

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

2
3 ESTATE OF REBECCA POWELL, through
4 BRIAN POWELL, as Special Administrator;
5 DARCI CREECY, individually and as Heir;
6 TARYN CREECY, individually and as an
7 Heir; ISAAH KHOSROF, individually and as
8 an Heir; LLOYD CREECY, individually;,
9
10

11 Plaintiffs,

12 vs.

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

24 Defendants.
25
26
27
28

Supreme Court No.:

District Court No. 7-19-28878-C

Electronically Filed
Feb 27 2023 01:41 PM
Elizabeth A. Brown
Clerk of Supreme Court

15 **RESPONDENTS’ APPENDIX VOLUME I**

16
17
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19 Nevada Bar No. 6858
20 ADAM GARTH
21 Nevada Bar No. 15045
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27 *Attorneys for Respondent Valley Health System, LLC*
28 *dba Centennial Hills Hospital Medical Center*

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this 24th day of February, 2023

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 Respondent Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center

1 **CERTIFICATE OF SERVICE**

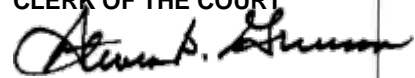
2 I hereby certify that on this 24th day of February, 2023, a true and correct copy
3 of **RESPONDENTS' APPENDIX VOLUME I** was served by electronically filing with the Clerk
4 of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address
5 on record, who have agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
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9 Las Vegas, NV 89103
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11 Fax: 702.366.1940
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M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.*

14 By /s/ Heidi Brown
15 An Employee of
16 LEWIS BRISBOIS BISGAARD & SMITH LLP
17
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19
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21
22
23
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25
26
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EXHIBIT A



MTN
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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. 30

**PLAINTIFFS' MOTION TO EXTEND
TIME TO RESPOND TO DEFENDANTS'
VALLEY HEALTH SYSTEMS, DR.
DIONICE S. JULIANO, DR. CONRADO
CONCIO, AND DR. VISHAL S. SHAH'S
MEMORANDUMS OF COSTS**

Hearing Date Requested

COMES NOW, Plaintiffs, ESTATE OF REBECCA POWELL, BRIAN POWELL,
DARCI CREECY, TARYN CREECY, ISAIAH KHOSROF, AND LLOYD CREECY by and
through their attorneys of record, PAUL S. PADDA, ESQ. and SRILATA R. SHAH, ESQ. of

1 PAUL PADDA LAW, PLLC, and submit their Motion to Extend Time to Respond to Defendants
2 Memorandum of Costs.

3 In support of this motion, Plaintiffs relies upon the memorandum of points and authorities
4 below, the exhibits attached hereto and all other papers on file in this case.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. FACTUAL BACKGROUND**

7
8 This is a medical malpractice/wrongful death case where it is alleged that Ms. Rebecca
9 Powell, age 42, died while in the care of Centennial Hills on account of negligence by the hospital
10 and its medical personnel. Following motion practice in the District Court, Defendant Valley
11 Health System filed a Petition for Writ of Mandamus with the Nevada Supreme Court on
12 December 22, 2020. On March 9, 2021, Defendant Dionice S. Juliano, MD., Conrado Concio,
13 M.D., and Vishal Shah, M.D. filed their Notice of Non-Opposition to Petitioner Valley Health
14 System, LLC's Application for Writ of Mandamus and Motion to Join Petition for Writ of
15 Mandamus. Defendants' Writ Petition challenged the District Court Order denying a Motion for
16 Summary Judgment in a professional negligence matter on a statute of limitations grounds. On
17 October 18, 2021, the Nevada Supreme Court issued an Order granting Defendants' Writ Petition
18 and directing the Clerk to issue a Writ of Mandamus instructing the District Court to vacate its
19 order denying Defendant's motion for summary judgment and enter summary judgment in favor
20 of the Defendants. The Writ of Mandamus was served on the District Court and the parties on
21 November 3, 2021.

