**

- 6 1. Expenses of administration.
7 2. Funeral expenses.
8 3. The expenses of the last illness.
9 4. Family allowance.
10 5. Debts having preference by laws of the United States.
11 6. Money owed to the Department of Health and Human Services as a
12 result of the payment of benefits for Medicaid.
13 7. Wages to the extent of \$600, of each employee of the decedent, for
14 work done or personal services rendered within 3 months before the
15 death of the employer. If there is not sufficient money with which to
16 pay all such labor claims in full, the money available must be
17 distributed among the claimants in accordance with the amounts of
18 their respective claims.
19 8. Judgments rendered against the decedent in his or her lifetime, and
20 mortgages in order of their date. The preference given to a mortgage
21 extends only to the proceeds of the property mortgaged. If the proceeds
22 of that property are insufficient to pay the mortgage, the part remaining
23 unsatisfied must be classed with other demands against the estate.
24 9. All other demands against the estate.

25 (emphasis supplied). Conspicuously absent from Plaintiffs' citation to this statute is the phrase "The
26 debts and charges of the estate must be paid in the following order:." These proceedings have nothing
27 whatsoever to do with the order of payment of a debt. This judgment debtors' examination is to
28 ascertain the specific assets of the respective judgment debtors including the Estate. At this point, we
are not discussing priority of payment. We are discussing what the Estate and the remaining Plaintiffs
possess to pay the judgment. Once those assets are identified, enforcement would occur within the
respective forums required.

Moreover, Plaintiffs cite no authority to demonstrate that a judgment may not be secured in the
district court stemming from a motion pursuant to NRCP 68 and other governing statutes against the
Estate or the individual Plaintiffs. In fact, where else, other than district court, was VHS supposed to
secure the very judgment against the Estate at issue?¹⁰ The Probate Court lacks any authority to

¹⁰ Out of an abundance of caution, in order to pursue the judgment against the Estate once assets are
(footnote continued)

1 render any Rule 68 penalties against an Estate in proceeding which were not before it which
2 precipitated the penalties themselves. Once again, more misdirection by Plaintiffs' counsel.

3 Furthermore, Plaintiffs' reliance upon *Jacobson v. Estate of Clayton*, 121 Nev. 518, 119 P.3d
4 132 (2005) is entirely misplaced as the facts and holding are completely inapplicable to this scenario.
5 In *Jacobson*, plaintiff had a tort action against the decedent's estate. The Nevada Supreme Court
6 revisited its 1969 decision in *Bodine v. Stinson*, 85 Nev. 657, 461 P.2d 868 (1969) in which the Court
7 determined that the probate statutes of NRS Chapter 147 provide the statutory scheme for the
8 administration of estates and must be followed in every case regardless of the existence of insurance.
9 The import of *Jacobson* was the conclusion that *Bodine* was superseded by the Legislature's 1971
10 amendment of NRS 140.040 to specifically allow suits against a special administrator, in place of
11 probate proceedings, when the estate's sole asset is a liability insurance policy.

12 Plaintiffs' citation to *Jacobson* as standing for the proposition that probate procedures be
13 followed first by filing a claim with the administrator¹¹ is not only inaccurate, but problematic. In the
14 first place, Plaintiffs' citation within *Jacobson* is actually the *Jacobson* Court's quotation of the now
15 overruled *Bodine* case. Second, this proceeding is not a lawsuit filed against the Estate. This is a
16 penalty imposed upon the Estate by this Court for their rejection of a valid offer of judgment. Third,
17 these proceedings are to ascertain the specific assets of the judgment debtors, nothing more at this
18 point. Plaintiffs cite no authority indicating that this Court lacks jurisdiction to conduct the judgment
19 debtors' examination of any Plaintiff, including the Estate. It is extremely disturbing that Plaintiffs'
20 counsel's improper reliance and mischaracterization of *Jacobson* is being advanced to support his
21 untenable position.

22 Moreover, counsel's reference to the Special Administrator being authorized to proceed
23

24 ascertained in these proceedings, a creditor's claim was filed with the Probate Court along with notice
25 of entry of judgment from this Court (**collectively Exhibit E**). Given that this is a judgment obtained
26 in district court, not subject to payment of an original claim against the Estate based upon the liability
27 of a decedent before death, this filing was extraneous. To the extent that the Probate Court must be
28 aware of any dissipation of Estate assets due to subsequently obtained judgments after death for issues
arising after death, the Probate Court has been so notified.

¹¹ Plaintiffs' Motion, pp. 10-11

1 without bond refers solely to that individual's dispensation as to his personal liability for his actions
2 on the Estate's behalf. The Probate Court's appointment of Mr. Powell without bond did not refer to
3 his posting of an appeal bond on the Estate's behalf before his ability to pursue to that appeal of the
4 motion to reconsider the imposition of Rule 68 penalties which form the basis of the judgment at
5 issue.

6 **3. The Non-Estate Plaintiffs Remain Liable for Judgment**

7 Again, Plaintiffs' counsel employs the "think system" to the notion that the remaining
8 individually named Plaintiffs have no liability here. He spends so much time trying to create a
9 distraction regarding the Estate, he fails to address the simple notion that there are four individually
10 named Plaintiffs against whom judgments have already been entered in their home counties.¹² For all
11 of the reasons cited hereinabove, there is no excuse nor bar to collection of the judgment against each
12 and every one of the Plaintiffs. Once again, they collectively rejected the offer of judgment made to
13 each of them. As a result, they each remain liable for payment of the entire judgment, jointly and
14 severally.

15 **C. Fees and Costs Should Be Assessed Against Plaintiffs and Their Counsel**

16 EDCR 7.60 states in pertinent part:

17 **(a) If without just excuse or because of failure to give reasonable**
18 **attention to the matter, no appearance is made on behalf of a party**
19 **on the call of a calendar, at the time set for the hearing of any**
 matter, at a pre-trial conference, or on the date of trial, the court may
 order any one or more of the following:

20 **(1) Payment by the delinquent attorney or party of**
21 **costs, in such amount as the court may fix, to the**
 clerk or to the adverse party.

22 **(2) Payment by the delinquent attorney or party of the**
23 **reasonable expenses, including attorney's fees, to**
 any aggrieved party.

24 **(3) Dismissal of the complaint, cross-claim, counter-**
25 **claim or motion or the striking of the answer and**
26 **entry of judgment by default, or the granting of the**
 motion.

27 **(4) Any other action it deems appropriate, including,**

28 ¹² **Exhibit D**

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without limitation, imposition of fines.

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

- (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
- (2) Fails to prepare for a presentation.
- (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.
- (4) Fails or refuses to comply with these rules.
- (5) Fails or refuses to comply with any order of a judge of the court.

(emphasis supplied).

NRS § 7.085 states:

If a court finds that an attorney has:

(a) **Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith;** or

(b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State,

the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.

2. The court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

(emphasis supplied).

1 NRS § 18.010 states in pertinent part:

2 1. The compensation of an attorney and counselor for his or her
3 services is governed by agreement, express or implied, which is not
restrained by law.

4 2. In addition to the cases where an allowance is authorized by specific
5 statute, **the court may make an allowance of attorney's fees to a
prevailing party:**

6 * * *

7 **(b) Without regard to the recovery sought, when the court finds**
8 **that the claim, counterclaim, cross-claim or third-party complaint**
9 **or defense of the opposing party was brought or maintained**
10 **without reasonable ground or to harass the prevailing party. The**
11 **court shall liberally construe the provisions of this paragraph in**
12 **favor of awarding attorney's fees in all appropriate situations.** It is
13 the intent of the Legislature that the court award attorney's fees
14 pursuant to this paragraph and impose sanctions pursuant to Rule 11 of
the Nevada Rules of Civil Procedure in all appropriate situations to
punish for and deter frivolous or vexatious claims and defenses
because such claims and defenses overburden limited judicial
resources, hinder the timely resolution of meritorious claims and
increase the costs of engaging in business and providing professional
services to the public.

15 3. In awarding attorney's fees, the court may pronounce its decision on
16 the fees at the conclusion of the trial or special proceeding without
written motion and with or without presentation of additional evidence

17 (emphasis supplied).

18 In imposing costs and fees on the offending counsel, the Court in *Berberich v. S. Highland*
19 *Cnty. Ass'n*, 2019 Nev. Dist. LEXIS 130, *11, Case No. A-16-731824-C, (Nev. Dist. Ct. January 29,
20 2019) stated “NRS 7.085 essentially provides, where an attorney violates NRS 18.010(2), NRCP 11 or
21 EDCR 7.60, the delinquent lawyer may be required to personally pay the additional costs, expenses
22 and/or attorney's fees in all appropriate situations. Notably, as shown above, NRS 18.010(2)(b),
23 EDCR 7.60 and NRS 7.085 do not require Defendants to be "prevailing parties" and attorneys' fees
24 may be awarded without regard to the recovery sought.” “The statutes are clear—parties who bring
25 and maintain an action without grounds shall have attorney fees imposed against them. We therefore
26 reverse the district court's decision regarding attorney fees and remand for a determination of attorney
27 fees pursuant to NRS 7.085.” *Lopez v. Corral*, Nos. 51541, 51972, 2010 Nev. LEXIS 69, at *24, 2010
28 WL 5541115 (Dec. 20, 2010). The Nevada Supreme Court also held that:

1 [t]he language of NRS 7.085 is straightforward. Subsection 1 of NRS
2 7.085 provides that district courts "shall" hold attorneys "personally"
3 liable for "additional costs, expenses and attorney's fees" under certain
4 circumstances. If the statutory conditions are met, "the court shall"
5 impose a sanction of taxable fees and costs "reasonably incurred
6 because of such conduct." *Id.* With respect to "such conduct," the
7 statute requires no more than what it states: in relevant part, that "a
8 court find[] that an attorney has" (i) "[brought or] maintained ... a civil
9 action" that (ii) either (a) "is not well-grounded in fact," (b) "is not
10 warranted by existing law," or (c) "is not warranted ... by a[] [good
11 faith] argument for changing the existing law." *See* NRS 7.085(1)(a).
12 Subsection 2 requires Nevada courts to "liberally construe" subsection
13 1 "in favor of awarding costs, expenses and attorney's fees *in all*
14 *appropriate situations.*" NRS 7.085(2) (emphasis added).

15 *Washington v. AA Primo Builders, Ltd. Liab. Co.*, 440 P.3d 49 (Nev. 2019). As noted, NRS
16 7.085 is non-discretionary. Upon a finding that any of the criteria of NRS 7.085 or EDCR 7.60 have
17 been met, the Court is obligated to impose costs and sanctions.

18 As demonstrated above, it is uncontroverted that Plaintiffs' and their counsel defied multiple
19 Court orders. They failed to produce materials ordered by September 14, 2022 directed at their
20 respective assets. They failed to appear for a judgment debtors' examination on September 28, 2022
21 as ordered by this Court. Despite having their counsel served with a copy of the motion for the
22 judgment debtors examination, Plaintiffs and their counsel did absolutely nothing to seek a protective
23 order, nor to stay the proceedings before any of the deadlines by which to comply had elapsed.
24 Plaintiffs' counsel's sole communication in this regard was the aforementioned email at 2:21 the day before
25 the scheduled hearing to advise that his clients would be defying this Court's order and not appear for
26 the hearing, followed by his after business day filing the day before the scheduled hearing, his motion
27 to stay these proceedings. When asked in open Court why he took no action on his clients' behalf,
28 Plaintiffs' counsel had no valid excuse. He supplied no affidavits of his clients regarding their
financial circumstances. He provided no evidence of anything. Instead, as he did in opposition to the
summary judgment motion, he interposed his own beliefs and interpretations without any evidentiary
substantiation whatsoever. As if that failure did not land him in enough trouble by having this case
dismissed and subjecting his clients to the judgment now pending, the failure of the Court to impose
sanctions, costs and fees on Plaintiffs' counsel emboldened the very behavior which brings this
countermotion to bear. By failing to call out this behavior and impose the financial hardship on

1 Plaintiffs' counsel he so richly deserves by defying Court orders and engaging in baseless and
2 unsupported motion practice, which itself attempts to mislead the Court as to the proper state of the
3 law and the proceedings, it further encourages the very behavior which must be deterred. No longer
4 should this attorney or any other be permitted to operate with impunity and continue to delay, harass
5 and improperly utilize the legal system to the detriment of others. Plaintiffs and their counsel cost
6 VHS money here, multiple times. Their conduct needs to be met with compensation for their actions
7 upon a proper hearing at which evidence of the time spent preparing for the September 28, 2022
8 hearing, preparing the application for same, and now preparing this opposition and countermotion and
9 further attendance at the hearing of same should be paid for courtesy of Mr. Padda. Once he starts by
10 paying for the trouble he precipitates, he will be deterred from creating it in the future.

11 The totality of this is conduct not only warrants the imposition of costs and fees, but it is also
12 conduct to which this Court should refer Mr. Padda to Bar Counsel for disciplinary action.

13 DATED this 28th day of October, 2022

14 LEWIS BRISBOIS BISGAARD & SMITH LLP

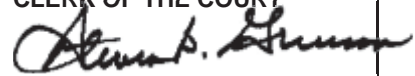
15 By /s/ Adam Garth
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21 Las Vegas, Nevada 89118
22 Tel. 702.893.3383
23 *Attorneys for Attorneys for Defendant Valley*
24 *Health System, LLC dba Centennial Hills Hospital*
25 *Medical Center*
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 28th day of October, 2022, a true and correct copy
3 of **DEFENDANT/JUDGMENT CREDITOR VALLEY HEALTH SYSTEM, LLC'S**
4 **OPPOSITION TO PLAINTIFFS' MOTION TO STAY EXECUTION ON JUDGMENT FOR**
5 **ATTORNEYS' FEES AND COSTS INCLUDING STAY OF EXAMINATION OF JUDGMENT**
6 **DEBTORS AND PRODUCTION OF DOCUMENTS AND COUNTERMOTION FOR**
7 **CONTEMPT AND ATTORNEYS' FEES** was served by electronically filing with the Clerk of the
8 Court using the Odyssey E-File & Serve system and serving all parties with an email-address on
9 record, who have agreed to receive electronic service in this action.

10 Paul S. Padda, Esq.
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17 *Attorneys for Plaintiffs*

18 By /s/ Sue Awe
19 an Employee of
20 LEWIS BRISBOIS BISGAARD & SMITH LLP
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*Attorneys for Defendant Valley Health System,
7 LLC dba Centennial Hills Hospital Medical
Center*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISAIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
18 business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
19 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
20 JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
21 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z,;

22 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

**APPENDIX TO
DEFENDANT/JUDGMENT CREDITOR
VALLEY HEALTH SYSTEM, LLC'S
OPPOSITION TO PLAINTIFFS'
MOTION TO STAY EXECUTION ON
JUDGMENT FOR ATTORNEYS' FEES
AND COSTS INCLUDING STAY OF
EXAMINATION OF JUDGMENT
DEBTORS AND PRODUCTION OF
DOCUMENTS AND COUNTERMOTION
FOR CONTEMPT AND ATTORNEYS'
FEES**

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INDEX TO DEFENDANT'S APPENDIX

Exhibit	Document	Date	Page Nos.
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B	Notice of Entry of Order on Order Directing Examination of Judgment Debtors and Production of Documents	08/19/2022	67-74
C	Email String Between Paul Padda and Adam Garth – Re: Estate of Rebecca Powell	9/27/2022	75-77
D	Judgments Entered Against Plaintiffs in Respective Jurisdictions	9/27/2022	78-210
E	Probate Court Claim	10/06/2022	211-213

DATED this 28th day of October, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth

S. BRENT VOGEL

Nevada Bar No. 6858

ADAM GARTH

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Tel. 702.893.3383

*Attorneys for Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical Center*

1 **CERTIFICATE OF SERVICE**

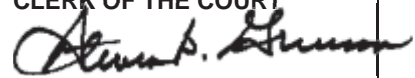
2 I hereby certify that on this 28th day of October, 2022, a true and correct copy of **APPENDIX**
3 **TO DEFENDANT/JUDGMENT CREDITOR VALLEY HEALTH SYSTEM, LLC'S**
4 **OPPOSITION TO PLAINTIFFS' MOTION TO STAY EXECUTION ON JUDGMENT FOR**
5 **ATTORNEYS' FEES AND COSTS INCLUDING STAY OF EXAMINATION OF**
6 **JUDGMENT DEBTORS AND PRODUCTION OF DOCUMENTS AND**
7 **COUNTERMOTION FOR CONTEMPT AND ATTORNEYS' FEES** was served by
8 electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving
9 all parties with an email-address on record, who have agreed to receive electronic service in this
10 action.

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Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

21 By /s/ Sue Awe
22 an Employee of
23 LEWIS BRISBOIS BISGAARD & SMITH LLP
24
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EXHIBIT A



EXPM

S. BRENT VOGEL
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*Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z,;

Defendants.

Case No. A-19-788787-C

Dept. No.: 7

**EX PARTE APPLICATION FOR
JUDGMENT DEBTORS EXAMINATION
AND PRODUCTION OF DOCUMENTS**

Judgment Creditor, VALLEY HEALTH SYSTEM, LLC, applies to this Court for an Order
setting and requiring Judgment Debtors, ESTATE OF REBECCA POWELL, through BRIAN
POWELL, as Special Administrator, individually and as the representative or "person most
knowledgeable", DARCI CREECY, TARYN CREECY, ISIAH KHOSROF, and LLOYD

1 CREECY, to each appear and answer upon oath or affirmation questions concerning Judgment
2 Debtors' assets, pursuant to NRS Chapter 21 and produce documents attendant thereto.

3 This Motion is based on the following Points and Authorities, and the pleadings and papers on
4 file herein, and any oral argument permitted by this Court.

5 DATED this 19th day of July, 2022

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7 By /s/ Adam Garth
8 S. BRENT VOGEL
9 Nevada Bar No. 6858
10 ADAM GARTH
11 Nevada Bar No. 15045
12 6385 S. Rainbow Boulevard, Suite 600
13 Las Vegas, Nevada 89118
14 Tel. 702.893.3383
15 *Attorneys for Attorneys for Defendant Valley*
16 *Health System, LLC dba Centennial Hills Hospital*
17 *Medical Center*
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1 **DECLARATION OF ADAM GARTH, ESQ. IN SUPPORT OF MOTION FOR**
2 **EXAMINATION OF JUDGMENT DEBTORS**

3 I, ADAM GARTH, ESQ. do declare under penalty of perjury as follows:

4 1. I am an attorney and partner with the law firm Lewis Brisbois Bisgaard & Smith LLP
5 and am duly licensed in the State of Nevada.

6 2. I am an attorney of record representing Valley Health System, LLC ("Judgment
7 Creditor") in the above entitled action, before Department 7 of the Eighth Judicial District Court for
8 the State of Nevada, Case No. A-19-788787-C.

9 3. I make this Declaration in support of Judgment Creditor's Motion for Examination of
10 Judgment Debtors.

11 4. I have personal knowledge of the facts contained herein and am competent to testify to
12 these facts.

13 5. A judgment was entered in this action on June 7, 2022 in favor of the Judgment
14 Creditor and against Plaintiffs Estate of Rebecca Powell, through Brian Powell as Special
15 Administrator, Darci Creecy, Taryn Creecy, Isaiah Khosrof, and Lloyd Creecy (collectively
16 "Judgment Debtors"), ordering them to pay the total sum of \$118,906.78 plus statutory interest
17 accruing from the date of the Judgment.

18 6. As of this date, no portion of the Judgment has been satisfied and to my knowledge,
19 Judgment Debtors have taken no action to satisfy the Judgment.

20 7. Attached hereto as **Exhibit A** is a true and correct copy of the June 7, 2022 Judgment
21 with Notice of Entry thereof.

22 8. Attached hereto as **Exhibit B** is a true and correct copy of the proposed Order
23 permitting the requested examination and production of materials.

24 9. This Motion has not been filed in bad faith, for the purpose of undue delay, or to harass
25 the Judgment Debtors or their counsel.

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I declare under the penalty of perjury that the foregoing is true and correct.

Dated this the 19th day of July, 2022

/s/ Adam Garth

Adam Garth, Esq.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 A Judgment was entered against Judgment Debtors on June 7, 2022, in the amount of
4 \$118,906.78 plus post judgment interest to run at the statutory rate, plus fees and costs in executing
5 the judgment. As of the date of this application, no payments have been made by Judgment Debtors to
6 satisfy this debt and Judgment Debtors have made no effort to pay the Judgment.

7 **II. LEGAL ARGUMENT**

8 **A. The Judgment Creditors Should be Permitted to Conduct Examination of the**
9 **Judgment Debtors.**

10 “Nevada law provides procedures governing execution on a judgment, including proceeding
11 supplementary to execution to aid the judgment creditor in collecting the judgment[.]” *Mona v. Eight*
12 *Judicial Dist. Court*, 132 Nev. 719, 726, 380 P.3d 836 (2016) (citing NRS 21.010-.340) (citations
13 omitted). “Under these procedures, a judgment creditor may conduct the examination of a judgment
14 debtor at any time after the judgment is entered,”¹ subject to certain automatic stay procedures. *Id.*
15 (citations omitted) (internal quotation marks omitted). Pursuant to NRS 21.270, any time after a
16 judgment is entered, a Judgment Creditor is entitled to proceed with a court-ordered Judgment Debtor
17 Examination. Specifically, NRS 21.270 states, in pertinent part, as follows:

- 18 1. A judgment creditor, at any time after the judgment is entered, is
19 entitled to an order from the judge of the court requiring the
20 judgment debtor to appear and answer upon oath or affirmation
21 concerning his property, before:
(a) The judge or a master appointed by him/her; or
(b) An attorney representing the judgment creditor.²

22 The Nevada Supreme Court has explained that a “judgment creditor can, in a summary
23 manner, compel the disclosure of any property belonging to the judgment debtor in the hands or under
24 the control of any other person, and of any indebtedness due to the judgment debtor, and for this

25 ¹ Judgments in Nevada are enforceable for six years. *See* NRS 11.190(1).

26 ² Although the statute also permits the examination to be conducted by “[a]n attorney representing the
27 judgment creditor,” Judgment Creditors request that this Court permit the examination to be
28 conducted before this Court or a master appointed by the Court. *See* NRS 21.270(1)(b).

1 purpose great latitude is usually allowed.” *Hagerman v. Tong Lee*, 12 Nev. 331, 334 (1877); *see also*
2 *Greene v. Eighth Judicial Dist. Ct.*, 115 Nev. 391, 396, 990 P.2d 184 (1999) (“Nevada law provides
3 proceedings supplementary to execution[.]” in order to permit a judgment creditor “to protect and
4 recover on a judgment.”) (citations omitted). Indeed, “[t]hese procedures have existed and been
5 largely unchanged since Nevada became a state, and now, as then, ‘[t]he creditor is always entitled to
6 prosecute the inquiry to such an extent as to enable him to ascertain the true condition of the property
7 and business affairs of the judgment debtor.’” *Mona*, 132 Nev. at 726-27 (citation omitted); *see also*
8 *Hagerman*, 12 Nev. at 334-35. “A judgment debtor who is regularly served with an order issued
9 pursuant to [NRS 21.270], and who fails to appear at the time and place specified in the order, may be
10 punished for contempt by the judge issuing the order.” NRS 21.270(3).

11 Pursuant to NRS 21.270, Judgment Creditor respectfully requests that this Court grant this
12 Motion to allow it to determine the identity and extent of property and assets in the possession or
13 control of the Judgment Debtors with which the Judgment may be satisfied. In this case, one judgment
14 has been entered against Judgment Debtors Estate of Rebecca Powell, through Brian Powell as Special
15 Administrator, Darci Creecy, Taryn Creecy, Isaiah Khosrof, and Lloyd Creecy attached hereto as
16 **Exhibit A** with notice of entry thereof. To date, no part of the Judgment has been paid by Judgment
17 Debtors. Accordingly, Judgment Creditor hereby requests this Court’s intervention to order the
18 Judgment Debtors to: (1) appear for an examination to answer questions regarding the property and
19 assets of each of the Judgment Debtors and (2) to produce the information and materials identified
20 herein so that Judgment Creditor may identify property and assets so as to satisfy the Judgment.
21 Judgment Creditor further respectfully requests that this Court order precluding the Judgment Debtors
22 from selling, transferring, or otherwise disposing of any property or assets not exempt from execution
23 pursuant to NRS 21.005, et seq. A proposed Order has been attached hereto. **See Exhibit B.**

24 **B. The Judgment Debtor Should be Ordered to Produce Documents and Things**
25 **in Its Possession Relating to Its Respective Property and Assets Prior to Its**
26 **Examination.**

27 The Nevada Supreme Court has made clear that “NRCp 69(a) also authorizes the judgment
28 creditor to ‘obtain discovery from any person, including the judgment debtor, in the manner provided

1 in' the NRC[.]” *Mona*, 132 Nev. at 726 (citations omitted); *see also* NRC[.] 69(a) (“In aid of the
2 judgment or execution, the judgment creditor . . . may obtain discovery from any person – including
3 the judgment creditor – as provided in these rules or by state law.”). Rule 34 of the Nevada Rules of
4 Civil Procedure permits a party to serve on another party requests for production of documents,
5 electronically stored information, and tangible things so as to “permit the requesting party or its
6 representative to inspect, copy, test, or sample” such items. NRC[.] 34(a)(1)(A)-(B). “The party to
7 whom the request is directed must respond in writing within 30 days after being served[;]” however,
8 “[a] shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.” NRC[.]
9 34(2)(A).

10 NRS 21.180 provides that “[a]ll goods, chattel, moneys and other property, real and personal,
11 of the judgment debtor not exempt by law, and all property and rights of property seized and held
12 under attachment in the action, shall be liable to execution.”

13 The Judgment Creditor therefore respectfully requests that this Court enter an Order requiring
14 the Judgment Debtors to provide the following documents, electronically stored information, and
15 tangible things to the Judgment Creditor at the law offices of **Lewis Brisbois Bisgaard & Smith**
16 **LLP, located at 6385 S. Rainbow Boulevard, Suite 600, Las Vegas, Nevada 89118**, no later than
17 **fourteen (14) days** prior to the date of the examinations so as to permit the Judgment Creditors to
18 prepare for such examinations and to conduct them in the most efficient manner possible. Judgment
19 Creditors further respectfully request that the Judgment Debtors be ordered to be prepared to discuss
20 the below-listed documents, electronically stored information, and tangible things at the time of their
21 respective examinations.

22 **Requests for Production to Each Judgment Debtor.**

23 *Instructions and Definitions.*

24 1. Each Judgment Debtor is instructed to respond to these Requests for Production
25 separately and pursuant to Rule 34 of the Nevada Rule of Civil Procedure.

26 2. “You” and “Your” shall refer to and any past or present agents, attorneys, accountants,
27 employees, representatives, or any other person or persons acting for, on behalf of, or in concert with
28 Estate of Rebecca Powell, through Brian Powell as Special Administrator, Darci Creecy, Taryn

1 Creecy, Isaiah Khosrof, and/or Lloyd Creecy.

2 3. “Document” or “documents” means any tangible thing upon which any expression,
3 communication, representation, or data has been recorded by any means including, but not limited to,
4 handwriting, typewriting, printing, photostating, photographing, on a computer, instant messages,
5 magnetic impulse, or mechanical or electronic recording and any non-identical copies (whether
6 different from the original because of notes made on such copies, because of indications that said
7 copies were sent to different individuals than were the originals, or because of any other reason),
8 including but not limited to working papers, preliminary, intermediate, or final drafts, correspondence,
9 memoranda, charts, notes, records of any sort of meetings, invoices, financial statements, financial
10 calculations, diaries, reports of telephone or other oral conversations, desk calendars, appointment
11 books, audio or video tape recordings, microfilm, microfiche, computer tape, computer disk, computer
12 printout, computer card, and all other writings and recordings of every kind that are in your actual or
13 constructive possession, custody or control.

14 4. “Referring to” or “relating to” means concerning, reflecting, discussing, referring or
15 relating to, describing, evidencing, or constituting.

16 5. The term “identify” when used with respect to a person, shall mean to provide: (a) his
17 or her full name; (b) present (or last known) business and residence; (c) telephone numbers; (d) the
18 name and address of his or her present (or last known) employer; and (e) his or her title or position
19 with that employer.

20 6. The term “identify” when used with respect to a document, shall mean to state: (a) the
21 identity of each person who authored or prepared the document; (b) the identity of each person who
22 signed it and in whose name it was issued; (c) the identity of each person to whom it was address or
23 distributed; (d) its date; (e) its present location; (f) its substance; and (g) the identity of each person
24 currently having custody or possession of it.

25 7. Wherever used herein, the singular includes the plural and vice versa; the words “and”
26 and “or” shall be both conjunctive and disjunctive; the words “all” and “any” shall mean “any and
27 all”; the word “including” means “including without limitation.”

28 *Requests for Production.*

1 **REQUEST FOR PRODUCTION NO. 1:**

2 Any and all monthly statements, books of account, check books, records of wire transfers, cancelled
3 checks and instruments of deposit and/or withdrawal for any accounts located at any financial or
4 banking institution including, but not limited to, bank, savings and loan association, investment,
5 brokerage, hedge fund, mutual fund, merchant bank, thrift and loan, credit union, mutual thrift, and
6 virtual currency (including cryptocurrency) from January 1, 2017 to the present.

7 **REQUEST FOR PRODUCTION NO. 2:**

8 Any and all receipts for any and all safe-deposit boxes to which You have access, either directly or
9 indirectly, or which contain property belonging to You our which is under Your control from January
10 1, 2017 to the present.

11 **REQUEST FOR PRODUCTION NO. 3:**

12 Any and all deeds or other evidence of an ownership interest either directly, indirectly or beneficially
13 by You in any real property in any location and at any time during the period from January 1, 2017 to
14 the present.

15 **REQUEST FOR PRODUCTION NO. 4:**

16 Any and all property tax bills for any real property in which You have an ownership interest or in
17 which You had an ownership interest, either directly or indirectly, at any location and at any time
18 during the period from January 1, 2017 to the present.

19 **REQUEST FOR PRODUCTION NO. 5:**

20 Any and all mortgages or deeds of trust conveyed to You from which You derive a benefit of any
21 nature whatsoever, or in which You had an interest, from January 1, 2017 to the present.

22 **REQUEST FOR PRODUCTION NO. 6:**

23 Any and all promissory notes, security agreements, guarantees, leases or other commercial paper in
24 which You have an interest of any nature whatsoever or had an interest from January 1, 2017 to the
25 present.

26 **REQUEST FOR PRODUCTION NO. 7:**

27 Any contracts or any other agreements entered into by You or in which You have an interest or from
28 which You derive income from January 1, 2017 to the present.

REQUEST FOR PRODUCTION NO. 8:

Any and all stocks, bonds, securities, and security instruments owned by You directly, indirectly or beneficially or in which You have an interest or from which You derive a benefit from January 1, 2017 to the present.

REQUEST FOR PRODUCTION NO. 9:

Any and all Documents that reflect, refer, or relate to any interest, direct, indirect or beneficial You have in any corporation, partnership, limited liability company, joint venture or other entity from which You derive gain or expect to derive gain.

REQUEST FOR PRODUCTION NO. 10:

Any and all settlement agreements to which You are a party and which were entered into between January 1, 2017 to the present from which You received or are entitled to receive a benefit between January 1, 2017 and the present.

REQUEST FOR PRODUCTION NO. 11:

Any and all judgments entered in Your favor or in which You have an ownership interest from January 1, 2017 to the present.

REQUEST FOR PRODUCTION NO. 12:

Any and all contracts to which You are a party, including but not limited to, promissory notes, leases, security agreements, guarantees, rental agreements, leases, subleases, assignments, assumption agreements and any modifications thereto from January 1, 2017 to the present.

REQUEST FOR PRODUCTION NO. 13:

All financial statements either prepared by or for You for the period from January 1, 2017 to the present.

REQUEST FOR PRODUCTION NO. 14:

All applications for credit or loans of any kind either prepared by or for You for the period from January 1, 2017 to the present.

REQUEST FOR PRODUCTION NO. 15:

Any and all statements for all credit cards, debit cards, and cash cards held in Your name or issued to You or used by You or for Your benefit from January 1, 2017 to the present.

1 **REQUEST FOR PRODUCTION NO. 16:**

2 Any and all Documents that evidences any line(s) of credit, certificates of deposit, stocks, bonds or
3 other security interests owned or held by You, or in which You have an interest either directly or
4 indirectly from January 1, 2017 to the present.

5 **REQUEST FOR PRODUCTION NO. 17:**

6 Any and all Documents that reflect Your receipt either directly, indirectly or beneficially of rental
7 income, dividend income, interest income, proceeds from sale of real or personal property, proceeds
8 from sale of antiques, artifacts, paintings, jewelry and/or collectibles from January 1, 2017 to the
9 present.

10 **REQUEST FOR PRODUCTION NO. 18:**

11 All Documents that reflect, refer or relate to all income received by or which You are entitled to
12 receive from January 1, 2017 to the present, including, but not limited to, all state and federal tax
13 returns (including all schedules and amendments thereto), W2s, K-1s, 1099s, pay stubs, and all
14 Documents provided and received from all personal accountants for your yearly tax preparation and
15 submission.

16 **REQUEST FOR PRODUCTION NO. 19:**

17 All Documents that reflect, refer or relate to any monetary and non-monetary obligations owed to You
18 with a value in excess of \$20.00 from January 1, 2017 to the present, regardless of whether such
19 obligations have been satisfied.

20 **REQUEST FOR PRODUCTION NO. 20:**

21 All Documents that reflect, refer or relate to all costs and expenses incurred by You for each month
22 from January 1, 2017 to the present.

23 **REQUEST FOR PRODUCTION NO. 21:**

24 All insurance policies and other Documents that reflect, refer or relate to any insurance policy that
25 You currently own, previously owned, and/or are or were a named insured or beneficiary from
26 January 1, 2017 to the present.

27 **REQUEST FOR PRODUCTION NO. 22:**

28 Any and all information and documentation identifying all automobiles, cars, vans, trucks, sport utility

1 vehicles (SUVs), airplanes, motorcycles, side-by-sides, personal watercraft, boats, snowmobiles, all-
2 terrain vehicles (ATVs), and any other vehicle owned by You, whether individually, jointly, or
3 otherwise, and without regard to any liens or other encumbrances.

