

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Appellants,

vs.

VALLEY HEALTH SYSTEM,  
LLC (doing business as  
“Centennial Hills Hospital Medical  
Center”),

Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

Appeal No. 84861

**APPELLANTS’ APPENDIX**

**VOLUME 5**

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Respectfully submitted,

*/s/ Paul S. Padda*

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Paul S. Padda, Esq.

Dated: January 30, 2023

## **CERTIFICATE OF SERVICE**

Pursuant to the Nevada Rules of Appellate Procedure, I hereby certify that on this day, January 30, 2023, the foregoing document entitled **APPELLANTS' APPENDIX VOLUME 5** was filed with the Supreme Court of Nevada through its electronic filing system. Service of the foregoing document shall be made in accordance with the Master Service List upon all registered parties and/or participants and their counsel.

/s/ Shelbi Schram

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Shelbi Schram, Paralegal  
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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 DBA CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER'S  
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**

**HEARING REQUESTED**

22 Defendants by and through their counsel of record, S. Brent Vogel and Adam Garth of the  
23 Law Firm LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby file their Motion for Attorneys'  
24 Fees Pursuant to N.R.C.P. 68 and N.R.S. §§ 17.117, 7.085, 18.010(2) and EDCR 7.60.

25 This Motion is based upon the Memorandum of Points and Authorities below, the pleadings  
26 and papers on file herein, any oral argument which may be entertained by the Court at the hearing  
27 of this matter and the Declaration of Adam Garth, below.  
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DATED this 23<sup>rd</sup> day of February, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth  
S. BRENT VOGEL  
Nevada Bar No. 6858  
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*Attorneys for Attorneys for Defendant Valley  
Health System, LLC dba Centennial Hills Hospital  
Medical Center*



1     **DECLARATION OF ADAM GARTH IN SUPPORT OF MOTION FOR ATTORNEYS'**  
2                                     **FEEES**

3     I, Adam Garth, declare under penalty of perjury as follows:

4             1.     I am a partner at Lewis Brisbois Bisgaard & Smith LLP, and am duly licensed to  
5     practice law in the State of Nevada. I am competent to testify to the matters set forth herein, and  
6     will do so if called upon.

7             2.     I am one of the attorneys of record representing Defendant Valley Health System,  
8     LLC dba Centennial Hills Hospital Medical Center ("Defendant" or "CHH") in the above-entitled  
9     action, currently pending in Department 30 of the Eighth Judicial District Court for the State of  
10    Nevada, Case No. A-19-788787-C.

11            3.     I make this Declaration on behalf of DEFENDANT VALLEY HEALTH SYSTEM,  
12    LLC DBA CENTENNIAL HILLS HOSPITAL MEDICAL CENTER'S MOTION FOR  
13    RECONSIDERATION REGARDING ITS MOTION FOR ATTORNEYS' FEES PURSUANT TO  
14    N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), AND EDCR 7.60.

15            4.     I have been counsel of record for Defendants for much of this case, including for all  
16    times that fees are being sought with this Motion for post-NRCP Rule 68 fees and costs, and much  
17    pre-NRCP Rule 68 fees and costs.

18            5.     On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant  
19    to N.R.C.P. 68, N.R.S. 17.115<sup>1</sup>, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d  
20    1050 (2019) for a waiver of any presently or potentially recoverable costs in full and final settlement  
21    of the matter. At the time of the Offer, Defendants' expended costs and fees totaled \$58,514.36.  
22    The Offer was not accepted by Plaintiff and expired on September 11, 2020.

23            6.     Since the date the Offer of Judgment: I billed 405.6 hours for a total charge to the  
24    client of \$91,260; S. Brent Vogel, Esq. billed 39.8 hours for a total charge to the client of \$8,955;  
25    Heather Armantrout, Esq. billed 33.1 hours for a total charge to the client of \$6,404.85. I have  
26    personal knowledge of Mr. Vogel and Ms. Armantrout's work on this matter and I have personally  
27    reviewed their billing entries for the time period in question.

28     

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<sup>1</sup> Currently N.R.S. 17.117.

1           7.       Since the date of the Offer of Judgment, paralegals in my office have billed the  
2 following in this matter: Arielle Atkinson billed 46.9 hours for a total charge to the client of \$4,221;  
3 and Joshua Daor billed 0.1 hours for a total charge to the client of \$9. I have personal knowledge  
4 of Ms. Atkinson and Mr. Daor's work on this matter, and I have personally reviewed their billing  
5 entries for the time period in question.

6           8.       The billing records are attached hereto along with all costs and disbursements  
7 incurred in this case which are true and accurate copies of said records and are maintained in the  
8 course of our firm's business<sup>2</sup>.

9           9.       I declare under penalty of perjury that the foregoing is true and correct.

10 FURTHER YOUR DECLARANT SAYETH NAUGHT.

11                               */s/Adam Garth*

12                               Adam Garth, Esq.

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14 No notarization required pursuant to NRS 53.045  
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<sup>2</sup> Exhibit "E" hereto

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3 This is a professional negligence case that arises out of the care and treatment Defendant  
4 Valley Health System, LLC dba Centennial Hills Hospital Medical Center ("Defendant" or "CHH")  
5 as well as co-defendant physicians provided to decedent Rebecca Powell from May 3-11, 2017.  
6

7 CHH moved this Court on November 22, 2021 for \$110,930.85 in attorneys' fees per  
8 N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant  
9 to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.<sup>3</sup> Plaintiffs opposed said motion,<sup>4</sup> with a reply by  
10 CHH interposed in further support of its motion.<sup>5</sup>

11 By order of this Court dated, February 15, 2022 and served with notice of entry on February  
12 16, 2022,<sup>6</sup> this Court denied CHH's motion, claiming that it was not sufficiently supported with  
13 invoices and billing statements reflecting every moment of work performed on this case, that  
14 somehow the declaration of an officer of the Court attesting to the hours spent by all timekeepers  
15 on this case was insufficient. Additionally, this Court denied the request to conduct an *in camera*  
16 hearing at which time any supporting evidence could be presented before opposing counsel and the  
17 Court without having to publicly trot out CHH's private bills and expenses related hereto. Annexed  
18 hereto are 195 pages of bills and invoices reflecting every moment of professional time billed on  
19 this matter, all invoices from medical experts necessarily engaged to defend CHH, as well as all  
20 other costs and disbursements attendant to this litigation.<sup>7</sup> As is plainly evident from this evidence,  
21 CHH incurred substantial costs associated with the defense of this case. Plaintiffs not only lost, but  
22 after having caused CHH to litigate this case, but also forced the case to proceed during a lengthy  
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26 <sup>3</sup> Exhibit "A" hereto

27 <sup>4</sup> Exhibit "B" hereto

28 <sup>5</sup> Exhibit "C" hereto

<sup>6</sup> Exhibit "D" hereto

<sup>7</sup> Exhibit "E" hereto

1 appeal incurring even greater expense. Said appeal resulted in a final determination that the  
2 evidence which Plaintiffs exclusively possessed demonstrated that this lawsuit was void from its  
3 inception. A price must be paid for flagrantly untenable pursuits.

4       There are two issues afoot which this Court conflated, namely the memorandum of costs and  
5 disbursements previously submitted totaling **\$42,492.03<sup>8</sup>**, an amount which is undisputed, and for  
6 which this Court has refused to sign a judgment,<sup>9</sup> and the additional costs, disbursements and  
7 attorneys fees addressed by CHH's instant motion and the initial motion which sought **\$110,930.85**  
8 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  
9 and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60. As a further reminder, this  
10 Court previously denied Plaintiffs' motion to extend time to retax costs<sup>10</sup> attendant to the  
11 memorandum of costs for the aforementioned **\$42,492.03<sup>11</sup>**, an amount which itself is undisputed and for  
12 which a judgment must be signed and entered.

13  
14  
15       Additionally, this Court implied that the amount of attorneys' fees specified in CHH's  
16 motion is somehow excessive, by asserting that it far exceeded those of co-defense counsel is  
17 concerning.<sup>12</sup> CHH's counsel spearheaded considerable motions and engaged in extensive appellate  
18 practice due to this Court's refusal to either dismiss this case from its inception, or at the very least,  
19 grant summary judgment when the uncontroverted evidence necessitated that result. These  
20 extraordinary legal fees resulted from having to engage in extensive discovery, engaging multiple  
21 experts due to the Plaintiffs' blunderbuss of allegations, the law of ostensible agency which  
22 implicated CHH in any alleged negligence of any physician credentialed at its hospital, the multiple  
23 stays this Court denied while the appeal was pending, coupled with Plaintiffs' counsel's refusal to  
24

25  
26 <sup>8</sup> Exhibit "F" hereto

27 <sup>9</sup> Exhibit "G" hereto

<sup>10</sup> Exhibit "H" hereto

28 <sup>11</sup> Exhibit "F"

<sup>12</sup> Exhibit "D", p. 11

1 consent to a stay of proceedings while the appeal was pending. All of these actions combined with  
2 the finding of the Supreme Court that this Court manifestly abused its discretion in failing to grant  
3 summary judgment in the wake of the overwhelming evidence requiring dismissal is what brought  
4 us to this place. Plaintiffs' counsel and his clients cost CHH over \$200,000. CHH did not  
5 commence these proceedings, Plaintiffs did. CHH did cause itself to incur huge amounts of legal  
6 fees and costs due to Plaintiffs' untimely lawsuit, Plaintiff did. CHH should not have to underwrite  
7 a frivolous lawsuit which was given breath in the wake of overwhelming evidence that dismissal  
8 was not only warranted, but required.

10 What is more concerning is the finding that "the Court notes that although the Court found  
11 insufficient evidence to establish irrefutably that the statute of limitations had expired, Defense  
12 counsel was successful in convincing the Supreme Court of that, and consequently, Defendants  
13 prevailed."<sup>13</sup> The record needs to be corrected here – there was no convincing the Supreme Court  
14 of anything. The Supreme Court reviewed the entirety of the record, the same one that was before  
15 this Court. The Supreme Court held that this Court "manifestly abused its discretion when it denied  
16 summary judgment."

18 A manifest abuse of discretion is "[a] clearly erroneous interpretation of the  
19 law or a clearly erroneous application of a law or rule." Steward v. McDonald,  
20 330 Ark. 837, 958 S.W.2d 297, 300 (Ark. 1997); see Jones Rigging and  
21 Heavy Hauling v. Parker, 347 Ark. 628, 66 S.W.3d 599, 602 (Ark. 2002)  
22 (stating that a manifest abuse of discretion "is one exercised improvidently or  
23 thoughtlessly and without due consideration"); Blair v. Zoning Hearing Bd.  
24 of Tp. of Pike, 676 A.2d 760, 761 (Pa. Commw. Ct. 1996) ("[M]anifest abuse  
of discretion does not result from a mere error in judgment, but occurs when  
the law is overridden or misapplied, or when the judgment exercised is  
manifestly unreasonable or the result of partiality, prejudice, bias or ill will.").