22
23 On November 22, 2021, Defendant Valley Health System filed its Verified Memorandum
24 of Costs. The following day on November 23, 2021, Defendant Dionice S. Juliano, MD., Conrado
25 Concio, M.D., and Vishal Shah, M.D. filed their Verified Memorandum of Costs. Two (2) days
26
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1 later Thanksgivings Day and Plaintiffs' counsel's office was closed in observance of the holiday.
2 Plaintiffs' counsel contacted Defendants' counsels and requested an extension to respond to their
3 Memorandums of Costs and Motion for Attorneys' Fees. Defense counsel for Valley Health
4 System approved the extension of time for Plaintiffs to respond to their Motions for Attorneys'
5 Fees. *See*, Email correspondence attached hereto as **Exhibit 1**. Then a few hours later, Defense
6 counsel for Valley Health System stated that they are only giving approval for the extension of
7 time for Plaintiffs respond to their Motion for Attorneys' Fees, not their Memorandum of Costs.
8 *Id.* Defense counsel for Dionice S. Juliano, MD., Conrado Concio, M.D., and Vishal Shah, M.D.
9 joined in Defendant Valley Health System's refusal to provide Plaintiffs an extension of time to
10 respond to their Memorandum of Costs. *Id.* As a result, Plaintiffs are forced to file the instant
11 Motion.
12

14 II. LEGAL ARGUMENT

15 A. Legal Standard

16 NRCP 6(b)(1)(B)(ii) permits a party "on motion made after the time has expired if the
17 party failed to act because of excusable neglect." This requirement is mirrored by EDCR 2.35(a)¹.
18 "Excusable neglect" within this context includes inadvertence, mistake, surprise, or any
19 intervening circumstance beyond a party's control. There is no published precedent as to the
20 meaning of "excusable neglect" under EDCR 2.35(a), nor as to whether EDCR 2.35(a)'s
21 definition of the term is synonymous to NRCP 6(b)(1)(B)(ii)'s. However, in at least one
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26 ¹ **Rule 2.35. Extension of discovery deadlines.**

27 (a) Stipulations or motions to extend any date set by the discovery scheduling order must be in writing and
28 supported by a showing of good cause for the extension and be filed no later than 21 days before the discovery cut-
off date or any extension thereof. A request made beyond the period specified above shall not be granted unless the
moving party, attorney or other person demonstrates that the failure to act was the result of excusable neglect.

unpublished decision, the Nevada Supreme Court states that excusable neglect is present under EDCR 2.35 when “some external factor beyond a party’s control affects the party’s ability to act or respond as otherwise required.” *Clark v. Coast Hotels and Casinos, Inc.*, 2014 WL 3784262, 3 (Nev. 2014). On the other hand, the Nevada Supreme Court articulates the four requirements that must be met when determining if there was excusable neglect when a party is seeking relief from NRCP 25(a)(1) under NRCP 6(b) the requirements are: (1) the movant acted in good faith, (2) the movant exercised due diligence, (3) there is a reasonable basis for not complying within the specified time, and (4) the nonmoving party will not suffer prejudice. *Moseley v. Eighth Judicial Dist. Court*, 124 Nev. 654, 668 n.66 (2008).

B. There is “Excusable Neglect” to Justify the Extending Time to Respond to Defendants Memorandum of Costs

First, Plaintiff’s counsel received Defendants’ Memorandums for Costs during Thanksgiving week, November 22, 2021 and November 23, 2021. Plaintiff’s office was closed part of Thanksgiving week, therefore had limited time to respond to Defendants’ Memorandums for Costs. The timing of the filing and the intervening holiday was beyond Plaintiffs’ counsel’s control. Nonetheless, it was the underlying reason behind Plaintiffs’ inability to act in a timely manner.

Second, once Plaintiffs realized they were not going to be able to respond to Defendants’ Memorandums of Costs within the prescribed time, Plaintiffs’ counsel contacted Defendants’ counsels and requested an extension to respond to their Memorandums of Costs. Defense counsels both denied Plaintiffs’ informal request for additional time to respond to their Memorandum of Costs.

Plaintiffs’ counsel was unable to respond in a timely manner due to the already short deadline for responding to Defendants’ Memorandums of Costs being made even shorter by the

1 Thanksgiving holiday. Lastly, Defendants would not suffer any significant prejudice from
2 Plaintiffs' request for an extension because it will merely extend the time slightly, during which
3 period no additional costs will be accruing.

4 As all four *Moseley* factors are fulfilled, there is excusable neglect to justify Plaintiffs'
5 request for an Extension of Time to Respond to Defendants' Memorandums of Costs.
6

7 **III. CONCLUSION**

8 **WHEREFORE** based on the foregoing, Plaintiffs respectfully request this Court grant
9 Plaintiffs' Motion to Extend Time to Respond to Defendants' Memorandums of Costs.