4 **REQUEST FOR PRODUCTION NO. 23:**

5 All forms, schedules, calculations, summaries, statements, petitions, and other documents submitted
6 by You or on Your behalf to any bankruptcy court, along with any amendments or modification to the
7 same, from January 1, 2019 to the present.

8 **III. CONCLUSION**

9 Based on the foregoing, Judgment Creditor respectfully request that this Court grant this
10 Motion and enter an Order directing the Judgment Debtors to each appear before this Court (or before
11 a master appointed by this Court) to answer questions under oath regarding their respective property
12 and assets; to each produce the information and materials identified herein no later than fourteen (14)
13 days prior to the examination hearing; and to prohibit the them from selling, transferring, or otherwise
14 disposing of any property or assets not exempt from execution.

15 DATED this 19th day of July, 2022

16 LEWIS BRISBOIS BISGAARD & SMITH LLP

17 By /s/ Adam Garth

18 S. BRENT VOGEL

19 Nevada Bar No. 6858

20 ADAM GARTH

21 Nevada Bar No. 15045

22 6385 S. Rainbow Boulevard, Suite 600

23 Las Vegas, Nevada 89118

24 Tel. 702.893.3383

25 *Attorneys for Attorneys for Defendant Valley*

26 *Health System, LLC dba Centennial Hills Hospital*
27 *Medical Center*
28

1 **CERTIFICATE OF SERVICE**

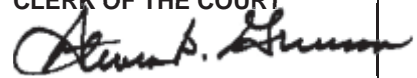
2 I hereby certify that on this 19th day of July, 2022, a true and correct copy of **EX PARTE**
3 **APPLICATION FOR JUDGMENT DEBTORS EXAMINATION** was served by electronically
4 filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with
5 an email-address on record, who have agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
7 PAUL PADDA LAW, PLLC
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Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

14 By /s/ Heidi Brown
15 an Employee of
16 LEWIS BRISBOIS BISGAARD & SMITH LLP
17
18
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EXHIBIT A



NJUD
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Las Vegas, Nevada 89118
Telephone: 702.893.3383
Facsimile: 702.893.3789
*Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISAIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z,;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF JUDGMENT

1 PLEASE TAKE NOTICE that the Defendant Valley Health System LLC' Judgment of Costs
2 and Attorneys' Fees per NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) as Against
3 Plaintiffs was entered on June 2, 2022, a true and correct copy of which is attached hereto as **Exhibit**
4 **A.**

5
6 DATED this 7th day of June, 2022

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8 By /s/ Adam Garth

9 S. BRENT VOGEL

10 Nevada Bar No. 6858

11 ADAM GARTH

12 Nevada Bar No. 15045

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Tel. 702.893.3383

16 *Attorneys for Attorneys for Defendant Valley*

17 *Health System, LLC dba Centennial Hills Hospital*

18 *Medical Center*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 7th day of June, 2022, a true and correct copy of **NOTICE OF**
3 **ENTRY OF JUDGMENT** was served by electronically filing with the Clerk of the Court using the
4 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have
5 agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
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Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

14
15
16 By /s/ Maria T. San Juan
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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EXHIBIT A

JUDG
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Telephone: 702.893.3383
Facsimile: 702.893.3789
*Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISALIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as “Centennial Hills Hospital Medical
Center”), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM LLC’S JUDGMENT OF COSTS
AND ATTORNEYS’ FEES PER NRS
18.020, 18.005, 18.110, 17.117, and N.R.C.P.
68(f) AS AGAINST PLAINTIFFS**

Pursuant to the Order granting Defendant Valley Health System, LLC’s motion for summary judgment dated and entered on November 19, 2021 (**Exhibit “A”**), the Order granting Defendant Valley Health System, LLC’s motion for reconsideration regarding motion for attorneys’ fees dated and entered on May 4, 2022 (**Exhibit “B”**), and pursuant to Defendant Valley Health System, LLC’s notice of withdrawal of appeal dated and filed in the Nevada Supreme Court on May 12, 2022

1 (Exhibit "C"),

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

3 That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

4 Defendants Valley Health System, LLC shall be awarded their reasonable costs and
5 attorneys' fees pursuant to NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) in the amounts
6 of \$110,849.85 for attorneys' fees, and costs of \$8,056.93, for a total of \$118,906.78 in accordance
7 with the Court's orders attached hereto as **Exhibits "A" and "B"** based upon the withdrawal of
8 Defendant's appeal as attached hereto as **Exhibit "C"**.

9 DATED this _____ day of _____, 2022.

Dated this 2nd day of June, 2022

10
11 _____
12 DISTRICT COURT JUDGE

13 Respectfully Submitted By: **7B8 6E9 6A6B C7E9**
14 LEWIS BRISBOIS BISGAARD & SMITH LLP
15 Jerry A. Wiese
16 District Court Judge

17 By /s/ Adam Garth
18 S. BRENT VOGEL
19 Nevada Bar No. 6858
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24 Tel. 702.893.3383
25 *Attorneys for Attorneys for Defendant Valley*
26 *Health System, LLC dba Centennial Hills Hospital*
27 *Medical Center*
28

23 ///

24 ///

25 ///

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27 ///

28 ///

1 Agreed as to form and substance by:

2

Refused to sign

3

Paul S. Padda, Esq.

4

Srilata Shah, Esq.

5

PAUL PADDA LAW, PLLC

6

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Attorneys for Plaintiffs

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this ____ day of May, 2022, a true and correct copy of **DEFENDANT**
3 **VALLEY HEALTH SYSTEM LLC'S JUDGMENT OF COSTS AND ATTORNEYS' FEES**
4 **PER NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) AS AGAINST PLAINTIFFS** was
5 served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system
6 and serving all parties with an email-address on record, who have agreed to receive electronic service
7 in this action.

8 Paul S. Padda, Esq.
9 PAUL PADDA LAW, PLLC
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15 *Attorneys for Plaintiffs*

16 By /s/ Heidi Brown
17 An Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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From: [Paul Padda](#)
To: [Garth, Adam](#); [Srilata Shah](#)
Cc: [Vogel, Brent](#); [Brown, Heidi](#); [San Juan, Maria](#)
Subject: [EXT] RE: Powell v Valley - CHH's Judgment for Costs #2.pdf
Date: Monday, May 16, 2022 1:26:18 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)



We cannot agree to this. Thanks.

Paul S. Padda, Esq.

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Nevada Physical Office:

4 6 D r d 3
d 3
7 366-

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4 3 d 3 37
d 73



PAUL PADDA LAW

IT'S NOT ABOUT THE INJURY. IT'S ABOUT THE RECOVERY.

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Thursday, May 12, 2022 12:43 PM

To: Paul Padda <psp@paulpaddalaw.com>; Srilata Shah <sri@paulpaddalaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Brown, Heidi <Heidi.Brown@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>

Subject: Powell v Valley - CHH's Judgment for Costs #2.pdf

Counsel,

Please see attached. Please advise if we may affix your e-signature to the judgment.

Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

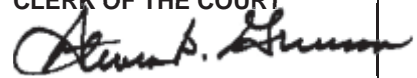
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EXHIBIT A



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7 *Attorneys for Defendant Valley Health System,*
LLC dba Centennial Hills Hospital Medical
8 *Center*

9
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISAIAH KHOSROF, individually and as
14 an Heir; LLOYD CREECY, individually;,,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
18 Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
19 foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
20 CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
21 individual; DOES 1-10; and ROES A-Z;,,

22 Defendants.

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

23
24 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
25 captioned matter on the 19th day of November 2021, a copy of which is attached hereto.

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DATED this 19th day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
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*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

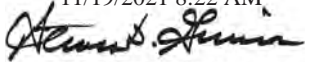
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19th day of November, 2021, a true and correct copy of
3 **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the
4 Court using the Odyssey E-File & Serve system and serving all parties with an email-address on
5 record, who have agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
7 PAUL PADDA LAW, PLLC
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*Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.*

14
15 By /s/ Roya Rokni
16 An Employee of
17 LEWIS BRISBOIS BISGAARD & SMITH LLP
18
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CLERK OF THE COURT**ORDR**

S. BRENT VOGEL

Nevada Bar No. 6858

Brent.Vogel@lewisbrisbois.com

ADAM GARTH

Nevada Bar No. 15045

Adam.Garth@lewisbrisbois.com

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*Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISALIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually;,,

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;,,

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**ORDER VACATING PRIOR ORDER
DENYING DEFENDANT VALLEY
HEALTH SYSTEM, LLC DBA
CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING SAID DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
PER MANDAMUS OF NEVADA
SUPREME COURT**

This matter, coming before this Honorable Court on November 18, 2021 at 10:30 a.m. in
accordance with the order granting the petition for a writ of mandamus issued by the Nevada
Supreme Court dated October 18, 2021, directing that this Court vacate its order of October 29,
2020, which previously denied Defendant VALLEY HEALTH SYSTEM, LLC's motion for

1 summary judgment and co-defendants Concio and Shah's joinder thereto (collectively
2 "Defendants"), and ordering this Court to issue an order entering summary judgment in favor of
3 said Defendants due to the expiration of the statute of limitations, with Paul S. Padda, Esq. and
4 Srilata Shah, Esq. of PAUL PADDA LAW, PLLC, appearing on behalf of Plaintiffs, Adam Garth,
5 Esq., S. Brent Vogel, Esq. and Shady Sirsy, Esq., of the Law Offices of LEWIS BRISBOIS
6 BISGAARD & SMITH LLP, appearing on behalf of the Defendant VALLEY HEALTH SYSTEM,
7 LLC and John H. Cotton, Esq. and Brad Shipley, Esq. of JOHN H. COTTON AND ASSOCIATES,
8 appearing on behalf of DR. CONRADO C.D. CONCIO, M.D. and DR. VISHAL S. SHAH, M.D.,
9 with the Honorable Court having reviewed the order of the Nevada Supreme Court, finds and orders
10 as follows:

11 THE COURT FINDS that Defendants argued that undisputed evidence demonstrated
12 Plaintiffs were on inquiry notice of their alleged professional negligence, wrongful death, and
13 negligent infliction of emotional distress claims by June 11, 2017, at the latest, and

14 THE COURT FURTHER FINDS that Defendants contended that Plaintiffs' February 4,
15 2019 complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an
16 action for injury or death based on the negligence of a health care provider within three years of the
17 date of injury and within one year of discovering the injury, whichever occurs first), and

18 THE COURT FURTHER FINDS that the term injury in NRS 41A.097 means "legal injury."
19 *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury
20 when he knows or, through the use of reasonable diligence, should have known of facts that would
21 put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A
22 plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an
23 ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*,
24 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th
25 ed. 2009)), and

26 THE COURT FURTHER FINDS that while the accrual date for NRS 41A.097(2)'s one-
27 year period is generally a question for the trier of fact, this Court may decide the accrual date as a
28 matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462, and

1 THIS COURT FURTHER FINDS that here, irrefutable evidence demonstrated that
2 Plaintiffs were on inquiry notice by June 11, 2017, at the latest, when Plaintiff Brian Powell, special
3 administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged
4 that the decedent, Rebecca Powell, “went into respiratory distress” and her health care providers did
5 not appropriately monitor her, abandoning her care and causing her death, and

6 THIS COURT FURTHER FINDS that Brian Powell’s own allegations in the aforesaid
7 Board complaint demonstrate that he had enough information to allege a prima facie claim for
8 professional negligence-that in treating Rebecca Powell, her health care providers failed “to use the
9 reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained
10 and experienced providers of health care.” NRS 41A.015 (defining professional negligence); *Winn*,
11 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a “plaintiffs general belief that someone’s
12 negligence may have caused his or her injury” triggers inquiry notice), and

13 THIS COURT FURTHER FINDS that the evidence shows that Plaintiff Brian Powell was
14 likely on inquiry notice even earlier than the aforesaid Board complaint, wherein Plaintiffs alleged
15 they had observed in real time, following a short period of recovery, the rapid deterioration of
16 Rebecca Powell’s health while in Defendants’ care, and

17 THIS COURT FURTHER FINDS that Plaintiff Brian Powell filed a complaint with the
18 Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar
19 to the Nursing Board complaint, this complaint alleged facts, such as the Defendants’ failure to
20 upgrade care, sterilize sutures properly, and monitor Rebecca Powell, all of which suggest he already
21 believed, and knew of facts to support his belief, that negligent treatment caused Rebecca Powell’s
22 death by the time he made these complaints to NDHHS and the Nursing Board, and

23 THIS COURT FURTHER FINDS that even though Plaintiffs received Rebecca Powell’s
24 death certificate 17 days later, erroneously listing her cause of death as suicide, that fact did not
25 change the conclusion that Plaintiffs received inquiry notice prior to that date, and

26 THE COURT FURTHER FINDS that Plaintiffs did not adequately address why tolling
27 should apply under NRS 41A.097(3) (providing that the limitation period for a professional
28 negligence claim “is tolled for any period during which the provider of health care has concealed

1 any act, error or omission upon which the action is based”), and

2 THIS COURT FURTHER FINDS that even if Plaintiffs did adequately address the tolling
3 issue, such an argument would be unavailing, as the medical records provided were sufficient for
4 their expert witness to conclude that petitioners were negligent in Rebecca Powell’s care. *See Winn*,
5 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate
6 where the intentionally concealed medical records were “material” to the professional negligence
7 claims), and

8 THE COURT FURTHER FINDS that the doctrine of equitable tolling has not been extended
9 to NRS 41A.097(2), and

10 THIS COURT FURTHER FINDS that Plaintiffs did not adequately address whether such
11 an application of equitable tolling is appropriate under these facts. *See Edwards v. Emperor's*
12 *Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider
13 arguments that a party did not cogently argue or support with relevant authority), and

14 THE COURT FURTHER FINDS that Plaintiffs had until June 11, 2018, at the latest, to file
15 their professional negligence claim, making Plaintiffs’ February 4, 2019 complaint untimely, and

16 THE COURT FURTHER FINDS that given the uncontroverted evidence demonstrating that
17 Defendants were entitled to judgment as a matter of law because the complaint was time-barred
18 under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing
19 that courts must grant summary judgment when the pleadings and all other evidence on file, viewed
20 in a light most favorable to the nonmoving party, "demonstrate that no genuine issue as to any
21 material fact [remains] and that the moving party is entitled to a judgment as a matter of law"
22 (internal quotations omitted));

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court’s prior order
24 of October 29, 2020 denying VALLEY HEALTH SYSTEM, LLC’s motion for summary judgment
25 and co-defendants’ joinder thereto is vacated in its entirety, and

26 ///

27 ///

28 ///

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
2 VALLEY HEALTH SYSTEM, LLC's motion for summary judgment and co-defendants' joinders
3 thereto are granted in their entirety due to the untimely filing of this action by Plaintiffs.

4
5 Dated: _____.

Dated this 19th day of November, 2021



DISTRICT COURT JUDGE

8 DATED this ____ day of November, 2021.

DATED this 18th day of November, 2021

Jerry A. Wiese
District Court Judge

9
10 *UNSIGNED*

11 Paul S. Padda, Esq.
12 Srilata Shah, Esq.,
13 PAUL PADDALAW, PLLC
14 4560 S. Decatur Blvd., Suite 300
15 Las Vegas, NV 89103
16 Tel: 702.366.1888
17 Fax: 702.366.1940
18 psp@paulpaddalaw.com
19 Attorneys for Plaintiffs

DATED this 18th day of November, 2021

/s/ Brad Shipley

19 John H. Cotton, Esq.
20 Brad Shipley, Esq.
21 JOHN H. COTTON & ASSOCIATES
22 7900 W. Sahara Ave., Suite 200
23 Las Vegas, NV 89117
24 Tel: 702.832.5909
25 Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipley@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

/s/ Adam Garth

26 S. BRENT VOGEL, ESQ.
27 Nevada Bar No. 6858
28 ADAM GARTH, ESQ.
Nevada Bar No. 15045
SHADY SIRSY, ESQ.
Nevada Bar No. 15818
LEWIS BRISBOIS BISGAARD & SMITH
LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center

From: [Brad Shipley](#)
To: [Garth, Adam](#); [Srilata Shah](#); [Paul Padda](#)
Cc: [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#)
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 10:00:14 AM
Attachments: [image001.png](#)

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Adam,
I believe the bracketed word [proposed] in the title caption should be removed before submission to the court, but please use my e-signature with or without making that change. Thank you for taking the time to draft the order.

Brad Shipley, Esq.
John H. Cotton & Associates, Ltd.
7900 W. Sahara ave. #200
Las Vegas, NV 89117
bshipley@jhcottonlaw.com
702 832 5909

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Friday, November 12, 2021 8:50 AM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; John Cotton <jhcotton@jhcottonlaw.com>
Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Importance: High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com
T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Tuesday, November 9, 2021 10:33 AM

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

Adam Garth
Partner

R
7 6 3 433 r 7 433

From: [Garth, Adam](#)
To: [Paul Padda](#); [Srilata Shah](#); [Brad Shipley](#)
Cc: [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#); jhcotton@jhcottonlaw.com
Subject: RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 9:59:40 AM
Attachments: [image001.png](#)
[image002.png](#)

We are not willing to do that. As you were unwilling to stay anything at our request, we will return the courtesy.

From: Paul Padda <psp@paulpaddalaw.com>
Sent: Friday, November 12, 2021 9:56 AM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

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As you know, there is a motion for rehearing pending in the Supreme Court. Given that fact, and the lack of prejudice to Defendants, please advise if Defendants are willing to stay enforcement of the Supreme Court's decision which is the subject of a motion for rehearing? Thanks.

Paul S. Padda, Esq.
PAUL PADDALAW, PLLC
Websites: paulpaddalaw.com

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4560 South Decatur Blvd., Suite 300
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Sent: Friday, November 12, 2021 8:50 AM

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Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

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Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

Adam Garth

Partner

7 6 3 433 R
r 7 433

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
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 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: 11/19/2021

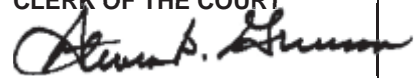
16 Paul Padda	psp@paulpaddalaw.com
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22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
24 Adam Garth	Adam.Garth@lewisbrisbois.com
25 Royak Rokni	roya.rokni@lewisbrisbois.com

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Diana Escobedo	diana@paulpaddalaw.com
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Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
Maria San Juan	maria.sanjuan@lewisbrisbois.com
Karen Cormier	karen@paulpaddalaw.com

EXHIBIT B



1 S. BRENT VOGEL
Nevada Bar No. 6858
2 Brent.Vogel@lewisbrisbois.com
ADAM GARTH
3 Nevada Bar No. 15045
Adam.Garth@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
Telephone: 702.893.3383
6 Facsimile: 702.893.3789
*Attorneys for Defendant Valley Health System,
7 LLC dba Centennial Hills Hospital Medical
Center*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
18 Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
19 foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
20 CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
21 individual; DOES 1-10; and ROES A-Z;,
22

23 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that the Order Regarding Valley Health System's Motion for
25 Reconsideration Regarding Motion for Attorneys' Fees was entered on May 4, 2022, a true and
26 correct copy of which is attached hereto.

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DATED this 4th day of May, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
Nevada Bar No. 6858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

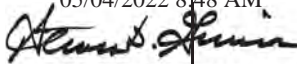
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 4th day of May, 2022, a true and correct copy of **NOTICE OF ENTRY**
3 **OF ORDER** was served by electronically filing with the Clerk of the Court using the Odyssey E-
4 File & Serve system and serving all parties with an email-address on record, who have agreed to
5 receive electronic service in this action.

6 Paul S. Padda, Esq.
7 PAUL PADDALAW, PLLC
8 4560 S. Decatur Blvd., Suite 300
9 Las Vegas, NV 89103
10 Tel: 702.366.1888
11 Fax: 702.366.1940
12 psp@paulpaddalaw.com
13 *Attorneys for Plaintiffs*

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bshipleyr@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

14
15
16 By /s/ Heidi Brown
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

ESTATE OF REBECCA POWELL, through)
BRIAN POWELL, as Special Administrator;)
DARCI CREECY, individually and as an Heir;)
TARYN CREECY, individually and as an Heir;)
ISAIAH KHOSROF, individually and as an)
Heir; LLOYD CREECY, individually,)

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing)
Business as "Centennial Hills Hospital)
Medical Center"), a foreign limited liability)
Company; UNIVERSAL HEALTH SERVICES,)
INC., a foreign corporation; DR. DIONICE)
S. JULIANO, M.D., an individual; DR.)
CONRADO C.D. CONCIO, M.D., an individual;)
DR. VISHAL S. SHAH, M.D., an individual;)
DOES 1-10; and ROES A-Z,)

Defendants.

CASE NO.: A-19-788787-C
DEPT. NO.: XXX

**ORDER RE: VALLEY
HEALTH SYSTEM'S
MOTION FOR
RECONSIDERATION RE
MOTION FOR
ATTORNEYS' FEES**

INTRODUCTION

The above-referenced matter was scheduled for a hearing on ~~3/30/22~~ ^{4/1/22}, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Reconsideration of the Court's Order re: Defendant's Motion for Attorneys' Fees. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs. This Court
19 entered an Order on 2/15/22 denying Valley's Motion for Fees and Countermotion for
20 Fees and Costs. Thereafter, Valley filed an Appeal dealing specifically with the Court's
21 denial of fees and costs. Consequently, this Court no longer has jurisdiction to address
22 the issue of fees and costs. If the Court were inclined to reconsider its previous
23 decision, the most it could do would be to enter a *Honeycutt* Order (See *Honeycutt v.*
24 *Honeycutt*, 94 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall*, 126 Nev. 49, 228
25 P.3d 453 (2010)), indicating its intention.

26 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

27 Valley Health System, d/b/a Centennial Hills Hospital (CHH) requests that the
28 Court reconsider its 2/15/22 Order denying attorneys' fees and costs and award it
\$110,930.85 in attorneys' fees per N.R.C.P. 68 and NRS § 17.117, plus \$58,514.36 in
pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR
7.60. Additionally, CHH requests this Court sign the judgment already submitted for
the undisputed \$42,492.03.

1 CHH contends that this Court conflated two issues- (1) the memorandum of
2 costs and disbursements previously submitted totaling \$42,492.038, "an amount which
3 is undisputed, and for which this Court has refused to sign a judgment," and (2) the
4 additional costs, disbursements and attorneys' fees addressed by CHH's instant motion
5 and the initial motion which sought \$110,930.85 in attorneys' fees per N.R.C.P. 68 and
6 N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to
7 N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

8 With regard to first "issue," CHH argues that because the Court denied Plaintiff's
9 Motion to Extend Time to Retax Costs, the \$42,492.03 claimed in CHH's Verified
10 Memorandum of Costs is undisputed and therefore judgment must be signed and
11 entered. CHH stated that, "[t]his Court cannot revisit an issue which has been finally
12 decided and therefore, at a minimum, a judgment for the unchallenged \$42,492.03 in
13 statutory costs and disbursements must be signed.

14 The majority of CHH's Motion for Reconsideration concentrates on the second
15 "issue," that this Court's decision to deny CHH's request for an additional \$169,445.21
16 in costs, disbursements and attorneys' fees was clearly erroneous. See *Masonry & Tile*
17 *Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).
18 As a preliminary matter, CHH is concerned by the Court's comparison to the Motion
19 for Fees filed by Drs. Concio and Shaw. Further, CHH contends it is "more concerning,"
20 that the Court's prior order stated, "Finally, in considering the result, the Court notes
21 that although the Court found insufficient evidence to establish irrefutably that the
22 statute of limitations had expired, Defense counsel was successful in convincing the
23 Supreme Court of that, and consequently, Defendants prevailed." According to CHH,
24 "the record needs to be corrected here- there was no convincing the Supreme Court of
25 anything."

26 CHH argues that although the Court correctly found that CHH's offer of
27 judgment was made in good faith and its timing was proper, it erroneously found
28 "Plaintiffs' decision to reject the offer and proceed to trial was not grossly unreasonable
or in bad faith. Plaintiffs believed they had a valid claim, and the Court cannot find
that wanting some recovery, as opposed to \$0.00, to be 'grossly unreasonable' or in
'bad faith'." CHH contends that this finding is unreasonable in light of the Nevada
Supreme Court's determination that Plaintiffs were on notice of any alleged malpractice

1 no more than one month after decedent's death. Similarly, CHH argues that this Court
2 incorrectly found Plaintiffs' decision to reject the Offer of Judgment was not made in
3 bad faith and was not grossly unreasonable.

4 As for the reasonableness of the attorneys' fees requested pursuant to NRCP 68,
5 CHH states that it offered to present the Court supporting documentation for in camera
6 review, but, "instead of granting a hearing to which Plaintiffs could interpose whatever
7 opposition they may have had, the Court rejected this offer and suggestion." In
8 addition, Plaintiffs did not oppose the amount of costs and fees incurred in the original
9 motion, even without the attached bills. Additionally, CHH provides that, "[s]ince this
10 Court insisted that the bills be attached, CHH has provided the entirety thereof for
judicial review and review by Plaintiffs."

11 In Opposition, Plaintiffs argue that CHH's Motion must be summarily denied,
12 without the Court addressing the merits of the Motion because CHH did not present
13 any new or substantially different evidence than what it had the opportunity to present
14 when it filed its Verified Memorandum of Costs and separate Motion for Attorney's
15 Fees on 11/22/21. Further, Plaintiffs contend that CHH's Motion for Reconsideration is
16 "clearly a transparent attempt to bolster a potential appeal by inviting the Court to
17 engage with the merits," because a motion for reconsideration is only appealable if
18 decided on the merits. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589
(2010).

19 Further, Plaintiffs argue that CHH falsely claims that it attached evidence to its
20 Motion for Reconsideration that "was originally submitted to this Court." Plaintiffs also
21 state that CHH's Motion lacks any authority showing the Court's denial of costs was
22 clearly erroneous, and it does not even engage with the authorities cited on pages 7
23 through 9 of the Court's 2/15/22 Order. Plaintiffs argue they should not be liable for
24 CHH's negligence in failing to follow both the statutory and common law requirements
25 for establishing entitlement to costs. Plaintiffs argue that this Court was thus correct in
26 denying CHH costs in their entirety for lack of proper documentation and reliable
evidence.

27 With regard to CHH's request to reconsider the denial of fees, Plaintiffs note that
28 the Court's denial was based upon its finding that (1) Plaintiffs did not act in bad faith
or in a grossly unreasonable manner when they rejected CHH zero dollar Offer of

1 Judgment and (2) the documentation in support of the request for attorney's fees was
2 lacking. While the first finding by itself ends the inquiry into whether fees can be
3 awarded, in this case the Court also found that "[a]lthough the Defendant [CHH] has
4 offered to submit a billing ledger to the Court in camera, it would have been necessary
5 for the Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so
6 that the reasonableness could have been addressed by all parties, and by the Court."
7 Plaintiffs argue that since this never happened, there was no reasonable basis for this
8 Court to assess the reasonableness of fees being claimed by CHH. Plaintiffs argue that
9 CHH merely rehashes the same arguments presented in its original Motion for Fees.

10 Moreover, Plaintiffs argue that the Court's decision to deny fees was not clearly
11 erroneous because the disposition of this case turned on a legal question, which the
12 Nevada Supreme Court decided, well after the time Plaintiffs rejected the Offer of
13 Judgment. It would be ridiculous to expect Plaintiffs, grieving the death of their
14 mother, to anticipate the legal issue and foresee its resolution by the Nevada Supreme
15 Court when they rejected the Offer of Judgment. CHH itself acknowledges this fact
16 when it admits, "[m]edical malpractice cases are complex and require an in-depth
17 understanding of both unique legal issues as well as the medical care and course that is
18 at issue." VHS' Motion for Reconsideration, p. 21 (lines 1-2).

19 Finally, Plaintiffs argue that the CHH fails to address the deficiency of
20 withholding a billing ledger when it made its fee request and instead asking the Court
21 to rely only upon the declaration of its counsel.

22 In Reply, CHH argues that Plaintiff incorrectly asserts CHH "has not presented
23 any new or substantially different evidence than what it had the opportunity to present
24 when it filed its original Verified Memorandum of Costs and separate Motion for
25 Attorneys' Fees..." CHH's instant motion is predicated on this Court's clearly erroneous
26 decision to: (1) refuse to sign a judgment for an undisputed amount of legally
27 awardable costs to which CHH is entitled, and (2) to deny additional costs and
28 attorneys' fees stemming from Plaintiff's commencement and maintenance of an action
that the Supreme Court found was not only untimely, but that this Court's decision to
deny summary judgment in light of the evidence was a manifest abuse of discretion.

1 Noting that the Court decided the underlying Motion on the papers and without
2 oral argument, CHH contends that this Court ignored the request for in camera review
3 of any evidence it required, with Plaintiffs' opportunity to review same as well. The
4 Court also denied any request for statutorily permitted costs and fees, which was never
5 opposed by Plaintiffs, and denied the discretionary motion for attorneys' fees and costs
6 predicated on other legal and statutory bases. CHH suggests that these denials were
7 based upon this Court's abuse of its discretion and refusal to accept the underlying
8 findings of the Supreme Court pertaining to the evidence Plaintiffs knowingly
9 possessed which demonstrated clear inquiry notice within one month of the decedent's
10 death.

11 CHH argues that this Court erroneously concluded that CHH submitted no
12 documentary evidence or explanation of costs attendant to the verified memorandum
13 of costs. However, the verified memorandum of costs contained not only a complete
14 listing of disbursements which are allowable under the law for these purposes, but the
15 declaration explained that the expenses were accurate and were incurred and were
16 reasonable. Moreover, the memorandum explained and justified each of the costs,
17 supported by case authority and an application of the respective factors considered to
18 the specific facts and circumstances of this case. As such, CHH claims there was more
19 than ample evidentiary justification for the costs claimed including court filing fees and
20 the expert fees which were justified by the explanations contained in the verified
21 memorandum. For this Court to somehow assert complete ignorance of the legal and
22 appellate history of this case was clearly erroneous.

23 Moreover, CHH states that Plaintiffs never disputed, nor to this day dispute, the
24 veracity and accuracy of the costs contained in the verified memorandum of costs. CHH
25 argues that, "There was no absence of evidence justifying the costs. The Court just
26 chose to ignore it and improperly declared they were insufficient, citing to the
27 aforenoted authority." CHH argues that the authority does stand for the proposition for
28 which they are cited or was misapplied by the Court. The authority cited involved no
evidence or documentation. CHH not only provided evidence, it justified the costs,
especially of the voluminous number of experts needed for retention due to the
blunderbuss of allegations.

1 CHH further states:

2 Rather than accepting the Supreme Court's decision and rationale, this
3 Court's denial of CHH's motion and the rationale behind that decision
4 continues to perpetuate the false notion that the action was either
5 brought or maintained in good faith, a fact completely dispelled by the
6 Supreme Court's decision. Thus, denying costs and attorneys' fees in light
7 of the Supreme Court's decision is not only clearly erroneous, it is also a
8 manifest abuse of discretion which the instant motion seeks to redress.

9 Again, this Court possessed admissible evidence of the work, time and
10 expenses on the original motion. This Court wanted more than that. This
11 motion gives the Court everything it could possibly need. Moreover, all of
12 this could have been obviated by a hearing with an opportunity for all
13 parties to participate to consider the totality of the evidence which has
14 now been submitted, and would have been submitted had the in camera
15 inspection thereof been considered.

16 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

17 Pursuant to EDCR 2.24(a), "[n]o motion once heard and disposed of may be
18 renewed in the same cause, nor may the same matters therein embraced by reheard,
19 unless by leave of the court granted upon motion therefor, after notice of such motion
20 to the adverse parties."

21 Nevada courts have inherent authority to reconsider their prior orders. See,
22 *Trail v. Faretto*, 91 Nev. 401 (1975). A party may, "for sufficient cause shown ... request
23 that a court ... amend, correct, resettle, modify, or vacate, as the case may be, an order
24 previously made and entered ... in the case or proceeding. *Id.* at 403. A court may
25 exercise its discretion to revisit and reverse a prior ruling if any one of five
26 circumstances is present: (1) a clearly erroneous ruling; (2) an intervening change in
27 controlling law; (3) substantially different evidence; (4) other changed circumstances;
28 or (5) that manifest injustice would result if the prior ruling is permitted to stand.
United States v. Real Prop_. Located at *Incline Village*, 976 F. Supp. 1327, 1353
(D.Nev. 1997). A motion for reconsideration should be granted where new issues of fact
or law are raised which support a "ruling contrary to the ruling already reached."
Moore v. City of Las Vegas, 92 Nev. 402, 405 (1976).

Although the Defendants take offense at the language the Court used in its
previous Order, this Court intended nothing negative by indicating that Defendants
were able to "convince" the Supreme Court of their position. Such statement was made

1 simply to convey the “fact” that the Supreme Court was “convinced” that the
2 Defendant’s position was correct. Defendants argue that the Court’s denial of fees and
3 costs was somehow a continuation of the Court’s position in favor of the Plaintiff, but
4 this is also incorrect. In fact, the Court found that the *Beattie* and *Brunzell* factors
5 weighed in favor of the Defense, but since the Defense had not supported its request for
6 fees and costs, as required by the Nevada Supreme Court, this Court was unable to
7 award fees and costs. *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983);
8 *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969).

9 Additionally, Defendants argue that because they submitted a Memorandum of
10 Costs, which was not timely objected to, they are “entitled” to whatever they asked for.
11 This is also incorrect. A party is only entitled to costs if they are substantiated, and the
12 Court finds that such costs were reasonable, and incurred in the subject litigation.
13 *Frazier v. Drake*, 131 Nev. 632, 357 P.3d 365 (NV.Ct.of App., 2015); *Bobby Berosini,*
14 *Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383
15 (1998); *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015).

16 Finally, Defendants suggest that the Court would have been able to review the
17 supporting documents, which Defendant failed to initially provide, if the Court had
18 held a “hearing” and allowed the Defendant to present such documents. Part of the
19 Court’s previous inability to award fees was based on the Defendant’s failure to provide
20 support for the fees requested, although such documentation was offered to the Court
21 “in camera.” It is simply not “fair” to an opposing party, to offer supporting documents
22 “in camera,” implying that the opposing party will not have the opportunity to
23 challenge such documents. Based on the Defendant’s suggestion that they would make
24 billing records available to the Court “in camera,” the Court was led to believe that such
25 documents would not be provided to the Plaintiff.