25 *State v. Eighth Judicial Dist. Court of Nev.*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011). Under  
26  
27

28 <sup>13</sup> Court's February 15, 2022 order, pp. 11-12

1 the Supreme Court's own definition, a manifest abuse of discretion is one where a court so  
2 erroneously interprets the law or rule, or where the result is so unreasonable that it demonstrates  
3 prejudice, partiality or bias that it must be corrected. Such is the case here. In light of the Supreme  
4 Court's finding in this regard, it remains abundantly clear that this matter was frivolously brought  
5 and frivolously maintained. Under those circumstances, the law provides for and even requires the  
6 recovery of costs, disbursements and attorneys' fees. To deny same disregards the Supreme Court's  
7 conclusion as well as the laws and cases interpreting them requiring the impositions of costs and  
8 attorneys' fees on the counsel who perpetrated the frivolous action.

10 Therefore, we end the introduction where we began. CHH submitted its memorandum of  
11 costs and disbursements.<sup>14</sup> That memorandum was not challenged. Plaintiffs missed the deadline  
12 for doing so, and this Court agreed and denied Plaintiffs an extension of time to retax costs.<sup>15</sup> By  
13 so doing, CHH's memorandum of costs is unopposed and a judgment is required to be signed and  
14 entered stemming directly therefrom.<sup>16</sup> This Court cannot revisit an issue which has been finally  
15 decided and therefore, at a minimum, a judgment for the unchallenged \$42,492.03 in statutory costs  
16 and disbursements must be signed.<sup>17</sup>

18 Separate and apart from the \$42,492.03, are the additional costs, disbursements and fees to  
19 which the underlying motion was addressed. In light of the Supreme Court's findings, as well as  
20 the materials annexed hereto, additional costs, disbursements and attorneys' fees are more than  
21 warranted and justified to the extent of \$110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§  
22 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085,  
23 18.010(2) and EDCR 7.60.

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26 <sup>14</sup> Exhibit "F"

27 <sup>15</sup> Exhibit "H"

28 <sup>16</sup> Exhibit "F"

<sup>17</sup> *Id.*

1 As previously noted in CHH's prior motion on this issue, Plaintiffs made multiple allegations  
2 concerning the cause of death. First, Plaintiffs asserted that Ms. Powell died from a Cymbalta  
3 overdose and that the administration of the Ativan to calm her during her CT procedure suppressed  
4 her breathing which caused her death. In order to debunk those theories, CHH engaged Dr. Ruffalo,  
5 a pharmacology and anesthesiology expert, whose report completely eviscerated Plaintiffs'  
6 accusations in this regard. This forced Plaintiffs to abandon their initial theory of the case as outlined  
7 in their Complaint and concoct another unsupported liability theory. Dr. Ruffalo's itemized bills  
8 are attached hereto documenting his extensive review of the records, his research of applicable  
9 literature supportive of his findings, and his drafting of both an initial expert report and rebuttal  
10 report addressing the respective Plaintiffs' experts accusations.<sup>18</sup> His bills alone total \$16,500.<sup>19</sup>

12 Second, Plaintiffs implicated the care and treatment rendered by critical care physicians and  
13 hospitalist physicians credentialed by CHH but not employed by CHH. Under the ostensible agency  
14 theory, CHH would potentially be vicariously liable for any alleged professional negligence of these  
15 individuals. As such, CHH needed to employ the services of Abraham Ishaaya, MD, a critical care  
16 physician, and Hiren Shah, MD, a hospitalist, in order to review the care and treatment provided to  
17 Ms. Powell by their respective counterparts in order to debunk the allegations leveled by Plaintiffs  
18 against physicians in those respective specialties. Dr. Shah did not provide us bills for his services,  
19 so those were not included in this motion. Dr. Ishaaya did provide his itemized bills which are  
20 referenced herein.<sup>20</sup> Drs. Shah and Ishaaya each demonstrated that the theories upon which  
21 Plaintiffs based their lawsuit were unsubstantiated by medical science. They each conducted  
22 comprehensive reviews of the decedent's medical records and reviewed the theories and literature  
23 propounded by Plaintiffs' experts. This took a substantial amount of time. Dr. Ishaaya's bills total  
24  
25  
26

27 <sup>18</sup> Exhibit "E", pp. 17, 38, 128

28 <sup>19</sup> *Id.*

<sup>20</sup> Exhibit "E", pp. 25, 39, 105, 138, 171 and 195

1 \$25,355.<sup>21</sup>

2 When Plaintiffs' first theory of a drug overdose by CHH and others was completely  
3 debunked, Plaintiffs had to scramble to manufacture another theory for which they ultimately lacked  
4 medical support. CHH's experts even forced Plaintiffs' experts to agree that Ms. Powell's cause of  
5 death was an acute event which could not have been predicted, thus destroying any notion that CHH  
6 or anyone for whom it may have been vicariously liable, was in any way responsible for Ms.  
7 Powell's death.  
8

9 Additionally, Plaintiffs interposed some half-baked economic loss theory based upon Brian  
10 Powell's supplemental interrogatory response where he merely guessed at Ms. Powell's prior  
11 earnings. To that end, Plaintiffs interposed an "expert report" from an economist based solely upon  
12 the unsubstantiated guesswork of a party to this action. CHH needed to interpose a rebuttal to  
13 Plaintiffs' economist to discredit the unsubstantiated income theory proffered by them. Erik Volk  
14 was engaged to do exactly that. His invoices to review of Plaintiffs' expert report and draft a rebuttal  
15 thereto have also been provided.<sup>22</sup> Invoices from Mr. Volk total \$4,544.10.<sup>23</sup> Thus, expert fees  
16 alone, without Dr. Shah's bills, total \$46,399.10.  
17

18 Previously provided to this Court on the original motion were the initial expert and rebuttal  
19 reports from CHH's four experts which specifically addressed the allegations made by Plaintiffs as  
20 implicated by their respective specialties.<sup>24</sup>  
21

22 As for the amount of attorneys fees and hours billed by all timekeepers in this case, as well  
23 as other related disbursements including court filing fees and other related expenses, CHH provides  
24 195 pages of billing records<sup>25</sup> substantiating the hundreds of hours devoted to defending CHH  
25

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26 <sup>21</sup> *Id.*

27 <sup>22</sup> Exhibit "E", pp. 146-150, 162-166

28 <sup>23</sup> *Id.*

<sup>24</sup> Exhibit "D" to Exhibit "C" hereto

<sup>25</sup> Exhibit "E"



1 against Plaintiffs' folly. These records include time devoted to preparation and propounding of  
2 extensive written discovery to Plaintiffs, correspondence directed at Plaintiffs lack of proper  
3 responses to said discovery, CHH's responses to Plaintiffs' multiple discovery devices, consultation  
4 with experts regarding standard of care and causation opinions, strategizing with co-defense counsel  
5 pertaining to the dismissal of the Plaintiffs' case, moving this Court for summary judgment, moving  
6 this Court twice for a stay of proceedings pending the appeal, interposing a writ application to the  
7 Nevada Supreme Court, moving for a stay in the Nevada Supreme Court, preparing for a mediation  
8 which was eventually obviated by the Supreme Court's decision which included the preparation of  
9 an extensive mediation brief, as well as the collection of Plaintiffs' prior medical records and  
10 analysis of more than 1100 pages of records from CHH concerning Ms. Powell's subject hospital  
11 stay.  
12

13  
14 In essence, this was a Herculean effort to defend a case on multiple tracks – (1) litigation in  
15 this Court due to the forced push to trial when summary judgment should have been clearly granted,  
16 and (2) in the Nevada Supreme Court to present the overwhelming and obvious evidence which was  
17 ignored in CHH's motion for summary judgment regarding Plaintiffs' possession of irrefutable  
18 evidence of inquiry notice to commence the running of the statute of limitations. CHH's costs, fees  
19 and disbursements (which are unrelated to the undisputed \$42,492.03 for which a judgment must be  
20 entered) total \$110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36  
21 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60 (a  
22 total of \$169,445.21). When added to the undisputed \$42,492.03, CHH incurred \$211,937.24 n  
23 costs, fees and disbursements.  
24

## 25 **II. LEGAL ARGUMENT**

### 26 **A. A Motion to Reconsider is Both Timely And Appropriate**

27 EDCR 2.24 states in pertinent part:  
28

1 (a) No motion once heard and disposed of may be renewed in the same  
2 cause, nor may the same matters therein embraced be reheard, unless by leave  
3 of the court granted upon motion therefor, after notice of such motion to the  
adverse parties.

4 (b) A party seeking reconsideration of a ruling of the court, other than any  
5 order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or  
6 60, must file a motion for such relief within 14 days after service of written  
notice of the order or judgment unless the time is shortened or enlarged by  
order.

7 The implicated order was served with notice of entry on February 16, 2022 (Exhibit "D")  
8 making this motion timely.

9 "A district court may reconsider a previously decided issue if substantially different evidence  
10 is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors v.*  
11 *Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Based upon the evidence  
12 attached hereto and which was originally submitted to this Court in support of CHH's motion, CHH  
13 requests that this Court reconsider its order and impose the additional \$169,445.21 in costs,  
14 disbursements and attorneys' fees attendant to the defense of this case, over and above the  
15 \$42,492.03 in undisputed costs and disbursements to which CHH is entitled by law and for which  
16 this Court denied Plaintiffs' motion to retax. Moreover, this Court must sign the judgment for CHH's  
17 \$42,492.03 in undisputed costs. *See*, NRCP 58(b)(1).  
18

19  
20 **B. An Award of Attorneys' Fees is Appropriate**

21 Plaintiffs rejected CHH's Offer of Judgment and then failed to obtain a more favorable  
22 judgment. Therefore, CHH is entitled to reasonable attorneys' fees under N.R.C.P. 68(f) and N.R.S.  
23 17.117(10).  
24

25 Rule 68 (f), Penalties for Rejection of Offer, provides as follows:

26 (1) In general. If the offeree rejects an offer and fails to obtain a more  
27 favorable judgment:  
28

...

1 (B) the offeree must pay the offeror's post-offer costs and expenses,  
2 including a reasonable sum to cover any expenses incurred by the offeror for  
3 each expert witness whose services were reasonably necessary to prepare for  
4 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.

5 Similarly, N.R.S. 17.117, Offers of judgment, provides:

6  
7 (10) If the offeree rejects an offer and fails to obtain a more favorable  
judgment:

8 (a) The offeree may not recover any costs, expenses or attorney's fees  
9 and may not recover interest for the period after the service of the offer and  
before the judgment; and

10  
11 (b) The offeree must pay the offeror's post-offer costs and expenses,  
12 including a reasonable sum to cover any expenses incurred by the offeror for  
13 each expert witness whose services were reasonably necessary to prepare for  
14 and conduct the trial of the case, applicable interest on the judgment from the  
time of the offer to the time of the entry of the judgment and reasonable  
attorney's fees, if any allowed, actually incurred by the offeror from the time  
of the offer.