10 DATED this ___3rd_ day of December, 2021.

11 **PAUL PADDA LAW**

12 */s/ Srilata R. Shah*

13
14 PAUL S. PADDA, ESQ.
15 Nevada Bar Number: 10417
16 SRILATA R. SHAH, ESQ.
17 Nevada Bar Number: 6820
18 4560 South Decatur Boulevard, Suite 300
19 Las Vegas, Nevada 89103
20 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the amendment to EDCR 7.26, and Administrative Order 14-2, I hereby certify that on December 3, 2021, I caused a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO EXTEND TIME TO RESPOND TO DEFENDANTS MEMORANDUM OF COSTS** to be served electronically to all parties with an email address on record, as follow

JOHN H. COTTON AND ASSOCIATES

JOHN H. COTTON, ESQ.

Nevada Bar No. 5268

BRAD J. SHIPLEY, ESQ.

Nevada Bar No. 12639

7900 W. Sahara Avenue, Ste. 200

Las Vegas, Nevada 89117

*Attorneys for Defendants Dionice S. Juliano,
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Shah, M.D.*

LEWIS BRISBOIS BISGAARD & SMITH

S. BRENT VOGEL, ESQ.

Nevada Bar No. 6858

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Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Ste. 600

Las Vegas, Nevada 89118

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

/s/ Karen Cormier,

Employee of Paul Padda Law

EXHIBIT 1

Karen Cormier

From: Srilata Shah
Sent: Thursday, December 2, 2021 5:06 PM
To: Brad Shipley; Garth, Adam; Paul Padda
Cc: Vogel, Brent; Rokni, Roya; San Juan, Maria; Sirsy, Shady; Diana Escobedo; Karen Cormier; Dube, Tiffany; DeSario, Kimberly
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

All:
Thank you for your emails and responses to our request. Sri

Srilata Shah, Esq.
PAUL PADDA LAW, PLLC
Websites: paulpaddalaw.com

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4560 South Decatur Blvd., Suite 300
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Tele: (702) 366-1888

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From: Brad Shipley <bshipley@jhcottonlaw.com>
Sent: Thursday, December 2, 2021 5:01 PM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

We are in agreement to move the hearing on the motion, and either of the proposed dates is agreeable.

As to extending the time to file a motion to retax, we would join in the objection to any extension. We were required to serve our memorandum of costs almost immediately after notice of entry of order granting summary judgment. Once that notice of entry was served, you are reasonably on notice that the memorandum of costs would be served shortly thereafter.

The fact that your office may have been closed for a single judicial day is not availing as a basis for extending a deadline that has passed almost twice over, especially given that you had or reasonably should have had notice of a forthcoming memorandum of costs and the short deadline for retaxing the week *before* Thanksgiving, and furthermore have not provided anything to suggest that there is any good-faith basis for retaxing costs in the first place.

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

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Thursday, December 2, 2021 4:04 PM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; John Cotton <jhcotton@jhcottonlaw.com>; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: Re: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

We cannot agree to extend. The memorandum of costs was filed the week before Thanksgiving. You had 3 days to retax, giving you until Monday before Thanksgiving. Nothing was filed. You are now 13 days from our filing and 10 days beyond your deadline. An extension presumes you still have time. Unfortunately, your office failed to act. Extending any time, for which the statute does not provide, places my client at a disadvantage. Therefore, we will not consent.

As to the motion, I will agree to extend the professional courtesy of the extension as we agreed.

Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: [702.693.4335](tel:702.693.4335) F: [702.366.9563](tel:702.366.9563)

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From: Srilata Shah <sri@paulpaddalaw.com>
Sent: Thursday, December 2, 2021 3:41:20 PM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com <jhcotton@jhcottonlaw.com>; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

Hi Adam:

In response to your email below, I am agreeable to filing our opposition to your Motion for Attorneys' Fees on or before December 16, 2021. However, we would like the opportunity to review your memorandum of costs and file an application to re-tax. I understand your position, however considering the filing of the memorandum of costs right before the Thanksgiving holiday we request additional time to respond to your memorandum of costs as well. If you are not agreeable, we will file a motion to extend our time to respond to the memorandum of costs with the Court. Thank you. Sri

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Thursday, December 2, 2021 2:49 PM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria

<Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

I'm fine for 1/19 with the reply due on 1/12. This presumes your opposition to our motion is served on or before 12/16 as you requested. I'm not certain of Brad Shipley's position on the extension pertaining to our pending motion, and he can certainly speak separately and for his client on that issue.