26 The Defendant has now submitted documentation supporting the claim for
27 attorney’s fees. Because the Court has now been presented with substantially different
28 or additional evidence, reconsideration is appropriate.

Defendant has now provided billing records indicating the following:

5/27/20	\$725.00
6/1/20-6/28/20	\$3,510.00
7/1/20-7/31/20	\$10,192.50
8/10/20-8/28/20	\$8,865.00
9/1/20-9/25/20	\$19,642.50

10/1/20-10/29/20	\$12,559.50
11/2/20-11/30/20	\$14,392.80
12/1/20-12/22/20	\$3,690.00
1/5/21-1/21/21	\$4,449.00
2/4/21-2/19/21	\$1,489.50
3/4/21-3/30/21	\$2,150.00
4/2/21-4/30/21	\$11,200.00
5/5/21-5/21/21	\$905.00
6/4/21-6/25/21	\$6,629.50
7/7/21-7/29/21	\$1,026.50
8/3/21-8/31/21	\$5,841.50
9/8/21-9/30/21	\$4,375.00
10/1/21-10/27/21	\$10,700.00
11/9/21-11/23/21	\$2,826.50
12/2/21-12/29/21	\$7,975.00
1/3/22-1/25/22	<u>\$4,925.00</u>
Total:	\$138,069.80

Defendant has now provided documentation supporting the following costs:

American Legal Investigation	\$27.43
Ruffalo & Associates	\$4,350.00
	\$1,800.00
	\$10,350.00
Abraham Ishaaya, M.D.	\$6,710.00
	\$1,375.00
	\$6,187.50
	\$2,970.00
	\$3,437.50
	\$4,675.00
Cohen Volk Economic Counseling	\$688.50
	\$3,855.60
JAMS	\$3,000.00
Filing Fees	<u>\$529.50</u>
Total:	\$49,956.03

Defendant argues that it is entitled to \$42,492.03, and \$110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant to N.R.C.P. 68, N.R.S. 17.1151, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d 1050 (2019) for a waiver of any presently or potentially recoverable costs in full and final settlement of the matter. At the time of the Offer,

1 Defendants' expended costs and fees totaled \$58,514.36. The Offer was not accepted by
2 Plaintiff and expired on September 11, 2020.

3 Since the date of the Offer of Judgment, Defendant argues that it incurred
4 \$106,619.85 in attorney's fees, and paralegal's fees in the amount of \$4,230.00. This
5 Court finds and concludes that the fees incurred by Defendant were reasonable and
6 necessarily incurred in the defense of the case. This Court adopts by reference its prior
7 reasoning and analysis relating to the requested attorney's fees, and now that the Court
8 has been provided with the documentary support of such fees, and finds that such fees
9 were reasonable, pursuant to *Beattie* and *Brunzell*, the Court finds and concludes that
10 such fees are appropriate and recoverable. The Court further finds that the Defendant
11 has now met the requirements of *Frazier*, with regard to documenting the costs
12 incurred. The Court is still not convinced that the expert fees, in addition to the \$1,500
13 recoverable by statute, are necessary or recoverable. Consequently, in reducing each of
14 the expert's fees to \$1,500.00, the above-referenced costs, which have been
documented, must be reduced to \$8,056.93.

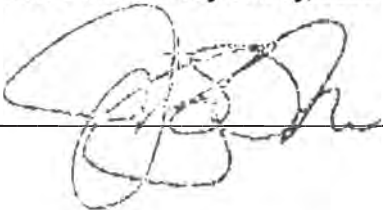
15 **CONCLUSION/ORDER**

16 Based upon the foregoing, and good cause appearing,

17 This Court now indicates its intention, pursuant to *Huneycutt v. Huneycutt*, 94
18 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453
19 (2010), that if this Court had jurisdiction to decide this matter, the Court would now
award attorney's fees of \$110,849.85, and costs of \$8,056.93.

20 Because this matter has been decided on the pleadings, any future hearings
21 relating to this matter are taken off calendar. The Court requests that counsel for
22 Defendant prepare and process a Notice of Entry with regard to this matter, and convey
23 this Decision to the Supreme Court, pursuant to *Huneycutt* and *Dingwall*.

24 Dated this 4th day of May, 2022

25 
26 _____

27
28 **0D9 DD7 5826 D5EB**
Jerry A. Wiese
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Estate of Rebecca Powell,
Plaintiff(s)

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

8
9 Valley Health System, LLC,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 5/4/2022

16 Paul Padda psp@paulpaddalaw.com

17 S. Vogel brent.vogel@lewisbrisbois.com

18 Jody Foote jfoote@jhcottonlaw.com

19 Jessica Pincombe jpincombe@jhcottonlaw.com

20 John Cotton jhcotton@jhcottonlaw.com

21 Brad Shipley bshipley@jhcottonlaw.com

22 Tony Abbatangelo Tony@thevegaslawyers.com

23 Adam Garth Adam.Garth@lewisbrisbois.com

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25 Srilata Shah sri@paulpaddalaw.com

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Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
Shelbi Schram	shelbi@paulpaddalaw.com
Maria San Juan	maria.sanjuan@lewisbrisbois.com
Karen Cormier	karen@paulpaddalaw.com
Kimberly DeSario	kimberly.desario@lewisbrisbois.com
Heidi Brown	Heidi.Brown@lewisbrisbois.com
Shelbi Schram	shelbi@paulpaddalaw.com

EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,

Appellant,

vs.

ESTATE OF REBECCA POWELL, DARCI
CREECY, TARYN CREECY, ISAIAH
KHOSROF, and LLOYD CREECY,

Respondents.

Supreme Court No.: 84402

Electronically Filed
May 12 2022 10:56 a.m.

District Court No.: A-19-788787-C
Elizabeth A. Brown
Clerk of Supreme Court

NOTICE OF WITHDRAWAL OF APPEAL

VALLEY HEALTH SYSTEM, LLC, appellant named above, hereby
moves to voluntarily withdraw the appeal mentioned above.

I, Adam Garth, Esq., as counsel for the appellant, explained and informed
VALLEY HEALTH SYSTEM, LLC of the legal effects and consequences of this
voluntary withdrawal of this appeal, including that VALLEY HEALTH SYSTEM,
LLC cannot hereafter seek to reinstate this appeal and that any issues that were or
could have been brought in this appeal are forever waived. Having been so
informed, VALLEY HEALTH SYSTEM, LLC hereby consents to a voluntary
dismissal of the above-mentioned appeal.

VERIFICATION

I recognize that pursuant to N.R.A.P. 3C I am responsible for filing a notice of withdrawal of appeal and that the Supreme Court of Nevada may sanction an attorney for failing to file such a notice. I therefore certify that the information provided in this notice of withdrawal of appeal is true and complete to the best of my knowledge, information and belief.

DATED this 12th day of May, 2022

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
Nevada Bar No. 006858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2022, a true and correct copy of **NOTICE OF WITHDRAWAL OF APPEAL** was served upon the following parties by electronic service through this Court's electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

By /s/ Heidi Brown
An Employee of
LEWIS BRISBOIS BISGAARD &
SMITH LLP

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 6/2/2022

16 Paul Padda	psp@paulpaddalaw.com
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22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
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25 Srilata Shah	sri@paulpaddalaw.com

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Shelbi Schram	shelbi@paulpaddalaw.com
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EXHIBIT B

1 **ORDJ**
2 S. BRENT VOGEL
3 Nevada Bar No. 6858
4 Brent.Vogel@lewisbrisbois.com
5 ADAM GARTH
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 Telephone: 702.893.3383
12 Facsimile: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA
12

13 ESTATE OF REBECCA POWELL, through
14 BRIAN POWELL, as Special Administrator;
15 DARCI CREECY, individually and as Heir;
16 TARYN CREECY, individually and as an
17 Heir; ISIAH KHOSROF, individually and as
18 an Heir; LLOYD CREECY, individually,

19 Plaintiffs,

20 vs.

21 VALLEY HEALTH SYSTEM, LLC (doing
22 business as "Centennial Hills Hospital Medical
23 Center"), a foreign limited liability company;
24 UNIVERSAL HEALTH SERVICES, INC., a
25 foreign corporation; DR. DIONICE S.
26 JULIANO, M.D., an individual; DR.
27 CONRADO C.D. CONCIO, M.D., an
28 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z,;

Defendants.

Case No. A-19-788787-C

Dept. No.: 7

**ORDER DIRECTING EXAMINATION OF
JUDGMENT DEBTORS AND
PRODUCTION OF DOCUMENTS**

25 After having reviewed the Judgment Creditor's Motion for Examination of Judgment
26 Debtors and good cause otherwise appearing:

27 IT IS HEREBY ORDERED that Judgment Debtors Estate of Rebecca Powell, through Brian
28 Powell as Special Administrator, Darci Creecy, Taryn Creecy, Isaiah Khosrof, and Lloyd Creecy

1 shall each appear before this Court located at _____ on _____
2 beginning at _____ and on such further days as the Court shall determine, if
3 necessary, to then and there answer upon oath concerning their respective property and assets as
4 identified in the Judgment Creditor's Ex Parte Examination of Judgment Debtors. The Judgment
5 Debtors are hereby forbidden in the meantime from selling, transferring, or otherwise disposing of
6 any property or assets not exempt from execution pursuant to NRS 21.005, *et seq.*

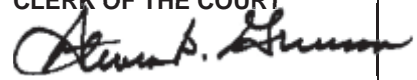
7 IT IS HEREBY FURTHER ORDERED that Judgment Debtors Estate of Rebecca Powell,
8 through Brian Powell as Special Administrator, Darci Creecy, Taryn Creecy, Isaiah Khosrof, and
9 Lloyd Creecy shall each individually respond to each of the Requests for Production set forth in
10 Judgment Creditor's Ex Parte Application for Examination of Judgment Debtors and shall produce
11 the requested information, documents, and other materials **no later than fourteen (14) days** prior
12 to the date of the examination as set forth herein. The information, documents, and other materials
13 shall be produced to the law offices of **Lewis Brisbois Bisgaard & Smith LLP, located at 6385 S.**
14 **Rainbow Boulevard, Suite 600, Las Vegas, Nevada 89118.**

15 Failure to produce the requested materials or failure to appear for the examination at the
16 dates and times specified above may result in an Order to Show Cause being issued.

17 DATED this ____ day of _____, 2022.

18
19 _____
20 **DISTRICT COURT JUDGE**
21
22
23
24
25
26
27
28

EXHIBIT B



1 S. BRENT VOGEL
Nevada Bar No. 6858
2 Brent.Vogel@lewisbrisbois.com
ADAM GARTH
3 Nevada Bar No. 15045
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*Attorneys for Defendant Valley Health System,
7 LLC dba Centennial Hills Hospital Medical
Center*
8

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISAIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

15 Plaintiffs,

16 vs.
17

18 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
19 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
20 JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
21 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;,
22

23 Defendants.
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Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

1 PLEASE TAKE NOTICE that the Order Directing Examination of Judgment Debtors and
2 Production of Documents was entered on August 18, 2022, a true and correct copy of which is
3 attached hereto.

4 DATED this 19th day of August, 2022

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6 By /s/ Adam Garth

7 S. BRENT VOGEL

8 Nevada Bar No. 6858

9 ADAM GARTH

10 Nevada Bar No. 15045

11 6385 S. Rainbow Boulevard, Suite 600

12 Las Vegas, Nevada 89118

13 Tel. 702.893.3383

14 *Attorneys for Attorneys for Defendant Valley*

15 *Health System, LLC dba Centennial Hills Hospital*

16 *Medical Center*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19th day of August, 2022, a true and correct copy of **NOTICE**
3 **OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the
4 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have
5 agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
7 PAUL PADDALAW, PLLC
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10 Tel: 702.366.1888
11 Fax: 702.366.1940
12 psp@paulpaddalaw.com
13 *Attorneys for Plaintiffs*

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jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

14
15
16 By /s/ Heidi Brown
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
19
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ORDJ
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Las Vegas, Nevada 89118
Telephone: 702.893.3383
Facsimile: 702.893.3789
*Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center*

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z,;

Defendants.

Case No. A-19-788787-C

Dept. No.: 7

**ORDER DIRECTING EXAMINATION OF
JUDGMENT DEBTORS AND
PRODUCTION OF DOCUMENTS**

After having reviewed the Judgment Creditor's Motion for Examination of Judgment Debtors and good cause otherwise appearing:

IT IS HEREBY ORDERED that Judgment Debtors Estate of Rebecca Powell, through Brian Powell as Special Administrator, Darci Creecy, Taryn Creecy, Isaiah Khosrof, and Lloyd Creecy

1 shall each appear before this Court located at _____ in Courtroom 5B of the _____ on Wednesday,
2 beginning at 9:00 am _____ and on such further days as the Court shall determine, if
3 necessary, to then and there answer upon oath concerning their respective property and assets as
4 identified in the Judgment Creditor's Ex Parte Examination of Judgment Debtors. The Judgment
5 Debtors are hereby forbidden in the meantime from selling, transferring, or otherwise disposing of
6 any property or assets not exempt from execution pursuant to NRS 21.005, *et seq.*

7 IT IS HEREBY FURTHER ORDERED that Judgment Debtors Estate of Rebecca Powell,
8 through Brian Powell as Special Administrator, Darci Creecy, Taryn Creecy, Isaiah Khosrof, and
9 Lloyd Creecy shall each individually respond to each of the Requests for Production set forth in
10 Judgment Creditor's Ex Parte Application for Examination of Judgment Debtors and shall produce
11 the requested information, documents, and other materials **no later than fourteen (14) days** prior
12 to the date of the examination as set forth herein. The information, documents, and other materials
13 shall be produced to the law offices of **Lewis Brisbois Bisgaard & Smith LLP, located at 6385 S.**
14 **Rainbow Boulevard, Suite 600, Las Vegas, Nevada 89118.**

15 Failure to produce the requested materials or failure to appear for the examination at the
16 dates and times specified above may result in an Order to Show Cause being issued.

17 DATED this ____ day of _____, 2022. ~~Dated this 18th day of August, 2022~~

18
19 
DISTRICT COURT JUDGE

20 FC8 154 0748 30FD
21 Linda Marie Bell
22 District Court Judge
23
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28

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 7

9 Valley Health System, LLC,
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 for Examination of Judgment Debtor was served via the court's
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as
16 listed below:

Service Date: 8/18/2022

17 Paul Padda	psp@paulpaddalaw.com
18 S. Vogel	brent.vogel@lewisbrisbois.com
19 Jody Foote	jfoote@jhcottonlaw.com
20 Jessica Pincombe	jpincombe@jhcottonlaw.com
21 John Cotton	jhcotton@jhcottonlaw.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Paul Padda	civil@paulpaddalaw.com
24 Tony Abbatangelo	Tony@thevegaslawyers.com
25 Adam Garth	Adam.Garth@lewisbrisbois.com
26 Srilata Shah	sri@paulpaddalaw.com

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Shelbi Schram	shelbi@paulpaddalaw.com
Maria San Juan	maria.sanjuan@lewisbrisbois.com
Karen Cormier	karen@paulpaddalaw.com
Kimberly DeSario	kimberly.desario@lewisbrisbois.com
Shelbi Schram	shelbi@paulpaddalaw.com
Heidi Brown	Heidi.Brown@lewisbrisbois.com

EXHIBIT C

From: [Paul Padda](#)
To: [Garth, Adam](#); [Srilata Shah](#); [Vogel, Brent](#)
Cc: [Lani Esteban-Trinidad](#)
Subject: [EXT] Re: Estate of Rebecca Powell
Date: Tuesday, September 27, 2022 2:21:00 PM
Attachments: [image001.png](#)



Dear Messrs. Vogel and Garth,

I am writing to advise that none of the respondents in your Judgment Debtor proceeding will be able to appear tomorrow. As you know, they have very limited financial means and are unable to travel to Las Vegas. In fact, to my knowledge, they haven't stepped foot in Nevada since the passing of Rebecca Powell. I am providing this in advance to avoid any inconvenience. I will also be seeking relief from the Court regarding the same.

Regards,
Paul Padda

Paul S. Padda, Esq.

PAUL PADDALAW, PLLC
(702) 366-1888
paulpaddalaw.com

Nevada Physical Office:

4560 South Decatur Blvd, Suite 300
Las Vegas, Nevada 89103
Tele: [\(702\) 366-1888](tel:(702)366-1888)

California Physical Office:

300 South Grand Avenue, Suite 3840
Los Angeles, California 90071
Tele: (213) 423-7788

Mailing Address For All Offices:

4030 South Jones Blvd., Unit 30370
Las Vegas, Nevada 89173



CONFIDENTIALITY NOTICE: The information in this electronic mail communication contains confidential information which is the property of the sender and may be protected by the attorney-client privilege and/or attorney work product doctrine. It is intended solely for the addressee. Access to this e-mail by anyone else is unauthorized by the sender. If you are not the intended recipient, you are hereby notified that any disclosure, copying, or distribution of the contents of this e-mail transmission or the taking or omission of any action in reliance thereon or pursuant thereto, is prohibited, and may be unlawful. If you received this e-mail in error, please notify us immediately of your receipt of this message by e-mail and

destroy this communication, any attachments, and all copies thereof. Thank you for your cooperation.

EXHIBIT D

NOTICE TO JUDGMENT DEBTOR PURSUANT TO OH. REV. CODE § 2716.031

TO: Lloyd Creecy
(Name of Judgment Debtor)

You are hereby notified that the judgment creditor in this proceeding has issued an affidavit of current balance due on garnishment order in the above-referenced case in the Lorain County Court of Common Pleas. The “Affidavit Of Current Balance Due” on the proceeding page shows the original amount of the judgment that was the basis of the garnishment order, the accrued interest to date, the court costs assessed to date, all moneys paid the judgment creditor and the judgment creditor’s attorney on the judgment to date, and the current balance due on the judgment.

If you dispute the judgment creditor’s determination of these amounts or if you believe that this affidavit is improper for any other reason, you may request a hearing before this court by disputing the affidavit in the Request for Hearing Form, contained in this packet, and delivering the Request for Hearing Form to this court at the address listed on the Form no later than the end of the fifth business day after you receive this notice. You may state your reasons for disputing the judgment creditor’s determination of the amounts shown in the affidavit of current balance due in the space provided on the Form; however, you are not required to do so. If you do state your reasons for disputing the judgment creditor’s determination, you are not prohibited from stating any other reason at the hearing. If you do not state your reasons, it will not be held against you by the court, and you can state your reasons at the hearing. **NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING.** The hearing will be limited to a consideration of the amount currently due on the judgment you owe to the judgment creditor.

If you request a hearing by delivering your request for hearing not later than the end of the fifth business day after you receive this notice, the court will conduct the hearing no later than twelve days after your request is received by the court, and the court will send you notice of the date, time, and place. You may indicate in the form that you believe that the need for the hearing is an emergency and that it should be given priority by the court. If you do so, the court will schedule the hearing as soon as practicable after your request is received and will send you notice of the date, time, and place. If you do not request a hearing by delivering your request for hearing not later than the end of the fifth business day after you receive this notice, some of your personal earnings will continue to be paid to the judgment creditor until the judgment is satisfied.

If you have any questions concerning this matter, you may contact the office of the clerk of this court. However, be advised that the clerk’s office cannot provide you with legal advice. If you want legal representation, you should contact your lawyer immediately. If you need the name of a lawyer, you should contact the lawyer referral service through the local bar association.

Emily Davis
(Attorney for Judgment Creditor or Judgment Creditor)

September 27, 2022
(Date)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lloyd Creecy
11872 Robeson Road
Grafton, OH 44094



9590 9402 6688 1060 3222 64

2. Article Number (Transfer from service label)

7017 3040 0000 5325 0449

PS Form 3811, July 2020 PSN 7530-02-000-9003

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

If YES, delivery address is:

Yes ☐ No ☐

Signature Confirmation

Restricted Delivery

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USPS TRACKING #



950 9402 6688 1060 3222 64

United States
Postal Service

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box*

Lewis Brisbois Bisgaard & Smith LLP
1375 E. 9th Street, Suite 7250
Cleveland, OH 44114

Rowell (EAD)

ATTN: JJ





Emily Davis
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Emily.Davis@lewisbrisbois.com
Direct: 216.586.8823

August 9, 2022

Lloyd Creecy
11872 Robson Road
Grafton, OH 44044-9162

Re: Valley Health System, LLC v. Darci Creecy
Our File No.: 28094.190

Dear Mr. Creecy:

Enclosed is the Notice of Court Proceeding to Collect debt for your signature. Please review and complete the second page, Payment to Avoid Garnishment and sign.

Once completed and signed on the line stating (Signature of Judgment Debtor), and kindly return to me in the self-addressed stamped envelope.

Thank you for your assistance. If you have any questions or concerns, please contact me at (216) 586-8823 or Emily.Davis@lewisbrisbois.com.

Very truly yours,

/s/ Emily H. Davis

Emily H. Davis for
LEWIS BRISBOIS BISGAARD & SMITH LLP

EHD:js
Enclosures
cc: Adam Garth, Esquire

NOTICE OF COURT PROCEEDING TO COLLECT DEBT

To: Lloyd Creecy

(Name of Judgment Debtor)

11872 Robeson Road, Grafton, OH 44044

(Last Known Residence Address of Judgment Debtor)

You owe the undersigned Valley Health System, LLC \$ 118,906.78, including interest and court costs, for which a judgment was obtained against you or certified in the
(Name of Judgment Creditor)

Court on July 22, 2022, payment of which is hereby demanded.
(Date)

If you do not do one of the three things listed below within fifteen days of the date of the mailing of this notice or of its service by the court, we will go to court, unless we are otherwise precluded by law from doing so, and ask that your employer be ordered to withhold money from your earnings until the judgment is paid in full or, if applicable, is paid to a certain extent and to pay the withheld money to the court in satisfaction of your debt. This is called garnishment of personal earnings.

It is to your advantage to avoid garnishment of personal earnings because the placing of the extra burden on your employer possibly could cause you to lose your job.

YOU CAN AVOID THE GARNISHMENT BY DOING ONE OF THESE THREE THINGS WITHIN THE FIFTEEN-DAY PERIOD:

- (1) Pay to us the amount due;
- (2) Complete the attached form entitled "Payment to Avoid Garnishment" and return it to us with the payment, if any, shown due on it; or
- (3) Apply to your local municipal or county court or, if you are not a resident of Ohio, to the municipal or county court in whose jurisdiction your place of employment is located, for the appointment of a trustee to receive the part of your earnings that is not exempt from garnishment, and notify us that you have applied for the appointment of a trustee. You will be required to list your creditors, the amounts of their claims, and the amounts due on their claims, and the amount you then will pay to your trustee each payday will be divided among them until the debts are paid off. This can be to your advantage because in the meantime none of those creditors can garnish your wages.

You also may contact a budget and debt counseling service described in division (D) of section 2716.03 of the Revised Code for the purpose of entering into an agreement for debt scheduling. There may not be enough time to set up an agreement for debt scheduling in order to avoid a garnishment of your wages based upon this demand for payment, but entering into an agreement for debt scheduling might protect you from future garnishments of your wages. Under an agreement for debt scheduling, you will have to regularly pay a portion of your income to the service until the debts subject to the agreement are paid off. This portion of your income will be paid by the service to your creditors who are owed debts subject to the agreement. This can be to your advantage because these creditors cannot garnish your wages while you make your payments to the service on time.

Valley Health System, LLC

(Name of Judgment Creditor)


(Signature of Judgment Creditor or Agent)

367 South Gulph Road, King of Prussia, PA 19406

(Address of Judgment Creditor)

PAYMENT TO AVOID GARNISHMENT

To:

Valley Health System, LLC
367 South Gulph Road, King
of Prussia, PA 19406

Judgment Creditor Name and Address

To avoid the garnishment of personal earnings of which you have given me notice, I enclose \$ _____ to apply toward my indebtedness to you. The amount of the payment was computed as follows:

- (1) Total amount of indebtedness demanded: \$ 118,906.78
- (2) Enter the amount of your personal earnings, after deductions required by law, earned by you during the current pay period (that is, the pay period in which this demand is received by you): \$ _____
- (3) a. Enter your pay period (circle one):
☒ Weekly ☐ Biweekly ☐ Semimonthly ☐ Monthly
- b. Enter the date when your present pay period ends: _____
- (4) Enter an amount equal to 25% of the amount on line (2): \$ _____
- (5) a. The current federal minimum hourly wage is \$ _____ (to be filled in by Judgment Creditor) (You should use the above figure to complete this portion of the form.) If you are paid weekly, enter thirty times the current federal minimum hourly wage; if paid biweekly, enter sixty times the current federal minimum hourly wage; if paid semimonthly, enter sixty-five times the current federal minimum hourly wage; if paid monthly, enter one hundred thirty times the current federal minimum hourly wage: \$ _____
- b. Enter the amount by which the amount on line (2) exceeds the amount on line 5(A): \$ _____
- (6) Enter the smallest of the amounts on line (1), (4), or 5(B). Send this amount to the judgment creditor along with this form after you have signed it: \$ _____

I certify that the statements contained above are true to the best of my knowledge and belief.

(Signature of Judgment Debtor)

Judgment Debtor Name and Residence Address

TO VERIFY THAT THE AMOUNT SHOWN ON LINE (2) IS A TRUE STATEMENT OF YOUR EARNINGS, YOU MUST **EITHER** HAVE YOUR EMPLOYER CERTIFY BELOW THAT THE AMOUNT SHOWN ON LINE (2) IS A TRUE STATEMENT OF YOUR EARNINGS **OR** YOU MAY SUBMIT COPIES OF YOUR PAY STUBS FOR THE TWO PAY PERIODS IMMEDIATELY PRIOR TO YOUR RECEIVING THIS NOTICE.

I certify that the amount shown on line (2) is a true statement of the judgment debtor's earnings.

I certify that I have attached copies of my pay stubs for the two pay periods immediately prior to my receiving this notice.

(Print Name of Employer)

(Signature of Judgment Debtor)

(Signature of Employer or Agent)

NOTICE TO JUDGMENT DEBTOR PURSUANT TO OH. REV. CODE § 2716.06
(DELIVERED BY EMPLOYER TO EMPLOYEE)

TO THE JUDGMENT DEBTOR: Lloyd Creecy CASE NUMBER: 22CV206538

You are hereby notified that this court has issued an order in the above case in favor of:

Valley Health System, LLC, 367 South Gulph Road, King of Prussia, PA, 19406

(Name and address of judgment creditor)

the judgment creditor in this proceeding, directing that some of your personal earnings be used in satisfaction of your debt to the judgment creditor instead of being paid to you. This order was issued on the basis of the judgment creditor's judgment against you that was obtained in the following court:

Clark County District Court of Nevada in case no. A-19-788787-C

on June 7, 2022 .
(Date)

The law of Ohio provides that you are entitled to keep a certain amount of your personal earnings free from the claims of creditors. Additionally, wages under a certain amount may never be used to satisfy the claims of creditors. The documents entitled "ORDER AND NOTICE OF GARNISHMENT AND ANSWER OF EMPLOYER (GARNISHEE)" that are enclosed with this notice show how the amount proposed to be taken out of your personal earnings was calculated by your employer.

If you dispute the judgment creditor's right to garnish your personal earnings and believe that you are entitled to possession of the personal earnings because they are exempt, or you feel that this order is improper for any other reason, you may request a hearing before this court by disputing the claim in the request for hearing form, enclosed in this packet, or in a substantially similar form, and delivering the request for hearing to this court at the above address, at the office of the clerk of this court, no later than the end of the fifth business day after you receive this notice. You may state your reasons for disputing the judgment creditor's right to garnish your personal earnings in the space provided on the form; however, you are not required to do so. If you do state your reasons for disputing the judgment creditor's right, you are not prohibited from stating any other reason at the hearing. If you do not state your reasons, it will not be held against you by the court, and you can state your reasons at the hearing. NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING. The hearing will be limited to a consideration of the amount of your personal earnings, if any, that can be used in satisfaction of the judgment you owe to the judgment creditor.

If you request a hearing by delivering your request for hearing form no later than the end of the fifth business day after you receive this notice, it will be conducted no later than twelve days after your request is received by the court, and the court will send you notice of the date, time, and place. You may indicate on the form that you believe that the need for the hearing is an emergency and that it should be given priority by the court. If you do so, the court will schedule the hearing as soon as practicable after your request is received and will send you notice of the date, time, and place. If you do not request a hearing by delivering your request for hearing form no later than the end of the fifth business day after you receive this notice, some of your personal earnings will be paid to the judgment creditor.

If you have any questions concerning this matter, you may contact the office of the clerk of this court. However, be advised that the clerk's office cannot provide you with legal advice. If you want legal representation, you should contact your lawyer immediately. If you need the name of a lawyer, you may wish to contact the lawyer referral service through the local bar association.

TOM ORLANDO, CLERK OF COURT

BY: _____
DEPUTY CLERK

DATE

CUYAHOGA COUNTY AFFIDAVIT & ORDER & NOTICE OF GARNISHMENT OF PERSONAL EARNINGS & ANSWER OF EMPLOYER
CUYAHOGA COUNTY CLERK OF COURTS OFFICE, CIVIL DIVISION, 1ST FLOOR, JUSTICE CENTER, 1200 ONTARIO STREET, CLEVELAND, OH 44113, (216) 443-3764,
<http://coc.cuyahogacounty.us/>

Valley Health System, LLC
367 South Gulph Road
King of Prussia, PA 19406

CREDITOR
(ADDRESS)

CASE NO. CV22966476

DOCKET NO. _____

Darci Creecy
13613 Woodward Boulevard
Garfield Hts., OH 44125

V.
DEBTOR
(ADDRESS)

STATE OF OHIO, COUNTY OF CUYAHOGA, ss: The undersigned, being first duly cautioned, sworn or affirmed according to law, says that I am attorney/judgment creditor who recovered or certified a judgment in this court against above named judgment debtor. The garnishee named below may be an employer of the judgment debtor and may have personal earnings owing to the judgment debtor. Written demand on judgment debtor, per § 2716.02 ORC, has been made at least 15 and not more than 45 days before this date. Payment demanded in the written demand has not been made, nor has a sufficient portion been made to prevent the garnishment of personal earnings described in such section. Affiant has no knowledge if the judgment debtor has applied for trusteeship or is the subject of a debt scheduling agreement, either of which precludes the garnishment of judgment debtor's personal earnings.

Emily Davis, Esq. (0100237)
Lewis Brisbois Bisgaard & Smith
1375 E 9th Street, Suite 2250
Cleveland, OH 44114

ATTORNEY FOR
JUDGMENT CREDITOR
(INCLUDE FIRM ADDRESS AND REGISTRATION NO.)

Signature: Judgment Creditor/Attorney

Sworn to & Subscribed to me on _____

Signature: Notary Public

SECTION A. COURT ORDER AND NOTICE OF GARNISHMENT

Garnishee:

The judgment creditor in the above case has filed an affidavit, satisfactory to the undersigned, in this court stating that you may owe the judgment debtor money for personal earnings.

You are therefore ordered to complete the "ANSWER OF EMPLOYER (GARNISHEE)" in section B of this form.

Return one completed and signed copy of this form to the clerk of this court within five (5) business days after you receive this order of garnishment. Deliver one completed and signed copy of this form and the accompanying documents entitled "NOTICE TO THE JUDGMENT DEBTOR" and "REQUEST FOR HEARING" to the judgment debtor. Keep the other completed and signed copy of this form for your files.

1. The UNPAID PORTION OF THE JUDGMENT amounts to: \$ _____
2. Plus INTEREST TO DATE (interest rate = ____%) + \$ _____
3. Plus UNPAID COURT COSTS amount to: + \$ _____
4. Minus AMOUNT PAID on judgment, costs, and interest - \$ _____
5. AMOUNT NOW DUE = \$ _____

This garnishment order of personal earnings is a continuous order requiring you to withhold a specified amount, calculated during each pay period at the statutory percentage, of the debtor's personal disposable earnings as determined in accordance with the Interim/Final Report & Answer of Garnishee, from the debtors personal, disposable earnings during each pay period beginning with the first full pay period after you receive the order, until the judgment, court costs, and all applicable interest has been paid in full. **You must pay that specified amount, calculated each pay period at the statutory percentage, to the clerk of this court within 30 days after the end of each pay period of the debtor. You must include with that specified amount an Interim/Final Report & Answer of Garnishee in the form set forth in 2716.07 ORC (form enclosed).** Use a new photocopy with each payment. You are permitted to deduct a processing fee (not part of the court costs) of up to \$3.00 from the debtor's personal, disposable earnings for any pay period of the debtor where an amount was withheld. You are not required to file with the court the Interim/Final Report and Answer of Garnishee for any pay period in which an amount from the debtor's personal, disposable earnings was not withheld.

This garnishment of personal earnings will remain in effect until one of the following occur:

- (1) The total probable amount due on the judgment is paid in full due to your withholding of the specified amount.
- (2) The creditor/attorney files with this court a written notice that the total probable amount due on the judgment has been satisfied; or files a written request to terminate and release this garnishment order, releasing you from the mandate of this garnishment.
- (3) A municipal or county court appoints a trustee for the debtor and issues to you an order that stays this garnishment order.
- (4) A federal bankruptcy court issues to you an order that stays this garnishment order of personal earnings.
- (5) A municipal, county, or a common pleas court issues to you a garnishment order of personal earnings that relates to the debtor and a different creditor, and Ohio or federal law provides the other order with a higher priority than this order.
- (6) A municipal, county, or a common pleas court issues to you a garnishment order of personal earnings that relates to the debtor and a different creditor that does not have a higher priority than this order.

Under any of the circumstances listed, you are required to file with this court an Interim/Final Report & Answer of Garnishee per § 2716.08 ORC. Under the circumstances listed in 5 & 6 above, you must cease processing this garnishment after the expiration of the full pay period within which the 182nd day after you began processing it falls. Special stacking, priority of payment, and manner of payment rules apply when a garnishee receives multiple garnishment orders with respect to the same debtor. Familiarize yourself with the rules are set forth in § 2716.041 ORC.