15 This Court has discretion under N.R.C.P. 68(f) and N.R.S. 17.117(10) to award attorneys'  
16 fees when the offeror prevailed and the offeree failed to obtain a more favorable judgment. While  
17 exercising this discretion, a Court must consider the following factors: (1) whether the offeree  
18 brought his claims in good faith; (2) whether the offeror's offer of judgment was also brought in  
19 good faith in both timing and amount; (3) whether the offeree's decision to reject the offer of  
20 judgment was in bad faith or grossly unreasonable; and (4) whether the amount of offeror's  
21 requested fees is reasonable and justified. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833, 917 P.2d  
22 786 (1985). To not award costs and fees in light of the overwhelming evidence in this case directly  
23 violates the very purpose of the statutes allowing for same.  
24

25  
26 The circumstances of CHH's Offer of Judgment (premised on the waiver of an existing or  
27 potential right to attorneys' fees and costs) was accepted and analyzed as a proper Offer of Judgment  
28 by the Nevada Supreme Court in *Busick v. Trainer*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d 1050

1 (2019). In *Busick*, the Court upheld the trial court's award of attorneys' fees and costs to the  
2 defendant following a verdict in favor of the defendant/physician. *Id.* at \*6-7.

3 Generally, the "district court may not award attorney fees absent authority under a statute,  
4 rule, or contract." *Albios v. Horizon Cmty., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022 (2006).  
5 Pursuant to N.R.S. 17.115 [the predecessor to N.R.S. 17.117] and N.R.C.P. 68, "a party is entitled  
6 to recover certain costs and reasonable attorney fees that it incurs after the making an unimproved-  
7 upon offer of judgment." *Logan v. Abe*, 131 Nev. 260, 268, 350 P.3d 1139 (2015).

9 In this case, CHH served an Offer of Judgment on Plaintiffs for waiver of any presently or  
10 potentially recoverable costs in full and final settlement of the claims. Plaintiffs rejected this Offer  
11 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  
12 Court was directed by the Supreme Court to vacate its order denying summary judgment to CHH  
13 and instead issue an order granting CHH's summary judgment motion, Plaintiffs failed to obtain  
14 more a favorable judgment than the one offered to them in CHH's Offer of Judgment. Thus,  
15 pursuant to N.R.C.P. 68 and N.R.S. 17.117, this Court has discretion to award CHH its attorneys'  
16 fees.  
17

18 All factors to be considered in awarding attorneys' fees under the current circumstances  
19 weigh in favor of Defendants. First, Plaintiffs did not bring his claims against CHH in good faith.  
20 The Nevada Supreme Court confirmed this fact by finding as follows:  
21

22 **Here, irrefutable evidence demonstrates that the real parties in interest**  
23 **were on inquiry notice by June 11, 2017 at the latest**, when real party in  
24 interest Brian Powell, special administrator for the estate, filed a complaint  
25 with the State Board of Nursing. There, Brian alleged that the decedent,  
26 Rebecca Powell, "went into respiratory distress" and her health care providers  
27 did not appropriately monitor her, abandoning her care and causing her death.  
28 Thus, Brian's own allegations in this Board complaint demonstrate that he had  
enough information to allege a prima facie claim for professional negligence-  
that in treating Rebecca, her health care providers failed "to use the reasonable  
care, skill or knowledge ordinarily used under similar circumstances by  
similarly trained and experienced providers of health care." NRS 41A.015  
(defining professional negligence); *Winn*, 128 Nev. at 252-53; 277 P.3d at

1 462 (explaining that a "plaintiffs general belief that someone's negligence  
2 may have caused his or her injury" triggers inquiry notice).<sup>3</sup> That the real  
3 parties in interest received Rebecca's death certificate 17 days later,  
4 erroneously listing her cause of death as suicide, does not change this  
5 conclusion.<sup>4</sup> Thus, the real parties in interest had until June 11, 2018, at the  
6 latest, to file their professional negligence claim. Therefore, their February 4,  
7 2019 complaint was untimely.

8 **3 The evidence shows that Brian was likely on inquiry**  
9 **notice even earlier. For example, real parties in interest**  
10 **had observed in real time, following a short period of**  
11 **recovery, the rapid deterioration of Powell's health while**  
12 **in petitioners' care. Additionally, Brian had filed a**  
13 **complaint with the Nevada Department of Health and**  
14 **Human Services (NDHHS) on or before May 23, 2017.**  
15 **Similar to the Nursing Board complaint, this complaint**  
16 **alleged facts, such as the petitioners' failure to upgrade**  
17 **care, sterilize sutures properly, and monitor Powell, that**  
18 **suggest he already believed, and knew of facts to support**  
19 **his belief, that negligent treatment caused Powell's death**  
20 **by the time he made these complaints to NDHHS and the**  
21 **Nursing Board.**

22 **4 The real parties in interest do not adequately address**  
23 **why tolling should apply under NRS 41A.097(3) (providing**  
24 **that the limitation period for a professional negligence claim**  
25 **"is tolled for any period during which the provider of health**  
26 **care has concealed any act, error or omission upon which the**  
27 **action is based"). Even if they did, such an argument would be**  
28 **unavailing, as the medical records provided were sufficient for**  
their expert witness to conclude that petitioners were negligent  
in Powell's care. *See Winn*, 128 Nev. at 255, 277 P.3d at 464  
(holding that tolling under NRS 41A.097(3) is only  
appropriate where the intentionally concealed medical records  
were "material" to the professional negligence claims).  
Finally, we have not extended the doctrine of equitable tolling  
to NRS 41A.097(2), and the real parties in interest do not  
adequately address whether such an application is appropriate  
under these facts. *See Edwards v. Emperor's Garden Rest.*, 122  
Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing  
to consider arguments that a party did not cogently argue or  
support with relevant authority).

**Given that uncontroverted evidence demonstrates that the petitioners**  
**are entitled to judgment as a matter of law because the complaint is**  
**time-barred under NRS 41A.097(2), see NRCp 56(a); *Wood*, 121 Nev. at 729,**  
**121 P.3d at 1029 (recognizing that courts must grant summary judgment**  
**when the pleadings and all other evidence on file, viewed in a light most**

1 favorable to the nonmoving party, "demonstrate that **no genuine issue as to**  
2 **any material fact [remains]** and that the moving party is entitled to a  
3 judgment as a matter of law" (internal quotations omitted)) . . .<sup>26</sup>

4 This Court correctly found that CHH's offer of judgment was made in good faith and its  
5 timing was proper.<sup>27</sup> However, this Court erroneously found "Plaintiff's decision to reject the offer  
6 and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs believed they had a valid  
7 claim, and the Court cannot find that wanting some recovery, as opposed to \$0.00, to be 'grossly  
8 unreasonable' or in 'bad faith'."<sup>28</sup> This finding is unreasonable in light of the Supreme Court's  
9 conclusions in this case. The Supreme Court determined that Plaintiffs were certainly on notice of  
10 any alleged malpractice no more than one month after decedent's death. The Court also determined  
11 that the very records upon which Plaintiffs based their case were in their possession long before the  
12 statute of limitations expired and that they knowingly initiated complaints to State agencies  
13 manifesting definitive knowledge and belief of malpractice. Nevertheless, Plaintiffs chose to initiate  
14 a lawsuit which was dead on arrival, continued to maintain it even after irrefutable evidence  
15 demonstrated its untenability, and then used every opportunity to prevent the expenditure of  
16 additional resources in order to prove the impropriety of the lawsuit. Plaintiffs were given every  
17 opportunity to exit the matter gracefully, but they instead chose to pursue an untenable claim, with  
18 knowledge they were doing so, utilizing an attorney who presented no evidence supportive of his  
19 own personal theories, and did all of this to the financial detriment of CHH. There is a price to be  
20 paid for that, and the statutes and case law cited above, coupled with the clear findings of the  
21 Supreme Court, entitle CHH to be compensated, at least in part, for their losses.<sup>29</sup>

22  
23  
24  
25 <sup>26</sup> Exhibit "B" to Exhibit "A" hereto, pp. 3-5 (emphasis supplied)

26 <sup>27</sup> Exhibit "D" hereto, p. 11

27 <sup>28</sup> *Id.*

28 <sup>29</sup> Pursuant to NRCP 68 and NRS 17.117, CHH normally does not get compensated for approximately \$60,000 in pre-offer of judgment expenses it incurred, but based upon statutes and cases cited hereinbelow, Defendants are requesting these very pre-Rule 68 costs and fees.

1 Second, this Court already correctly found that CHH's Offer of Judgment was brought in  
2 good faith in both timing and amount. At the time of the Offer, CHH incurred over \$58,000 in costs  
3 defending Plaintiffs' claims. The Offer was served several days prior to CHH's motion for summary  
4 judgment and about 1 ½ years from the lawsuit's commencement. Moreover, Plaintiffs were in  
5 possession of CHH's respective requests for production of documents and interrogatories six weeks  
6 prior to the motion for summary judgment having been filed, and produced they produced the  
7 "smoking gun" documents demonstrating irrefutable evidence of inquiry notice prior to the motion  
8 for summary judgment having been made and even while said motion was pending before this Court  
9 prior to the final submission of the motion. Plaintiffs were on notice of the statute of limitations  
10 issues even as early as the motion to dismiss made by predecessor counsel in July, 2019, just months  
11 after commencing this action, yet they still pursued their untenable claim while in full possession of  
12 the documents which defeated it. That is bad faith, pure and simple. Given the likelihood of  
13 Plaintiffs losing on this issue, the offered waiver of the right to seek reimbursement of costs was  
14 reasonable in both timing and amount, especially given the multiple opportunities for Plaintiffs to  
15 be on notice of the issue. Annexed hereto are all of the supporting documents demonstrating all  
16 work and expenses incurred in this matter.<sup>30</sup>

19 Third, Plaintiffs' decision to reject the Offer of Judgment was made in bad faith and was  
20 grossly unreasonable. For the reasons noted above, this Court's decision to find otherwise was  
21 incorrect given the Supreme Court's findings and the facts and evidence associated therewith.  
22 Instead of abandoning their untimely filed action, (and accepting CHH's Offer of Judgment),  
23 Plaintiffs simply continued to push the litigation forward, blocking every opportunity CHH provided  
24 to "stop the financial bleeding" by staying the litigation while this case dispositive issue made its  
25

26  
27  
28 <sup>30</sup> Exhibit "E" hereto.

1 way through the courts. They opposed two stay motions and a motion to reconsider a stay. They  
2 opposed a motion to dismiss and a motion for summary judgment, presenting not one shred of  
3 evidence by anyone with personal knowledge of the facts, supporting their claim of a timely  
4 commencement of the action. They forced CHH to incur substantial legal costs and expenses to  
5 defend the action, requiring the engagement of counsel along with multiple experts, to pursue a  
6 lawsuit they knew could not be maintained from the start. Furthermore, they provided unresponsive  
7 answers to discovery requests seeking to avoid addressing the underlying claims in the lawsuit  
8 necessitating EDCR 2..34 conferences and their supplementation of a large number of discovery  
9 responses. At every turn and opportunity, Plaintiffs stonewalled providing materials and  
10 information supportive of their claims while placing CHH in the position of having to incur massive  
11 expenses to obtain that to which it was legally entitled and seek dismissal of what Plaintiffs clearly  
12 knew was an untenable claim. The Plaintiffs' failure to accept CHH's Offer of Judgment was both  
13 in bad faith and grossly unreasonable.