Just to clarify, the only extension to which we will agree is on our pending motion. There is no extension granted pertaining to our filing of the memorandum of costs we also filed. Per NRS 18.110(3), "Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs." The 3 day deadline within which to move to retax costs has long expired and no extension of time has been or will be granted as to the memorandum of costs.

Adam Garth

From: Srilata Shah <sri@paulpaddalaw.com>
Sent: Thursday, December 2, 2021 2:40 PM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

All:
I just spoke to Angela McBride, Judge Weiss' JEA. She provided two dates to move the current hearing date of December 29, 2021. We can move the hearing date to **January 19, 2022**, and the reply will be due on January 12, 2022, or we can move the hearing date to **January 26, 2022**, with the reply due on January 19, 2022. Please let me know your preference. Once we agree on the hearing date, we can forward an email to Ms. McBride, and she will move the hearing date. Thank you. Sri

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From: Srilata Shah

Sent: Thursday, December 2, 2021 2:28 PM

To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>

Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

Hi Adam:

Let me contact the court and see if they can move the hearing date which will give you additional time to file the reply. The current hearing date is December 29, 2021. Thank you. Sri

Srilata Shah, Esq.

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

Sent: Thursday, December 2, 2021 1:53 PM

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

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

I don't have a problem with it in theory, but you will have to seek an extension of the hearing date as we will have considerably less time to interpose our reply given the holidays. Please advise of proposed hearing date changes from the court and we will work out your request once we know more.

Adam Garth



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

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From: Srilata Shah <sri@paulpaddalaw.com>

Sent: Thursday, December 2, 2021 9:44 AM

To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>

Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

All counsel:

Defense counsel have filed several motions for fees and costs on November 22, 2021, and November 23, 2021. I am requesting a ten-day extension to file our oppositions. Please let me know if you are amenable to granting the undersigned through December 16, 2021, to file our oppositions. Thank you. Sri

Srilata Shah, Esq.
PAUL PADDA LAW, PLLC
Websites: paulpaddalaw.com

Nevada Office:
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103

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12655 West Jefferson Blvd., Fourth Floor

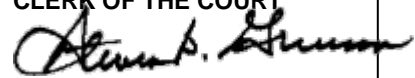
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EXHIBIT B



1 **OPPM/CTM**
2 S. BRENT VOGEL
3 Nevada Bar No. 6858
4 Brent.Vogel@lewisbrisbois.com
5 ADAM GARTH
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 Telephone: 702.893.3383
12 Facsimile: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 vs.

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

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM, LLC DBA CENTENNIAL
HILLS HOSPITAL'S OPPOSITION TO
PLAINTIFFS' MOTION TO EXTEND
TIME TO RETAX COSTS AND
COUNTERMOTION FOR COSTS AND
FEES PURSUANT TO EDCR 7.60**

**Hearing Date: January 19, 2022
Hearing Time: 9:00 a.m.**

24 Defendant VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS HOSPITAL
25 ("CHH") by and through its counsel of record, S. Brent Vogel, Esq. and Adam Garth, Esq. of the
26 Law Firm LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby file OPPOSITION TO
27 PLAINTIFFS' MOTION TO EXTEND TIME TO RETAX COSTS AND COUNTERMOTION
28

1 FOR COSTS AND FEES PURSUANT TO EDCR 7.60.

2 This Motion is based upon the Memorandum of Points and Authorities below, the pleadings
3 and papers on file herein, any oral argument which may be entertained by the Court at the hearing
4 of this matter.

5 DATED this 17th day of December, 2021

6
7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8
9 By /s/ Adam Garth
10 S. BRENT VOGEL
11 Nevada Bar No. 6858
12 ADAM GARTH
13 Nevada Bar No. 15045
14 6385 S. Rainbow Boulevard, Suite 600
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16 Tel. 702.893.3383
17 *Attorneys for Attorneys for Defendant Valley*
18 *Health System, LLC dba Centennial Hills Hospital*
19 *Medical Center*
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs' entire motion is predicated on a false assumption that they have an avenue to
4 extend time to retax costs pursuant to the "excusable neglect" standard articulated in NRC
5 6(b)(1)(B)(ii). Plaintiffs fail to point out that Nev. R. Civ. P. 6(b)(2) applies to most acts required
6 by the rules of civil procedure unless they are specifically excluded. The act involved here, however,
7 is not covered by the NRC at all, but is covered by NRS 18.110 to which NRC 6 does not apply.
8 Thus, the very basis of Plaintiffs' motion is predicated on a false assumption, incorrect application
9 and advancement of law. Thus, Plaintiffs' motion must be denied as improper and wholly
10 unsupported by any law, statute or rule. Even if NRC 6 applied, it is unavailing to Plaintiffs as
11 they have failed to demonstrate the excusable neglect required by the statute and interpreting case
12 law.