Witness My Hand & Seal of This Court On Today's Date _____

ADMINISTRATIVE AND PRESIDING JUDGE BRENDAN J. SHEEHAN

CUYAHOGA COUNTY AFFIDAVIT & ORDER & NOTICE OF GARNISHMENT OF PERSONAL EARNINGS & ANSWER OF EMPLOYER
CUYAHOGA COUNTY CLERK OF COURTS OFFICE, CIVIL DIVISION, 1ST FLOOR, JUSTICE CENTER, 1200 ONTARIO STREET, CLEVELAND, OH 44113, (216) 443-3764,
<http://coc.cuyahogacounty.us/>

Valley Health System, LLC CREDITOR

Case No. CV22966476

VS.

Darci Creecy DEBTOR

THIS COMMUNICATION
IS FROM A DEBT COLLECTOR

SECTION B. ANSWER OF EMPLOYER (GARNISHEE). ANSWER ALL PERTINENT QUESTIONS. An employer is one who is required to withhold payroll taxes out of payments of personal earnings made to the judgment debtor. Complete and return a signed copy of this page to the above listed address.

Now comes _____, the employer (garnishee) herein, who says:

1. This order of garnishment of personal earnings was received on _____

2. The judgment debtor is in my/our employ: YES/NO (IF "YES" COMPLETE REMAINDER OF SECTION B AND THE INTERIM/FINAL REPORT FORM)

If answer is "No," give date of last employment: _____

If never employed here check here: ☐

3. (A) Is the debt to which this order of garnishment of personal earnings pertains the subject of an existing agreement for debt scheduling between the judgment debtor and a budget and debt counseling service and has the judgment debtor made every payment that was due under the agreement for debt scheduling no later than forty-five days after the date on which the payment was due?

☐ YES

☐ NO

If the answer to both parts of this question is "Yes," give all available details of the agreement, sign this form, and return it to the court.

(B) Were you, on the date that you received this order of garnishment of personal earnings, withholding moneys from the judgment debtor's personal disposable earnings pursuant to another order of garnishment of personal earnings that Ohio or federal law provides with a higher priority than this order of garnishment of personal earnings (such as a support order or Internal Revenue service Service levy)?

☐ YES

☐ NO

If the answer to this question is "Yes," give the name of the court that issued the higher priority order, the associated case number, the date upon which you received that order, and the balance due to the relevant judgment creditor under that order.

(C) Did you receive prior to the date that you received this order of garnishment of personal earnings one or more other orders of garnishment of personal earnings that are not described in question 3(B), and are you currently processing one or more of those orders for the statutorily required time period or holding one or more of those orders for processing for a statutorily required period in the sequence of their receipt by you?

☐ YES

☐ NO

If the answer to this question is "Yes," give the name of the court that issued each of those previously received orders, the associated case numbers, the date upon which you received each of those orders, and the balance due to the relevant judgment creditor under each of those orders. List first the previously received order(s) that you are currently processing, and list each of the other previously received orders in the sequence that you are required to process them.

I certify that the statements above are true.

(Print Name of Employer)

(Print Name and Title of Person Who Completed Form on behalf of the Employer)

Dated _____

(Signature of Employer or Employer's Agent)

CUYAHOGA COUNTY AFFIDAVIT & ORDER & NOTICE OF GARNISHMENT OF PERSONAL EARNINGS & ANSWER OF EMPLOYER
CUYAHOGA COUNTY CLERK OF COURTS OFFICE, CIVIL DIVISION, 1ST FLOOR, JUSTICE CENTER, 1200 ONTARIO STREET, CLEVELAND, OH 44113, (216) 443-3764,
<http://coc.cuyahogacounty.us/>

Valley Health System, LLC
367 South Gulph Road
King of Prussia, PA 19406

CREDITOR
(ADDRESS)

CASE NO. CV22966476

DOCKET NO. _____

Taryn Creecy
5305 Northfield Road, Apt 315
Bedford Hts., OH 44146

V.
DEBTOR
(ADDRESS)

STATE OF OHIO, COUNTY OF CUYAHOGA, ss: The undersigned, being first duly cautioned, sworn or affirmed according to law, says that I am attorney/judgment creditor who recovered or certified a judgment in this court against above named judgment debtor. The garnishee named below may be an employer of the judgment debtor and may have personal earnings owing to the judgment debtor. Written demand on judgment debtor, per § 2716.02 ORC, has been made at least 15 and not more than 45 days before this date. Payment demanded in the written demand has not been made, nor has a sufficient portion been made to prevent the garnishment of personal earnings described in such section. Affiant has no knowledge if the judgment debtor has applied for trusteeship or is the subject of a debt scheduling agreement, either of which precludes the garnishment of judgment debtor's personal earnings.

Emily Davis, Esq. (0100237)
Lewis Brisbois Bisgaard & Smith
1375 E 9th Street, Suite 2250
Cleveland, OH 44114

ATTORNEY FOR
JUDGMENT CREDITOR
(INCLUDE FIRM ADDRESS AND REGISTRATION NO.)

Signature: Judgment Creditor/Attorney

Sworn to & Subscribed to me on _____

Signature: Notary Public

SECTION A. COURT ORDER AND NOTICE OF GARNISHMENT

Garnishee:

The judgment creditor in the above case has filed an affidavit, satisfactory to the undersigned, in this court stating that you may owe the judgment debtor money for personal earnings.

You are therefore ordered to complete the "ANSWER OF EMPLOYER (GARNISHEE)" in section B of this form.

Return one completed and signed copy of this form to the clerk of this court within five (5) business days after you receive this order of garnishment. Deliver one completed and signed copy of this form and the accompanying documents entitled "NOTICE TO THE JUDGMENT DEBTOR" and "REQUEST FOR HEARING" to the judgment debtor. Keep the other completed and signed copy of this form for your files.

1. The UNPAID PORTION OF THE JUDGMENT amounts to: \$ _____
2. Plus INTEREST TO DATE (interest rate = ____%) + \$ _____
3. Plus UNPAID COURT COSTS amount to: + \$ _____
4. Minus AMOUNT PAID on judgment, costs, and interest - \$ _____
5. AMOUNT NOW DUE = \$ _____

This garnishment order of personal earnings is a continuous order requiring you to withhold a specified amount, calculated during each pay period at the statutory percentage, of the debtor's personal disposable earnings as determined in accordance with the Interim/Final Report & Answer of Garnishee, from the debtors personal, disposable earnings during each pay period beginning with the first full pay period after you receive the order, until the judgment, court costs, and all applicable interest has been paid in full. **You must pay that specified amount, calculated each pay period at the statutory percentage, to the clerk of this court within 30 days after the end of each pay period of the debtor. You must include with that specified amount an Interim/Final Report & Answer of Garnishee in the form set forth in 2716.07 ORC (form enclosed).** Use a new photocopy with each payment. You are permitted to deduct a processing fee (not part of the court costs) of up to \$3.00 from the debtor's personal, disposable earnings for any pay period of the debtor where an amount was withheld. You are not required to file with the court the Interim/Final Report and Answer of Garnishee for any pay period in which an amount from the debtor's personal, disposable earnings was not withheld.

This garnishment of personal earnings will remain in effect until one of the following occur:

- (1) The total probable amount due on the judgment is paid in full due to your withholding of the specified amount.
- (2) The creditor/attorney files with this court a written notice that the total probable amount due on the judgment has been satisfied; or files a written request to terminate and release this garnishment order, releasing you from the mandate of this garnishment.
- (3) A municipal or county court appoints a trustee for the debtor and issues to you an order that stays this garnishment order.
- (4) A federal bankruptcy court issues to you an order that stays this garnishment order of personal earnings.
- (5) A municipal, county, or a common pleas court issues to you a garnishment order of personal earnings that relates to the debtor and a different creditor, and Ohio or federal law provides the other order with a higher priority than this order.
- (6) A municipal, county, or a common pleas court issues to you a garnishment order of personal earnings that relates to the debtor and a different creditor that does not have a higher priority than this order.

Under any of the circumstances listed, you are required to file with this court an Interim/Final Report & Answer of Garnishee per § 2716.08 ORC. Under the circumstances listed in 5 & 6 above, you must cease processing this garnishment after the expiration of the full pay period within which the 182nd day after you began processing it falls. Special stacking, priority of payment, and manner of payment rules apply when a garnishee receives multiple garnishment orders with respect to the same debtor. Familiarize yourself with the rules are set forth in § 2716.041 ORC.

Witness My Hand & Seal of This Court On Today's Date _____

ADMINISTRATIVE AND PRESIDING JUDGE BRENDAN J. SHEEHAN

CUYAHOGA COUNTY AFFIDAVIT & ORDER & NOTICE OF GARNISHMENT OF PERSONAL EARNINGS & ANSWER OF EMPLOYER
CUYAHOGA COUNTY CLERK OF COURTS OFFICE, CIVIL DIVISION, 1ST FLOOR, JUSTICE CENTER, 1200 ONTARIO STREET, CLEVELAND, OH 44113, (216) 443-3764,
<http://coc.cuyahogacounty.us/>

Valley Health System, LLC CREDITOR

Case No. CV22966476

VS.

Taryn Creecy DEBTOR

THIS COMMUNICATION
IS FROM A DEBT COLLECTOR

SECTION B. ANSWER OF EMPLOYER (GARNISHEE). ANSWER ALL PERTINENT QUESTIONS. An employer is one who is required to withhold payroll taxes out of payments of personal earnings made to the judgment debtor. Complete and return a signed copy of this page to the above listed address.

Now comes _____, the employer (garnishee) herein, who says:

1. This order of garnishment of personal earnings was received on _____

2. The judgment debtor is in my/our employ. YES/NO (IF "YES" COMPLETE REMAINDER OF SECTION B AND THE INTERIM/FINAL REPORT FORM)

If answer is "No," give date of last employment: _____

If never employed here check here: ☐

3. (A) Is the debt to which this order of garnishment of personal earnings pertains the subject of an existing agreement for debt scheduling between the judgment debtor and a budget and debt counseling service and has the judgment debtor made every payment that was due under the agreement for debt scheduling no later than forty-five days after the date on which the payment was due?

☐ YES

☐ NO

If the answer to both parts of this question is "Yes," give all available details of the agreement, sign this form, and return it to the court.

(B) Were you, on the date that you received this order of garnishment of personal earnings, withholding moneys from the judgment debtor's personal disposable earnings pursuant to another order of garnishment of personal earnings that Ohio or federal law provides with a higher priority than this order of garnishment of personal earnings (such as a support order or Internal Revenue service Service levy)?

☐ YES

☐ NO

If the answer to this question is "Yes," give the name of the court that issued the higher priority order, the associated case number, the date upon which you received that order, and the balance due to the relevant judgment creditor under that order.

(C) Did you receive prior to the date that you received this order of garnishment of personal earnings one or more other orders of garnishment of personal earnings that are not described in question 3(B), and are you currently processing one or more of those orders for the statutorily required time period or holding one or more of those orders for processing for a statutorily required period in the sequence of their receipt by you?

☐ YES

☐ NO

If the answer to this question is "Yes," give the name of the court that issued each of those previously received orders, the associated case numbers, the date upon which you received each of those orders, and the balance due to the relevant judgment creditor under each of those orders. List first the previously received order(s) that you are currently processing, and list each of the other previously received orders in the sequence that you are required to process them.

I certify that the statements above are true.

(Print Name of Employer)

(Print Name and Title of Person Who Completed Form on behalf of the Employer)

Dated _____

(Signature of Employer or Employer's Agent)

**NOTICE TO JUDGMENT DEBTOR
PERSONAL EARNINGS GARNISHMENT**

CUYAHOGA COUNTY CLERK OF COURTS OFFICE, CIVIL DIVISION, 1ST FLOOR, JUSTICE CENTER, 1200 ONTARIO STREET, CLEVELAND, OH 44113, (216) 443-3764,
<http://coc.cuyahogacounty.us/>

Valley Health Systems, LLC
367 South Gulph Road,
King of Prussia, PA 19406

CREDITOR
(ADDRESS)

CASE NO. CV22966476

V.

Darci Creecy
13613 Woodward Blvd
Garfield Heights, OH 44125

DEBTOR
(ADDRESS)

You are hereby notified that this court has issued an order in the above case in favor of Valley Health Systems, LLC, the judgment creditor in this proceeding,
(Creditor's Name)

directing that some of your personal earnings be used in satisfaction of your debt to the judgment creditor instead of being paid to you. This order was issued on the basis of the
judgment creditor's judgment against you that was obtained in the Cuyahoga County Court of Common Pleas on July 26, 2022.

The law of Ohio provides that you are entitled to keep a certain amount of your personal earnings free from the claims of creditors. Additionally, wages under a certain amount may never be used to satisfy the claims of creditors. The documents entitled "**ORDER AND NOTICE OF GARNISHMENT AND ANSWER OF EMPLOYER**" that are enclosed with this notice show how the amount proposed to be taken out of your personal earnings was calculated by your employer.

If you dispute the judgment creditor's right to garnish your personal earnings and believe that you are entitled to possession of the personal earnings because they are exempt or if you feel that this order is improper for any other reason, you may request a hearing before this court by disputing the claim in the request for hearing form, appearing below, or in a substantially similar form, and delivering the request for hearing to this court at the above address, at the office of the clerk of this court, no later than the end of the fifth business day after you receive this notice. You may state your reasons for disputing the judgment creditor's right to garnish your personal earnings in the space provided on the form; however, you are not required to do so. If you do state your reasons for disputing the judgment creditor's right, you are not prohibited from stating any other reason at the hearing.

If you do not state your reasons, it will not be held against you by the court, and you can state your reasons at the hearing. **NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING.** The hearing will be limited to a consideration of the amount of your personal earnings, if any, that can be used in satisfaction of the judgment you owe to the judgment creditor.

If you request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, it will be conducted no later than twelve days after your request is received by the court, and the court will send you notice of the date, time, and place. You may indicate in the form that you believe that the need for the hearing is an emergency and that it should be given priority by the court. If you do so, the court will schedule the hearing as soon as practicable after your request is received and will send you notice of the date, time, and place. If you do not request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, some of your personal earnings will be paid to the judgment creditor.

If you have any questions concerning this matter, you may contact the office of the clerk of this court. If you want legal representation, you should contact your lawyer immediately. If you need the name of a lawyer, contact the local bar association.

by. _____
Deputy Clerk

Date

**REQUEST FOR HEARING
PERSONAL EARNINGS GARNISHMENT**

CUYAHOGA COUNTY CLERK OF COURTS OFFICE, CIVIL DIVISION, 1ST FLOOR, JUSTICE CENTER, 1200 ONTARIO STREET, CLEVELAND, OH 44113, (216) 443-3764,
<http://coc.cuyahogacounty.us/>

Valley Health Systems, LLC
367 South Gulph Road,
King of Prussia, PA 19406

v.

Darci Creecy
13613 Woodward Blvd
Garfield Heights, OH 44125

CREDITOR

DEBTOR

CASE NO. CV22966476

I dispute the judgment creditor's right to garnish my personal earnings in the above case and request that a hearing in this matter be held no later than twelve days after delivery of this request to the court.

I _____ feel that the need for the hearing is an emergency.
(insert "Do" or "Do Not")

I dispute the judgment creditor's right to garnish my personal earnings for the following reasons:

(OPTIONAL)

I UNDERSTAND THAT NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE CONSIDERED AT THE HEARING.

WARNING: IF YOU DO NOT DELIVER THIS REQUEST FOR HEARING OR A REQUEST IN A SUBSTANTIALLY SIMILAR FORM TO THE OFFICE OF THE CLERK OF THIS COURT WITHIN FIVE BUSINESS DAYS OF YOUR RECEIPT OF IT, YOU WAIVE YOUR RIGHT TO A HEARING AND SOME OF YOUR PERSONAL EARNINGS WILL BE PAID TO

Valley Health Systems, LLC IN SATISFACTION OF YOUR DEBT TO THE JUDGMENT-CREDITOR.
(Name of Judgment Creditor)

(Name of Judgment Debtor-Print)

(Signature)

Date: _____

**NOTICE TO JUDGMENT DEBTOR
PERSONAL EARNINGS GARNISHMENT**

CUYAHOGA COUNTY CLERK OF COURTS OFFICE, CIVIL DIVISION, 1ST FLOOR, JUSTICE CENTER, 1200 ONTARIO STREET, CLEVELAND, OH 44113, (216) 443-3764,
<http://coc.cuyahogacounty.us/>

Valley Health Systems, LLC
367 South Gulph Road,
King of Prussia, PA 19406

CREDITOR
(ADDRESS)

CASE NO. CV22966476

V.

Taryn Creecy
5305 Northfield Rd, Apt. 315
Bedford Heights, OH 44146

DEBTOR
(ADDRESS)

You are hereby notified that this court has issued an order in the above case in favor of Valley Health Systems, LLC, the judgment creditor in this proceeding,
(Creditor's Name)

directing that some of your personal earnings be used in satisfaction of your debt to the judgment creditor instead of being paid to you. This order was issued on the basis of the
judgment creditor's judgment against you that was obtained in the Cuyahoga County Court of Common Pleas on July 26, 2022.

The law of Ohio provides that you are entitled to keep a certain amount of your personal earnings free from the claims of creditors. Additionally, wages under a certain amount may never be used to satisfy the claims of creditors. The documents entitled "**ORDER AND NOTICE OF GARNISHMENT AND ANSWER OF EMPLOYER**" that are enclosed with this notice show how the amount proposed to be taken out of your personal earnings was calculated by your employer.

If you dispute the judgment creditor's right to garnish your personal earnings and believe that you are entitled to possession of the personal earnings because they are exempt or if you feel that this order is improper for any other reason, you may request a hearing before this court by disputing the claim in the request for hearing form, appearing below, or in a substantially similar form, and delivering the request for hearing to this court at the above address, at the office of the clerk of this court, no later than the end of the fifth business day after you receive this notice. You may state your reasons for disputing the judgment creditor's right to garnish your personal earnings in the space provided on the form; however, you are not required to do so. If you do state your reasons for disputing the judgment creditor's right, you are not prohibited from stating any other reason at the hearing.

If you do not state your reasons, it will not be held against you by the court, and you can state your reasons at the hearing. **NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING.** The hearing will be limited to a consideration of the amount of your personal earnings, if any, that can be used in satisfaction of the judgment you owe to the judgment creditor.

If you request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, it will be conducted no later than twelve days after your request is received by the court, and the court will send you notice of the date, time, and place. You may indicate in the form that you believe that the need for the hearing is an emergency and that it should be given priority by the court. If you do so, the court will schedule the hearing as soon as practicable after your request is received and will send you notice of the date, time, and place. If you do not request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, some of your personal earnings will be paid to the judgment creditor.

If you have any questions concerning this matter, you may contact the office of the clerk of this court. If you want legal representation, you should contact your lawyer immediately. If you need the name of a lawyer, contact the local bar association.

by. _____
Deputy Clerk

Date

REQUEST FOR HEARING
PERSONAL EARNINGS GARNISHMENT

CUYAHOGA COUNTY CLERK OF COURTS OFFICE, CIVIL DIVISION, 1ST FLOOR, JUSTICE CENTER, 1200 ONTARIO STREET, CLEVELAND, OH 44113, (216) 443-3764,
<http://coc.cuyahogacounty.us/>

Valley Health Systems, LLC
367 South Gulph Road,
King of Prussia, PA 19406

v.

Taryn Creecy
5305 Northfield Rd, Apt. 315
Bedford Heights, OH 44146

CREDITOR

DEBTOR

CASE NO. CV22966476

I dispute the judgment creditor's right to garnish my personal earnings in the above case and request that a hearing in this matter be held no later than twelve days after delivery of this request to the court.

I _____ feel that the need for the hearing is an emergency.
(insert "Do" or "Do Not")

I dispute the judgment creditor's right to garnish my personal earnings for the following reasons:

(OPTIONAL)

I UNDERSTAND THAT NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE CONSIDERED AT THE HEARING.

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Valley Health Systems, LLC IN SATISFACTION OF YOUR DEBT TO THE JUDGMENT-CREDITOR.
(Name of Judgment Creditor)

(Name of Judgment Debtor-Print)

(Signature)

Date: _____

Cuyahoga County Court of Common Pleas

Date: July 26, 2022

Case Number: CV 22 966476

Judgment Creditor:
Valley Health System, LLC
367 South Gulph Road
King of Prussia, PA 19406

Judgment Creditor's Attorney:
Emily Davis, Esq.
Lewis Brisbois Bisgaard & Smith
1375 E 9th Street, Suite 2250
Cleveland, OH 44114

VS.

Judgment Debtor:
Taryn Creecy
5305 Northfield Road
Apt 315
Bedford Hts., OH 44146

Notice: A foreign judgement has been filed in this court by

Valley Health System, LLC

Judgment Creditor against Taryn Creecy
Section 2329.022 of the Ohio Revised Code.

, Judgment Debtor pursuant to

Nailah K. Byrd
Clerk of the Court of Common Pleas

CUYAHOGA COUNTY, CLERK OF COURTS



Cuyahoga County Court of Common Pleas

Date: July 26, 2022

Case Number: CV 22 966476

Judgment Creditor:

Valley Health System, LLC
367 South Gulph Road
King of Prussia, PA 19406

Judgment Creditor's Attorney:

Emily Davis, Esq.
Lewis Brisbois Bisgaard & Smith
1375 E 9th Street, Suite 2250
Cleveland, OH 44114

VS.

Judgment Debtor:

Darci Creecy
13613 Woodward Boulevard
Garfield Hts., OH 44125

Notice: A foreign judgement has been filed in this court by

Valley Health System, LLC

Judgment Creditor against Darci Creecy
Section 2329.022 of the Ohio Revised Code.

, Judgment Debtor pursuant to

Nailah K. Byrd
Clerk of the Court of Common Pleas

CUYAHOGA COUNTY, CLERK OF COURTS

By: _____

RECEIPT



LORAIN COUNTY Court of Common Pleas

TOM ORLANDO, Clerk

LORAIN COUNTY JUSTICE CENTER 225 COURT STREET ELYRIA, OHIO 44035

Cashier/Bookkeeping (440) 329-5625

RECEIPT INFORMATION

Receipt Number:

22-0017066

Receipt Date/Time

Jul 22 2022 12:39PM

Receipt Type:

Civil Case Receipt

CASE INFORMATION

Case Number:

22CV206538

Judge:

Hon. Judge Raymond J. Ewers

Case Caption:

VALLEY HEALTH SYSTEM LLC VS LLOYD CREECY

PAYMENT INFORMATION

Paid By:

LEWIS BRISBOIS BISGAARD &

Paid For:

Payment Type:

Check

Paid To:

C.H.

Amount Tendered:

\$300.00

Balance Due:

\$0.00

Description:

NEW CASE



Steven D. Grierson

FILED

2022 JUL 22 P 2:23

CLERK OF COURTS
CLARK COUNTY

Judge: ANDREW J. SANTOLI

CV 22 966476

1 NJUD
2 S. BRENT VOGEL
3 Nevada Bar No. 6858
4 Brent.Vogel@lewisbrisbois.com
5 ADAM GARTH
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 LEWIS BRISBOIS BISGAARD & SMITH
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 Telephone: 702.893.3383
12 Facsimile: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

12 ESTATE OF REBECCA POWELL, through
13 BRIAN POWELL, as Special Administrator;
14 DARCI CREECY, individually and as Heir;
15 TARYN CREECY, individually and as an
16 Heir; ISAIAH KHOSROF, individually and as
17 an Heir; LLOYD CREECY, individually,

Plaintiffs,

vs.

18 VALLEY HEALTH SYSTEM, LLC (doing
19 business as "Centennial Hills Hospital Medical
20 Center"), a foreign limited liability company;
21 UNIVERSAL HEALTH SERVICES, INC., a
22 foreign corporation; DR. DIONICE S.
23 JULIANO, M.D., an individual; DR.
24 CONRADO C.D. CONCIO, M.D., an
25 individual; DR. VISHAL S. SHAH, M.D., an
26 individual; DOES 1-10; and ROES A-Z.,

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF JUDGMENT

FOREIGN JUDGMENT
2329.022 O.R.C.

1 PLEASE TAKE NOTICE that the Defendant Valley Health System LLC's Judgment of Costs
2 and Attorneys' Fees per NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) as Against
3 Plaintiffs was entered on June 2, 2022, a true and correct copy of which is attached hereto as Exhibit
4 A.

5
6 DATED this 7th day of June, 2022

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8 By /s/ Adam Garth

9 S. BRENT VOGEL

10 Nevada Bar No. 6858

11 ADAM GARTH

12 Nevada Bar No. 15045

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Tel. 702.893.3383

16 *Attorneys for Attorneys for Defendant Valley*

17 *Health System, LLC dba Centennial Hills Hospital*
18 *Medical Center*

19
20
21
22
23 JUN - 8 2022

24 CERTIFIED COPY
25 DOCUMENT ATTACHED IS A
26 TRUE AND CORRECT COPY
27 OF THE ORIGINAL ON FILE

28 *Adam D. Blum*
CLERK OF THE COURT

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 7th day of June, 2022, a true and correct copy of **NOTICE OF**
3 **ENTRY OF JUDGMENT** was served by electronically filing with the Clerk of the Court using the
4 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have
5 agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
7 PAUL PADDA LAW, PLLC
8 4560 S. Decatur Blvd., Suite 300
9 Las Vegas, NV 89103
10 Tel: 702.366.1888
11 Fax: 702.366.1940
12 psp@paulpaddalaw.com
13 *Attorneys for Plaintiffs*

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

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15
16 By /s/ Maria T. San Juan
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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EXHIBIT A

JUDG

S. BRENT VOGEL

Nevada Bar No. 6858

Brent.Vogel@lewisbrisbois.com

ADAM GARTH

Nevada Bar No. 15045

Adam.Garth@lewisbrisbois.com

LEWIS BRISBOIS BISGAARD & SMITH LLP

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Telephone: 702.893.3383

Facsimile: 702.893.3789

*Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISAIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM LLC'S JUDGMENT OF COSTS
AND ATTORNEYS' FEES PER NRS
18.020, 18.005, 18.110, 17.117, and N.R.C.P.
68(f) AS AGAINST PLAINTIFFS**

Pursuant to the Order granting Defendant Valley Health System, LLC's motion for summary judgment dated and entered on November 19, 2021 (**Exhibit "A"**), the Order granting Defendant Valley Health System, LLC's motion for reconsideration regarding motion for attorneys' fees dated and entered on May 4, 2022 (**Exhibit "B"**), and pursuant to Defendant Valley Health System, LLC's notice of withdrawal of appeal dated and filed in the Nevada Supreme Court on May 12, 2022

1 (Exhibit "C"),

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

3 That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

4 Defendants Valley Health System, LLC shall be awarded their reasonable costs and
5 attorneys' fees pursuant to NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) in the amounts
6 of \$110,849.85 for attorneys' fees, and costs of \$8,056.93, for a total of \$118,906.78 in accordance
7 with the Court's orders attached hereto as Exhibits "A" and "B" based upon the withdrawal of
8 Defendant's appeal as attached hereto as Exhibit "C".

9 DATED this _____ day of _____, 2022.

Dated this 2nd day of June, 2022

10

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12

DISTRICT COURT JUDGE

13

Respectfully Submitted By: **7B8 6E9 6A6B C7E9**
LEWIS BRISBOIS BISGAARD & SMITH LLP
Jerry A. Wiese
District Court Judge

14

15

16

By /s/ Adam Garth

17

S. BRENT VOGEL
Nevada Bar No. 6858

18

ADAM GARTH
Nevada Bar No. 15045

19

6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

20

Tel. 702.893.3383

21

*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

22

23 ///

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26 ///

27 ///

28 ///

1 Agreed as to form and substance by:

2

Refused to sign

3

Paul S. Padda, Esq.

4

Srilata Shah, Esq.

5

PAUL PADDA LAW, PLLC

6

4560 S. Decatur Blvd., Suite 300

7

Las Vegas, NV 89103

8

Tel: 702.366.1888

9

Fax: 702.366.1940

10

psp@paulpaddalaw.com

11

Attorneys for Plaintiffs

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this ____ day of May, 2022, a true and correct copy of **DEFENDANT**
3 **VALLEY HEALTH SYSTEM LLC'S JUDGMENT OF COSTS AND ATTORNEYS' FEES**
4 **PER NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) AS AGAINST PLAINTIFFS** was
5 served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system
6 and serving all parties with an email-address on record, who have agreed to receive electronic service
7 in this action.

8 Paul S. Padda, Esq.
9 PAUL PADDALAW, PLLC
10 4560 S. Decatur Blvd., Suite 300
11 Las Vegas, NV 89103
12 Tel: 702.366.1888
13 Fax: 702.366.1940
14 psp@paulpaddalaw.com
15 *Attorneys for Plaintiffs*

16 By /s/ Heidi Brown
17 An Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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From: [Paul Padda](#)
To: [Garth, Adam; Srilata Shah](#)
Cc: [Vogel, Brent; Brown, Heidi; San Juan, Maria](#)
Subject: [EXT] RE: Powell v Valley - CHH's Judgment for Costs #2.pdf
Date: Monday, May 16, 2022 1:26:18 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)



We cannot agree to this. Thanks.

Paul S. Padda, Esq.

PAUL PADDA LAW, PLLC
(702) 366-1888
paulpaddalaw.com



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4560 South Decatur Blvd, Suite 300
Las Vegas, Nevada 89103
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Los Angeles, California 90071
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Mailing Address For All Offices:
4030 South Jones Blvd., Unit 30370
Las Vegas, Nevada 89173



PAUL PADDA LAW
IT'S NOT ABOUT THE INJURY. IT'S ABOUT THE RECOVERY.

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Thursday, May 12, 2022 12:43 PM
To: Paul Padda <psp@paulpaddalaw.com>; Srilata Shah <sri@paulpaddalaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Brown, Heidi <Heidi.Brown@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>
Subject: Powell v Valley - CHH's Judgment for Costs #2.pdf

Counsel,

Please see attached. Please advise if we may affix your e-signature to the judgment.

Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

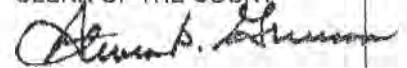
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EXHIBIT A



1 NEOJ
2 S. BRENT VOGEL
3 Nevada Bar No. 06858
4 Brent.Vogel@lewisbrisbois.com
5 ADAM GARTH
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 T: 702.893.3383
12 F: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
14 TARYN CREECY, individually and as an
15 Heir; ISAIAH KHOSROF, individually and as
16 an Heir; LLOYD CREECY, individually;
17 Plaintiffs,

18 vs.

19 VALLEY HEALTH SYSTEM, LLC (doing
20 business as "Centennial Hills Hospital Medical
21 Center"), a foreign limited liability company;
22 UNIVERSAL HEALTH SERVICES, INC., a
23 foreign corporation; DR. DIONICE S.
24 JULIANO, M.D., an individual; DR.
25 CONRADO C.D. CONCIO, M.D., an
26 individual; DR. VISHAL S. SHAH, M.D., an
27 individual; DOES 1-10; and ROES A-Z,;

28 Defendants.

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
25 captioned matter on the 19th day of November 2021, a copy of which is attached hereto.