14  
15  
16 Finally, as set forth in detail below, the fourth factor regarding the reasonableness of CHH's  
17 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may recover  
18 their attorneys' fees from the date of service of the Offer of Judgment to the end of the matter. In  
19 this case, the Offer of Judgment was served on August 28, 2020 and expired on September 11, 2020.  
20 CHH incurred a total of \$110,930.85 in attorneys' fees alone<sup>31</sup> (not inclusive of expenses) from  
21 August, 28, 2020 to the present billing cycle (which does not include all fees incurred for October,  
22 2021). Additionally, CHH incurred \$31,401.10 in disbursements including expert fees and other  
23 expenses incurred since August, 28, 2020.<sup>32</sup> This amount of bills is reasonable for the massive  
24 amounts of time and energy needed to defend this case, engage in extensive written discovery to  
25  
26  
27

28 <sup>31</sup> Exhibit "E" hereto

<sup>32</sup> *Id.*



1 obtain the various documents proving the late filing of the case, extensive motions and appeals  
2 practice, and, expert time and expense due to Plaintiffs' refusal to stipulate to stay the litigation  
3 while the summary judgment issue made its way through the court system. Plaintiffs own actions  
4 in this matter, including bringing it late in the first place, caused all of the expenses here. Medical  
5 malpractice cases are complex, involve substantial amounts of expert testimony, and require a great  
6 deal of preparation. Supporting documentation was offered to be presented to this Court for *in*  
7 *camera* review. Instead of granting a hearing to which Plaintiffs could interpose whatever opposition  
8 they may have had, the Court rejected this offer and suggestion. Moreover, Plaintiffs provided not  
9 one shred of opposition to the amount of costs and fees incurred on the original motion, even without  
10 the attached bills. Since this Court insisted that the bills be attached, CHH has provided the entirety  
11 thereof for judicial review and review by Plaintiffs.<sup>33</sup>

12  
13  
14 An analysis of the *Beattie* factors shows that an award of attorneys' fees to Defendants from  
15 the time of the Offer of Judgment served on Plaintiff to the present is warranted and appropriate.

16 **C. Amount of Fees Incurred**

17 When awarding fees in the offer of judgment context under N.R.C.P. 68 and N.R.S. 17.115  
18 [currently N.R.S. 17.117], the district court must also consider the reasonableness of the fees  
19 pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* When  
20 determining the amount of attorneys' fees to award, the District Court has wide discretion, to be  
21 "tempered only by reason and fairness" *Shuette v. Beazer Homes*, 121 Nev. 837, 864 (2005).<sup>34</sup> If  
22 the district court's exercise of discretion is neither arbitrary nor capricious, it will not be disturbed  
23 on appeal. *Schouweiler*, 101 Nev. at 833.

24  
25  
26 <sup>33</sup> *Id.*

27 <sup>34</sup> Reasonable attorneys' fees also include fees for paralegal and non-attorney staff "whose labor  
28 contributes to the work product for which an attorney bills her client." See *Las Vegas Metro. Police*  
*Dep't v. Yeghiazarian*, 312 P.3d 503, 510 (Nev. 2013).

1 "In determining the amount of fees to award, the [district] court is not limited to one specific  
2 approach; its analysis may begin with any method rationally designed to calculate a reasonable  
3 amount, so long as the requested amount is reviewed in light of the . . . Brunzell factors." *See Haley*  
4 *v. Eighth Judicial Dist. Court*, 128 Nev. 171 (2012); *see also, Gunderson v. D.R. Horton, Inc.*, 319  
5 P.3d 606, 615-616, 130 Nev. Adv. Rep. 9 (2014).  
6

7 The following four *Brunzell* factors are to be considered by the court:

8 (1) the qualities of the advocate: ability, training, education, experience,  
9 professional standing and skill;

10 (2) the character of the work to be done: its difficulty, its intricacy, its  
11 importance, time and skill required, the responsibility imposed and the  
12 prominence and character of the parties where they affect the importance of  
13 the litigation;

14 (3) the work actually performed by the lawyer: the skill, time and  
15 attention given to the work;

16 (4) the result: whether the attorney was successful and what benefits were  
17 derived.

18 *Brunzell v. Golden Gate*, at 349-50.

19 From August 28, 2020 to present, the attorneys' fees incurred by CHH are as follows:

20 Partner Adam Garth	405.6 hours	\$91,260.00
21 Partner Brent Vogel	39.8 hours	\$ 8,955.00
22 Associate Heather Armantrout	33.1 hours	\$ 6,404.85
23 Paralegal Arielle Atkinson	46.9 hours	\$ 4,221.00
24 Paralegal Joshua Daor	0.1 hours	\$ 90.00
25	<b>Total</b>	<b>\$110,930.85<sup>35</sup></b>

26 Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on medical  
27 malpractice. Both have practiced over either close to or equal to 30 years each and are partners at  
28 Lewis Brisbois. They both billed \$225/hour on this matter. Where appropriate, work was also  
assigned to associate attorneys (\$193.50/hour) and paralegals (\$90/hour).

<sup>35</sup> Exhibit "E" hereto

1 Medical malpractice cases are complex and require an in-depth understanding of both unique  
2 legal issues as well as the medical care and course that is at issue. Plaintiffs claimed that they were  
3 entitled to \$105,000,000.00 in damages including \$172,728.04 billed by CHH as a recoverable  
4 expense, plus a loss of earning capacity of \$1,348,596. There were multiple highly skilled expert  
5 witnesses presented by both parties. Further, nearly 14 months have passed since CHH's Offer of  
6 Judgment expired, including the participation a motion for summary judgment, two motions to stay  
7 proceedings (one in this Court and one in Supreme Court), a writ petition to the Nevada Supreme  
8 Court plus all that it implies, and extensive written discovery.

10 Defendants' requested attorneys' fees are well below the amounts Nevada courts have found  
11 reasonable. Defendants are only requesting attorneys' fees at a rate of \$225 and \$193.50 per hour,  
12 and a paralegal rate of \$90 per hour, which is a fraction of the rates recognized that Nevada courts  
13 have found reasonable.

15 A consideration of the *Brunzell* factors shows that the recovery of the entire billed amount  
16 of fees from August 28, 2020 to present is entirely appropriate.

17 **D. Award of Pre-NRCP Rule 68 Offer of Judgment Costs and Fees Pursuant to**  
18 **NRS 7.085.**

19 NRS § 7.085 provides the following:

20 1. If a court finds that an attorney has:

21 (a) **Filed, maintained or defended a civil action or proceeding in any court**  
22 **in this State and such action or defense is not well-grounded in fact or is**  
23 **not warranted by existing law or by an argument for changing the**  
**existing law that is made in good faith; or**

24 (b) **Unreasonably and vexatiously extended a civil action or proceeding**  
25 **before any court in this State, the court shall require the attorney**  
26 **personally to pay the additional costs, expenses and attorney's fees**  
**reasonably incurred because of such conduct.**

27 2. **The court shall liberally construe the provisions of this section in favor**  
28 **of awarding costs, expenses and attorney's fees in all appropriate**  
**situations. It is the intent of the Legislature that the court award costs,**

1 expenses and attorney's fees pursuant to this section and impose sanctions  
2 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
3 situations to punish for and deter frivolous or vexatious claims and  
4 defenses because such claims and defenses overburden limited judicial  
5 resources, hinder the timely resolution of meritorious claims and  
6 increase the costs of engaging in business and providing professional  
7 services to the public.

8 NRS § 7.085 (emphasis supplied).

9 As clearly documented above, Plaintiffs brought this action in the first place already having  
10 personally alleged medical negligence pertaining to CHH to third parties, i.e., two State agencies.  
11 They went to the trouble of obtaining a Special Administrator for decedent's estate for the express  
12 purpose of obtaining her medical records from CHH which they received. Not only did they receive  
13 the records, their counsel, with unmitigated gall, suggested that CHH was obligated to prove that  
14 Plaintiffs received the medical records. Plaintiffs' counsel completely disregarded NRS 47.250(13)  
15 in which a rebuttable presumption is created "[t]hat a letter duly directed and mailed was received  
16 in the regular course of the mail." CHH submitted the declarations of two witnesses with personal  
17 knowledge of the facts outlining their procedures for handling incoming medical records requests,  
18 the specifics of how such procedures were implemented in this case, and that the medical records  
19 here were mailed to the Plaintiffs twice, all within one month of decedent's death. Plaintiffs' counsel  
20 produced nothing in rebuttal except his false and improper claim that CHH was required to prove  
21 Plaintiffs actually received the records. Plaintiffs themselves never denied receiving them. What  
22 made his statement even more disingenuous was the fact that he gave the very records to Dr. Hashim,  
23 his own expert, for review. Dr. Hashim stated that he reviewed the records and formulated an  
24 opinion which counsel used to file his Complaint. Plaintiffs' counsel even denied asserting a  
25 fraudulent concealment argument and this Court found no such argument advanced by Plaintiffs. In  
26 a footnote, the Nevada Supreme Court stated "The real parties in interest do not adequately  
27 address why tolling should apply under NRS 41A.097(3) (providing that the limitation period for  
28

1 a professional negligence claim "is tolled for any period during which the provider of health care  
2 has concealed any act, error or omission upon which the action is based"). Even if they did, such  
3 an argument would be unavailing, as the medical records provided were sufficient for their  
4 expert witness to conclude that petitioners were negligent in Powell's care."<sup>36</sup> Therefore, there  
5 was no evidence that Plaintiffs lacked sufficient documentation to formulate their claim and the  
6 Supreme Court confirmed it.

8 As noted by a sister Department, "NRS 7.085 essentially provides, where an attorney  
9 violates NRS 18.010(2), NRCP 11 or EDCR 7.60, the delinquent lawyer may be required to  
10 personally pay the additional costs, expenses and/or attorney's fees in all appropriate situations.  
11 Notably, as shown above, NRS 18.010(2)(b), EDCR 7.60 and NRS 7.085 do not require Defendants  
12 to be "prevailing parties" and attorneys' fees may be awarded without regard to the recovery sought."  
13 *Berberich v. S. Highland Cmty. Ass'n*, 2019 Nev. Dist. LEXIS 130, \*11 (Nev. Dist. Ct., Case No.  
14 A-16-731824-C, January 29, 2019).

16 Furthermore,

17 Nevada's statutory interpretation rules also support treating NRCP 11 and  
18 NRS 7.085 as separate sanctioning mechanisms. This court has "previously  
19 indicated that the rules of statutory interpretation apply to Nevada's Rules of  
20 Civil Procedure." *Webb, ex rel. Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611,  
21 618, 218 P.3d 1239, 1244 (2009) (citing *Moseley*, 124 Nev. at 662 n.20, 188  
22 P.3d at 1142 n.20). Further, "whenever possible, a court will interpret a rule  
23 or statute in harmony with other rules or statutes." *Nev. Power Co. v.*  
24 *Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999); *see also Bowyer*,  
107 Nev. at 627-28, 817 P.2d at 1178. The simplest way to reconcile NRCP  
11 and NRS 7.085 is to do what federal courts have done with FRCP 11 and  
§ 1927; treat the rule and statute as independent methods for district courts to  
award attorney fees for misconduct. Therefore, we conclude NRCP 11 does  
not supersede NRS 7.085.