13 It should be clear that every courtesy and possible judgment call, throughout the pendency
14 of this litigation, has been extended by this Court to Plaintiffs. This Court denied a motion to dismiss
15 on the statute of limitations issue, denied a motion for summary judgment on this issue, denied two
16 stay motions pertaining to the writ petition filed, all of which was justified by this Court to give
17 Plaintiffs every opportunity to prove this case. It was only when the Supreme Court intervened and
18 determined that the overwhelming evidence of inquiry notice which Plaintiffs received no more than
19 one month after the death of Plaintiffs' decedent required dismissal of the case since it was filed 8
20 months beyond the expiration of the statute of limitations. Plaintiffs' counsel interposed improper
21 opposition, failed to support opposition to the respective motions to dismiss or summary judgment
22 with any admissible evidence, and relied solely and improperly upon counsel's manufactured
23 speculation. This Court accepted all of Plaintiffs' counsel's improprieties, overlooked the absence
24 of Plaintiffs' evidence, and accepted Plaintiffs' articulation of an improper standard pertaining to
25 the rebuttable presumption of an item properly mailed being received.

26 Now, after Plaintiffs were on notice of NRS 18.110's statutory obligation for CHH to file its
27 memorandum of costs within 5 days of service of notice of entry of this Court's order granting
28 summary judgment, they are somehow surprised by the timely filing of the memo and they ignored

1 NRS 18.110(4)'s 3 day requirement for retaxing costs, using the excuse that Thanksgiving interfered
2 with their timeframe. What Plaintiffs failed to articulate is that CHH's memo was filed on
3 November 22, 2021. Plaintiffs had 3 judicial days to retax costs. They did nothing until December
4 2, 2021, **10 days** after being served with the memorandum of costs. In fact, it is a sure bet that
5 Plaintiffs did not even know they needed to move to retax costs within 3 days, and were only put on
6 notice when we made it abundantly clear that the only extension being given was for our motion for
7 additional costs and fees for which a hearing was scheduled. We specifically advised that no
8 extension was being given with respect to the costs to which CHH is statutorily entitled pursuant to
9 the memorandum of costs.

10 Plaintiffs are once again counting on this Court's generosity in granting them yet more time
11 to perpetrate their nonsense, without even demonstrating they have a valid case to even retax the
12 costs they are now precluded from retaxing. It is CHH's sincere hope that the judicial courtesies
13 extended to these Plaintiffs and their counsel are over, and that the Supreme Court will not be
14 saddled with yet more litigation practice in determining whether there was an abuse of discretion on
15 this issue, should Plaintiffs' motion be granted. Moreover, costs and fees are definitively warranted
16 against Plaintiffs for their frivolous motion.

17 **II. FACTUAL BACKGROUND**

18 This is a professional negligence case that arises out of the care and treatment Defendant
19 Valley Health System, LLC dba Centennial Hills Hospital Medical Center ("Defendant" or "CHH")
20 as well as co-defendant physicians provided to decedent Rebecca Powell from May 3-11, 2017.
21 According to the Complaint, Rebecca Powell overdosed on Benadryl, Cymbalta, and Ambien on
22 May 3, 2017. Plaintiffs further alleged that EMS was called and came to Ms. Powell's aid,
23 discovering her with labored breathing and vomit on her face. Plaintiffs alleged that Ms. Powell
24 was transported to CHH where she was admitted.

25 Plaintiffs claim on May 10, 2017, Ms. Powell complained of shortness of breath, weakness,
26 and a drowning feeling, and Defendant Vishal Shah, MD, ordered Ativan to be administered via IV
27 push. Plaintiffs assert that on May 11, 2017, Defendant Conrado Concio, MD, ordered two doses
28 of Ativan via IV push.

1 To assess her complaints, Plaintiffs alleged that a chest CT was ordered, but chest CT was
2 not performed due to Ms. Powell's anxiety, and she was returned to her room. Plaintiffs further
3 alleged that Ms. Powell was placed in a room with a camera monitor.