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DATED this 19th day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
Nevada Bar No. 06858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
702.893.3383
*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 19th day of November, 2021, a true and correct copy of
3 **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the
4 Court using the Odyssey E-File & Serve system and serving all parties with an email-address on
5 record, who have agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
7 PAUL PADDA LAW, PLLC
8 4560 S. Decatur Blvd., Suite 300
9 Las Vegas, NV 89103
10 Tel: 702.366.1888
11 Fax: 702.366.1940
12 psp@paulpaddalaw.com
13 *Attorneys for Plaintiffs*

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Brad Shipley, Esq.
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bshipleyr@jhcottonlaw.com
*Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.*

14
15
16 By /s/ Roya Rokni
17 An Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
19
20
21
22
23
24
25
26
27
28

ORDR

S. BRENT VOGEL
Nevada Bar No. 6858
Brent.Vogel@lewisbrisbois.com
ADAM GARTH
Nevada Bar No. 15045
Adam.Garth@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
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Las Vegas, Nevada 89118
Telephone: 702.893.3383
Facsimile: 702.893.3789
*Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center*

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
Heir; ISAIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z,;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**ORDER VACATING PRIOR ORDER
DENYING DEFENDANT VALLEY
HEALTH SYSTEM, LLC DBA
CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING SAID DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
PER MANDAMUS OF NEVADA
SUPREME COURT**

This matter, coming before this Honorable Court on November 18, 2021 at 10:30 a.m. in
accordance with the order granting the petition for a writ of mandamus issued by the Nevada
Supreme Court dated October 18, 2021, directing that this Court vacate its order of October 29,
2020, which previously denied Defendant VALLEY HEALTH SYSTEM, LLC's motion for

1 summary judgment and co-defendants Concio and Shah's joinder thereto (collectively
2 "Defendants"), and ordering this Court to issue an order entering summary judgment in favor of
3 said Defendants due to the expiration of the statute of limitations, with Paul S. Padda, Esq. and
4 Srilata Shah, Esq. of PAUL PADDA LAW, PLLC, appearing on behalf of Plaintiffs, Adam Garth,
5 Esq., S. Brent Vogel, Esq. and Shady Sirsy, Esq., of the Law Offices of LEWIS BRISBOIS
6 BISGAARD & SMITH LLP, appearing on behalf of the Defendant VALLEY HEALTH SYSTEM,
7 LLC and John H. Cotton, Esq. and Brad Shipley, Esq. of JOHN H. COTTON AND ASSOCIATES,
8 appearing on behalf of DR. CONRADO C.D. CONCIO, M.D. and DR. VISHAL S. SHAH, M.D.
9 with the Honorable Court having reviewed the order of the Nevada Supreme Court, finds and orders
10 as follows:

11 THE COURT FINDS that Defendants argued that undisputed evidence demonstrated
12 Plaintiffs were on inquiry notice of their alleged professional negligence, wrongful death, and
13 negligent infliction of emotional distress claims by June 11, 2017, at the latest, and

14 THE COURT FURTHER FINDS that Defendants contended that Plaintiffs' February 4,
15 2019 complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an
16 action for injury or death based on the negligence of a health care provider within three years of the
17 date of injury and within one year of discovering the injury, whichever occurs first), and

18 THE COURT FURTHER FINDS that the term injury in NRS 41A.097 means "legal injury,"
19 *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury
20 when he knows or, through the use of reasonable diligence, should have known of facts that would
21 put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A
22 plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an
23 ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*,
24 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th
25 ed. 2009)), and

26 THE COURT FURTHER FINDS that while the accrual date for NRS 41A.097(2)'s one-
27 year period is generally a question for the trier of fact, this Court may decide the accrual date as a
28 matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462, and

1 THIS COURT FURTHER FINDS that here, irrefutable evidence demonstrated that
2 Plaintiffs were on inquiry notice by June 11, 2017, at the latest, when Plaintiff Brian Powell, special
3 administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged
4 that the decedent, Rebecca Powell, “went into respiratory distress” and her health care providers did
5 not appropriately monitor her, abandoning her care and causing her death, and

6 THIS COURT FURTHER FINDS that Brian Powell’s own allegations in the aforesaid
7 Board complaint demonstrate that he had enough information to allege a prima facie claim for
8 professional negligence-that in treating Rebecca Powell, her health care providers failed “to use the
9 reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained
10 and experienced providers of health care.” NRS 41A.015 (defining professional negligence); *Winn*,
11 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a “plaintiffs general belief that someone’s
12 negligence may have caused his or her injury” triggers inquiry notice), and

13 THIS COURT FURTHER FINDS that the evidence shows that Plaintiff Brian Powell was
14 likely on inquiry notice even earlier than the aforesaid Board complaint, wherein Plaintiffs alleged
15 they had observed in real time, following a short period of recovery, the rapid deterioration of
16 Rebecca Powell’s health while in Defendants’ care, and

17 THIS COURT FURTHER FINDS that Plaintiff Brian Powell filed a complaint with the
18 Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar
19 to the Nursing Board complaint, this complaint alleged facts, such as the Defendants’ failure to
20 upgrade care, sterilize sutures properly, and monitor Rebecca Powell, all of which suggest he already
21 believed, and knew of facts to support his belief, that negligent treatment caused Rebecca Powell’s
22 death by the time he made these complaints to NDHHS and the Nursing Board, and

23 THIS COURT FURTHER FINDS that even though Plaintiffs received Rebecca Powell’s
24 death certificate 17 days later, erroneously listing her cause of death as suicide, that fact did not
25 change the conclusion that Plaintiffs received inquiry notice prior to that date, and

26 THE COURT FURTHER FINDS that Plaintiffs did not adequately address why tolling
27 should apply under NRS 41A.097(3) (providing that the limitation period for a professional
28 negligence claim “is tolled for any period during which the provider of health care has concealed

1 any act, error or omission upon which the action is based"), and

2 THIS COURT FURTHER FINDS that even if Plaintiffs did adequately address the tolling
3 issue, such an argument would be unavailing, as the medical records provided were sufficient for
4 their expert witness to conclude that petitioners were negligent in Rebecca Powell's care. *See Winn*,
5 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate
6 where the intentionally concealed medical records were "material" to the professional negligence
7 claims), and

8 THE COURT FURTHER FINDS that the doctrine of equitable tolling has not been extended
9 to NRS 41A.097(2), and

10 THIS COURT FURTHER FINDS that Plaintiffs did not adequately address whether such
11 an application of equitable tolling is appropriate under these facts. *See Edwards v. Emperor's*
12 *Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider
13 arguments that a party did not cogently argue or support with relevant authority), and

14 THE COURT FURTHER FINDS that Plaintiffs had until June 11, 2018, at the latest, to file
15 their professional negligence claim, making Plaintiffs' February 4, 2019 complaint untimely, and

16 THE COURT FURTHER FINDS that given the uncontroverted evidence demonstrating that
17 Defendants were entitled to judgment as a matter of law because the complaint was time-barred
18 under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing
19 that courts must grant summary judgment when the pleadings and all other evidence on file, viewed
20 in a light most favorable to the nonmoving party, "demonstrate that no genuine issue as to any
21 material fact [remains] and that the moving party is entitled to a judgment as a matter of law"
22 (internal quotations omitted));

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court's prior order
24 of October 29, 2020 denying VALLEY HEALTH SYSTEM, LLC's motion for summary judgment
25 and co-defendants' joinder thereto is vacated in its entirety, and

26 ///

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28 ///

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
2 VALLEY HEALTH SYSTEM, LLC's motion for summary judgment and co-defendants' joinders
3 thereto are granted in their entirety due to the untimely filing of this action by Plaintiffs.

4
5 Dated: _____

Dated this 19th day of November, 2021


DISTRICT COURT JUDGE

6
7
8 DATED this ____ day of November, 2021.

DATED this 18th day of November, 2021
Jerry A. Wiese
District Court Judge

9
10 *UNSIGNED*

11 Paul S. Padda, Esq.
12 Srilata Shah, Esq.
13 PAUL PADDALAW, PLLC
14 4560 S. Decatur Blvd., Suite 300
15 Las Vegas, NV 89103
16 Tel: 702.366.1888
17 Fax: 702.366.1940
18 psp@paulpaddalaw.com
19 Attorneys for Plaintiffs

20 DATED this 18th day of November, 2021

21 /s/ Brad Shipley

22 John H. Cotton, Esq.
23 Brad Shipley, Esq.
24 JOHN H. COTTON & ASSOCIATES
25 7900 W. Sahara Ave., Suite 200
26 Las Vegas, NV 89117
27 Tel: 702.832.5909
28 Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipley@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

/s/ Adam Garth

S. BRENT VOGEL, ESQ.
Nevada Bar No. 6858
ADAM GARTH, ESQ.
Nevada Bar No. 15045
SHADY SIRSY, ESQ.
Nevada Bar No. 15818
LEWIS BRISBOIS BISGAARD & SMITH
LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center

From: Brad Shipley
To: Garth, Adam; Srilata Shah; Paul Padda
Cc: Vogel, Brent; Rokni, Roya; Sirsy, Shady; San Juan, Maria
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 10:00:14 AM
Attachments: image001.png

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Adam,

I believe the bracketed word [proposed] in the title caption should be removed before submission to the court, but please use my e-signature with or without making that change. Thank you for taking the time to draft the order.

Brad Shipley, Esq.
John H. Cotton & Associates, Ltd.
7900 W. Sahara ave. #200
Las Vegas, NV 89117
bshipley@jhcottonlaw.com
702 832 5909

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Friday, November 12, 2021 8:50 AM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; John Cotton <jhcotton@jhcottonlaw.com>
Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Importance: High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Tuesday, November 9, 2021 10:33 AM

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <pp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

Adam Garth
Partner
Las Vegas Rainbow
702.693.4335 or x7024335

From: Garth, Adam
To: Paul Padda, Srilata Shah, Brad Shipley
Cc: Vogel, Brent, Rokni, Roya, Sirsy, Shady, San Juan, Maria, jhcotton@jhcottonlaw.com
Subject: RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 9:59:40 AM
Attachments: image001.png
image002.png

We are not willing to do that. As you were unwilling to stay anything at our request, we will return the courtesy.

From: Paul Padda <psp@paulpaddalaw.com>
Sent: Friday, November 12, 2021 9:56 AM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

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As you know, there is a motion for rehearing pending in the Supreme Court. Given that fact, and the lack of prejudice to Defendants, please advise if Defendants are willing to stay enforcement of the Supreme Court's decision which is the subject of a motion for rehearing?
Thanks.

Paul S. Padda, Esq.
PAUL PADDALAW, PLLC
Websites: paulpaddalaw.com

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Friday, November 12, 2021 8:50 AM

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Tuesday, November 9, 2021 10:33 AM

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

Adam Garth

Partner
Las Vegas Rainbow
702.693.4335 or x7024335

1 CSERV

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
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 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: 11/19/2021

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
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EXHIBIT B



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8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISAAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
18 Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
19 foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
20 CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
21 individual; DOES 1-10; and ROES A-Z;,
22

23 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that the Order Regarding Valley Health System's Motion for
25 Reconsideration Regarding Motion for Attorneys' Fees was entered on May 4, 2022, a true and
26 correct copy of which is attached hereto.

27 ///

28 ///

1 DATED this 4th day of May, 2022

2 LEWIS BRISBOIS BISGAARD & SMITH LLP

3 By /s/ Adam Garth

4 S. BRENT VOGEL

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12 *Health System, LLC dba Centennial Hills Hospital*

13 *Medical Center*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 4th day of May, 2022, a true and correct copy of **NOTICE OF ENTRY**
3 **OF ORDER** was served by electronically filing with the Clerk of the Court using the Odyssey E-
4 File & Serve system and serving all parties with an email-address on record, who have agreed to
5 receive electronic service in this action.

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16 By /s/ Heidi Brown
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

ESTATE OF REBECCA POWELL, through)
BRIAN POWELL, as Special Administrator;)
DARCI CREECY, individually and as an Heir;)
TARYN CREECY, individually and as an Heir;)
ISAIAH KHOSROF, individually and as an)
Heir; LLOYD CREECY, individually,)

Plaintiffs,)

vs.)

VALLEY HEALTH SYSTEM, LLC (doing)
Business as "Centennial Hills Hospital)
Medical Center"), a foreign limited liability)
Company; UNIVERSAL HEALTH SERVICES,)
INC., a foreign corporation; DR. DIONICE)
S. JULIANO, M.D., an individual; DR.)
CONRADO C.D. CONCIO, M.D., an individual;)
DR. VISHAL S. SHAH, M.D., an individual;)
DOES 1-10; and ROES A-Z,)

Defendants.)

CASE NO.: A-19-788787-C
DEPT. NO.: XXX

**ORDER RE: VALLEY
HEALTH SYSTEM'S
MOTION FOR
RECONSIDERATION RE
MOTION FOR
ATTORNEYS' FEES**

INTRODUCTION

The above-referenced matter was scheduled for a hearing on ^{4/1/22}~~3/30/22~~, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Reconsideration of the Court's Order re: Defendant's Motion for Attorneys' Fees. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs. This Court
19 entered an Order on 2/15/22 denying Valley's Motion for Fees and Countermotion for
20 Fees and Costs. Thereafter, Valley filed an Appeal dealing specifically with the Court's
21 denial of fees and costs. Consequently, this Court no longer has jurisdiction to address
22 the issue of fees and costs. If the Court were inclined to reconsider its previous
23 decision, the most it could do would be to enter a *Honeycutt* Order (See *Honeycutt v.*

24 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

25 Valley Health System, d/b/a Centennial Hills Hospital (CHH) requests that the
26 Court reconsider its 2/15/22 Order denying attorneys' fees and costs and award it
27 \$110,930.85 in attorneys' fees per N.R.C.P. 68 and NRS § 17.117, plus \$58,514.36 in
28 pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR
7.60. Additionally, CHH requests this Court sign the judgment already submitted for
the undisputed \$42,492.03.

1 CHH contends that this Court conflated two issues- (1) the memorandum of
2 costs and disbursements previously submitted totaling \$42,492.038, "an amount which
3 is undisputed, and for which this Court has refused to sign a judgment," and (2) the
4 additional costs, disbursements and attorneys' fees addressed by CHH's instant motion
5 and the initial motion which sought \$110,930.85 in attorneys' fees per N.R.C.P. 68 and
6 N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to
7 N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

8 With regard to first "issue," CHH argues that because the Court denied Plaintiff's
9 Motion to Extend Time to Retax Costs, the \$42,492.03 claimed in CHH's Verified
10 Memorandum of Costs is undisputed and therefore judgment must be signed and
11 entered. CHH stated that, "[t]his Court cannot revisit an issue which has been finally
12 decided and therefore, at a minimum, a judgment for the unchallenged \$42,492.03 in
13 statutory costs and disbursements must be signed.

14 The majority of CHH's Motion for Reconsideration concentrates on the second
15 "issue," that this Court's decision to deny CHH's request for an additional \$169,445.21
16 in costs, disbursements and attorneys' fees was clearly erroneous. See *Masonry & Tile*
17 *Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).
18 As a preliminary matter, CHH is concerned by the Court's comparison to the Motion
19 for Fees filed by Drs. Concio and Shaw. Further, CHH contends it is "more concerning,"
20 that the Court's prior order stated, "Finally, in considering the result, the Court notes
21 that although the Court found insufficient evidence to establish irrefutably that the
22 statute of limitations had expired, Defense counsel was successful in convincing the
23 Supreme Court of that, and consequently, Defendants prevailed." According to CHH,
24 "the record needs to be corrected here- there was no convincing the Supreme Court of
25 anything."

26 CHH argues that although the Court correctly found that CHH's offer of
27 judgment was made in good faith and its timing was proper, it erroneously found
28 "Plaintiffs' decision to reject the offer and proceed to trial was not grossly unreasonable
or in bad faith. Plaintiffs believed they had a valid claim, and the Court cannot find
that wanting some recovery, as opposed to \$0.00, to be 'grossly unreasonable' or in
'bad faith'." CHH contends that this finding is unreasonable in light of the Nevada
Supreme Court's determination that Plaintiffs were on notice of any alleged malpractice

1 no more than one month after decedent's death. Similarly, CHH argues that this Court
2 incorrectly found Plaintiffs' decision to reject the Offer of Judgment was not made in
3 bad faith and was not grossly unreasonable.

4 As for the reasonableness of the attorneys' fees requested pursuant to NRCP 68,
5 CHH states that it offered to present the Court supporting documentation for in camera
6 review, but, "instead of granting a hearing to which Plaintiffs could interpose whatever
7 opposition they may have had, the Court rejected this offer and suggestion." In
8 addition, Plaintiffs did not oppose the amount of costs and fees incurred in the original
9 motion, even without the attached bills. Additionally, CHH provides that, "[s]ince this
10 Court insisted that the bills be attached, CHH has provided the entirety thereof for
11 judicial review and review by Plaintiffs."

12 In Opposition, Plaintiffs argue that CHH's Motion must be summarily denied,
13 without the Court addressing the merits of the Motion because CHH did not present
14 any new or substantially different evidence than what it had the opportunity to present
15 when it filed its Verified Memorandum of Costs and separate Motion for Attorney's
16 Fees on 11/22/21. Further, Plaintiffs contend that CHH's Motion for Reconsideration is
17 "clearly a transparent attempt to bolster a potential appeal by inviting the Court to
18 engage with the merits," because a motion for reconsideration is only appealable if
19 decided on the merits. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589
(2010).

20 Further, Plaintiffs argue that CHH falsely claims that it attached evidence to its
21 Motion for Reconsideration that "was originally submitted to this Court." Plaintiffs also
22 state that CHH's Motion lacks any authority showing the Court's denial of costs was
23 clearly erroneous, and it does not even engage with the authorities cited on pages 7
24 through 9 of the Court's 2/15/22 Order. Plaintiffs argue they should not be liable for
25 CHH's negligence in failing to follow both the statutory and common law requirements
26 for establishing entitlement to costs. Plaintiffs argue that this Court was thus correct in
27 denying CHH costs in their entirety for lack of proper documentation and reliable
28 evidence.

With regard to CHH's request to reconsider the denial of fees, Plaintiffs note that
the Court's denial was based upon its finding that (1) Plaintiffs did not act in bad faith
or in a grossly unreasonable manner when they rejected CHH zero dollar Offer of

1 Judgment and (2) the documentation in support of the request for attorney's fees was
2 lacking. While the first finding by itself ends the inquiry into whether fees can be
3 awarded, in this case the Court also found that "[a]lthough the Defendant [CHH] has
4 offered to submit a billing ledger to the Court in camera, it would have been necessary
5 for the Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so
6 that the reasonableness could have been addressed by all parties, and by the Court."
7 Plaintiffs argue that since this never happened, there was no reasonable basis for this
8 Court to assess the reasonableness of fees being claimed by CHH. Plaintiffs argue that
9 CHH merely rehashes the same arguments presented in its original Motion for Fees.

10 Moreover, Plaintiffs argue that the Court's decision to deny fees was not clearly
11 erroneous because the disposition of this case turned on a legal question, which the
12 Nevada Supreme Court decided, well after the time Plaintiffs rejected the Offer of
13 Judgment. It would be ridiculous to expect Plaintiffs, grieving the death of their
14 mother, to anticipate the legal issue and foresee its resolution by the Nevada Supreme
15 Court when they rejected the Offer of Judgment. CHH itself acknowledges this fact
16 when it admits, "[m]edical malpractice cases are complex and require an in-depth
17 understanding of both unique legal issues as well as the medical care and course that is
18 at issue." VHS' Motion for Reconsideration, p. 21 (lines 1-2).

19 Finally, Plaintiffs argue that the CHH fails to address the deficiency of
20 withholding a billing ledger when it made its fee request and instead asking the Court
21 to rely only upon the declaration of its counsel.

22 In Reply, CHH argues that Plaintiff incorrectly asserts CHH "has not presented
23 any new or substantially different evidence than what it had the opportunity to present
24 when it filed its original Verified Memorandum of Costs and separate Motion for
25 Attorneys' Fees..." CHH's instant motion is predicated on this Court's clearly erroneous
26 decision to: (1) refuse to sign a judgment for an undisputed amount of legally
27 awardable costs to which CHH is entitled, and (2) to deny additional costs and
28 attorneys' fees stemming from Plaintiff's commencement and maintenance of an action
that the Supreme Court found was not only untimely, but that this Court's decision to
deny summary judgment in light of the evidence was a manifest abuse of discretion.

1 Noting that the Court decided the underlying Motion on the papers and without
2 oral argument, CHH contends that this Court ignored the request for in camera review
3 of any evidence it required, with Plaintiffs' opportunity to review same as well. The
4 Court also denied any request for statutorily permitted costs and fees, which was never
5 opposed by Plaintiffs, and denied the discretionary motion for attorneys' fees and costs
6 predicated on other legal and statutory bases. CHH suggests that these denials were
7 based upon this Court's abuse of its discretion and refusal to accept the underlying
8 findings of the Supreme Court pertaining to the evidence Plaintiffs knowingly
9 possessed which demonstrated clear inquiry notice within one month of the decedent's
10 death.

11 CHH argues that this Court erroneously concluded that CHH submitted no
12 documentary evidence or explanation of costs attendant to the verified memorandum
13 of costs. However, the verified memorandum of costs contained not only a complete
14 listing of disbursements which are allowable under the law for these purposes, but the
15 declaration explained that the expenses were accurate and were incurred and were
16 reasonable. Moreover, the memorandum explained and justified each of the costs,
17 supported by case authority and an application of the respective factors considered to
18 the specific facts and circumstances of this case. As such, CHH claims there was more
19 than ample evidentiary justification for the costs claimed including court filing fees and
20 the expert fees which were justified by the explanations contained in the verified
21 memorandum. For this Court to somehow assert complete ignorance of the legal and
22 appellate history of this case was clearly erroneous.

23 Moreover, CHH states that Plaintiffs never disputed, nor to this day dispute, the
24 veracity and accuracy of the costs contained in the verified memorandum of costs. CHH
25 argues that, "There was no absence of evidence justifying the costs. The Court just
26 chose to ignore it and improperly declared they were insufficient, citing to the
27 aforementioned authority." CHH argues that the authority does stand for the proposition for
28 which they are cited or was misapplied by the Court. The authority cited involved no
evidence or documentation. CHH not only provided evidence, it justified the costs,
especially of the voluminous number of experts needed for retention due to the
blunderbuss of allegations.

1 CHH further states:

2 Rather than accepting the Supreme Court's decision and rationale, this
3 Court's denial of CHH's motion and the rationale behind that decision
4 continues to perpetuate the false notion that the action was either
5 brought or maintained in good faith, a fact completely dispelled by the
6 Supreme Court's decision. Thus, denying costs and attorneys' fees in light
7 of the Supreme Court's decision is not only clearly erroneous, it is also a
8 manifest abuse of discretion which the instant motion seeks to redress.

9 Again, this Court possessed admissible evidence of the work, time and
10 expenses on the original motion. This Court wanted more than that. This
11 motion gives the Court everything it could possibly need. Moreover, all of
12 this could have been obviated by a hearing with an opportunity for all
13 parties to participate to consider the totality of the evidence which has
14 now been submitted, and would have been submitted had the in camera
15 inspection thereof been considered.

12 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13 Pursuant to EDCR 2.24(a), "[n]o motion once heard and disposed of may be
14 renewed in the same cause, nor may the same matters therein embraced by reheard,
15 unless by leave of the court granted upon motion therefor, after notice of such motion
16 to the adverse parties."

17 Nevada courts have inherent authority to reconsider their prior orders. See,
18 *Trail v. Faretto*, 91 Nev. 401 (1975). A party may, "for sufficient cause shown ... request
19 that a court ... amend, correct, resettle, modify, or vacate, as the case may be, an order
20 previously made and entered ... in the case or proceeding. *Id.* at 403. A court may
21 exercise its discretion to revisit and reverse a prior ruling if any one of five
22 circumstances is present: (1) a clearly erroneous ruling; (2) an intervening change in
23 controlling law; (3) substantially different evidence; (4) other changed circumstances;
24 or (5) that manifest injustice would result if the prior ruling is permitted to stand.
25 *United States v. Real Prop_*. Located at Incline Village, 976 F. Supp. 1327, 1353
(D.Nev. 1997). A motion for reconsideration should be granted where new issues of fact
26 or law are raised which support a "ruling contrary to the ruling already reached."
27 *Moore v. City of Las Vegas*, 92 Nev. 402, 405 (1976).

28 Although the Defendants take offense at the language the Court used in its
previous Order, this Court intended nothing negative by indicating that Defendants
were able to "convince" the Supreme Court of their position. Such statement was made

1 simply to convey the “fact” that the Supreme Court was “convinced” that the
2 Defendant’s position was correct. Defendants argue that the Court’s denial of fees and
3 costs was somehow a continuation of the Court’s position in favor of the Plaintiff, but
4 this is also incorrect. In fact, the Court found that the *Beattie* and *Brunzell* factors
5 weighed in favor of the Defense, but since the Defense had not supported its request for
6 fees and costs, as required by the Nevada Supreme Court, this Court was unable to
7 award fees and costs. *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983);
8 *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969).

9 Additionally, Defendants argue that because they submitted a Memorandum of
10 Costs, which was not timely objected to, they are “entitled” to whatever they asked for.
11 This is also incorrect. A party is only entitled to costs if they are substantiated, and the
12 Court finds that such costs were reasonable, and incurred in the subject litigation.
13 *Frazier v. Drake*, 131 Nev. 632, 357 P.3d 365 (NV.Ct.of App., 2015); *Bobby Berosini,*
14 *Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383
15 (1998); *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015).

16 Finally, Defendants suggest that the Court would have been able to review the
17 supporting documents, which Defendant failed to initially provide, if the Court had
18 held a “hearing” and allowed the Defendant to present such documents. Part of the
19 Court’s previous inability to award fees was based on the Defendant’s failure to provide
20 support for the fees requested, although such documentation was offered to the Court
21 “in camera.” It is simply not “fair” to an opposing party, to offer supporting documents
22 “in camera,” implying that the opposing party will not have the opportunity to
23 challenge such documents. Based on the Defendant’s suggestion that they would make
24 billing records available to the Court “in camera,” the Court was led to believe that such
25 documents would not be provided to the Plaintiff.

26 The Defendant has now submitted documentation supporting the claim for
27 attorney’s fees. Because the Court has now been presented with substantially different
28 or additional evidence, reconsideration is appropriate.

Defendant has now provided billing records indicating the following:

5/27/20	\$725.00
6/1/20-6/28/20	\$3,510.00
7/1/20-7/31/20	\$10,192.50
8/10/20-8/28/20	\$8,865.00
9/1/20-9/25/20	\$19,642.50

10/1/20-10/29/20	\$12,559.50
11/2/20-11/30/20	\$14,392.80
12/1/20-12/22/20	\$3,690.00
1/5/21-1/21/21	\$4,449.00
2/4/21-2/19/21	\$1,489.50
3/4/21-3/30/21	\$2,150.00
4/2/21-4/30/21	\$11,200.00
5/5/21-5/21/21	\$905.00
6/4/21-6/25/21	\$6,629.50
7/7/21-7/29/21	\$1,026.50
8/3/21-8/31/21	\$5,841.50
9/8/21-9/30/21	\$4,375.00
10/1/21-10/27/21	\$10,700.00
11/9/21-11/23/21	\$2,826.50
12/2/21-12/29/21	\$7,975.00
1/3/22-1/25/22	<u>\$4,925.00</u>
Total:	\$138,069.80

Defendant has now provided documentation supporting the following costs:

American Legal Investigation	\$27.43
Ruffalo & Associates	\$4,350.00
	\$1,800.00
	\$10,350.00
Abraham Ishaaya, M.D.	\$6,710.00
	\$1,375.00
	\$6,187.50
	\$2,970.00
	\$3,437.50
	\$4,675.00
Cohen Volk Economic Counseling	\$688.50
	\$3,855.60
JAMS	\$3,000.00
Filing Fees	<u>\$529.50</u>
Total:	\$49,956.03

Defendant argues that it is entitled to \$42,492.03, and \$110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant to N.R.C.P. 68, N.R.S. 17.1151, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d 1050 (2019) for a waiver of any presently or potentially recoverable costs in full and final settlement of the matter. At the time of the Offer,

1 Defendants' expended costs and fees totaled \$58,514.36. The Offer was not accepted by
2 Plaintiff and expired on September 11, 2020.

3 Since the date of the Offer of Judgment, Defendant argues that it incurred
4 \$106,619.85 in attorney's fees, and paralegal's fees in the amount of \$4,230.00. This
5 Court finds and concludes that the fees incurred by Defendant were reasonable and
6 necessarily incurred in the defense of the case. This Court adopts by reference its prior
7 reasoning and analysis relating to the requested attorney's fees, and now that the Court
8 has been provided with the documentary support of such fees, and finds that such fees
9 were reasonable, pursuant to *Beattie* and *Brunzell*, the Court finds and concludes that
10 such fees are appropriate and recoverable. The Court further finds that the Defendant
11 has now met the requirements of *Frazier*, with regard to documenting the costs
12 incurred. The Court is still not convinced that the expert fees, in addition to the \$1,500
13 recoverable by statute, are necessary or recoverable. Consequently, in reducing each of
14 the expert's fees to \$1,500.00, the above-referenced costs, which have been
documented, must be reduced to \$8,056.93.

15 **CONCLUSION/ORDER**

16 Based upon the foregoing, and good cause appearing,

17 This Court now indicates its intention, pursuant to *Huneycutt v. Huneycutt*, 94
18 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453
19 (2010), that if this Court had jurisdiction to decide this matter, the Court would now
award attorney's fees of \$110,849.85, and costs of \$8,056.93.

20 Because this matter has been decided on the pleadings, any future hearings
21 relating to this matter are taken off calendar. The Court requests that counsel for
22 Defendant prepare and process a Notice of Entry with regard to this matter, and convey
23 this Decision to the Supreme Court, pursuant to *Huneycutt* and *Dingwall*.

24 Dated this 4th day of May, 2022

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Jerry A. Wiese
District Court Judge

1 CSERV
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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
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6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
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 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: 5/4/2022

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EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,

Appellant,

vs.

ESTATE OF REBECCA POWELL, DARCI
CREECY, TARYN CREECY, ISAAH
KHOSROF, and LLOYD CREECY,

Respondents.

Supreme Court No.: 84402

Electronically Filed

May 12 2022 10:56 a.m.

District Court No.: A-19-788787-C
Elizabeth A. Brown
Clerk of Supreme Court

NOTICE OF WITHDRAWAL OF APPEAL

VALLEY HEALTH SYSTEM, LLC, appellant named above, hereby
moves to voluntarily withdraw the appeal mentioned above.

I, Adam Garth, Esq., as counsel for the appellant, explained and informed
VALLEY HEALTH SYSTEM, LLC of the legal effects and consequences of this
voluntary withdrawal of this appeal, including that VALLEY HEALTH SYSTEM,
LLC cannot hereafter seek to reinstate this appeal and that any issues that were or
could have been brought in this appeal are forever waived. Having been so
informed, VALLEY HEALTH SYSTEM, LLC hereby consents to a voluntary
dismissal of the above-mentioned appeal.

VERIFICATION

I recognize that pursuant to N.R.A.P. 3C I am responsible for filing a notice of withdrawal of appeal and that the Supreme Court of Nevada may sanction an attorney for failing to file such a notice. I therefore certify that the information provided in this notice of withdrawal of appeal is true and complete to the best of my knowledge, information and belief.

DATED this 12th day of May, 2022

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
Nevada Bar No. 006858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2022, a true and correct copy of **NOTICE OF WITHDRAWAL OF APPEAL** was served upon the following parties by electronic service through this Court's electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

By /s/ Heidi Brown
An Employee of
LEWIS BRISBOIS BISGAARD &
SMITH LLP

1 CSERV

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
10 Defendant(s)

11 AUTOMATED CERTIFICATE OF SERVICE

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

15 Service Date: 6/2/2022

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpincombe@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Paul Padda	civil@paulpaddalaw.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
24 Adam Garth	Adam.Garth@lewisbrisbois.com
25 Srilata Shah	sri@paulpaddalaw.com
26	
27	
28	

1	Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
2		
3	Shelbi Schram	shelbi@paulpaddalaw.com
4	Maria San Juan	maria.sanjuan@lewisbrisbois.com
5	Karen Cormier	karen@paulpaddalaw.com
6	Kimberly DeSario	kimberly.desario@lewisbrisbois.com
7	Shelbi Schram	shelbi@paulpaddalaw.com
8	Heidi Brown	Heidi.Brown@lewisbrisbois.com
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Vendor No.: **64746** **Cuyahoga County Clerk of Court**

Check No.: **200029**

Invoice Date	Invoice No.	Description	Disb. Code	Voucher No.	Account No./ File No.	Amount
7/20/22	CLE-02089	Filing fee for Nevada Certified Judgment and Order on 7/22/22.	5	2922250	28094-190	125.00

Total Amount: 125.00



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS

1200 Ontario Street
Cleveland, Ohio 44113

R E C E I P T

For: CIVIL

Receipt Number: 225000064246

Case Nbr: CV22966476

Date Filed: 07/22/2022

Receipt Date: 07/22/2022

VALLEY HEALTH SYSTEM, LLC

FOREIGN JUDGMENT	125.00
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-vs-

DARCI CREECY ET AL

Judge: ANDREW J. SANTOLI

Total Due	125.00
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Check Number	200029	125.00
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Received From:
LEWIS BRISBOIS BISGAARD & SMITH LLP 000142
1375 E 9TH ST, STE 2250
CLEVELAND, OH 44114-0000

Change	
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Total Paid	125.00
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DEPUTY CLERK

CLMHB

NOTICE OF COURT PROCEEDING TO COLLECT DEBT

To: **Taryn Creecy**
(Name of Judgment Debtor)

5305 Northfield Rd., Apt. 315, Bedford Heights, OH 44146

(Last Known Residence Address of Judgment Debtor)

You owe the undersigned **Valley Health System, LLC** \$ **118,906.78**, including interest and court costs, for which a judgment was obtained against you or certified in the
(Name of Judgment Creditor)

Court on **July 22, 2022**, payment of which is hereby demanded.
(Date)

If you do not do one of the three things listed below within fifteen days of the date of the mailing of this notice or of its service by the court, we will go to court, unless we are otherwise precluded by law from doing so, and ask that your employer be ordered to withhold money from your earnings until the judgment is paid in full or, if applicable, is paid to a certain extent and to pay the withheld money to the court in satisfaction of your debt. This is called garnishment of personal earnings.

It is to your advantage to avoid garnishment of personal earnings because the placing of the extra burden on your employer possibly could cause you to lose your job.

YOU CAN AVOID THE GARNISHMENT BY DOING ONE OF THESE THREE THINGS WITHIN THE FIFTEEN-DAY PERIOD:

- (1) Pay to us the amount due;
- (2) Complete the attached form entitled "Payment to Avoid Garnishment" and return it to us with the payment, if any, shown due on it; or
- (3) Apply to your local municipal or county court or, if you are not a resident of Ohio, to the municipal or county court in whose jurisdiction your place of employment is located, for the appointment of a trustee to receive the part of your earnings that is not exempt from garnishment, and notify us that you have applied for the appointment of a trustee. You will be required to list your creditors, the amounts of their claims, and the amounts due on their claims, and the amount you then will pay to your trustee each payday will be divided among them until the debts are paid off. This can be to your advantage because in the meantime none of those creditors can garnish your wages.

You also may contact a budget and debt counseling service described in division (D) of section 2716.03 of the Revised Code for the purpose of entering into an agreement for debt scheduling. There may not be enough time to set up an agreement for debt scheduling in order to avoid a garnishment of your wages based upon this demand for payment, but entering into an agreement for debt scheduling might protect you from future garnishments of your wages. Under an agreement for debt scheduling, you will have to regularly pay a portion of your income to the service until the debts subject to the agreement are paid off. This portion of your income will be paid by the service to your creditors who are owed debts subject to the agreement. This can be to your advantage because these creditors cannot garnish your wages while you make your payments to the service on time.

Valley Health System, LLC

(Name of Judgment Creditor)

(Signature of Judgment Creditor or Agent)

367 South Gulph Road, King of Prussia, PA 19406

(Address of Judgment Creditor)

PAYMENT TO AVOID GARNISHMENT

To:

Valley Health System, LLC
367 South Gulph Road, King
of Prussia, PA 19406

Judgment Creditor Name and Address

To avoid the garnishment of personal earnings of which you have given me notice, I enclose \$ _____ to apply toward my indebtedness to you. The amount of the payment was computed as follows:

- (1) Total amount of indebtedness demanded: \$ 118,906.78
- (2) Enter the amount of your personal earnings, after deductions required by law, earned by you during the current pay period (that is, the pay period in which this demand is received by you): \$ _____
- (3) a. Enter your pay period (circle one):
- ☒ Weekly ☐ Biweekly ☐ Semimonthly ☐ Monthly
- b. Enter the date when your present pay period ends: _____
- (4) Enter an amount equal to 25% of the amount on line (2): \$ _____
- (5) a. The current federal minimum hourly wage is \$ _____ (to be filled in by Judgment Creditor) (You should use the above figure to complete this portion of the form.) If you are paid weekly, enter thirty times the current federal minimum hourly wage; if paid biweekly, enter sixty times the current federal minimum hourly wage; if paid semimonthly, enter sixty-five times the current federal minimum hourly wage; if paid monthly, enter one hundred thirty times the current federal minimum hourly wage: \$ _____
- b. Enter the amount by which the amount on line (2) exceeds the amount on line 5(A): \$ _____
- (6) Enter the smallest of the amounts on line (1), (4), or 5(B). Send this amount to the judgment creditor along with this form after you have signed it: \$ _____

I certify that the statements contained above are true to the best of my knowledge and belief.