25 *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 131 Nev. 783, 789, 358 P.3d 228, 232 (2015).

28 <sup>36</sup> Exhibit "B" to Exhibit "A" hereto, note 4 (emphasis supplied)

1       Hereinabove is a long documented recitation of case law and facts which specifically and  
2 directly contradict anything and everything advanced by Plaintiffs' counsel in this matter. Plaintiffs'  
3 counsel did everything he could to force CHH to incur expenses. He filed a case well beyond the  
4 statute of limitations, despite clear case law demonstrating when inquiry notice commences. He  
5 was faced with two motions on the issue and misrepresented the facts. He provided not one shred  
6 of evidence to support his personal theories about confusion, refusing and unable to produce any  
7 supporting evidence. He provided no support for a suggestion of fraudulent concealment, and  
8 opposed any motions for a stay of proceedings while the statute of limitations issue made its way  
9 through the appellate system. In short, Plaintiffs' counsel advanced a case which was dead on  
10 arrival. He knew it, was reminded of it, and pursued it anyway, hoping for a judicial lifeline. The  
11 Supreme Court made certain to cover all possible avenues for Plaintiffs' counsel's attempt to scurry  
12 away from his late and improper case filing. Adding insult to injury, he did everything he could to  
13 increase expenses. Elections have consequences. Those consequences are sanctions under NRS  
14 7.085 which include the \$58,514.36 in pre-NRCP 68 offer fees and expenses incurred from the  
15 commencement of this litigation. Based upon Plaintiffs counsel's violation of the two prongs of  
16 NRS 7.085, the Supreme Court has determined;

17  
18       The language of NRS 7.085 is straightforward. Subsection 1 of NRS 7.085  
19 provides that district courts "shall" hold attorneys "personally" liable for  
20 "additional costs, expenses and attorney's fees" under certain circumstances.  
21 If the statutory conditions are met, "the court shall" impose a sanction  
22 of taxable fees and costs "reasonably incurred because of such  
23 conduct." *Id* With respect to "such conduct," the statute requires no more than  
24 what it states: in relevant part, that "a court find[] that an attorney has" (i)  
25 "[brought or] maintained ... a civil action" that (ii) either (a) "is not well-  
26 grounded in fact," (b) "is not warranted by existing law," or (c) "is not  
27 warranted ... by a[] [good faith] argument for changing the existing law." See  
28 NRS 7.085(1)(a). Subsection 2 requires Nevada courts to "liberally construe"  
subsection 1 "in favor of awarding costs, expenses and attorney's fees in all  
appropriate situations." NRS 7.085(2) (emphasis added).

*Washington v. AA Primo Builders, Ltd. Liab. Co.*, 440 P.3d 49 (Nev. 2019) (Emphasis supplied).

1 "The statutes are clear—parties who bring and maintain an action without grounds shall have  
2 attorney fees imposed against them." *Lopez v. Corral*, Nos. 51541, 51972, 2010 Nev. LEXIS 69, at  
3 \*24, 2010 WL 5541115 (Dec. 20, 2010).

4 There is no clearer case for the imposition of attorney's fees than this one. Plaintiffs' motion  
5 case was entirely frivolous as it was knowingly filed beyond the statute of limitations. For this  
6 Court to hold otherwise, especially in light of the Supreme Court's findings that the overwhelming  
7 evidence of statute of limitations breach by Plaintiffs required this Court to dismiss their case, and  
8 the failure to do so was a manifest abuse of discretion. Even if it was not known from the outset,  
9 which the evidence clearly demonstrated that it was, it became abundantly clear that the Plaintiffs  
10 themselves not only suspected, but actually accused CHH of malpractice and sought investigations  
11 by the State into their allegations. Plaintiffs supplied the very evidence damning their own  
12 assertions of "confusion" which make Plaintiffs' counsel's advancement thereof all the more  
13 egregious.  
14

15  
16 Thus, in addition to all NRCP Rule 68 post offer fees and costs, CHH requests that sanctions  
17 be imposed against Plaintiffs' counsel for all pre-NRCP Rule 68 costs and fees totaling \$58,514.36  
18 in accordance with NRS 7.085.

19 **E. EDCR 7.60 Authorizes the Imposition of Fines, Costs, and/or Attorneys' Fees**  
20 **Due to an Attorney's Presentation of Frivolous Opposition to a Motion or Who**  
21 **Multiplies the Proceeding in a Case to Increase Costs**

22 EDCR 7.60(b) provides:

- 23 (b) The court may, after notice and an opportunity to be heard, impose  
24 upon an attorney or a party any and all sanctions which may, under  
25 the facts of the case, be reasonable, including the imposition of fines,  
26 costs or attorney's fees when an attorney or a party without just cause:  
27 (1) Presents to the court a motion or an opposition to a motion which  
28 is obviously frivolous, unnecessary or unwarranted.  
(2) Fails to prepare for a presentation.  
(3) So multiplies the proceeding in a case as to increase costs  
unreasonably and vexatiously.  
(4) Fails or refuses to comply with these rules.

1 (5) Fails or refuses to comply with any order of a judge of the court.

2 The facts pertaining to Plaintiffs' counsel's conduct here are fully documented above. They  
3 commenced and maintained a completely unsustainable action from the beginning. They knowingly  
4 possessed the full medical file. They went to court to obtain an authorization to get the medical file.  
5 They never denied receiving the medicals, and in fact, utilized the medicals they did receive to  
6 obtain a medical affidavit for use with the Complaint. They knowingly possessed multiple  
7 complaints to State agencies alleging malpractice against CHH and requesting formal investigations  
8 thereof. Then, for purposes of the motion for summary judgment, Plaintiffs' counsel feigned  
9 confusion on his client's behalf as to decedent's cause of death (a fact which none of the Plaintiffs  
10 confirmed in any sworn statement or testimony). After creating chaos for no reason, when given  
11 the opportunity to prevent CHH from incurring further costs, Plaintiffs' counsel opposed any request  
12 for a stay of proceedings, three times in this case, requiring the continued discovery process, expert  
13 evaluations and expert reporting. They refused to agree to postpone the trial date to allow this matter  
14 to make its way through the Supreme Court, with knowledge that the Court would be ruling one  
15 way or another on this case dispositive issue. In all, Plaintiffs' counsel knowingly caused enormous  
16 costs on CHH only to have the very issues raised in this Court result in a total dismissal. CHH  
17 should not be required to pay for Plaintiffs' folly, especially when Plaintiffs' counsel purposely  
18 looked to increase expenses while pursuing a defunct case from the outset. Thus, EDCR 7.60  
19 provides a further avenue of deterrence to attorneys, like Plaintiffs' counsel, who engage in these  
20 unnecessary and flagrantly frivolous lawsuits which are dead before they are even filed, justifying  
21 an award of \$110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36  
22 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.  
23

24 **F. CHH Is Also Entitled to Its Fees and Costs Per NRS 18.010(2)**

25 Likewise, CHH is entitled to an award of his attorney's fees and costs under NRS  
26  
27  
28



1 §18.010(2)(b), which provides in pertinent part:

2 In addition to the cases where an allowance is authorized by specific statute  
3 [see NRS § 7.085 above], the court may make an allowance of attorney's fees  
4 to a prevailing party:

5 (b) Without regard to the recovery sought, when the court finds that the claim,  
6 counterclaim, cross-claim or third-party complaint or defense of the opposing  
7 party was brought or maintained without reasonable ground or to harass the  
8 prevailing party. The court shall liberally construe the provisions of this  
9 paragraph in favor of awarding attorney's fees in all appropriate situations. It  
10 is the intent of the Legislature that the court award attorney's fees pursuant to  
11 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.

12 For the reasons discussed above, CHH respectfully requests an award of attorney's fees and  
13 costs that it incurred in this matter, and enter an order awarding **\$110,930.85** in attorneys' fees per  
14 N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant  
15 to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60. All of this is in addition to the undisputed **\$42,492.03**  
16 in costs and disbursements allowed by law and which have been fully justified by this Court's denial  
17 of Plaintiffs' motion to extend time to retax the costs to which they relate. If there is no dispute as  
18 to the costs and disbursements, a judgment must be signed pursuant to NRCP 58(b)(1).

19  
20 **III. CONCLUSION**

21 Based upon the legal authority and reasons stated above, Defendants respectfully request the  
22 Court grant their Motion and award them **\$110,930.85** in attorneys' fees per N.R.C.P. 68 and  
23 N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§  
24 7.085, 18.010(2) and EDCR 7.60. Moreover, this Court must sign the judgment already submitted  
25 to it for the undisputed **\$42,492.03** in costs to which CHH is already entitled by law.  
26  
27  
28

DATED this 23<sup>rd</sup> day of February 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 Attorneys for Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of February, 2022, a true and correct copy of **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. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), AND EDCR 7.60** 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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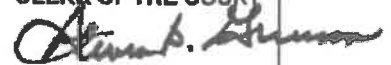
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By /s/ Heidi Brown  
An Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

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**DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\***

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Steven D. Grierson  
CLERK OF THE COURT



Estate of Rebecca Powell, Plaintiff(s)  
vs.  
Valley Health System, LLC, Defendant(s)

Case No.: A-19-788787-C

Department 30

**NOTICE OF HEARING**

Please be advised that the 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 in the above-entitled matter is set for hearing as follows:

**Date:** March 30, 2022

**Time:** 9:00 AM

**Location:** RJC Courtroom 14A  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE:** Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Imelda Murrieta  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Imelda Murrieta  
Deputy Clerk of the Court



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12 Attorneys for Plaintiffs

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 ESTATE OF REBECCA POWELL, through  
16 Brian Powell as Special Administrator; DARCI  
17 CREECY, individually; TARYN CREECY,  
18 individually; ISAIAH KHOSROF,  
19 individually; 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; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT. 30

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT VALLEY HEALTH  
SYSTEM LLC'S MOTION FOR  
RECONSIDERATION OF THE  
COURT'S DENIAL OF ITS  
APPLICATION FOR FEES AND COSTS**

By Order issued February 15, 2022, the Court decided that "Defendant's [Valley Health Systems, Inc. or "VHS"] Motion for Fees and Costs is DENIED." Notice of that Order was

Estate of Rebecca Powell, et al. v. Valley Health System LLC et al.  
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1 filed by Plaintiffs the next day on February 16, 2022. In response, Defendant VHS, citing Eighth  
2 Judicial Court Rule (“EDCR”) 2.24,<sup>1</sup> now seeks reconsideration of the Court’s denial of fees  
3 and costs. VHS’s motion must be denied as it fails to meet the exacting and narrow standard  
4 for reconsideration established under EDCR 2.24.<sup>2</sup>

5 The Nevada Supreme Court has noted, “[a] district court may reconsider a previously  
6 decided issue [only] if substantially different evidence is subsequently introduced or the decision  
7 is clearly erroneous.” Masonry & Tile Contractors Association of Southern Nevada v. Jolley,  
8 Urga & Wirth, Ltd., 113 Nev. 737, 741 (1997). Because VHS has not presented any new or  
9 substantially different evidence than what it had the opportunity to present when it filed its  
10 Verified Memorandum of Costs and separate Motion for Attorney’s Fees on November 22,  
11 2021, the Court should summarily deny the motion for reconsideration without addressing the  
12 merits of the motion. In fact, the motion for reconsideration is clearly a transparent attempt to  
13 bolster a potential appeal by inviting the Court to engage with the merits of VHS’s motion.  
14 Defendant VHS is presumably aware that the denial of a motion for reconsideration is not  
15 independently appealable. AA Primo Builders, LLC v. Washington, 126 Nev. 578, 589 (2010).  
16 But the denial of a motion for reconsideration, however, can become reviewable before the  
17 Nevada Supreme Court for abuse of discretion if the district court considers the merits of the  
18 motion. Id. Thus, recognizing the deficiencies in its Verified Memorandum of Costs and  
19  
20  
21  
22  
23

24 <sup>1</sup> See Motion for Reconsideration, p. 11-12.