4 Plaintiffs' expert stated in his affidavit used to support the Complaint that pursuant to the
5 doctor's orders, a dose of Ativan was administered at 03:27. Thereafter, Ms. Powell allegedly
6 suffered acute respiratory failure, which resulted in her death on May 11, 2017.

7 Plaintiffs commenced their action in this matter on February 4, 2019, alleging professional
8 negligence. NRS 41A.097(2) imposes a statute of limitations of 3 years after the date of injury or 1
9 year after the plaintiff discovers or through the use of reasonable diligence should have discovered
10 the injury, whichever occurs first. In this case, decedent's date of death of May 11, 2017, presents
11 the earliest date for accrual of the statute of limitations.

12 On May 25, 2017, MRO, a medical records retrieval service responsible for supplying
13 medical records to those requesting same on behalf of CHH, received a request for medical records
14 from Plaintiff Taryn Creecy along with a copy of a court order requiring that Centennial Hills
15 Hospital provide a complete copy of Rebecca Powell's medical chart.

16 On June 2, 2017, the request for the medical records for Mrs. Powell was processed by MRO
17 personnel. On June 5, 2017, MRO determined that the records for Mrs. Powell were requested by
18 Taryn Creecy, her daughter, that the records were requested to be sent to a post office box, and
19 verified the court order for same. On June 7, 2017, MRO invoiced Ms. Creecy which included all
20 fees associated with the provision of 1165 pages of Mrs. Powell's medical records from CHH. The
21 1165 pages invoiced represented the entirety of medical records for Mrs. Powell with no exclusions.
22 On June 12, 2017, MRO received payment for the 1165 pages of records and the next day, June 13,
23 2017, MRO sent out the complete 1165 pages to Ms. Creecy to the address provided on the request.

24 MRO received the package back from the United States Postal Service due to
25 undeliverability to the addressee on June 23, 2017. MRO contacted Ms. Creecy on June 28, 2017,
26 regarding the returned records, and she advised MRO that the post office box to which she requested
27 the records be sent was in the name of her father, Brian Powell, and that the Post Office likely
28 returned them since she was an unknown recipient at the post office box. She thereafter requested

1 that MRO resend the records to him at that post office box address. On June 29, 2017, MRO re-
2 sent the records addressed to Mr. Powell at the post office box previously provided, and MRO never
3 received the records back thereafter.

4 MRO provided copies of all medical records for Mrs. Powell and no records for this patient
5 were excluded from that packet. CHH's custodian of records stated that she compared the 1165
6 pages of records supplied in June, 2017 to Ms. Creecy to CHH's electronic medical records system
7 and she verified that the totality of the medical records for Ms. Powell was provided to Ms. Creecy
8 without excluding any records.

9 Contemporaneously with Plaintiffs' obtaining Ms. Powell's medical records from CHH,
10 Plaintiff Brian Powell personally initiated two investigations with State agencies including the
11 Nevada Department of Health and Human Services ("HHS") and the Nevada State Nursing Board.
12 Plaintiffs failed to disclose Mr. Powell's complaint to HHS, but they did disclose HHS's May 23,
13 2017, acknowledgement of his complaint alleging patient neglect (presumably the complaint Mr.
14 Powell initiated was prior to May 23, 2017). Mr. Powell's complaint to the Nursing Board dated
15 June 11, 2017, alleges that CHH's nursing staff failed to properly monitor Ms. Powell, that her care
16 was "abandoned by the nursing staff", and that she passed away as a result of these alleged failures.
17 Moreover, Mr. Powell stated, "Now I ask that you advocate for her, investigate, and ensure that this
18 doesn't happen again."

19 On February 4, 2019, which was one year, eight months, and twenty-four days after Ms.
20 Powell's death, Plaintiffs filed the subject Complaint. Plaintiffs included the Affidavit of Sami
21 Hashim, MD, which set forth alleged breaches of the standard of care.

22 Plaintiffs' claims sounded in professional negligence, which subjected the claims to NRS
23 41A.097(2)'s one-year statute of limitations requirement. Since Plaintiffs failed to file their
24 Complaint within one-year after they discovered or through the use of reasonable diligence should
25 have discovered the injury, CHH's Motion for Summary Judgment was eventually granted after a
26 writ of mandamus petition was filed, accepted and ruled upon by the Nevada Supreme Court.