(Signature of Judgment Debtor)

Judgment Debtor Name and Residence Address

TO VERIFY THAT THE AMOUNT SHOWN ON LINE (2) IS A TRUE STATEMENT OF YOUR EARNINGS, YOU MUST **EITHER** HAVE YOUR EMPLOYER CERTIFY BELOW THAT THE AMOUNT SHOWN ON LINE (2) IS A TRUE STATEMENT OF YOUR EARNINGS **OR** YOU MAY SUBMIT COPIES OF YOUR PAY STUBS FOR THE TWO PAY PERIODS IMMEDIATELY PRIOR TO YOUR RECEIVING THIS NOTICE.

I certify that the amount shown on line (2) is a true statement of the judgment debtor's earnings.

I certify that I have attached copies of my pay stubs for the two pay periods immediately prior to my receiving this notice.

(Print Name of Employer)

(Signature of Judgment Debtor)

(Signature of Employer or Agent)

NOTICE OF COURT PROCEEDING TO COLLECT DEBT

To: **Darci Creecy**
(Name of Judgment Debtor)

13613 Woodward Boulevard, Garfield Heights, OH 44125
(Last Known Residence Address of Judgment Debtor)

You owe the undersigned Valley Health System, LLC \$ 118,906.78, including interest and court costs, for which a judgment was obtained against you or certified in the
(Name of Judgment Creditor)
Court on July 22, 2022, payment of which is hereby demanded.
(Date)

If you do not do one of the three things listed below within fifteen days of the date of the mailing of this notice or of its service by the court, we will go to court, unless we are otherwise precluded by law from doing so, and ask that your employer be ordered to withhold money from your earnings until the judgment is paid in full or, if applicable, is paid to a certain extent and to pay the withheld money to the court in satisfaction of your debt. This is called garnishment of personal earnings.

It is to your advantage to avoid garnishment of personal earnings because the placing of the extra burden on your employer possibly could cause you to lose your job.

YOU CAN AVOID THE GARNISHMENT BY DOING ONE OF THESE THREE THINGS WITHIN THE FIFTEEN-DAY PERIOD:

- (1) Pay to us the amount due;
- (2) Complete the attached form entitled "Payment to Avoid Garnishment" and return it to us with the payment, if any, shown due on it; or
- (3) Apply to your local municipal or county court or, if you are not a resident of Ohio, to the municipal or county court in whose jurisdiction your place of employment is located, for the appointment of a trustee to receive the part of your earnings that is not exempt from garnishment, and notify us that you have applied for the appointment of a trustee. You will be required to list your creditors, the amounts of their claims, and the amounts due on their claims, and the amount you then will pay to your trustee each payday will be divided among them until the debts are paid off. This can be to your advantage because in the meantime none of those creditors can garnish your wages.

You also may contact a budget and debt counseling service described in division (D) of section 2716.03 of the Revised Code for the purpose of entering into an agreement for debt scheduling. There may not be enough time to set up an agreement for debt scheduling in order to avoid a garnishment of your wages based upon this demand for payment, but entering into an agreement for debt scheduling might protect you from future garnishments of your wages. Under an agreement for debt scheduling, you will have to regularly pay a portion of your income to the service until the debts subject to the agreement are paid off. This portion of your income will be paid by the service to your creditors who are owed debts subject to the agreement. This can be to your advantage because these creditors cannot garnish your wages while you make your payments to the service on time.

Valley Health System, LLC

(Name of Judgment Creditor)

(Signature of Judgment Creditor or Agent)

367 South Gulph Road, King of Prussia, PA 19406

(Address of Judgment Creditor)

PAYMENT TO AVOID GARNISHMENT

To:

Valley Health System, LLC
367 South Gulph Road, King
of Prussia, PA 19406

Judgment Creditor Name and Address

To avoid the garnishment of personal earnings of which you have given me notice, I enclose \$ _____ to apply toward my indebtedness to you. The amount of the payment was computed as follows:

- (1) Total amount of indebtedness demanded: \$ 118,906.78
- (2) Enter the amount of your personal earnings, after deductions required by law, earned by you during the current pay period (that is, the pay period in which this demand is received by you): \$ _____
- (3) a. Enter your pay period (circle one):
- ☒ Weekly ☐ Biweekly ☐ Semimonthly ☐ Monthly
- b. Enter the date when your present pay period ends: _____
- (4) Enter an amount equal to 25% of the amount on line (2): \$ _____
- (5) a. The current federal minimum hourly wage is \$ _____ (to be filled in by Judgment Creditor) (You should use the above figure to complete this portion of the form.) If you are paid weekly, enter thirty times the current federal minimum hourly wage; if paid biweekly, enter sixty times the current federal minimum hourly wage; if paid semimonthly, enter sixty-five times the current federal minimum hourly wage; if paid monthly, enter one hundred thirty times the current federal minimum hourly wage: \$ _____
- b. Enter the amount by which the amount on line (2) exceeds the amount on line 5(A): \$ _____
- (6) Enter the smallest of the amounts on line (1), (4), or 5(B). Send this amount to the judgment creditor along with this form after you have signed it: \$ _____

I certify that the statements contained above are true to the best of my knowledge and belief.

(Signature of Judgment Debtor)

Judgment Debtor Name and Residence Address

TO VERIFY THAT THE AMOUNT SHOWN ON LINE (2) IS A TRUE STATEMENT OF YOUR EARNINGS, YOU MUST **EITHER** HAVE YOUR EMPLOYER CERTIFY BELOW THAT THE AMOUNT SHOWN ON LINE (2) IS A TRUE STATEMENT OF YOUR EARNINGS **OR** YOU MAY SUBMIT COPIES OF YOUR PAY STUBS FOR THE TWO PAY PERIODS IMMEDIATELY PRIOR TO YOUR RECEIVING THIS NOTICE.

I certify that the amount shown on line (2) is a true statement of the judgment debtor's earnings.

I certify that I have attached copies of my pay stubs for the two pay periods immediately prior to my receiving this notice.

(Print Name of Employer)

(Signature of Judgment Debtor)

(Signature of Employer or Agent)

NOTICE OF COURT PROCEEDING TO COLLECT DEBT

To: **Lloyd Creecy**
(Name of Judgment Debtor)

11872 Robeson Road, Grafton, OH 44044
(Last Known Residence Address of Judgment Debtor)

You owe the undersigned **Valley Health System, LLC** \$ **118,906.78**, including interest and court costs, for which a judgment was obtained against you or certified in the
(Name of Judgment Creditor)
Court on **July 22, 2022**, payment of which is hereby demanded.
(Date)

If you do not do one of the three things listed below within fifteen days of the date of the mailing of this notice or of its service by the court, we will go to court, unless we are otherwise precluded by law from doing so, and ask that your employer be ordered to withhold money from your earnings until the judgment is paid in full or, if applicable, is paid to a certain extent and to pay the withheld money to the court in satisfaction of your debt. This is called garnishment of personal earnings.

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- (3) Apply to your local municipal or county court or, if you are not a resident of Ohio, to the municipal or county court in whose jurisdiction your place of employment is located, for the appointment of a trustee to receive the part of your earnings that is not exempt from garnishment, and notify us that you have applied for the appointment of a trustee. You will be required to list your creditors, the amounts of their claims, and the amounts due on their claims, and the amount you then will pay to your trustee each payday will be divided among them until the debts are paid off. This can be to your advantage because in the meantime none of those creditors can garnish your wages.

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Valley Health System, LLC

(Name of Judgment Creditor)

(Signature of Judgment Creditor or Agent)

367 South Gulph Road, King of Prussia, PA 19406

(Address of Judgment Creditor)

PAYMENT TO AVOID GARNISHMENT

To:

Valley Health System, LLC
367 South Gulph Road, King
of Prussia, PA 19406

Judgment Creditor Name and Address

To avoid the garnishment of personal earnings of which you have given me notice, I enclose \$ _____ to apply toward my indebtedness to you. The amount of the payment was computed as follows:

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- (3) a. Enter your pay period (circle one):
- ☒ Weekly ☐ Biweekly ☐ Semimonthly ☐ Monthly
- b. Enter the date when your present pay period ends: _____
- (4) Enter an amount equal to 25% of the amount on line (2): \$ _____
- (5) a. The current federal minimum hourly wage is \$ _____ (to be filled in by Judgment Creditor) (You should use the above figure to complete this portion of the form.) If you are paid weekly, enter thirty times the current federal minimum hourly wage; if paid biweekly, enter sixty times the current federal minimum hourly wage; if paid semimonthly, enter sixty-five times the current federal minimum hourly wage; if paid monthly, enter one hundred thirty times the current federal minimum hourly wage: \$ _____
- b. Enter the amount by which the amount on line (2) exceeds the amount on line 5(A): \$ _____
- (6) Enter the smallest of the amounts on line (1), (4), or 5(B). Send this amount to the judgment creditor along with this form after you have signed it: \$ _____

I certify that the statements contained above are true to the best of my knowledge and belief.

(Signature of Judgment Debtor)

Judgment Debtor Name and Residence Address

TO VERIFY THAT THE AMOUNT SHOWN ON LINE (2) IS A TRUE STATEMENT OF YOUR EARNINGS, YOU MUST **EITHER** HAVE YOUR EMPLOYER CERTIFY BELOW THAT THE AMOUNT SHOWN ON LINE (2) IS A TRUE STATEMENT OF YOUR EARNINGS **OR** YOU MAY SUBMIT COPIES OF YOUR PAY STUBS FOR THE TWO PAY PERIODS IMMEDIATELY PRIOR TO YOUR RECEIVING THIS NOTICE.

I certify that the amount shown on line (2) is a true statement of the judgment debtor's earnings.

I certify that I have attached copies of my pay stubs for the two pay periods immediately prior to my receiving this notice.

(Print Name of Employer)

(Signature of Judgment Debtor)

(Signature of Employer or Agent)

EXECUTION ON FOREIGN JUDGMENT
G.L. c. 218 § 4A

DOCKET NUMBER

2210CV0004

Trial Court of Massachusetts
District Court Department

CASE NAME

Valley Health System, LLC v. Isaiah Khosrof

JUDGMENT DEBTOR AGAINST WHOM EXECUTION IS ISSUED

Isaiah Khosrof
333 Alewife Brook Parkway
Apt. 2
Somerville, MA 02144

COURT NAME & ADDRESS

SOMERVILLE DISTRICT COURT
175 FELLSSWAY
SOMERVILLE, MA 02145

JUDGMENT CREDITOR(S) IN WHOSE FAVOR EXECUTION IS ISSUED

Valley Health System, LLC

JUDGMENT CREDITOR (OR CREDITOR'S ATTORNEY) WHO MUST ARRANGE SERVICE OF EXECUTION

Michael S. Metta, Esquire
Lewis Brisbois Bisgaard and Smith LLP
1 International Place
Boston, MA 02110

FURTHER ORDERS OF THE COURT

TO THE SHERIFFS OF THE SEVERAL COUNTIES OR THEIR DEPUTIES, OR (SUBJECT TO THE LIMITATIONS OF G.L. C. 41 § 92) ANY CONSTABLE OF ANY CITY OR TOWN WITHIN THE COMMONWEALTH:

The judgment creditor(s) has recovered judgment against the judgment debtor named above in a court of the United States or in another court that is entitled to full faith and credit in the Commonwealth. An authenticated copy of a foreign judgment was filed in the above-named Court under the Uniform Enforcement of Foreign Judgments Act (G.L. c. 218 § 4A) for the amount(s) shown below:

WE COMMAND YOU, therefore, from out of the value of any real or personal property of such judgment debtor found within your territorial jurisdiction, to cause payment to be made to the judgment creditor(s) in the amount of the "Execution Total" shown below, plus additional post-judgment interest as provided by G.L. c. 235 § 8 on the "Judgment Total" shown below, and to collect your own fees as provided by law. This Writ of Execution is valid for twenty years from the "Date Judgment Entered" shown below. It must be returned to the court, along with your return of service, within ten days after this judgment has been satisfied or discharged, or after twenty years if this judgment remains unsatisfied or undercharged.

1. Foreign Judgment Totals (with adjustments, if any):	\$ 118,906.78
2. Date Judgment Entered at Originating Court:	June 2, 2022
3. Annual Post-judgment Interest Rate:	.12
4. Post-judgment Interest from Judgment to Execution:	\$ 2,777.54
5. Post-judgment Costs (if any):	\$ 195.00
6. Credits (if any):	\$ 0
7. EXECUTION TOTAL (Lines 1 + 4 + 5, minus Line 6):	\$ 121,879.32
LEVYING OFFICER: (a) Add daily interest from date execution issued.	
(b) Add your fees as provided by law:	

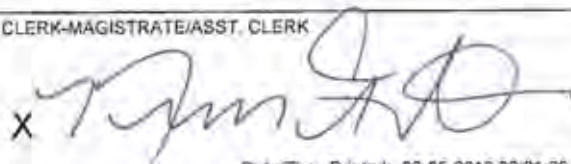
TESTE OF FIRST JUSTICE

WITNESS: **WILLIAM M. FITZPATRICK**

DATE EXECUTION ISSUED

8/12/2022

CLERK-MAGISTRATE/ASST. CLERK

X 



Middlesex Sheriff's Office • 400 Mystic Ave, 3rd Floor, Medford, MA 02155 • 617-547-1171
Middlesex, ss.

8/31/2022

By virtue of this execution, on 8/26/2022, I demanded of the within named, ISIAAH KHOSROF Defendant(s), judgment, costs, and my fees, or that he/she/they exhibit to me real or personal property belonging to him/her/them subject to be taken on execution and sufficient to satisfy this execution, upon which I could levy and satisfy the same, by leaving an attested copy of the within execution with my said demand endorsed thereon at: 333 ALEWIFE BROOK PARKWAY APT 2 SOMERVILLE, MA 02144 . And he/she/they has/have failed to pay the same or to exhibit to me real or personal property belonging to him/her/they, subject to be taken on execution and sufficient to satisfy the same, upon which I could levy to satisfy this execution, or any part thereof. Therefore, I return this execution in no part satisfied. Fees: Attest (\$5.00) Basic Service Fee (\$20.00) Postage and Handling (\$3.00) Travel (\$1.28) Conveyance (\$0.90) Total: \$30.18


Stephen Hickey
Deputy Sheriff

2020/08/26 2



Michael S. Metta
Licensed in Massachusetts and Florida
One International Place, Suite 350
Boston, Massachusetts 02110
Michael.Metta@lewisbrisbois.com
Direct: 857.362.9756

August 22, 2022

File No. 28014.190

VIA FEDEX

Civil Process Division
Middlesex Sheriff's Office
400 Mystic Ave 3rd Floor
Medford, MA 02155

Re: **Valley Health Systems, LLC v. Isaiah Khosrof**
Somerville District Court – Docket No. 2210CV0004
Execution on Foreign Judgment

To Whom it May Concern:

My law firm represents Valley Health Systems, LLC in the above-captioned collections matter.

Enclosed herein is the original Execution on Foreign Judgment issued by the Somerville District Court which authorizes execution of judgment in the amount of \$121,879.32, as against Isaiah Khosrof and in favor of Valley Health Systems, LLC.

As indicated in the Execution on Foreign Judgment, Mr. Khosrof's last known address is 333 Alewife Brook Parkway Apt. 2, Somerville, MA 02144. Please issue a demand for judgment to Mr. Kosrof as soon as possible. Thereafter, I would appreciate it if you would contact me at your earliest opportunity at the above number, or on my cell phone (774) 269-6063, to discuss collection options.

Very truly yours,

A handwritten signature in black ink that reads 'Michael S. Metta'. The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Michael S. Metta

MSM

Enclosure: Original Execution on Foreign Judgment

cc: Kenneth Walton
Adam Garth

EXECUTION ON FOREIGN JUDGMENT
G.L. c. 218 § 4A

DOCKET NUMBER

2210CV0004

Trial Court of Massachusetts
District Court Department

CASE NAME

Valley Health System, LLC v. Isaiah Khosrof

JUDGMENT DEBTOR AGAINST WHOM EXECUTION IS ISSUED

Isaiah Khosrof
333 Alewife Brook Parkway
Apt. 2
Somerville, MA 02144

COURT NAME & ADDRESS

SOMERVILLE DISTRICT COURT
175 FELLSWAY
SOMERVILLE, MA 02145

JUDGMENT CREDITOR(S) IN WHOSE FAVOR EXECUTION IS ISSUED

Valley Health System, LLC

JUDGMENT CREDITOR (OR CREDITOR'S ATTORNEY) WHO MUST ARRANGE SERVICE OF EXECUTION

Michael S. Metta, Esquire
Lewis Brisbois Bisgaard and Smith LLP
1 International Place
Boston, MA 02110

FURTHER ORDERS OF THE COURT

TO THE SHERIFFS OF THE SEVERAL COUNTIES OR THEIR DEPUTIES, OR (SUBJECT TO THE LIMITATIONS OF
G.L. C. 41 § 92) ANY CONSTABLE OF ANY CITY OR TOWN WITHIN THE COMMONWEALTH:

The judgment creditor(s) has recovered judgment against the judgment debtor named above in a court of the United States or in another court that is entitled to full faith and credit in the Commonwealth. An authenticated copy of a foreign judgment was filed in the above-named Court under the Uniform Enforcement of Foreign Judgments Act (G.L. c. 218 § 4A) for the amount(s) shown below:

WE COMMAND YOU, therefore, from out of the value of any real or personal property of such judgment debtor found within your territorial jurisdiction, to cause payment to be made to the judgment creditor(s) in the amount of the "Execution Total" shown below, plus additional post-judgment interest as provided by G.L. c. 235 § 8 on the "Judgment Total" shown below, and to collect your own fees as provided by law. This Writ of Execution is valid for twenty years from the "Date Judgment Entered" shown below. It must be returned to the court, along with your return of service, within ten days after this judgment has been satisfied or discharged, or after twenty years if this judgment remains unsatisfied or undercharged.

1. Foreign Judgment Totals (with adjustments, if any):	\$ 118,906.78
2. Date Judgment Entered at Originating Court:	June 2, 2022
3. Annual Post-judgment Interest Rate:	.12
4. Post-judgment Interest from Judgment to Execution:	\$ 2,777.54
5. Post-judgment Costs (if any):	\$ 195.00
6. Credits (if any):	\$ 0
7. EXECUTION TOTAL (Lines 1 + 4 + 5, minus Line 6):	\$ 121,879.32
LEVYING OFFICER: (a) Add daily interest from date execution issued.	
(b) Add your fees as provided by law	

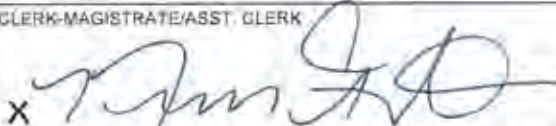
TESTE OF FIRST JUSTICE

WITNESS: WILLIAM M. FITZPATRICK

DATE EXECUTION ISSUED

8/12/2022

CLERK-MAGISTRATE/ASST. CLERK

X 

EXECUTION ON FOREIGN JUDGMENT
G.L. c. 218 § 4A

DOCKET NUMBER

2210CV0004

Trial Court of Massachusetts
District Court Department

CASE NAME

Valley Health System, LLC v. Isaiah Khosrof

JUDGMENT DEBTOR AGAINST WHOM EXECUTION IS ISSUED

**Isaiah Khosrof
333 Alewife Brook Parkway
Apt. 2
Somerville, MA 02144**

COURT NAME & ADDRESS

**SOMERVILLE DISTRICT COURT
175 FELLSWAY
SOMERVILLE, MA 02145**

JUDGMENT CREDITOR(S) IN WHOSE FAVOR EXECUTION IS ISSUED

Valley Health System, LLC

JUDGMENT CREDITOR (OR CREDITOR'S ATTORNEY) WHO MUST ARRANGE SERVICE OF EXECUTION

**Michael S. Metta, Esquire
Lewis Brisbois Bisgaard and Smith LLP
1 International Place
Boston, MA 02110**

FURTHER ORDERS OF THE COURT

TO THE SHERIFFS OF THE SEVERAL COUNTIES OR THEIR DEPUTIES, OR (SUBJECT TO THE LIMITATIONS OF G.L. C. 41 § 92) ANY CONSTABLE OF ANY CITY OR TOWN WITHIN THE COMMONWEALTH:

The judgment creditor(s) has recovered judgment against the judgment debtor named above in a court of the United States or in another court that is entitled to full faith and credit in the Commonwealth. An authenticated copy of a foreign judgment was filed in the above-named Court under the Uniform Enforcement of Foreign Judgments Act (G.L. c. 218 § 4A) for the amount(s) shown below:

WE COMMAND YOU, therefore, from out of the value of any real or personal property of such judgment debtor found within your territorial jurisdiction, to cause payment to be made to the judgment creditor(s) in the amount of the "Execution Total" shown below, plus additional post-judgment interest as provided by G.L. c. 235 § 8 on the "Judgment Total" shown below, and to collect your own fees as provided by law. This Writ of Execution is valid for twenty years from the "Date Judgment Entered" shown below. It must be returned to the court, along with your return of service, within ten days after this judgment has been satisfied or discharged, or after twenty years if this judgment remains unsatisfied or undercharged.

1. Foreign Judgment Totals (with adjustments, if any):	\$ 118,906.78
2. Date Judgment Entered at Originating Court:	June 2, 2022
3. Annual Post-judgment Interest Rate:	.12
4. Post-judgment Interest from Judgment to Execution:	\$ 2,777.54
5. Post-judgment Costs (if any):	\$ 195.00
6. Credits (if any):	\$ 0
7. EXECUTION TOTAL (Lines 1 + 4 + 5, minus Line 6):	\$ 121,879.32
LEVYING OFFICER: (a) Add daily interest from date execution issued.	
(b) Add your fees as provided by law:	

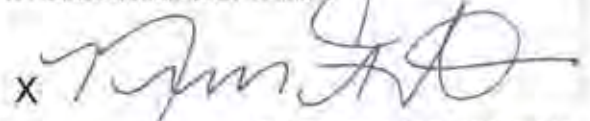
TESTE OF FIRST JUSTICE


WITNESS: WILLIAM M. FITZPATRICK

DATE EXECUTION ISSUED

8/12/2022

CLERK-MAGISTRATE/ASST. CLERK

X 

NOTICE OF FILING OF FOREIGN JUDGMENT UNDER THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENT ACT [G.L. C. 218 §4A]		DOCKET NO. 2210FJ000004	Trial Court of Massachusetts District Court Department 
CASE NAME: Valley Health System, LLC v. Isaiah Khosrof		COURT DIVISION Somerville District Court 175 Fellsway Somerville, MA 02145	
JUDGMENT DEBTOR TO WHOM COPY OF NOTICE IS ISSUED Isaiah Khosrof		COURT LOCATION WHERE ORIGINAL JUDGMENT ENTERED: District Court of Clark County Nevada	
JUDGMENT CREDITOR'S ATTORNEY NAME AND ADDRESS: Michael S Metta, Esq. Lewis Brisbois Bisgaard and Smith LLP 1 International Place Boston, MA 02110		JUDGMENT CREDITOR NAME AND ADDRESS Valley Health System, LLC	
NOTICE SENT TO: Michael S Metta, Esq. Lewis Brisbois Bisgaard and Smith LLP 1 International Place Boston, MA 02110			
NOTICE TO ABOVE-NAMED JUDGMENT DEBTOR: This notice is to inform you that the above-named judgment creditor has filed a foreign judgment pursuant to the <i>Uniform Enforcement of Foreign Judgment Act</i> , G.L. c. 218 §4A. The original foreign judgment was entered by the District Court of Clark County Nevada and notice of the filing of the Foreign Judgment and affidavits are being sent to the judgment debtor along with copies of all filed documents.			
ATTACHMENTS: Attached to this notice is a copy of the judgment that was filed for enforcement in Massachusetts under the Uniform Enforcement of Foreign Judgment Act (G.L.C.218 §4A), together with any other documents that were filed by the above-named judgment creditor as supporting documentation.			
NOTICE OF FURTHER ACTION: No execution or other process for the enforcement of the attached foreign judgment shall issue less than 30 days after the filing date as indicated below or for whatever period of time a stay of enforcement may be ordered by this court.			
Notice Date: 07/07/2022	Date of Filing: 07/07/2022	First Justice Hon. William Fitzpatrick	Clerk-Magistrate Kimberly M Foster



Michael S. Metta
One International Place, Suite 350
Boston, Massachusetts 02110
Michael.Metta@lewisbrisbois.com
Direct: 857.362.9756

July 6, 2022

File No. 28094.190

Via Federal Express

Civil Clerk's Office
Somerville District Court
175 Fellsway
Somerville, MA 02145

Re: Valley Health System, LLC v. Isaiah Khosrof
Our File No.: 28094.190

SOMERVILLE DISTRICT
COURT
2022 JUL -7 AM 11:22

Dear Sir/Madam:

Enclosed for filing, please find:

1. Affidavit of Compliance of Michael S. Metta;
2. Check payable to the Commonwealth of Massachusetts in the amount of \$195; and
3. Original Nevada Judgment in the amount of \$118,906.78 as set forth in the judgment.

Kindly file in your ordinary course and please date stamp the extra copy and return to us in the self-addressed stamped envelope.

Thank you for your assistance. If you have any questions or concerns, please contact me at (857) 362-9756 or Michael.Metta@lewisbrisbois.com

Very truly yours,

Michael S. Metta

MSM:cgt
Enclosures

cc: Kenneth B. Walton, Esquire
Adam Garth, Esquire

COPY

COMMONWEALTH OF MASSACHUSETTS

SOMERVILLE DISTRICT COURT
2022 JUN -7 AM 11:25
SOMERVILLE DISTRICT COURT

VALLEY HEALTH SYSTEM, LLC

Plaintiffs

v.

ISAIAH KHOSROF,

Defendant.

CIVIL ACTION

AFFIDAVIT OF COMPLIANCE

I, Michael S. Metta, duly sworn, states as follows:

1. I am over 21 years of age, sui juris, and competent to make the statements contained in this Affidavit.

2. I am a partner of Lewis Brisbois Bisgaard & Smith LLP with an office at One International Place, Suite 350, Boston, Massachusetts 02110. My email address is Michael.Metta@lewisbrisbois.com. My Massachusetts Bar License No. is 709490. My telephone number is (857) 362-9756.

3. I submit this Affidavit in compliance with the Massachusetts Uniform Enforcement of Foreign Judgments Act, ALM GL ch. 218 §4A.

4. I represent the judgment creditor, Valley Health System, LLC, whose last known post office address is 367 South Gulph Road, King of Prussia, PA 19406. However, I ask that any notices for Valley Health System, LLC, be sent to my attention at Lewis Brisbois Bisgaard & Smith LLP.

5. On June 2, 2022, the judgment creditor, Valley Health System, LLC, secured a judgment as against the judgment debtor, Isaiah Khosrof, whose last known post office address is 333 Alewife Brook Parkway, Apt. 2, Somerville, Massachusetts 02144.

6. The judgment is in the amount of \$118,906.78 as set forth in the judgment entitled "Defendant Valley Health System LLC's Judgment of Costs and Attorneys' Fees per NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) as Against Plaintiffs." See Exhibit A to the certified copy of Notice of Entry of Judgment which I have sent with this Affidavit of Compliance.

7. Any questions should be addressed to me at (857) 362-9756 or Michael.Metta@lewisbrisbois.com

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.

Michael S. Metta
(Affiant Signature)

July 6, 2022
(Date)

MASSACHUSETTS NOTARY ACKNOWLEDGEMENT


COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

Sworn to (or affirmed) and subscribed before me this 6th day of July, 2022.
(day) (month)

By: Michael S. Metta
(Name of person making statement)

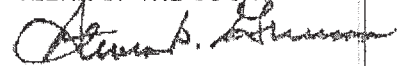
Laura J. Bourgeois
Notary Public
My Commission Expires: July 1, 2027

 **LAURA J. BOURGEOIS**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 1, 2027

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known ☒ or ☐ Produced Identification

Type of Identification Produced _____



1 **NJUD**
2 S. BRENT VOGEL
3 Nevada Bar No. 6858
4 Brent.Vogel@lewisbrisbois.com
5 ADAM GARTH
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 Telephone: 702.893.3383
12 Facsimile: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

12 ESTATE OF REBECCA POWELL, through
13 BRIAN POWELL, as Special Administrator;
14 DARCI CREECY, individually and as Heir;
15 TARYN CREECY, individually and as an
16 Heir; ISAAH KHOSROF, individually and as
17 an Heir; LLOYD CREECY, individually,

18 Plaintiffs,

19 vs.

20 VALLEY HEALTH SYSTEM, LLC (doing
21 business as "Centennial Hills Hospital Medical
22 Center"), a foreign limited liability company;
23 UNIVERSAL HEALTH SERVICES, INC., a
24 foreign corporation; DR. DIONICE S.
25 JULIANO, M.D., an individual; DR.
26 CONRADO C.D. CONCIO, M.D., an
27 individual; DR. VISHAL S. SHAH, M.D., an
28 individual; DOES 1-10; and ROES A-Z.

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF JUDGMENT

1 PLEASE TAKE NOTICE that the Defendant Valley Health System LLC' Judgment of Costs
2 and Attorneys' Fees per NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) as Against
3 Plaintiffs was entered on June 2, 2022, a true and correct copy of which is attached hereto as Exhibit
4 A.

5
6 DATED this 7th day of June, 2022

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8 By /s/ Adam Garth
9 S. BRENT VOGEL
10 Nevada Bar No. 6858
11 ADAM GARTH
12 Nevada Bar No. 15045
13 6385 S. Rainbow Boulevard, Suite 600
14 Las Vegas, Nevada 89118
15 Tel. 702.893.3383
16 *Attorneys for Attorneys for Defendant Valley*
17 *Health System, LLC dba Centennial Hills Hospital*
18 *Medical Center*

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JUN - 8 2022
CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE
Adam D. Johnson
CLERK OF THE COURT

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 7th day of June, 2022, a true and correct copy of **NOTICE OF**
3 **ENTRY OF JUDGMENT** was served by electronically filing with the Clerk of the Court using the
4 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have
5 agreed to receive electronic service in this action.

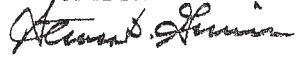
6 Paul S. Padda, Esq.
7 PAUL PADDA LAW, PLLC
8 4560 S. Decatur Blvd., Suite 300
9 Las Vegas, NV 89103
10 Tel: 702.366.1888
11 Fax: 702.366.1940
12 psp@paulpaddalaw.com
13 *Attorneys for Plaintiffs*

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

14
15
16 By /s/ Maria T. San Juan
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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EXHIBIT A


CLERK OF THE COURT

1 **JUDG**
2 S. BRENT VOGEL
3 Nevada Bar No. 6858
4 Brent.Vogel@lewisbrisbois.com
5 ADAM GARTH
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 Telephone: 702.893.3383
12 Facsimile: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
14 TARYN CREECY, individually and as an
15 Heir; ISAIAH KHOSROF, individually and as
16 an Heir; LLOYD CREECY, individually;

Plaintiffs,

vs.

16 VALLEY HEALTH SYSTEM, LLC (doing
17 business as "Centennial Hills Hospital Medical
18 Center"), a foreign limited liability company;
19 UNIVERSAL HEALTH SERVICES, INC., a
20 foreign corporation; DR. DIONICE S.
21 JULIANO, M.D., an individual; DR.
22 CONRADO C.D. CONCIO, M.D., an
23 individual; DR. VISHAL S. SHAH, M.D., an
24 individual; DOES 1-10; and ROES A-Z;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM LLC'S JUDGMENT OF COSTS
AND ATTORNEYS' FEES PER NRS
18.020, 18.005, 18.110, 17.117, and N.R.C.P.
68(f) AS AGAINST PLAINTIFFS**

23 Pursuant to the Order granting Defendant Valley Health System, LLC's motion for summary
24 judgment dated and entered on November 19, 2021 (**Exhibit "A"**), the Order granting Defendant
25 Valley Health System, LLC's motion for reconsideration regarding motion for attorneys' fees dated
26 and entered on May 4, 2022 (**Exhibit "B"**), and pursuant to Defendant Valley Health System, LLC's
27 notice of withdrawal of appeal dated and filed in the Nevada Supreme Court on May 12, 2022
28

1 (Exhibit "C"),

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

3 That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

4 Defendants Valley Health System, LLC shall be awarded their reasonable costs and
5 attorneys' fees pursuant to NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) in the amounts
6 of \$110,849.85 for attorneys' fees, and costs of \$8,056.93, for a total of \$118,906.78 in accordance
7 with the Court's orders attached hereto as Exhibits "A" and "B" based upon the withdrawal of
8 Defendant's appeal as attached hereto as Exhibit "C".

9 DATED this _____ day of _____, 2022.

Dated this 2nd day of June, 2022

10

11

DISTRICT COURT JUDGE

12

13

Respectfully Submitted By: **7B8 6E9 6A6B C7E9**
LEWIS BRISBOIS BISGAARD & SMITH LLP
Jerry A. Wiese
District Court Judge

14

15

By /s/ Adam Garth

16

S. BRENT VOGEL

17

Nevada Bar No. 6858

18

ADAM GARTH

19

Nevada Bar No. 15045

20

6385 S. Rainbow Boulevard, Suite 600

21

Las Vegas, Nevada 89118

22

Tel. 702.893.3383

23 ///

Attorneys for Attorneys for Defendant Valley

24 ///

Health System, LLC dba Centennial Hills Hospital

25 ///

Medical Center

26 ///

27 ///

28 ///

1 Agreed as to form and substance by:

2

Refused to sign

3

Paul S. Padda, Esq.