25 <sup>2</sup> “No motions once heard and disposed of may be renewed in the same cause, *nor may the*  
26 *same matters therein embraced be reheard*, unless by leave of court granted upon motion  
27 therefor, after notice of such motion to the adverse parties. EDCR 2.24 (emphasis supplied).

1 Motion for Attorneys Fees filed on November 22, 2021, VHS seeks to fix its prior failure to  
2 provide the Court with evidence that the costs and fees were reasonable, necessary and actually  
3 incurred<sup>3</sup> by now presenting the Court with nearly 600 pages of documents, many of which were  
4 not previously presented to the Court.

5 The Court should summarily deny VHS's motion for reconsideration as the motion  
6 presents no substantially new facts or shows clear legal error that would warrant reconsideration.  
7 In support of this Opposition, Plaintiffs rely upon the memorandum of points and authorities  
8 below, the papers on file in this action<sup>4</sup> and any other arguments the Court may permit.  
9

## 10 MEMORANDUM OF POINTS AND AUTHORITIES

### 11 I.

#### 12 BACKGROUND AND PROCEDURAL HISTORY

13 The Nevada Supreme Court issued an Order on October 18, 2021 granting VHS's  
14 petition for a writ of mandamus challenging this Court's denial of a motion for summary  
15 judgment. Exhibit 1. The Supreme Court's Order did not award any fees or costs. Instead, the  
16 Order simply instructed "the district court to vacate its order denying petitioner's motion for  
17 summary judgment and enter summary judgment in favor of petitioners." Id.  
18

19  
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22  
23 <sup>3</sup> A party may not simply estimate costs. Without evidence to determine whether a cost was  
24 reasonable and necessary, a district court may not award costs. Cadle Company v. Woods &  
25 Erickson, LLP, 131 Nev. 114, 121 (2015) (citing Bobby Berosini, Ltd. v. PETA, 114 Nev.  
1348, 1353 (1998)).

26 <sup>4</sup> All of which are incorporated by reference and made part of this Opposition. Instead of  
27 attaching all of these documents, reference is made throughout this Opposition to the filing date  
28 of the documents which are part of the official Court record.

1 This Court entered an Order on November 19, 2021 consistent with the Supreme Court's  
2 instructions. Notice of the Order was filed by VHS that same day, on November 19, 2021.

3 On November 22, 2022, VHS filed a "Verified Memorandum of Costs." The  
4 memorandum, alleging \$42,492.03 in purported costs, was unsupported by any evidence other  
5 than a "Disbursement Diary." The diary was simply a computer printout of VHS's purported  
6 costs incurred in the case generated by its own law firm. Apart from the diary, no invoices from  
7 any experts or any other documentation evidencing the costs was attached to the Memorandum.  
8 Counsel for VHS submitted a declaration in which he stated that "to the best of my belief" the  
9 purported costs were "necessarily incurred and paid in this action." Since there were no invoices  
10 or other original documents attached supporting the "Verified Memorandum of Costs," VHS's  
11 counsel was only attesting to this own law firm's Disbursement Diary.  
12

13 The same day, VHS filed a separate Motion for Attorney's Fees seeking an award of  
14 \$110,930.85. In that motion, VHS, despite acknowledging that Plaintiffs rejected the previously  
15 served Offer of Judgment well before the Nevada Supreme Court determined that the statute of  
16 limitations barred the prosecution of Plaintiffs' wrongful death case, claimed that the rejection  
17 was in fact in bad faith and grossly unreasonable. Apart from simply making this claim, no facts  
18 were provided to support this assertion and VHS's counsel's supporting declaration provided  
19 no facts corroborating the claim that Plaintiffs' rejection of the Offer of Judgment (which offered  
20 no money) was in bad faith or grossly unreasonable.  
21

22 On December 3, 2021, Plaintiffs, by and through their counsel, moved to extend the time  
23 to respond to VHS's memorandum of costs. While awaiting a decision on that  
24 motion, Plaintiffs filed their opposition to VHS' motion for attorney's fees on December 16,  
25 2021 noting, among other things, that whether inquiry notice triggered the statute of limitations  
26

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1 was a legal question that the Nevada Supreme Court decided to answer. Accordingly, Plaintiffs  
2 (lay persons grieving the death of their mother) could not have possibly acted in bad faith or in  
3 a grossly unreasonable manner when the disposition of the case ultimately turned on a question  
4 of law.

5 On December 20, 2021, VHS opposed Plaintiffs' motion for additional time to respond  
6 to the memorandum of costs and asserted a countermotion for costs and fees as a sanction citing  
7 EDCR 7.60.

8 On January 24, 2022, the Court issued an Order denying Plaintiffs' December 3, 2021  
9 motion to extend the time to file a response to VHS memorandum of costs. The Court made no  
10 finding that the costs sought by VHS were unopposed. Rather, the Court simply determined  
11 Plaintiffs failed to act with diligence in timely filing a response. The Court also denied VHS'  
12 motion for sanctions brought under EDCR 7.60.

13 On February 15, 2022 (with Notice of Entry filed the next day), the Court issued an Order  
14 denying VHS's motion for attorney's fees of \$110,930.85 (roughly twice the fees incurred by  
15 co-Defendants) by finding, among other things, that "Plaintiffs' decision to reject the offer and  
16 proceed to trial was not grossly unreasonable or in bad faith." Exhibit 2. In rejecting VHS's  
17 motion for attorney's fees, the Court also found that VHS's counsel failed to provide the Court  
18 with proper documentation that would have allowed the Court to decide the reasonableness of  
19 fees sought. *Id.* To this point, the Court further noted "[a]lthough the Defendant [VHS] has  
20 offered to submit a billing ledger to the Court in camera, it would have been necessary for the  
21 Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so that the  
22 reasonableness could have been addressed by all parties, and by the Court." *Id.* As for VHS'  
23 request for \$42,492.03 in purported costs, the Court, citing several Nevada Supreme Court

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1 authorities, also rejected that request upon finding that VHS' sole reliance on a "Disbursement  
2 Diary" from its own legal counsel was "insufficient to support the requested costs." For these  
3 reasons, the Court ordered that "Defendant's [VHS] Motion for Fees and Costs is DENIED." Id.

4 On February 23, 2022, VHS filed a motion for reconsideration of the Court's February  
5 15, 2022 decision denying fees and costs.

7 **II.**

8 **ARGUMENT**

9 **A. THE STANDARD OF REVIEW APPLICABLE TO A MOTION FOR**  
10 **RECONSIDERATION**

11 This Court's EDCR 2.24 specifically provides that "no motions once heard and disposed  
12 of may be renewed in the same cause, *nor may the same matters therein embraced be reheard*,  
13 unless by leave of court granted upon motion therefor, after notice of such motion to the adverse  
14 parties." The Nevada Supreme Court has held that "[a] district court may reconsider a  
15 previously decided issue [only] if substantially different evidence is subsequently introduced or  
16 the decision is clearly erroneous." Masonry & Tile Contractors Association of Southern Nevada  
17 v. Jolley, Urra & Wirth, Ltd., 113 Nev. 737, 741 (1997); Moore v. City of Las Vegas, 92 Nev.  
18 402, 404 (1976) ("Only in very rare instances in which new issues of fact or law are raised  
19 supporting a ruling contrary to the ruling already reached should a motion for rehearing be  
20 granted"). A motion for reconsideration "should not be granted absent highly unusual  
21 circumstances" and "may not be used to raise arguments or present evidence for the first time  
22 when they could reasonably have been raised earlier in the litigation." United States v. Bundy,  
23 406 F.Supp.3d 932, 935 (D. Nev. 2018).

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1 The denial of a motion for reconsideration is not independently appealable unless the  
2 district court considers the merits of the motion. See AA Primo Builders, LLC v. Washington,  
3 126 Nev. 578, 589 (2010); Arnold v. Kip, 123 Nev. 410 (2007 )(the Supreme Court of Nevada  
4 may consider arguments asserted in a motion for reconsideration on appeal but only if the district  
5 court elected to entertain the reconsideration motion on its merits).

6  
7 The decision to deny costs or fees is reviewed under an abuse of discretion standard.  
8 Cadle Company v. Woods & Erickson, LLP, 131 Nev. 114, 121 (2015); Gunderson v. D.R.  
9 Horton, Inc., 130 Nev. 67, 80 (2014). “An abuse of discretion occurs only when ‘no reasonable  
10 judge could reach a similar conclusion under the same circumstances.’” JP Morgan Chase Bank  
11 National Association v. SFR Investments Pool, LLC, 136 Nev. 596, 602 (2020)(quoting Leavitt  
12 v. Siems, 130 Nev. 503, 509 (2014)).

13  
14 **B. VHS HAS FAILED TO DEMONSTRATE THAT THE COURT’S ORDER**  
15 **DENYING VHS COSTS WAS CLEARLY ERRONEOUS OR THAT THERE**  
16 **IS SUBSTANTIAL NEW EVIDENCE, WHICH WAS PREVIOUSLY**  
17 **UNAVAILABLE TO VHS, THAT SUPPORTS THE AWARD**

18 Nevada law gives a district court wide, but not unlimited, discretion to award costs to a  
19 prevailing party. Cadle Company v. Woods & Erickson, LLP, 131 Nev. 114, 120 (2015). “Costs  
20 awarded must be reasonable.” Id. Equally important, costs must be justified and properly  
21 documented with reliable evidence. Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1353  
22 (1998)). In Bobby Berosini, the Nevada Supreme Court found that “justifying documentation”  
23 that will support an award of costs “must mean something more than a memorandum of costs.”  
24 Id.

25 In seeking reconsideration, VHS now presents the Court with nearly 600 pages of  
26 documents, the most salient of which were never previously presented to the Court. But as the  
27

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1 Court properly noted in its February 15, 2022 Order, VHS's sole reliance on a Disbursement  
2 Diary is exactly the type of evidence the Nevada Supreme Court has rejected to support a cost  
3 award. Bobby Berosini, Ltd. v. PETA, 114 Nev. At 1353. And to that end, it is just as notable  
4 that VHS submits a declaration from its counsel, Adam Garth, Esq., which is conspicuously  
5 silent in explaining why the nearly 600 pages of documents now being provided to the Court  
6 (including purported expert invoices) were previously withheld from the Court. It is  
7 indisputable that most of the evidence relied on by VHS for ~~seeking~~ to have this Court reconsider  
8 its decision on costs was never included with its Memorandum of Costs. Accordingly, VHS's  
9 claim that evidence attached to its motion for reconsideration "was originally submitted to this  
10 Court" in support of VHS's Memorandum of Costs is demonstrably false. See VHS' Motion  
11 for Reconsideration, p. 12 (line 13). The only thing that was attached to the Memorandum of  
12 Costs filed with the Court on November 22, 2021 by VHS was a Disbursement Diary and a  
13 collection of irrelevant emails. None of this constitutes the type of reliable evidence a district  
14 court may rely upon in awarding costs.