4

Srilata Shah, Esq.

5

PAUL PADDALAW, PLLC

6

4560 S. Decatur Blvd., Suite 300

7

Las Vegas, NV 89103

8

Tel: 702.366.1888

9

Fax: 702.366.1940

10

psp@paulpaddalaw.com

11

Attorneys for Plaintiffs

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on this ____ day of May, 2022, a true and correct copy of DEFENDANT
3 VALLEY HEALTH SYSTEM LLC'S JUDGMENT OF COSTS AND ATTORNEYS' FEES
4 PER NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) AS AGAINST PLAINTIFFS was
5 served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system
6 and serving all parties with an email-address on record, who have agreed to receive electronic service
7 in this action.

8 Paul S. Padda, Esq.
9 PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
10 Las Vegas, NV 89103
Tel: 702.366.1888
11 Fax: 702.366.1940
psp@paulpaddalaw.com
12 *Attorneys for Plaintiffs*

13
14
15 By /s/ Heidi Brown
16 An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP
17
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IT'S NOT ABOUT THE INJURY. IT'S ABOUT THE RECOVERY

EXHIBIT A



1 NEOJ
S. BRENT VOGEL
2 Nevada Bar No. 06858
Brent.Vogel@lewisbrisbois.com
3 ADAM GARTH
Nevada Bar No. 15045
4 Adam.Garth@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
5 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
6 T: 702.893.3383
F: 702.893.3789
7 *Attorneys for Defendant Valley Health System,*
8 *LLC dba Centennial Hills Hospital Medical*
Center

9
DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 ESTATE OF REBECCA POWELL, through
12 BRIAN POWELL, as Special Administrator;
DARCI CREECY, individually and as Heir;
13 TARYN CREECY, individually and as an
Heir; ISAIAH KHOSROF, individually and as
14 an Heir; LLOYD CREECY, individually,;

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
18 Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
19 foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
20 CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
21 individual; DOES 1-10; and ROES A-Z,;

22 Defendants.

23
24 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
25 captioned matter on the 19th day of November 2021. a copy of which is attached hereto.

26 ///

27 ///

28 ///

1 DATED this 19th day of November, 2021.

2 LEWIS BRISBOIS BISGAARD & SMITH LLP

3
4 By /s/ Adam Garth

5 S. BRENT VOGEL

6 Nevada Bar No. 06858

7 ADAM GARTH

8 Nevada Bar No. 15045

9 6385 S. Rainbow Boulevard, Suite 600

10 Las Vegas, Nevada 89118

11 702.893.3383

12 *Attorneys for Attorneys for Defendant Valley*

13 *Health System, LLC dba Centennial Hills Hospital*

14 *Medical Center*

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SOMERVILLE DISTRICT
COURT
2022 JUL -7 AM 11:25

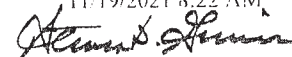
1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 19th day of November, 2021, a true and correct copy of
3 **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the
4 Court using the Odyssey E-File & Serve system and serving all parties with an email-address on
5 record, who have agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
7 PAUL PADDA LAW, PLLC
8 4560 S. Decatur Blvd., Suite 300
9 Las Vegas, NV 89103
10 Tel: 702.366.1888
11 Fax: 702.366.1940
12 psp@paulpaddalaw.com
13 *Attorneys for Plaintiffs*

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
*Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.*

14
15 By /s/ Roya Rokni
16 An Employee of
17 LEWIS BRISBOIS BISGAARD & SMITH LLP
18
19
20
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25
26
27
28



CLERK OF THE COURT

ORDR

S. BRENT VOGEL

Nevada Bar No. 6858

Brent.Vogel@lewisbrisbois.com

ADAM GARTH

Nevada Bar No. 15045

Adam.Garth@lewisbrisbois.com

LEWIS BRISBOIS BISGAARD & SMITH LLP

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Telephone: 702.893.3383

Facsimile: 702.893.3789

*Attorneys for Defendant Valley Health System,**LLC dba Centennial Hills Hospital Medical**Center*

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
 BRIAN POWELL, as Special Administrator;
 DARCI CREECY, individually and as Heir;
 TARYN CREECY, individually and as an
 Heir; ISAIAH KHOSROF, individually and as
 an Heir; LLOYD CREECY, individually,;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
 business as "Centennial Hills Hospital Medical
 Center"), a foreign limited liability company;
 UNIVERSAL HEALTH SERVICES, INC., a
 foreign corporation; DR. DIONICE S.
 JULIANO, M.D., an individual; DR.
 CONRADO C.D. CONCIO, M.D., an
 individual; DR. VISHAL S. SHAH, M.D., an
 individual; DOES 1-10; and ROES A-Z,;

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**ORDER VACATING PRIOR ORDER
 DENYING DEFENDANT VALLEY
 HEALTH SYSTEM, LLC DBA
 CENTENNIAL HILLS HOSPITAL
 MEDICAL CENTER'S MOTION FOR
 SUMMARY JUDGMENT AND
 GRANTING SAID DEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT
 PER MANDAMUS OF NEVADA
 SUPREME COURT**

This matter, coming before this Honorable Court on November 18, 2021 at 10:30 a.m. in
 accordance with the order granting the petition for a writ of mandamus issued by the Nevada
 Supreme Court dated October 18, 2021, directing that this Court vacate its order of October 29,
 2020, which previously denied Defendant VALLEY HEALTH SYSTEM, LLC's motion for

1 summary judgment and co-defendants Concio and Shah's joinder thereto (collectively
2 "Defendants"), and ordering this Court to issue an order entering summary judgment in favor of
3 said Defendants due to the expiration of the statute of limitations, with Paul S. Padda, Esq. and
4 Srilata Shah, Esq. of PAUL PADDALAW, PLLC, appearing on behalf of Plaintiffs, Adam Garth,
5 Esq., S. Brent Vogel, Esq. and Shady Sirsy, Esq., of the Law Offices of LEWIS BRISBOIS
6 BISGAARD & SMITH LLP, appearing on behalf of the Defendant VALLEY HEALTH SYSTEM,
7 LLC and John H. Cotton, Esq. and Brad Shipley, Esq. of JOHN H. COTTON AND ASSOCIATES,
8 appearing on behalf of DR. CONRADO C.D. CONCIO, M.D. and DR. VISHAL S. SHAH, M.D.
9 with the Honorable Court having reviewed the order of the Nevada Supreme Court, finds and orders
10 as follows:

11 THE COURT FINDS that Defendants argued that undisputed evidence demonstrated
12 Plaintiffs were on inquiry notice of their alleged professional negligence, wrongful death, and
13 negligent infliction of emotional distress claims by June 11, 2017, at the latest, and

14 THE COURT FURTHER FINDS that Defendants contended that Plaintiffs' February 4,
15 2019 complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an
16 action for injury or death based on the negligence of a health care provider within three years of the
17 date of injury and within one year of discovering the injury, whichever occurs first), and

18 THE COURT FURTHER FINDS that the term injury in NRS 41A.097 means "legal injury."
19 *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury
20 when he knows or, through the use of reasonable diligence, should have known of facts that would
21 put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A
22 plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an
23 ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*,
24 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th
25 ed. 2009)), and

26 THE COURT FURTHER FINDS that while the accrual date for NRS 41A.097(2)'s one-
27 year period is generally a question for the trier of fact, this Court may decide the accrual date as a
28 matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462, and

1 THIS COURT FURTHER FINDS that here, irrefutable evidence demonstrated that
2 Plaintiffs were on inquiry notice by June 11, 2017, at the latest, when Plaintiff Brian Powell, special
3 administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged
4 that the decedent, Rebecca Powell, "went into respiratory distress" and her health care providers did
5 not appropriately monitor her, abandoning her care and causing her death. and

6 THIS COURT FURTHER FINDS that Brian Powell's own allegations in the aforesaid
7 Board complaint demonstrate that he had enough information to allege a prima facie claim for
8 professional negligence-that in treating Rebecca Powell, her health care providers failed "to use the
9 reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained
10 and experienced providers of health care." NRS 41A.015 (defining professional negligence): *Winn*,
11 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a "plaintiffs general belief that someone's
12 negligence may have caused his or her injury" triggers inquiry notice), and

13 THIS COURT FURTHER FINDS that the evidence shows that Plaintiff Brian Powell was
14 likely on inquiry notice even earlier than the aforesaid Board complaint, wherein Plaintiff's alleged
15 they had observed in real time, following a short period of recovery, the rapid deterioration of
16 Rebecca Powell's health while in Defendants' care, and

17 THIS COURT FURTHER FINDS that Plaintiff Brian Powell filed a complaint with the
18 Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar
19 to the Nursing Board complaint, this complaint alleged facts, such as the Defendants' failure to
20 upgrade care, sterilize sutures properly, and monitor Rebecca Powell, all of which suggest he already
21 believed, and knew of facts to support his belief, that negligent treatment caused Rebecca Powell's
22 death by the time he made these complaints to NDHHS and the Nursing Board, and

23 THIS COURT FURTHER FINDS that even though Plaintiffs received Rebecca Powell's
24 death certificate 17 days later, erroneously listing her cause of death as suicide, that fact did not
25 change the conclusion that Plaintiffs received inquiry notice prior to that date, and

26 THE COURT FURTHER FINDS that Plaintiffs did not adequately address why tolling
27 should apply under NRS 41A.097(3) (providing that the limitation period for a professional
28 negligence claim "is tolled for any period during which the provider of health care has concealed

1 any act, error or omission upon which the action is based”), and

2 THIS COURT FURTHER FINDS that even if Plaintiffs did adequately address the tolling
3 issue, such an argument would be unavailing, as the medical records provided were sufficient for
4 their expert witness to conclude that petitioners were negligent in Rebecca Powell’s care. *See Winn*,
5 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate
6 where the intentionally concealed medical records were “material” to the professional negligence
7 claims). and

8 THE COURT FURTHER FINDS that the doctrine of equitable tolling has not been extended
9 to NRS 41A.097(2), and

10 THIS COURT FURTHER FINDS that Plaintiffs did not adequately address whether such
11 an application of equitable tolling is appropriate under these facts. *See Edwards v. Emperor’s*
12 *Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider
13 arguments that a party did not cogently argue or support with relevant authority). and

14 THE COURT FURTHER FINDS that Plaintiffs had until June 11, 2018, at the latest, to file
15 their professional negligence claim, making Plaintiffs’ February 4, 2019 complaint untimely, and

16 THE COURT FURTHER FINDS that given the uncontroverted evidence demonstrating that
17 Defendants were entitled to judgment as a matter of law because the complaint was time-barred
18 under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing
19 that courts must grant summary judgment when the pleadings and all other evidence on file, viewed
20 in a light most favorable to the nonmoving party, “demonstrate that no genuine issue as to any
21 material fact [remains] and that the moving party is entitled to a judgment as a matter of law”
22 (internal quotations omitted));

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court’s prior order
24 of October 29, 2020 denying VALLEY HEALTH SYSTEM, LLC’s motion for summary judgment
25 and co-defendants’ joinder thereto is vacated in its entirety, and

26 ///

27 ///

28 ///

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
2 VALLEY HEALTH SYSTEM, LLC's motion for summary judgment and co-defendants' joinders
3 thereto are granted in their entirety due to the untimely filing of this action by Plaintiffs.

4 Dated this 19th day of November, 2021

5 Dated: _____


DISTRICT COURT JUDGE

6
7
8 DATED this ____ day of November, 2021.

DATED this 18th day of November, 2021
Jerry A. Wiese
District Court Judge

9 *UNSIGNED*

10 /s/ Adam Garth

11 Paul S. Padda, Esq.
12 Srilata Shah, Esq.,
13 PAUL PADDALAW, PLLC
14 4560 S. Decatur Blvd., Suite 300
15 Las Vegas, NV 89103
16 Tel: 702.366.1888
17 Fax: 702.366.1940
18 psp@paulpaddalaw.com
19 Attorneys for Plaintiffs

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ADAM GARTH, ESQ.
Nevada Bar No. 15045
SHADY SIRSY, ESQ.
Nevada Bar No. 15818
LEWIS BRISBOIS BISGAARD & SMITH
LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center

20 DATED this 18th day of November, 2021

21 /s/ Brad Shipley

22 John H. Cotton, Esq.
23 Brad Shipley, Esq.
24 JOHN H. COTTON & ASSOCIATES
25 7900 W. Sahara Ave., Suite 200
26 Las Vegas, NV 89117
27 Tel: 702.832.5909
28 Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipley@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

From: [Brad Shipley](#)
To: [Garth, Adam](#); [Sriata Shah](#); [Paul Padda](#)
Cc: [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#)
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 10:00:14 AM
Attachments: [image001.png](#)

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Adam,

I believe the bracketed word [proposed] in the title caption should be removed before submission to the court, but please use my e-signature with or without making that change. Thank you for taking the time to craft the order.

Brad Shipley, Esq.
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7900 W. Sahara ave. #200
Las Vegas, NV 89117
bshipley@jhcottonlaw.com
702 832 5909

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Friday, November 12, 2021 8:50 AM
To: Sriata Shah <sri@paulpaddalaw.com>; Paul Padda <osp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; John Cotton <jhcotton@jhcottonlaw.com>
Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Importance: High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com
T: 702.693.4335 F: 702.366.9563

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Tuesday, November 9, 2021 10:33 AM

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

Adam Garth
Partner
Las Vegas Rainbow
702.693.4335 or x7024335

From: [Garth, Adam](#)
To: [Paul Padda](#); [Srilata Shah](#); [Brad Shipley](#)
Cc: [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#); [jhcotton@jhcottonlaw.com](#)
Subject: RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 9:59:40 AM
Attachments: [image001.png](#)
[image002.png](#)

We are not willing to do that. As you were unwilling to stay anything at our request, we will return the courtesy.

From: Paul Padda <psp@paulpaddalaw.com>
Sent: Friday, November 12, 2021 9:56 AM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shan <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

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As you know, there is a motion for rehearing pending in the Supreme Court. Given that fact, and the lack of prejudice to Defendants, please advise if Defendants are willing to stay enforcement of the Supreme Court's decision which is the subject of a motion for rehearing?
Thanks.

Paul S. Padda, Esq.
PAUL PADDALAW, PLLC
Websites: paulpaddalaw.com

Nevada Office:
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
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PAUL PADDALAW

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Friday, November 12, 2021 8:50 AM

To: Sriata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogt, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel,

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Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Tuesday, November 9, 2021 10:33 AM

To: Sriata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogt, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com

Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

Adam Garth

Partner
Las Vegas Rainbow
702.693.4335 or x7024335

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
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 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: 11/19/2021

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
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19 Jessica Pincombe	jpincombe@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Paul Padda	civil@paulpaddalaw.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
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25 Roy a Rokni	roya.rokni@lewisbrisbois.com

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1	Diana Escobedo	diana@paulpaddalaw.com
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EXHIBIT B



1 S. BRENT VOGEL
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2 Brent.Vogel@lewisbrisbois.com
ADAM GARTH
3 Nevada Bar No. 15045
Adam.Garth@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
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5 Las Vegas, Nevada 89118
Telephone: 702.893.3383
6 Facsimile: 702.893.3789
Attorneys for Defendant Valley Health System,
7 *LLC dba Centennial Hills Hospital Medical*
Center

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11
12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISAAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
18 business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
19 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
20 JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
21 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;.

22 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that the Order Regarding Valley Health System's Motion for
25 Reconsideration Regarding Motion for Attorneys' Fees was entered on May 4, 2022. a true and
26 correct copy of which is attached hereto.

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DATED this 4th day of May, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
Nevada Bar No. 6858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 4th day of May, 2022, a true and correct copy of **NOTICE OF ENTRY**
3 **OF ORDER** was served by electronically filing with the Clerk of the Court using the Odyssey E-
4 File & Serve system and serving all parties with an email-address on record, who have agreed to
5 receive electronic service in this action.

6 Paul S. Padda, Esq.
7 PAUL PADDA LAW, PLLC
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9 Las Vegas, NV 89103
10 Tel: 702.366.1888
11 Fax: 702.366.1940
12 psp@paulpaddalaw.com
13 *Attorneys for Plaintiffs*

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bshipleyr@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano.
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

14
15
16 By /s/ Heidi Brown
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
19
20
21
22
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Handwritten Signature
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

ESTATE OF REBECCA POWELL, through)
BRIAN POWELL, as Special Administrator;)
DARCI CREECY, individually and as an Heir;)
TARYN CREECY, individually and as an Heir;)
ISAIAH KHOSROF, individually and as an)
Heir; LLOYD CREECY, individually,)

Plaintiffs,)

VS.)

VALLEY HEALTH SYSTEM, LLC (doing)
Business as "Centennial Hills Hospital)
Medical Center"), a foreign limited liability)
Company; UNIVERSAL HEALTH SERVICES,)
INC., a foreign corporation; DR. DIONICE)
S. JULIANO, M.D., an individual;)
CONRADO C.D. CONCIO, M.D., an individual;)
DR. VISHAL S. SHAH, M.D., an individual;)
DOES 1-10; and ROES A-Z,)

Defendants.)

CASE NO.: A-19-788787-C
DEPT. NO.: XXX

**ORDER RE: VALLEY
HEALTH SYSTEM'S
MOTION FOR
RECONSIDERATION RE
MOTION FOR
ATTORNEYS' FEES**

SOHERVILLE DISTRICT
JUL -7 AM 11:25

INTRODUCTION

The above-referenced matter was scheduled for a hearing on 4/1/22 ~~3/30/22~~, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Reconsideration of the Court's Order re: Defendant's Motion for Attorneys' Fees. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs. This Court
19 entered an Order on 2/15/22 denying Valley's Motion for Fees and Countermotion for
20 Fees and Costs. Thereafter, Valley filed an Appeal dealing specifically with the Court's
21 denial of fees and costs. Consequently, this Court no longer has jurisdiction to address
22 the issue of fees and costs. If the Court were inclined to reconsider its previous
23 decision, the most it could do would be to enter a *Honeycutt* Order (See *Honeycutt v.*

24 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

25 Valley Health System, d/b/a Centennial Hills Hospital (CHH) requests that the
26 Court reconsider its 2/15/22 Order denying attorneys' fees and costs and award it
27 \$110,930.85 in attorneys' fees per N.R.C.P. 68 and NRS § 17.117, plus \$58,514.36 in
28 pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR
7.60. Additionally, CHH requests this Court sign the judgment already submitted for
the undisputed \$42,492.03.

1 CHH contends that this Court conflated two issues- (1) the memorandum of
2 costs and disbursements previously submitted totaling \$42,492.038, “an amount which
3 is undisputed, and for which this Court has refused to sign a judgment,” and (2) the
4 additional costs, disbursements and attorneys’ fees addressed by CHH’s instant motion
5 and the initial motion which sought \$110,930.85 in attorneys’ fees per N.R.C.P. 68 and
6 N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to
7 N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

8 With regard to first “issue,” CHH argues that because the Court denied Plaintiff’s
9 Motion to Extend Time to Retax Costs, the \$42,492.03 claimed in CHH’s Verified
10 Memorandum of Costs is undisputed and therefore judgment must be signed and
11 entered. CHH stated that, “[t]his Court cannot revisit an issue which has been finally
12 decided and therefore, at a minimum, a judgment for the unchallenged \$42,492.03 in
13 statutory costs and disbursements must be signed.

14 The majority of CHH’s Motion for Reconsideration concentrates on the second
15 “issue,” that this Court’s decision to deny CHH’s request for an additional \$169,445.21
16 in costs, disbursements and attorneys’ fees was clearly erroneous. See *Masonry & Tile*
17 *Contractors v. Jolley, Urga & Wirth Ass’n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).
18 As a preliminary matter, CHH is concerned by the Court’s comparison to the Motion
19 for Fees filed by Drs. Concio and Shaw. Further, CHH contends it is “more concerning,”
20 that the Court’s prior order stated, “Finally, in considering the result, the Court notes
21 that although the Court found insufficient evidence to establish irrefutably that the
22 statute of limitations had expired, Defense counsel was successful in convincing the
23 Supreme Court of that, and consequently, Defendants prevailed.” According to CHH,
24 “the record needs to be corrected here- there was no convincing the Supreme Court of
25 anything.”

26 CHH argues that although the Court correctly found that CHH’s offer of
27 judgment was made in good faith and its timing was proper, it erroneously found
28 “Plaintiffs’ decision to reject the offer and proceed to trial was not grossly unreasonable
or in bad faith. Plaintiffs believed they had a valid claim, and the Court cannot find
that wanting some recovery, as opposed to \$0.00, to be ‘grossly unreasonable’ or in
‘bad faith’.” CHH contends that this finding is unreasonable in light of the Nevada
Supreme Court’s determination that Plaintiffs were on notice of any alleged malpractice

1 no more than one month after decedent's death. Similarly, CHH argues that this Court
2 incorrectly found Plaintiffs' decision to reject the Offer of Judgment was not made in
3 bad faith and was not grossly unreasonable.

4 As for the reasonableness of the attorneys' fees requested pursuant to NRCP 68,
5 CHH states that it offered to present the Court supporting documentation for in camera
6 review, but, "instead of granting a hearing to which Plaintiffs could interpose whatever
7 opposition they may have had, the Court rejected this offer and suggestion." In
8 addition, Plaintiffs did not oppose the amount of costs and fees incurred in the original
9 motion, even without the attached bills. Additionally, CHH provides that, "[s]ince this
10 Court insisted that the bills be attached, CHH has provided the entirety thereof for
judicial review and review by Plaintiffs."

11 In Opposition, Plaintiffs argue that CHH's Motion must be summarily denied,
12 without the Court addressing the merits of the Motion because CHH did not present
13 any new or substantially different evidence than what it had the opportunity to present
14 when it filed its Verified Memorandum of Costs and separate Motion for Attorney's
15 Fees on 11/22/21. Further, Plaintiffs contend that CHH's Motion for Reconsideration is
16 "clearly a transparent attempt to bolster a potential appeal by inviting the Court to
17 engage with the merits," because a motion for reconsideration is only appealable if
18 decided on the merits. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589
(2010).

19 Further, Plaintiffs argue that CHH falsely claims that it attached evidence to its
20 Motion for Reconsideration that "was originally submitted to this Court." Plaintiffs also
21 state that CHH's Motion lacks any authority showing the Court's denial of costs was
22 clearly erroneous, and it does not even engage with the authorities cited on pages 7
23 through 9 of the Court's 2/15/22 Order. Plaintiffs argue they should not be liable for
24 CHH's negligence in failing to follow both the statutory and common law requirements
25 for establishing entitlement to costs. Plaintiffs argue that this Court was thus correct in
26 denying CHH costs in their entirety for lack of proper documentation and reliable
evidence.

27 With regard to CHH's request to reconsider the denial of fees, Plaintiffs note that
28 the Court's denial was based upon its finding that (1) Plaintiffs did not act in bad faith
or in a grossly unreasonable manner when they rejected CHH zero dollar Offer of

1 Judgment and (2) the documentation in support of the request for attorney's fees was
2 lacking. While the first finding by itself ends the inquiry into whether fees can be
3 awarded, in this case the Court also found that "[a]lthough the Defendant [CHH] has
4 offered to submit a billing ledger to the Court in camera, it would have been necessary
5 for the Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so
6 that the reasonableness could have been addressed by all parties, and by the Court."
7 Plaintiffs argue that since this never happened, there was no reasonable basis for this
8 Court to assess the reasonableness of fees being claimed by CHH. Plaintiffs argue that
9 CHH merely rehashes the same arguments presented in its original Motion for Fees.

10 Moreover, Plaintiffs argue that the Court's decision to deny fees was not clearly
11 erroneous because the disposition of this case turned on a legal question, which the
12 Nevada Supreme Court decided, well after the time Plaintiffs rejected the Offer of
13 Judgment. It would be ridiculous to expect Plaintiffs, grieving the death of their
14 mother, to anticipate the legal issue and foresee its resolution by the Nevada Supreme
15 Court when they rejected the Offer of Judgment. CHH itself acknowledges this fact
16 when it admits, "[m]edical malpractice cases are complex and require an in-depth
17 understanding of both unique legal issues as well as the medical care and course that is
18 at issue." VHS' Motion for Reconsideration, p. 21 (lines 1-2).

19 Finally, Plaintiffs argue that the CHH fails to address the deficiency of
20 withholding a billing ledger when it made its fee request and instead asking the Court
21 to rely only upon the declaration of its counsel.

22 In Reply, CHH argues that Plaintiff incorrectly asserts CHH "has not presented
23 any new or substantially different evidence than what it had the opportunity to present
24 when it filed its original Verified Memorandum of Costs and separate Motion for
25 Attorneys' Fees..." CHH's instant motion is predicated on this Court's clearly erroneous
26 decision to: (1) refuse to sign a judgment for an undisputed amount of legally
27 awardable costs to which CHH is entitled, and (2) to deny additional costs and
28 attorneys' fees stemming from Plaintiff's commencement and maintenance of an action
that the Supreme Court found was not only untimely, but that this Court's decision to
deny summary judgment in light of the evidence was a manifest abuse of discretion.

1 Noting that the Court decided the underlying Motion on the papers and without
2 oral argument, CHH contends that this Court ignored the request for in camera review
3 of any evidence it required, with Plaintiffs' opportunity to review same as well. The
4 Court also denied any request for statutorily permitted costs and fees, which was never
5 opposed by Plaintiffs, and denied the discretionary motion for attorneys' fees and costs
6 predicated on other legal and statutory bases. CHH suggests that these denials were
7 based upon this Court's abuse of its discretion and refusal to accept the underlying
8 findings of the Supreme Court pertaining to the evidence Plaintiffs knowingly
9 possessed which demonstrated clear inquiry notice within one month of the decedent's
10 death.

11 CHH argues that this Court erroneously concluded that CHH submitted no
12 documentary evidence or explanation of costs attendant to the verified memorandum
13 of costs. However, the verified memorandum of costs contained not only a complete
14 listing of disbursements which are allowable under the law for these purposes, but the
15 declaration explained that the expenses were accurate and were incurred and were
16 reasonable. Moreover, the memorandum explained and justified each of the costs,
17 supported by case authority and an application of the respective factors considered to
18 the specific facts and circumstances of this case. As such, CHH claims there was more
19 than ample evidentiary justification for the costs claimed including court filing fees and
20 the expert fees which were justified by the explanations contained in the verified
21 memorandum. For this Court to somehow assert complete ignorance of the legal and
22 appellate history of this case was clearly erroneous.

23 Moreover, CHH states that Plaintiffs never disputed, nor to this day dispute, the
24 veracity and accuracy of the costs contained in the verified memorandum of costs. CHH
25 argues that, "There was no absence of evidence justifying the costs. The Court just
26 chose to ignore it and improperly declared they were insufficient, citing to the
27 aforementioned authority." CHH argues that the authority does stand for the proposition for
28 which they are cited or was misapplied by the Court. The authority cited involved no
evidence or documentation. CHH not only provided evidence, it justified the costs,
especially of the voluminous number of experts needed for retention due to the
blunderbuss of allegations.

1 CHH further states:

2 Rather than accepting the Supreme Court's decision and rationale, this
3 Court's denial of CHH's motion and the rationale behind that decision
4 continues to perpetuate the false notion that the action was either
5 brought or maintained in good faith, a fact completely dispelled by the
6 Supreme Court's decision. Thus, denying costs and attorneys' fees in light
7 of the Supreme Court's decision is not only clearly erroneous, it is also a
8 manifest abuse of discretion which the instant motion seeks to redress.

9 Again, this Court possessed admissible evidence of the work, time and
10 expenses on the original motion. This Court wanted more than that. This
11 motion gives the Court everything it could possibly need. Moreover, all of
12 this could have been obviated by a hearing with an opportunity for all
13 parties to participate to consider the totality of the evidence which has
14 now been submitted, and would have been submitted had the in camera
15 inspection thereof been considered.

12 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13 Pursuant to EDCR 2.24(a), "[n]o motion once heard and disposed of may be
14 renewed in the same cause, nor may the same matters therein embraced by reheard,
15 unless by leave of the court granted upon motion therefor, after notice of such motion
16 to the adverse parties."

17 Nevada courts have inherent authority to reconsider their prior orders. See,
18 *Trail v. Paretto*, 91 Nev. 401 (1975). A party may, "for sufficient cause shown ... request
19 that a court ... amend, correct, resettle, modify, or vacate, as the case may be, an order
20 previously made and entered ... in the case or proceeding. *Id.* at 403. A court may
21 exercise its discretion to revisit and reverse a prior ruling if any one of five
22 circumstances is present: (1) a clearly erroneous ruling; (2) an intervening change in
23 controlling law; (3) substantially different evidence; (4) other changed circumstances;
24 or (5) that manifest injustice would result if the prior ruling is permitted to stand.
25 *United States v. Real Prop_ . Located at Incline Village*, 976 F. Supp. 1327, 1353
26 (D.Nev. 1997). A motion for reconsideration should be granted where new issues of fact
27 or law are raised which support a "ruling contrary to the ruling already reached."
28 *Moore v. City of Las Vegas*, 92 Nev. 402, 405 (1976).

Although the Defendants take offense at the language the Court used in its
previous Order, this Court intended nothing negative by indicating that Defendants
were able to "convince" the Supreme Court of their position. Such statement was made

1 simply to convey the “fact” that the Supreme Court was “convinced” that the
2 Defendant’s position was correct. Defendants argue that the Court’s denial of fees and
3 costs was somehow a continuation of the Court’s position in favor of the Plaintiff, but
4 this is also incorrect. In fact, the Court found that the *Beattie* and *Brunzell* factors
5 weighed in favor of the Defense, but since the Defense had not supported its request for
6 fees and costs, as required by the Nevada Supreme Court, this Court was unable to
7 award fees and costs. *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983);
8 *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969).

9 Additionally, Defendants argue that because they submitted a Memorandum of
10 Costs, which was not timely objected to, they are “entitled” to whatever they asked for.
11 This is also incorrect. A party is only entitled to costs if they are substantiated, and the
12 Court finds that such costs were reasonable, and incurred in the subject litigation.
13 *Frazier v. Drake*, 131 Nev. 632, 357 P.3d 365 (NV.Ct.of App., 2015); *Bobby Berosini,*
14 *Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383
(1998); *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015).

15 Finally, Defendants suggest that the Court would have been able to review the
16 supporting documents, which Defendant failed to initially provide, if the Court had
17 held a “hearing” and allowed the Defendant to present such documents. Part of the
18 Court’s previous inability to award fees was based on the Defendant’s failure to provide
19 support for the fees requested, although such documentation was offered to the Court
20 “in camera.” It is simply not “fair” to an opposing party, to offer supporting documents
21 “in camera,” implying that the opposing party will not have the opportunity to
22 challenge such documents. Based on the Defendant’s suggestion that they would make
23 billing records available to the Court “in camera,” the Court was led to believe that such
documents would not be provided to the Plaintiff.

24 The Defendant has now submitted documentation supporting the claim for
25 attorney’s fees. Because the Court has now been presented with substantially different
or additional evidence, reconsideration is appropriate.

26 Defendant has now provided billing records indicating the following:

27	5/27/20	\$725.00
28	6/1/20-6/28/20	\$3,510.00
	7/1/20-7/31/20	\$10,192.50
	8/10/20-8/28/20	\$8,865.00
	9/1/20-9/25/20	\$19,642.50

10/1/20-10/29/20	\$12,559.50
11/2/20-11/30/20	\$14,392.80
12/1/20-12/22/20	\$3,690.00
1/5/21-1/21/21	\$4,449.00
2/4/21-2/19/21	\$1,489.50
3/4/21-3/30/21	\$2,150.00
4/2/21-4/30/21	\$11,200.00
5/5/21-5/21/21	\$905.00
6/4/21-6/25/21	\$6,629.50
7/7/21-7/29/21	\$1,026.50
8/3/21-8/31/21	\$5,841.50
9/8/21-9/30/21	\$4,375.00
10/1/21-10/27/21	\$10,700.00
11/9/21-11/23/21	\$2,826.50
12/2/21-12/29/21	\$7,975.00
1/3/22-1/25/22	<u>\$4,925.00</u>
Total:	\$138,069.80

Defendant has now provided documentation supporting the following costs:

American Legal Investigation	\$27.43
Ruffalo & Associates	\$4,350.00
	\$1,800.00
	\$10,350.00
Abraham Ishaaya, M.D.	\$6,710.00
	\$1,375.00
	\$6,187.50
	\$2,970.00
	\$3,437.50
	\$4,675.00
Cohen Volk Economic Counseling	\$688.50
	\$3,855.60
JAMS	\$3,000.00
Filing Fees	<u>\$529.50</u>
Total:	\$49,956.03

Defendant argues that it is entitled to \$42,492.03, and \$110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant to N.R.C.P. 68, N.R.S. 17.1151, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d 1050 (2019) for a waiver of any presently or potentially recoverable costs in full and final settlement of the matter. At the time of the Offer,

1 Defendants' expended costs and fees totaled \$58,514.36. The Offer was not accepted by
2 Plaintiff and expired on September 11, 2020.

3 Since the date of the Offer of Judgment, Defendant argues that it incurred
4 \$106,619.85 in attorney's fees, and paralegal's fees in the amount of \$4,230.00. This
5 Court finds and concludes that the fees incurred by Defendant were reasonable and
6 necessarily incurred in the defense of the case. This Court adopts by reference its prior
7 reasoning and analysis relating to the requested attorney's fees, and now that the Court
8 has been provided with the documentary support of such fees, and finds that such fees
9 were reasonable, pursuant to *Beattie* and *Brunzell*, the Court finds and concludes that
10 such fees are appropriate and recoverable. The Court further finds that the Defendant
11 has now met the requirements of *Frazier*, with regard to documenting the costs
12 incurred. The Court is still not convinced that the expert fees, in addition to the \$1,500
13 recoverable by statute, are necessary or recoverable. Consequently, in reducing each of
14 the expert's fees to \$1,500.00, the above-referenced costs, which have been
documented, must be reduced to \$8,056.93.

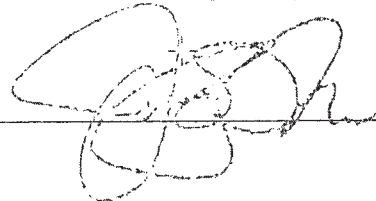
15 **CONCLUSION/ORDER**

16 Based upon the foregoing, and good cause appearing,

17 This Court now indicates its intention, pursuant to *Huneycutt v. Huneycutt*, 94
18 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453
19 (2010), that if this Court had jurisdiction to decide this matter, the Court would now
award attorney's fees of \$110,849.85, and costs of \$8,056.93.

20 Because this matter has been decided on the pleadings, any future hearings
21 relating to this matter are taken off calendar. The Court requests that counsel for
22 Defendant prepare and process a Notice of Entry with regard to this matter, and convey
23 this Decision to the Supreme Court, pursuant to *Huneycutt* and *Dingwall*.

24 Dated this 4th day of May, 2022

25 
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28 **0D9 DD7 5826 D5EB**
Jerry A. Wiese
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC.
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 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: 5/4/2022

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpincombe@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Brad Shipley	bshipley@jhcottonlaw.com
22 Tony Abbatangelo	Tony@thevegaslawyers.com
23 Adam Garth	Adam.Garth@lewisbrisbois.com
24 Paul Padda	civil@paulpaddalaw.com
25 Srilata Shah	sri@paulpaddalaw.com

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7	Heidi Brown	Heidi.Brown@lewisbrisbois.com
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EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,

Appellant,

vs.

ESTATE OF REBECCA POWELL, DARCI
CREECY, TARYN CREECY, ISAIAH
KHOSROF, and LLOYD CREECY,

Respondents.

Supreme Court No.: 84402

Electronically Filed

May 12 2022 10:56 a.m.

District Court No. A-19-788787-C
Elizabeth A. Brown
Clerk of Supreme Court

NOTICE OF WITHDRAWAL OF APPEAL

VALLEY HEALTH SYSTEM, LLC, appellant named above, hereby
moves to voluntarily withdraw the appeal mentioned above.

I, Adam Garth, Esq., as counsel for the appellant, explained and informed
VALLEY HEALTH SYSTEM, LLC of the legal effects and consequences of this
voluntary withdrawal of this appeal, including that VALLEY HEALTH SYSTEM,
LLC cannot hereafter seek to reinstate this appeal and that any issues that were or
could have been brought in this appeal are forever waived. Having been so
informed, VALLEY HEALTH SYSTEM, LLC hereby consents to a voluntary
dismissal of the above-mentioned appeal.

VERIFICATION

I recognize that pursuant to N.R.A.P. 3C I am responsible for filing a notice of withdrawal of appeal and that the Supreme Court of Nevada may sanction an attorney for failing to file such a notice. I therefore certify that the information provided in this notice of withdrawal of appeal is true and complete to the best of my knowledge, information and belief.

DATED this 12th day of May, 2022

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
Nevada Bar No. 006858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2022, a true and correct copy of **NOTICE OF WITHDRAWAL OF APPEAL** was served upon the following parties by electronic service through this Court's electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

By /s/ Heidi Brown
An Employee of
LEWIS BRISBOIS BISGAARD &
SMITH LLP

1 CSERV

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Estate of Rebecca Powell,
Plaintiff(s)

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

8
9 Valley Health System, LLC.
Defendant(s)

10
11 AUTOMATED CERTIFICATE OF SERVICE

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing 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: 6/2/2022

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
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Vendor No.: 15868 Commonwealth of Massachusetts

Check No.: 200009

Invoice Date	Invoice No.	Description	Disb. Code	Voucher No.	Account No./ File No.	Amount
6/30/22	BOS-01745	Filing fee for Domestication of Foreign Judgement in Massachusetts on 6/30/22.	5	2915482	28094-190	195.00
Total Amount:						195.00

WARNING - Do not cash unless you can verify a color change - Rub Briskly to Verify

LEWIS BRISBOIS BISGAARD & SMITH LLP

City National Bank
www.cnb.com

CHECK NO. 200009

ATTORNEYS
ONE INTERNATIONAL PLACE, SUITE 350
BOSTON, MASSACHUSETTS 02110
(857) 313-3850

16-1606/1220

DATE 06/30/2022

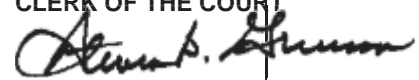
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PAY: One Hundred Ninety-Five and 00/100*****

Draft void 120 days from issued
LEWIS BRISBOIS BISGAARD & SMITH LLPTO THE
ORDER
OF Commonwealth of Massachusetts
LaFayette City Center
2 Avenue de Lafayette
Boston, MA 02111

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EXHIBIT E



CRCL

Adam Garth, Esq. (15045) Lewis Brisbois Bisgaard & Smith LLP

(Name)

6385 S. Rainbow Blvd, Suite 600

(Address)

Las Vegas, NV 89118

(City, State, Zip)

702-893-3383

(Telephone)

Adam.Garth@lewisbrisbois.com

(E-mail Address/Facsimile)

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of:

REBECCA ANN POWELL

Deceased.

Case No.: P-19-098361-E

Dept. No.: PC-1

CREDITOR'S CLAIM

1. ☐ I, (state your name) _____, am the creditor in the above-referenced matter.

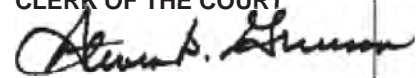
or:

☒ I, (state your name) Adam Garth, Esq., am not the creditor, but I am authorized to file and am doing so because (explain why you are filing and not the actual creditor)

I am the attorney of record for the judgment creditor, Valley Health System, LLC which entity is located

in the Commonwealth of Pennsylvania and incorporated in the State of Delaware.

EXHIBIT J



RSPN
PAUL S. PADDA, ESQ.
Nevada Bar No. 10417
Email: psp@paulpaddalaw.com
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888
Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator;
DARCI CREECY, individually and as heir;
TARYN CREECY, individually and as heir;
ISAIAH KHOSROF, individually and as heir;
LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT. 7

**PLAINTIFFS' RESPONSE TO
DEFENDANT VALLEY HEALTH
SYSTEM, LLC'S OPPOSITION TO
MOTION TO STAY EXECUTION ON
JUDGMENT FOR ATTORNEYS' FEES
AND COSTS (INCLUDING STAY OF
JUDGMENT DEBTORS AND
PRODUCTION OF DOCUMENTS) AND
PLAINTIFFS' OPPOSITION TO
DEFENDANT'S COUNTERMOTION
FOR CONTEMPT AND ATTORNEYS'
FEES**

Hearing Date: November 9, 2022
Hearing Time: 9 a.m.

Plaintiffs (collectively referred to as "the Powell parties") submit this response to
Defendant Valley Health System's ("VHS") opposition to *Plaintiffs' Motion to Stay
Execution on Judgment for Attorney's Fees and Costs Including Stay of Examination of*

1

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
Eighth Judicial District Court, Case No. A-19-788787-C (Dept. 7)
*Plaintiffs' Response To Defendant VHS' Opposition to Motion To Stay
And Opposition To Defendant's Countermotion*
PPL #201297-15-04

1 *Judgment Debtors and Production of Documents*. Plaintiffs’ also respond here to VHS’
2 “Counter-motion for Contempt and Attorneys’ Fees.” VHS’ opposition is untimely (and has no
3 substantive merit) and its counter-motion for contempt is simply frivolous.

4 In these proceedings, VHS, a subsidiary¹ of Universal Health System, Inc.,² seeks to
5 collect in excess of \$100,000 in attorney’s fees and costs against the grieving family of a
6 military nurse that died in the care and custody of VHS. As explained further in this response,
7 the entire basis for VHS’ pursuit of fees and costs is predicated upon a judgment that is void
8 *ab initio*. VHS and its counsel failed to follow the proper procedures established by the
9 Nevada Supreme Court in Foster v. Dingwall, 126 Nev. Ad. Op. No. 5. that would allow them
10 to properly obtain the relief they now seek to enforce. So instead, they tricked the Court into
11 signing a judgment unsupported by any prior decision of the Court. That behavior should
12 leave this Court very concerned and disturbed about how the judgment at issue was obtained.

13 This response (which is also an opposition) is based upon the points and authorities
14 below, the attached Declaration of Lloyd Creecy, the separately filed Appendix³ in support of
15 this response/opposition, all papers on file herein and any other argument the Court may
16 choose to entertain in this matter.

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21 ¹ <https://www.valleyhealthsystemlv.com/about>

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23 ² A publicly traded company with about 11 billion in yearly revenue in 2020 alone. *See*
24 <https://ir.uhs.com/>

25 ³ “App. ____.” refers to the page(s) of the Appendix filed this same day in support of this
26 submission. The Appendix is filed separately with the Court. All documents contained in that
Appendix are incorporated by reference in this Response.

I.

BACKGROUND

A. THE FACTS AND CIRCUMSTANCES OF REBECCA POWELL'S DEATH

This case arises from a medical malpractice/wrongful death case in which it was alleged that Ms. Rebecca Powell, age 42, died while in the care of Centennial Hills Hospital (a part of VHS) on account of negligence by the hospital and its medical personnel. Rebecca, a military nurse, was the mother of three children, Isiah, Taryn and Darci and the daughter of Lloyd Creecy. Exhibit A.⁴

On May 3, 2017, Rebecca was found by her daughter at her home. She was unconscious, labored in her breathing, and had vomit on her face. Emergency services arrived and provided immediate care and transported her to Centennial Hills where she was admitted. At first, Ms. Powell improved during her admission. However, on May 10, 2017, she complained of shortness of breath, weakness, and a "drowning feeling." In response to these complaints, one of the Defendant physicians ordered Ativan to be administered via an "IV push."

On May 11, 2017, another Defendant physician ordered two more doses of Ativan and ordered several tests, including a chest CT to be performed. Ms. Powell was returned to her room where she was supposed to be monitored by a camera (which was in fact inoperable).

⁴ None of them reside in Nevada.

1 Another dose of Ativan was ordered at 3:27 a.m. on May 11, 2017. Soon after, Ms. Powell
2 suffered acute respiratory failure and died.

3 On June 28, 2017, approximately six weeks after the death of Ms. Powell, Plaintiffs
4 received a Certificate of Death, issued by Nevada's Department of Health and Human Services
5 stating, incredibly, that Ms. Powell's cause of death while in the care and custody of the
6 hospital was a **suicide** due to "Complications of Duloxetine (Cymbalta) Intoxication." Ms.
7 Powell's former husband, Brian Powell, with whom she remained friends, could not visit with
8 Ms. Powell while she was in the hospital because he was "turned away by the nurses." He
9 testified under oath that, following Ms. Powell's death on May 11, 2017, "I did meet with
10 Taryn, Isaiah and one of Rebecca's friends to speak with the doctor and risk manager after
11 Rebecca's death, but they didn't provide any information." Therefore, in search of further
12 answers, Brian filed a complaint with HHS sometime before May 23, 2017 requesting that the
13 agency investigate the care and services received by the Ms. Powell.
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15 By letter dated February 5, 2018, HHS notified Brian that it conducted an
16 "investigation" of Centennial Hills and that the hospital committed multiple "**violation(s) with**
17 **rules and/or regulations.**" HHS's report noted several deficiencies in the medical care
18 provided to Ms. Powell including, among other things, that she was exhibiting symptoms that
19 should have triggered a higher level of care ("the physician should have been notified, the RRT
20 activated, and the level of care upgraded"). The HHS Report of Investigation stood in stark
21 contrast to the Certificate of Death which inaccurately declared Ms. Powell's death a suicide.
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1 Within one year of the HHS' investigative report putting them on notice of potential
2 negligence, Plaintiffs began this litigation. See App. 1-30. Plaintiffs attached a detailed
3 medical affidavit (App. 23-29) to their Complaint in which Dr. Sami Hashim, M.D.
4 characterized Defendants' actions as, among many other things, a "**shameful and gross**
5 **example of below standard of care.**" App. 28.

6 **B. THE PROCEDURAL HISTORY OF THIS CASE**

7 After the start of the litigation, VHS served Plaintiffs with a zero dollar offer of
8 judgment on August 28, 2020 while its motion for summary judgment raising statute of
9 limitations issues was pending with the Court. App. 66. The offer expired without Plaintiffs
10 accepting it. Two months later, the judge assigned to this case at the time, the Hon. Jerry A.
11 Wiese, denied VHS' motion for summary judgment on October 29, 2020 finding that
12 "[a]lthough the Complaints filed by Brian Powell suggest that Plaintiff may have at least been
13 on inquiry notice in 2017, the fact that the family was notified shortly after the decedent's death
14 that the cause of death was determined to be a 'suicide,' causes this Court some doubt or
15 concern about what the family knew at that time period." App. 33. Judge Wiese further added
16 that "there remains a genuine issue of material fact as to when the Plaintiffs were actually put
17 on inquiry notice" and that "[s]uch issue is an issue of fact, appropriate for determination by the
18 trier of fact." App. 34.

19 VHS filed a Writ petition with the Nevada Supreme Court and prevailed on the statute
20 of limitations issue. App. 40-51. The Nevada Supreme Court imputed whatever knowledge it
21 believed Brian Powell to have possessed to the other plaintiffs and dismissed their entire case.

Judge Wiese then vacated his prior order denying summary judgment and dismissed the case per the Supreme Court’s directive. App. 40-51.

Subsequently, VHS sought fees based on its offer of judgment and costs pursuant to statute. Judge Wiese denied costs finding that VHS failed to properly document any costs. App. 64 (“the Court cannot award costs”). As for fees, he denied those as well finding that **“Plaintiffs’ decision to reject the offer and proceed to trial was not grossly unreasonable or in bad faith”** because they believed **“they had a valid claim, and the Court cannot find that wanting some recovery, as opposed to \$0.00, to be ‘grossly unreasonable’ or in ‘bad faith.’”** App. 66. By decision dated February 15, 2022, he decided that “Defendant’s Motion for Fees and Costs is DENIED.” App. 89.

Following this denial of fees and costs, VHS filed a notice of appeal in the Nevada Supreme Court on March 14, 2022 which divested the trial court of further jurisdiction. App. 70-91. After this divestiture, and with an active appeal pending in the Nevada Supreme Court, VHS then sought reconsideration from Judge Wiese. The judge entertained the motion for reconsideration but did not change his opinion (or alter or modify his prior finding that Plaintiffs’ decision to reject the offer of judgment was not grossly unreasonable or in bad faith). App. 96. He denied VHS’s request to vacate his prior order which denied fees and costs by finding that the Court “no longer has jurisdiction to address the issue of fees and costs.” App. 96.⁵ Without vacating his prior decision, the judge also commented that only “[i]f the Court

⁵ “If the Court were inclined to reconsider its previous decision, *the most it could do* would be to enter a *Honeycutt* Order . . . indicating its intention.” App. 96 (emphasis supplied).

1 were inclined to reconsider its previous decision, the most it could do would be to enter a
2 *Honeycutt* Order.” App. 96. He ended his decision by opining that if he had jurisdiction, he
3 would “**now award attorney’s fees of \$110,849.85 and costs of \$8,056.93.**” App. 104. Apart
4 from simply saying this, he did not award any fees and costs to VHS, nor did he vacate his
5 prior order denying fees and costs. App. 104. Instead, he merely directed counsel for VHS to
6 “convey this Decision to the Supreme Court, pursuant to *Honeycutt* and *Dingwall*.” App. 104.
7 Counsel for VHS declined to follow Judge Wiese’s recommendation and instead filed a “Notice
8 of Withdrawal of Appeal” with the Nevada Supreme Court on May 12, 2022 representing that
9 VHS understands it “cannot hereafter seek to reinstate this appeal and that any issues that were
10 or could have been brought in this appeal are forever waived.” App. 115-116. The Supreme
11 Court later obliged VHS’ request and dismissed its appeal. App. 118.

14 Judge Wiese signed a judgment on June 2, 2022 that was drafted and presented to him
15 by VHS’ counsel. App. 107-108. “Notice” of entry of that judgment was filed on June 7, 2022.
16 Counsel for VHS filed an “Ex Parte Application for Judgment Debtor Exam” on July 19, 2022
17 which the Court granted. Plaintiffs filed a motion on September 27, 2022 to stay execution of
18 the judgment and any judgment debtor exam.
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II.

ARGUMENT

A. VHS'S OPPOSITION TO PLAINTIFFS MOTION IS UNTIMELY

At the last Court hearing in this case (September 28, 2022), counsel for VHS provided the Court with a long monologue about his various grievances and the need for litigants to comply with the rules. In doing so, he comported himself in a disappointing and unprofessional manner engaging in unnecessary attacks upon the Powell parties and undersigned counsel. For all the histrionics on display at the last hearing, it is ironic that VHS' opposition to the Powell parties' pending motion for a stay is untimely.

The Powell parties filed their motion, the subject of the current proceedings, on September 27, 2022. Under Eighth Judicial District Court Rule 2.20, VHS had 14-days, or until October 11, 2022, to file its Opposition. Instead, VHS, filed its Opposition on October 28, 2022. The record is clear that VHS did not file a written stipulation or motion requesting to file its Opposition after the deadline. Under EDCR 2.22(c), "[a]ll interested parties to a motion may stipulate to continue the day fixed for the filing of an opposition or reply thereto" but any stipulation in "ineffective" unless it is in writing and "filed with the clerk before the day fixed for filing the opposition."⁶

⁶ EDCR 2.20 and 2.25 contemplate motions being in writing. According to EDCR 2.25, *ex parte* motions will ordinarily not be granted. In this case, VHS did not file any motion or stipulation with the Court seeking to file its Opposition out of time.

1 Given that VHS' Opposition is untimely, the Court should disregard it and construe it as
2 an admission in favor of granting the Powell parties' motion to stay judgment and any judgment
3 debtor examinations. By failing to timely respond, as required by the rules of this Court, VHS
4 has conceded the merits of the Powell parties' motion.

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6 **B. VHS IS NOT A PROPER "JUDGMENT CREDITOR" BECAUSE THE**
7 **POWELL PARTIES HAVE NEVER BEEN ORDERED BY THIS COURT,**
8 **OR ANY OTHER COURT, TO PAY VHS ANYTHING**

9 What is essential as a starting point to any discussion regarding the issues before the
10 Court is acknowledgment of the indisputable fact that Judge Wiese denied VHS' motion for
11 fees and costs on February 15, 2022 (App. 56-67) and never vacated that order/decision.
12 Indeed, he specifically declined to do so on reconsideration. App. 95-104. Thus, the purported
13 judgment drafted by VHS' counsel and presented to the Court for signature on June 2, 2022
14 falsely cited the reconsideration decision as a basis for "awarding" fees and costs. App. 107.
15 The judgment itself, the basis for any judgment debtor examination, failed to vacate the
16 February 15, 2022 decision/order denying fees and costs to VHS. Thus, the judgment was, and
17 remains, void *ab initio* because it did not properly express the clear findings of the Court's prior
18 decisions denying fees and costs. Stated another way, there was never a decision rendered by
19 the Court that supports the monetary award set forth in the judgment nor can VHS's counsel
20 cite any.

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22 Indeed, given the clear record in this case, VHS's counsel made a deliberate and false
23 representation when they drafted a judgment referencing "the Order granting Defendant Valley
24 Health System, LLC's motion for reconsideration regarding motion for attorney's fees dated
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1 and entered on May 4, 2022”⁷ knowing full well that no such order existed. As this Court can
2 readily observe for itself, the language in the judgment is unsupported by any decision rendered
3 by Judge Wiese and counsel for VHS that appeared at the last hearing knew this because Judge
4 Wiese explicitly stated in the order cited in the judgment drafted by VHS that he no longer had
5 “jurisdiction to address the issue of fees and costs.” App. 96. Accordingly, and most
6 importantly, *he never vacated his earlier order and never granted reconsideration of*
7 *anything*, instead stating only that “if” he was inclined to reconsider his prior decision the most
8 he could do would be to enter a “*Huneycutt* Order.” App. 96 (lines 20-23). It is axiomatic that
9 the mere expression of an intention to do something is not the same as an actual affirmative act.
10 Once Judge Wiese issued the decision on reconsideration, where he refused to exercise
11 jurisdiction, that closed the door on fees and costs.
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14 After Judge Wiese issued his *Huneycutt*⁸ order, VHS could have followed his directive
15 set forth in that decision (App. 104) and presented it to the Nevada Supreme Court, *where*
16 VHS’s appeal was still pending, for the purpose of obtaining a limited remand for the purpose
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20 ⁷ App. 107.

21 ⁸ In *Huneycutt*, the Supreme Court adopted a procedure where a party, believing a basis exists
22 to alter, vacate or otherwise modify an order or judgment challenged on appeal after an appeal
23 from that order or judgment has been perfected, must first file a motion for relief from the order
24 or judgment in district court prior to filing a motion for remand in the Supreme Court.
25 *Huneycutt v. Huneycutt*, 94 Nev. 79 (1978). Despite the general rule that the perfection of an
26 appeal divests the district court of jurisdiction, the district court retains limited jurisdiction to
review motions made in accordance with this procedure but it lacks jurisdiction to enter an
order granting such a motion. *Id.* However, the district court does have jurisdiction to deny
such requests. *Id.*

1 of modifying or vacating the order denying attorney's fees. Indeed, VHS could have responded
2 to the Nevada Supreme Court's show cause order (App. 113-114) and urged that Court to
3 exercise jurisdiction by seeking a *Huneycutt* remand. Instead, on the advice of its counsel, VHS
4 chose to dismiss its appeal foreclosing its ability to seek a modification of Judge Wiese's denial
5 of attorney's fees.

6
7 Presumably recognizing this fatal error, counsel for VHS sought to fix the problem by
8 presenting the Court with a judgment predicated upon a false representation. Given Judge
9 Wiese's prior decisions dated February 15, 2022 (App. 56-67) and May 4, 2022 (App. 95-104),
10 it was a *clear and deliberate fraud upon the Court* to suggest that there was any basis for an
11 award of attorney's fees and costs when the reconsideration order specifically declined to vacate
12 its prior decision due to lack of jurisdiction. App. 96 ("*this Court no longer has jurisdiction to*
13 *address the issue of fees and costs*").

14
15 In light of the foregoing, the Court should grant the Powell parties' motion to stay
16 judgment and any judgment debtor examinations because the irrefutable facts demonstrate that
17 the judgment at issue in this case is void *ab initio*. Indeed, at the time, undersigned counsel for
18 the Powell parties even protested the fraudulent judgment by stating "[w]e cannot agree to this."
19 App. 111. Judge Wiese's staff may have affixed his electronic signature to the judgment,
20 viewing it as a ministerial act, without recognizing that the judgment contained false statements
21 of fact – specifically, the false suggestion that there was an actual decision awarding VHS fees
22 and costs. As this Court is aware, no such decision exists. As officers of the court, VHS's
23 counsel owed a duty to the Court to abstain from knowingly presenting a document to the Court
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1 for signature when they unquestionably knew that there was never any decision by Judge Wiese
2 granting fees and costs.⁹

3 Given the foregoing, the Court should immediately grant the Powell parties' motion for
4 stay of enforcement of the judgment and any judgment debtor examinations.

5 **C. THE JUDGMENT AGAINST THE ESTATE AND EFFORTS TO ENFORCE**
6 **AND EXECUTE ON ASSETS IS SUBJECT TO REQUIREMENTS OF**
7 **PROBATE**

8 Putting aside the fact that there has never been a decision awarding VHS fees and costs,
9 the statute relied upon by Defendant VHS to support its contempt campaign against Plaintiffs and
10 their counsel, NRS § 21.270(3), applies to "judgment debtors" that are not specially administered
11 estates subject to probate administration. *See* Opposition, at p. 5, lines 21-23. *Why?* Since one
12 of the Judgment Debtors, in this case, is a decedent's "estate" in probate proceedings by special
13 administration compliance with probate statutes with respect to enforcement, execution, and
14 related efforts geared toward execution of assets, necessarily apply.

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16 The Judgment is, as Defendant VHS' admits in its Opposition, "a penalty imposed upon
17 the Estate by this Court for their rejection of a valid offer of judgment." See Defendant VHS
18 Opp. and Motion, at p. 19, lines 15-16.¹⁰ Although claiming to do so only in "an abundance of
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22 ⁹ The Nevada Rules of Professional Conduct mandate that every attorney act competently and
with candor toward the tribunal. *See* NRPC 1.1 and 3.3(a).

23 ¹⁰ Indeed, the fact it was "imposed upon the Estate" as a penalty is one of the grounds to stay
24 execution or otherwise set aside the Judgment. No matter how much Defendant VHS tries to
25 minimize the role of probate proceedings in the enforcement and execution of its Judgment
26 against the Estate, by statute, the administration of debts of the probate estate must be made
through the probate.

caution,” Defendant VHS recently did what they were supposed to do originally, as Plaintiffs argue in their Motion, and that is to file a proper claim for its Judgment as “imposed on the Estate” with the probate court. Having done so, probate statutes are controlling.

NRS § 147.200(3) imposes an automatic stay of execution on all Judgments entered against an Estate in probate. As stated in the Plaintiffs’ Motion, and not otherwise refuted, NRS § 147.200(3) specifically provides that “no execution may issue upon the judgment, nor does it create any lien upon any property of the estate, nor give the judgment creditor any priority of payment.” Nev. Rev. Stat. § 147.200(3) (emphasis added).¹¹ The statute cannot be any more to the point: Defendant VHS cannot execute upon its Judgment on the Estate. Period. This statutory prohibition necessarily includes efforts to discover assets of the Estate and of its individual beneficiaries-heirs that are made in furtherance of Defendant VHS’ efforts to enforce and execute upon said Judgment.

After all, unless VHS’ true purpose included a veiled intention to harass, annoy, and/or intimidate the individual Plaintiffs and or their counsel, to pay up, Defendant VHS certainly would not have sought *ex parte* Judgment Debtor examinations of each of the Judgment Debtors if it not in furtherance of its ongoing efforts to enforce and execute upon its Judgment.¹² In

¹¹ In general, NRCPC Rule 62 (a)(1) similarly addresses “stay of proceedings to enforce a judgment” and provides for “automatic stay” of the enforcement of judgments such that “**no execution may issue on a judgment, nor may proceedings be taken to enforce it** until 30 days have passed after service of written notice of its entry unless the court orders otherwise.” NRCPC Rule 62(a)(1) (emphasis added).

¹² Certainly, as Defendant points out filing a Motion for a Protective Order can guard against these concerns, but this is not the only means available to Plaintiffs. If there is an automatic

1 addition to obtaining an order for judgment debtor examinations, Defendant VHS' aggressive
2 efforts to enforce and execute the Judgment, notwithstanding an automatic stay of execution as
3 to Judgment against the Estate, extended to the State of Ohio, where Defendant VHS made a
4 failed bid to levy assets of an elderly and infirm Plaintiff Lloyd Creecy. See Ex. 6, to the Plaintiffs
5 Motion.

6
7 Plaintiffs should not be held in contempt for not complying with an Order to appear for a
8 judgment creditor examination when the Judgment which provides the basis to allow for the
9 debtor examination is "enforced against the Estate," and Nevada probate statutes prohibit the
10 execution of such judgments upon the Estate. Moreover, Plaintiffs have advanced a good faith
11 argument that the Judgment itself does not explicitly impose joint and several liability of the
12 individual Plaintiffs/Judgement Debtors, who are beneficiaries of the estate as decedent's "heirs."

13
14 One of the problems with the Judgment and Order, as drafted, is that it summarily lumps
15 multiple Plaintiffs together in a single Judgment/Order, without language explicitly providing for
16 joint and several liability. If there is only one Judgment, and that same Judgment is "against the
17 Estate and the Plaintiffs," it follows that a statutory automatic stay on the Estate Judgment
18 operates as a stay on the execution of judgment as to the individual Plaintiffs as well, especially
19 when part of the Plaintiffs claims in the case are made in alternate capacity as "heirs" or Estate
20 beneficiaries whose claims stands to be reduced by judgments or claims entered against the Estate.
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24 stay imposed by statute with respect to the execution of Judgments against the Estate and
25 Plaintiffs have a well-grounded, good-faith basis for requesting a stay of execution based on the
26 statute and other reasons and for setting aside judgement and requesting relief from the same, it
would be a waste of time, money and resources for everyone.

1 In securing its Judgment and taking efforts consistent with execution and enforcement of
2 the Estate Judgment, Defendant VHS obviously did not quite think through the ramifications and
3 applicable statutes governing judgments entered against an Estate – judgments which by their
4 nature affect the rights of the beneficiaries of the Estate also known as decedent’s “heirs.”

5 **D. VHS’ COUNTERMOTION FOR CONTEMPT IS COMPLETELY**
6 **BASELESS**

7 Given that VHS’s counsel knowingly presented a judgment to Judge Wiese’s chambers
8 for signature knowing there was never any decision awarding fees and costs in this case, it is
9 hypocritical that VHS seeks to hold the Powell parties in contempt and even urges their
10 imprisonment.

11 As a matter of law, a finding of contempt under NRS § 21.270(3) is discretionary, not
12 mandatory. *See Nev. Rev. Stat. § 21.270(3).* Furthermore, any suggestion of arrest as a
13 criminal sanction or made pursuant to a bench warrant, as stated in Defendant VHS’ Opposition
14 and countermotion, is unconstitutional absent “constitutionally required procedural safeguards”
15 including, without limitation, “the right to a jury trial, and the right to proof of all elements of
16 the crime beyond a reasonable doubt.” Detwiler v. Eighth Judicial District Court, 137 Nev.
17 202, 209, 137 Nev. Adv. Op. 18 (May 6, 2021); see Opposition & Counter-motion, at p. 6, lines
18 1-17.

19 As noted in the supporting Declaration of Lloyd Creecy, there were compelling reasons
20 why he and his grandchildren could not appear at the judgment debtor examination. *See* Exhibit
21 B. Putting aside the fact that there is no actual basis for a valid judgment debtor examination,
22 (because the judgment at issue in this case was fraudulently obtained) the Court should decline
23

1 to hold the Powell parties in contempt. Given their own obvious misconduct, it is shameful that
2 VHS's counsel request the Court imprison a 76-year-old man and his grandchildren in a case in
3 which they simply sought answers regarding the death of their precious loved one.

4 As explained at the hearing on September 28, 2022, there was no intentional violation of
5 the Court's directives. Mr. Creecy is 76-years old and in very poor health. Both he and his
6 grandchildren, like millions of people in this country, are facing very difficult financial
7 circumstances. Most people cannot afford to drive 20 miles let alone spend thousands of dollars
8 on airfare to travel to Las Vegas for a judgment debtor examination. It is offensive that a
9 company the size of UHS, through VHS and its counsel, would urge the Court to imprison the
10 family of a wrongful death victim, especially where the judgment purporting to award fees and
11 costs to VHS was obtained through deception and fraud.

14 III.

15 CONCLUSION

16 Based upon the foregoing, the Powell parties respectfully request that the Court
17 immediately stay execution of the fraudulently obtained judgment and deny VHS's
18 counter-motion for contempt.

20 Respectfully submitted,

21 /s/ Paul S. Padda

22
23 Paul S. Padda, Esq.
24 Counsel for Plaintiffs

25 Dated: November 4, 2022

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure, the undersigned certifies that on this day, November 4, 2022, a copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANT VALLEY HEALTH SYSTEM, LLC'S OPPOSITION TO MOTION TO STAY EXECUTION ON JUDGMENT FOR ATTORNEYS' FEES AND COSTS (INCLUDING STAY OF JUDGMENT DEBTORS AND PRODUCTION OF DOCUMENTS) AND PLAINTIFFS' OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR CONTEMPT AND ATTORNEYS' FEES** was filed with the Court and served upon all parties/counsel of record (identified on the master service list) in the above-entitled matter through the Court's electronic filing system - efileNV e-service.

/s/ Ashley Pourghareman

Ashley Pourghareman, Paralegal
PAUL PADDA LAW

EXHIBIT A

EXHIBIT A



EXHIBIT B

EXHIBIT B

DECLARATION OF LLOYD CREECY

I, Lloyd Creecy, do hereby declare the following:

1. I am offering this declaration based upon my personal knowledge. I am above the age of 18 and I am competent to testify to the matters set forth herein if called upon to do so. I am a party to the matter pending before the Court.
2. I wish to advise the Court that in providing this declaration, I am speaking on behalf of myself and my grandchildren, Isaiah Khosrof, Taryn Creecy and Darci Creecy. I am in regular communication with each of them and have discussed this declaration with them. I am also very familiar with their personal and financial circumstances.
3. I understand my attendance was required on September 28, 2022 for a legal proceeding. I wish to sincerely apologize to the Court for any inconvenience occasioned by my failure to appear, as well as my grandchildren's failure to appear. I would like the Court to know that I am 76 years old and have been under the care of a neurosurgeon due to significant issues and pain with my spine. In fact, I am having a major medical procedure on November 18, 2022 and will be unable to travel after that for a significant period of time. I would like the Court to know that I am not able to travel from both a physical and financial standpoint. As the sole caregiver for my wife, I am unable to leave Ohio, where I reside, and travel to Las Vegas. Additionally, because of my very limited income, relying primarily upon social security disability payments, I have no financial means to afford travel.
4. I have discussed this matter with my grandchildren and they are similarly situated. Each is currently under financial hardship, like so many other people in America right now, and unable to travel to Las Vegas for any legal proceedings. For example, Isaiah has had an uneven employment history and has had difficulty finding employment. Darci is a new mother with limited financial means and unable to travel due to

financial and family considerations. Taryn and has had to move in with two roommates simply to make ends meet. None of my grandchildren, including myself, have the financial means to travel, let alone satisfy the claimed debt in this case.

5. The death of my daughter, Rebecca, was a tragedy that has significantly impacted our lives. There is not a day that goes by when each of us does not think about her. The fact that we might be financially liable to Centennial Hills Hospital for simply seeking answers about why she died is astounding to me and leaves me wondering what justice exists in the world. To be perfectly honest, I feel like my family is being victimized twice.

I declare, under penalty of perjury, that the foregoing is true and correct.

/s/ Lloyd Creecy

Lloyd Creecy

Dated: November 4, 2022