15  
16  
17  
18 VHS's motion for reconsideration fails to cite a single authority showing that the Court's  
19 denial of costs was clearly erroneous. In fact, the motion does not even engage with the  
20 authorities cited on pages 7 through 9 of the Court's February 15, 2022 Order. See Exhibit 2.  
21 Nor is there any new and substantial evidence presented to the Court by VHS that was not  
22 otherwise available to VHS when it filed its Verified Memorandum of Costs. Plaintiffs should  
23 not be liable for VHS' negligence in failing to follow both the statutory and common law  
24 requirements for establishing entitlement to costs. The Court was thus correct in denying VHS  
25 costs in their entirety for lack of proper documentation and reliable evidence. Similarly, this  
26 motion for reconsideration should also be rejected and denied as VHS cannot meet the threshold  
27

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burden of showing the Court's denial of costs was clearly erroneous or that substantial new evidence not otherwise available mandates reconsideration. Nor does VHS even come close to trying to meet its burden.

**C. VHS HAS FAILED TO DEMONSTRATE THAT THE COURT'S ORDER DENYING VHS ATTORNEY'S FEES WAS CLEARLY ERRONEOUS OR THAT THERE IS SUBSTANTIAL NEW EVIDENCE, WHICH WAS PREVIOUSLY UNAVAILABLE TO VHS, THAT SUPPORTS THE AWARD**

The Nevada Supreme Court reviews an award of attorney fees for an abuse of discretion. Logan v. Abe, 131 Nev. 260, 266 (2015). One of the factors a court must consider when awarding attorney fees is whether a party's decision to reject an offer of judgment and proceed to trial was grossly unreasonable or in bad faith. See Beattie v. Thomas, 99 Nev. 579, 588-89 (1983). Once a district court evaluates the *Beattie* factors, it then must determine whether the amount of fees being sought are justifiable and reasonable. See Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349 (1969). Ultimately, the decision to award attorney's fees rests within the discretion of the trial court and the Nevada appellate courts will only review such a decision for an abuse of discretion. See Frazier v. Drake, 131 Nev. 632, 641-42 (Ct. App. 2015).

Here, the Court denied VHS's request for attorneys fees based upon its finding that (1) Plaintiffs did not act in bad faith or in a grossly unreasonable manner when they rejected VHS 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 [VHS] 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." See Exhibit 2, p. 11. Given that this

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1 never happened, there was no reasonable basis for this Court to assess the reasonableness of fees  
2 being claimed by VHS.

3 In seeking reconsideration, VHS merely rehashes the same arguments presented in its  
4 original November 22, 2021 motion for fees. The Court's decision to deny fees, however, was  
5 not clearly erroneous because the disposition of this case turned on a legal question which the  
6 Nevada Supreme Court decided, well after the time Plaintiffs rejected the Offer of Judgment. It  
7 would be ridiculous to expect Plaintiffs, grieving the death of their mother, to anticipate the legal  
8 issue and foresee its resolution by the Nevada Supreme Court when they rejected the Offer of  
9 Judgment. VHS itself acknowledges this fact when it admits that "[m]edical malpractice cases  
10 are complex and require an in-depth understanding of both unique legal issues as well as the  
11 medical care and course that is at issue." VHS' Motion for Reconsideration, p. 21 (lines 1-2).  
12 Yet, despite this acknowledgment, VHS continues to argue, without properly addressing any of  
13 the legal authorities cited in the Court's February 15, 2022 Order, that Plaintiffs acted in bad  
14 faith and grossly unreasonable. This argument is tired and with no support whatsoever.  
15

16 Finally, VHS completely fails to discuss, let alone even address, the deficiency of  
17 withholding a billing ledger when it made its fee request and instead asking the Court to rely  
18 only upon the declaration of its counsel. The self-serving declaration of Adam Garth, Esq. was  
19 insufficient evidence for this Court to award fees, although the Court's analysis properly ended  
20 once it concluded the rejection of the Offer of Judgment was not made in bad faith or was grossly  
21 unreasonable.  
22

23 The motion for reconsideration should be rejected and denied as VHS cannot meet the  
24 threshold burden of showing the Court's denial of attorney fees was clearly erroneous or that  
25 substantial new evidence not otherwise available mandates reconsideration. In fact, the opposite  
26

27 Estate of Rebecca Powell, et al. v. Valley Health System LLC, et al.  
28 District Court Case No. A-19-788787-C, Dept. 30  
*Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Reconsideration*  
PPL #201297-15-04

1 is true, as noted by the Court in its Order, VHS, by and through its counsel, made the voluntary  
2 and deliberate choice to withhold documentation from the Court that would have potentially  
3 supported its fee request. That was a choice VHS made and a risk it assumed. Once again,  
4 Plaintiffs should not be monetarily liable for VHS's negligence.

5  
6 **III.**

7 **CONCLUSION**

8 The Court should reject VHS's motion for reconsideration. The motion is merely an  
9 attempt to bolster an appeal that would otherwise be dead on arrival. The Court should decline  
10 to entertain the merits of VHS's motion.

11  
12 PAUL PADDA LAW, PLLC

13 /s/ Paul S. Padda

14 /s/ Srilata R. Shah

15 Paul S. Padda, Esq.

16 Nevada Bar No. 10417

17 Srilata R. Shah, Esq.

18 Nevada Bar No. 6820

19 4560 South Decatur Boulevard, Suite 300

20 Las Vegas, Nevada 89103

21 *Attorneys for Plaintiffs*

22 Dated: March 9, 2022

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27  
28 Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.

District Court Case No. A-19-788787-C, Dept. 30

*Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Reconsideration*

PPL #201297-15-04

PAUL PADDALAW, PLLC  
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Tele: (702) 366-1888 • Fax (702) 366-1940

**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of Paul Padda Law, PLLC and that on this 9th day of March 2022, I served a true and correct copy of the above and foregoing document on all parties/counsel of record in the above entitled matter through hand service and/or efileNV eservice.

/s/ Karen Cormier  
An Employee of Paul Padda Law, PLLC

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.  
District Court Case No. A-19-788787-C, Dept. 30  
*Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Reconsideration*  
PPL #201297-15-04





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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 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

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

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

2 DATED this 14<sup>th</sup> day of March, 2022

3

4

LEWIS BRISBOIS BISGAARD & SMITH LLP

5

6

By /s/ Adam Garth

7

S. BRENT VOGEL

Nevada Bar No. 6858

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*Attorneys for Attorneys for Defendant Valley*

*Health System, LLC dba Centennial Hills Hospital*

13

*Medical Center*

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1 **CERTIFICATE OF SERVICE**

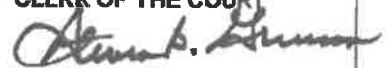
2 I hereby certify that on this 14<sup>th</sup> day of March, 2022, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**  
4 **HOSPITAL MEDICAL CENTER'S NOTICE OF APPEAL** was served by electronically filing  
5 with the Clerk of the Court using the Odyssey E-File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

7 Paul S. Padda, Esq.  
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*Shah, M.D.*

15 By /s/ Heidi Brown  
16 An Employee of  
17 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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# 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; 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 (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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**PAUL PADDA LAW, PLLC**  
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**CERTIFICATE OF SERVICE**

Pursuant to the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this day, February 16, 2022, a copy of the foregoing **NOTICE OF ENTRY OF ORDER AND DECISION REGARDING VALLEY HEALTH SYSTEM'S MOTION FOR FEES 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.

*/s/ Shelbi Schram*

Shelbi Schram, Litigation Assistant  
PAUL PADDA LAW

# 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, )

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

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, )

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

Defendants.

**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 *Albios v.*  
24 *Horizon Cmty., 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 *Brunwell*, 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 66DD  
24 Jerry A. Wiese  
25 District Court Judge  
26  
27  
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 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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17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
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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**

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; ISALAH 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  
CASE APPEAL STATEMENT**

29 **CASE APPEAL STATEMENT**

30 1. Name of appellant filing this case appeal statement:

31 **Valley Health System, LLC**

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

33 **Hon. Jerry Wiese, District Court Judge**

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

1           **VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills Hospital**  
2 **Medical Center")**, a foreign limited liability company, Appellant.

3           **S. Brent Vogel, Esq.**  
4           **Adam Garth, Esq.**  
5           **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
6           **6385 S. Rainbow Blvd.**  
7           **Las Vegas, NV 89118**  
8           **Tel: 702-893-3383**  
9           **Attorneys for Appellant Valley Health System, LLC**

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

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

16           **Paul S. Padda, Esq.**  
17           **PAUL PADDA LAW, PLLC**  
18           **4560 S. Decatur Blvd., Suite 300**  
19           **Las Vegas, NV 89103**  
20           **Tel: 702.366.1888**  
21           **Attorneys for Respondents**

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

26           **No.**

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

**Retained counsel.**

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



1       **Retained counsel.**

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

4       **Appellant was not granted leave to proceed in forma pauperis.**

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

7       **The Complaint was filed on February 4, 2019.**

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

10       **This is a professional negligence case that arises out of the care and treatment**  
11       **Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center**  
12       **("Defendant" or "CHH") as well as co-defendant physicians provided to decedent Rebecca**  
13       **Powell from May 3-11, 2017.**

14       **Plaintiffs commenced their action in this matter on February 4, 2019 alleging**  
15       **professional negligence. NRS 41A.097(2) imposes a statute of limitations of 3 years after the**  
16       **date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence**  
17       **should have discovered the injury, whichever occurs first.**

18       **CHH moved for summary judgment on September 2, 2020, which motion was denied**  
19       **by the District Court on October 29, 2020. By way of writ petition to the Nevada Supreme**  
20       **Court, the Supreme Court agreed to hear the writ petition. On October 18, 2021, the Nevada**  
21       **Supreme Court issued an order granting the CHH's writ petition and directing the Supreme**  
22       **Court Clerk to issue a writ of mandamus directing this Court to vacate is order denying**  
23       **CHH's motion for summary judgment and enter summary judgment in favor of all**  
24       **defendants. The District Court entered judgment in favor of Defendants on November 19,**  
25  
26  
27  
28

1 2021, and the Notice of Entry of Judgement was filed the same day.

2 Summary judgment in favor of Defendants entitles them to an award of attorneys' fees  
3 pursuant to N.R.C.P. 68, N.R.S. 17.117, and interpreting case authority. Moreover, NRS §§  
4 7.085 and 18.010(2) along with EDCR 7.60 entitle CHH to costs and attorney fees due to the  
5 Plaintiffs' frivolous filing of a lawsuit 8 months after the statute of limitations expired, with  
6 proof the exclusively provided, demonstrating that they possessed inquiry notice of the alleged  
7 malpractice as early as the date of decedent's death, but no later than June 11, 2017; however,  
8 they chose to file a lawsuit in February, 2019, long after the one year statute of limitations  
9 expired. Those statutes and rules, along with the cases interpreting them justify the requested  
10 costs and fees. and Plaintiffs' claims sounded in professional negligence, which subjected the  
11 claims to NRS 41A.097(2)'s one-year statute of limitations requirement. Since Plaintiffs failed  
12 to file their Complaint within one-year after they discovered or through the use of reasonable  
13 diligence should have discovered the injury, CHH's Motion for Summary Judgment was  
14 eventually granted after a writ of mandamus petition was filed, accepted and ruled upon by  
15 the Nevada Supreme Court.

16 Pursuant to N.R.C.P. 68, CHH served Plaintiff with an Offer of Judgment on August  
17 28, 2020. In that Offer of Judgment, Defendants offered to waive any presently or potentially  
18 recoverable costs in full and final settlement of the claims. At the time of the Offer,  
19 Defendants' incurred costs were \$58,514.36. The Offer was not accepted by Plaintiff and  
20 expired on September 11, 2020.

21 During the pendency of the District Court action, the parties engaged in extensive  
22 written discovery. Discovery disputes emerged during that time necessitating conferences  
23 pursuant to EDCR 2.34 and supplements to previously provided requests for production and  
24 interrogatories. Moreover, due to the wide ranging allegations in this matter and considering  
25

1 CHH's potential liability not only as a direct defendant, but also under the concept of  
2 ostensible agency, CHH engaged three medical experts to address the issues raised by  
3 Plaintiffs, namely a pharmacologist, a hospitalist and an intensivist. In response to Plaintiffs'  
4 expert disclosure, CHH engaged in an economist to rebut the Plaintiffs' economist's report  
5 which was predicated on not one shred of evidence, but based upon a supplemental  
6 interrogatory response from the decedent's ex-husband (dated one day before the economist's  
7 report), who provided no basis for his guess about his ex-wife's prior earnings.  
8

9       During discovery, Plaintiffs produced records demonstrating that Plaintiffs specifically  
10 notified two State agencies of their concerns about the decedent's treatment at CHH. They  
11 specifically alleged malpractice on CHH's part, and requested investigations by those agencies  
12 into their allegations of malpractice by CHH, both of which were initiated just days after the  
13 decedent's death. Moreover, Plaintiffs did not deny obtaining the decedent's medical records  
14 from CHH in June, 2017, several weeks after the decedent's death, but their counsel attempted  
15 to impose an improper burden on CHH to prove Plaintiffs received the medical records which  
16 were sent, in derogation of the statutory presumption that documents mailed are presumed  
17 received unless sufficient evidence of non-receipt is demonstrated. No such demonstration  
18 occurred. Moreover, Plaintiffs obtained the medical affidavit of a physician to support their  
19 Complaint who based his opinions on the very medical records Plaintiffs obtained from CHH  
20 (since the case had not yet been filed and there was no other avenue for Plaintiffs to have  
21 obtained said records).  
22  
23

24       CHH thereafter moved the District Court for a stay pending the filing of a writ petition  
25 to the Nevada Supreme Court predicated on the denial of CHH's motion for summary  
26 judgment. Plaintiffs vehemently opposed CHH's stay motion, and the District Court denied  
27 the stay motion on December 17, 2020.  
28

1           On December 22, 2020, CHH filed its writ petition with the Nevada Supreme Court.  
2           The Supreme Court requested answering and reply briefs on the aforesaid petition. Upon  
3           receipt of said order, CHH moved this Court to reconsider its decision to stay the proceedings  
4           in an effort to avoid future litigation costs. Again, Plaintiffs' vehemently opposed the stay.  
5           This District Court entered an order on April 28, 2021 denying CHH's motion to reconsider  
6           the stay. On April 22, 2021, CHH moved in Supreme Court for a stay. Once again, Plaintiffs  
7           opposed the motion and the Supreme Court denied the stay motion. Litigation proceeded with  
8           greatly increased costs for things such as expert exchanges, leaving only depositions of the  
9           parties and experts to be conducted.  
10

11           CHH moved the District Court on November 22, 2021 for \$110,930.85 in attorneys'  
12           fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and  
13           expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60. Plaintiffs opposed said  
14           motion, with a reply by CHH interposed in further support of its motion.  
15

16           By order of the District Court dated February 15, 2022 and served with notice of entry  
17           on February 16, 2022, the District Court denied CHH's motion, claiming that it was not  
18           sufficiently supported with invoices and billing statements reflecting every moment of work  
19           performed on this case, that somehow the declaration of an officer of the Court attesting to  
20           the hours spent by all timekeepers on this case was insufficient. Additionally, the District  
21           Court denied the request to conduct an in camera hearing at which time any supporting  
22           evidence could be presented before opposing counsel and the Court without having to publicly  
23           trot out CHH's private bills and expenses related hereto. Such findings by the District Court  
24           were manifest abuses of discretion.  
25

26           Additionally, the District Court conflated multiple issues, namely the memorandum of  
27           costs and disbursements previously submitted totaling \$42,492.03, an amount which was  
28

1 undisputed, and for which the District Court refused to sign a judgment, and the additional  
2 costs, disbursements and attorneys' fees addressed by CHH's motion which sought  
3 \$110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-  
4 NRCP 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

5  
6 The District Court previously denied Plaintiffs' motion to extend time to retax costs  
7 attendant to the memorandum of costs for the aforementioned \$42,492.03, an amount which itself  
8 is undisputed and for which a judgment must be signed and entered. The failure to sign said  
9 judgment in light of the undisputed memorandum of costs was a manifest abuse of discretion  
10 by the District Court.

11 Additionally, the Court implied that the amount of attorneys' fees specified in CHH's  
12 motion is somehow excessive, by asserting that it far exceeded those of co-defense counsel is  
13 concerning. CHH's counsel spearheaded considerable motions and engaged in extensive  
14 appellate practice due to the District Court's refusal to either dismiss this case from its  
15 inception, or at the very least, grant summary judgment when the uncontroverted evidence  
16 necessitated that result. These extraordinary legal fees resulted from having to engage in  
17 extensive discovery, engaging multiple experts due to the Plaintiffs' blunderbuss of  
18 allegations, the law of ostensible agency which implicated CHH in any alleged negligence of  
19 any physician credentialed at its hospital, the multiple stays the District Court denied while  
20 the appeal was pending, coupled with Plaintiffs' counsel's refusal to consent to a stay of  
21 proceedings while the appeal was pending. All of these actions combined with the finding of  
22 the Supreme Court that the District Court manifestly abused its discretion in failing to grant  
23 summary judgment in the wake of the overwhelming evidence requiring dismissal is what  
24 brought us to this place. Plaintiffs' counsel and his clients cost CHH over \$200,000.

25  
26  
27 Additionally, the District Court improperly found that "the Court notes that although  
28

1 the Court found insufficient evidence to establish irrefutably that the statute of limitations had  
2 expired, Defense counsel was successful in convincing the Supreme Court of that, and  
3 consequently, Defendants prevailed.” By so finding, the District Court improperly implied  
4 that its findings on summary judgment were correct, but CHH somehow convinced the  
5 Supreme Court otherwise. Such an improper finding formed the basis for the District Court’s  
6 denial of the motion for costs and fees since it formed the basis for the District Court’s finding  
7 that the underlying action was brought and maintained in good faith. Such a finding was  
8 wholly improper.

10 The District Court manifestly abused its discretion in not awarding costs and fees in  
11 this matter by refusing to accept the holding of the Nevada Supreme Court that the District  
12 Court manifestly abused its discretion in failing to granting CHH’s motion for summary  
13 judgment in the wake of overwhelming evidence of inquiry notice by Plaintiffs commencing  
14 only one month after the decedent’s death, for which an action was untimely commenced by  
15 Plaintiffs. The District Court’s finding that the matter was both brought and maintained in  
16 good faith by Plaintiffs continued the pattern of manifestly abusing its discretion in denying  
17 the costs and fees the law permits in light of the circumstances of this case.

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

23 Yes. Supreme Court Case No. 82250

24 VALLEY HEALTH SYSTEM, LLC (doing business as “Centennial Hills Hospital  
25 Medical Center”), a foreign limited liability company,  
26 Petitioner,

26 vs.

27 THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA ex rel.  
28 THE COUNTY OF CLARK, AND THE HONORABLE JUDGE JERRY A. WIESE II,



1 **CERTIFICATE OF SERVICE**

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

8 Paul S. Padda, Esq.  
9 PAUL PADDA LAW, PLLC  
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*M.D., Conrado Concio, M.D And Vishal S.*  
*Shah, M.D.*

16 By /s/ Heidi Brown  
17 An Employee of  
18 LEWIS BRISBOIS BISGAARD & SMITH LLP  
19  
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Electronically Filed  
Mar 18 2022 12:59 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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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 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 14<sup>th</sup> 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

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

7 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.*

15 By /s/ Heidi Brown  
16 An Employee of  
17 LEWIS BRISBOIS BISGAARD & SMITH LLP  
18  
19  
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21  
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28

# EXHIBIT A



1 NOED

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

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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

PAUL PADDA LAW, PLLC  
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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

9 Paul S. Padda, Esq.  
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10  
11

12 Counsel for Plaintiffs  
13

14 Dated: February 16, 2022  
15  
16  
17  
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**CERTIFICATE OF SERVICE**

Pursuant to the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this day, February 16, 2022, a copy of the foregoing **NOTICE OF ENTRY OF ORDER AND DECISION REGARDING VALLEY HEALTH SYSTEM'S MOTION FOR FEES 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.

*/s/ Shelbi Schram*

Shelbi Schram, Litigation Assistant  
PAUL PADDA LAW

# EXHIBIT A

# EXHIBIT A



*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; )  
 ISALAH KHOSROF, individually and as an )  
 Heir; LLOYD CREECY, individually, )

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

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 DOES A-Z, )

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

Defendants.

**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 Counter-motion for Fees and Costs.

#### 17 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

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

24 CHH states that it served an Offer of Judgment on Plaintiffs for a waiver of any  
25 presently or potentially recoverable costs, in full and final settlement of the Plaintiff's  
26 claims. Plaintiffs rejected this Offer of Judgment by failing to accept it within 14 days.  
27 N.R.C.P. 68(e) and N.R.S. 17.117(6). As this Court was directed by the Supreme Court to  
28 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  
10 disbursements including expert fees and other expenses since 8/28/20.

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

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

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

There were multiple highly skilled expert witnesses presented by both parties.  
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 *Prazier 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 *Prazier 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 **NRCP 68.**

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

23 In evaluating whether to grant an award of attorney's fees, pursuant to  
24 *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the Court must  
25 consider: "(1) whether plaintiff's claim was brought in good faith; (2) whether  
26 defendant's offer of judgment was brought in good faith in both its timing and amount;  
27 (3) whether plaintiff's decision to reject the offer and proceed to trial was grossly  
28 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

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6 Estate of Rebecca Powell,  
7 Plaintiff(s)

CASE NO: A-19-788787-C

DEPT. NO. Department 30

8 vs.

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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