27 Pursuant to N.R.C.P. 68, CHH served Plaintiffs with an Offer of Judgment on August 28,
28 2020. In that Offer of Judgment, Defendants offered to waive any presently or potentially

1 recoverable costs in full and final settlement of the claims. At the time of the Offer, Defendants'
2 incurred costs were \$58,514.36. The Offer was not accepted by Plaintiffs and expired on September
3 11, 2020.

4 The statute of limitations issue was first presented to this Court on June 19, 2019, by way of
5 a motion to dismiss by predecessor counsel. This Court held a hearing on September 25, 2019, and
6 denied that motion along other motions to dismiss and the respective joinders thereto.

7 Thereafter, the parties engaged in extensive written discovery. Discovery disputes emerged
8 during that time necessitating conferences pursuant to EDCR 2.34 and supplements to previously
9 provided requests for production and interrogatories. Moreover, due to the wide ranging allegations
10 in this matter and considering CHH's potential liability not only as a direct defendant, but also under
11 the concept of ostensible agency, CHH engaged three medical experts to address the issues raised
12 by Plaintiffs, namely a pharmacologist, a hospitalist and an intensivist. In response to Plaintiffs'
13 expert disclosure, CHH engaged in an economist to rebut the Plaintiffs' economist's report which
14 was predicated on not one shred of evidence, but based upon a supplemental interrogatory response
15 from the decedent's ex-husband (dated one day before the economist's report), who provided no
16 basis for his guess about his ex-wife's prior earnings.

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

1 CHH filed its motion for summary judgment on September 2, 2020, providing proof of the
2 medical record request from CHH and the corresponding mailing thereof. Moreover, CHH provided
3 Plaintiffs own documents to the respective State agencies alleging the malpractice which is the
4 subject of this action. All of these materials definitively demonstrated that Plaintiffs were on inquiry
5 notice within days of the decedent's death, but at the latest, a month thereafter.

6 On October 29, 2020, this Court issued an order denying CHH's motion for summary
7 judgment finding a question of fact as to when Plaintiffs received inquiry notice based upon
8 Plaintiffs' counsel's representation, without any declaration or affidavit by one with personal
9 knowledge of the facts, that Plaintiffs' may have been confused as to the decedent's cause of death,
10 which the Court believed was confirmed by the February 5, 2018, HHS report.

11 CHH thereafter moved this Court for a stay pending the filing of a writ petition to the Nevada
12 Supreme Court predicated on the denial of CHH's motion for summary judgment. Plaintiffs
13 vehemently opposed CHH's stay motion, and this Court denied the stay motion on December 17,
14 2020.

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

23 On October 18, 2021, The Nevada Supreme Court issued an order granting the CHH's writ
24 petition and directing the Supreme Court Clerk to issue a writ of mandamus directing this Court to
25 vacate is order denying CHH's motion for summary judgment and enter summary judgment in favor
26 of all defendants.

27 The Court entered judgment in favor of Defendants on November 19, 2021, and the Notice
28 of Entry of Judgement was filed the same day. Summary judgment in favor of Defendants entitles

1 them to an award of attorneys' fees pursuant to N.R.C.P. 68, however, the memorandum of costs to
2 which Plaintiffs' Motion to Extend time to retax is predicated, relies solely upon , N.R.S. 17.117,
3 18.005, 18.020, and 18.110 and interpreting case authority. The NRCP does not apply to
4 memoranda of costs. The timing of NRS 18.110 is not influenced in any way by the NRCP, and
5 therefore, any motions to extend time pertaining to the acts required by a statute not covered by the
6 NRCP are improper. Even if NRCP 6 applied, it is unavailing to Plaintiffs.

7 On November 19, 2021, Plaintiffs were served with notice of entry of this Court's order vacating
8 the denial of CHH's motion for summary judgment and granting summary judgment to CHH in its
9 entirety in accordance with the Supreme Court's writ of mandamus.¹ In accordance with NRS
10 18.110(1), CHH timely served its memorandum of costs on November 22, 2021² within the requisite
11 5 days provided by statute. Coterminous with the filing of CHH's memorandum of costs, CHH
12 separately moved for attorneys' fees pursuant to N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2),
13 and EDCR 7.60 on November 22, 2021.³ Pursuant to EDCR 2.20(e), Plaintiffs had until December
14 6, 2021, to file opposition to the only thing left to oppose, CHH's aforesaid motion.

15 Plaintiffs did nothing to retax costs within the 3 days provided by NRS 18.110(4). In fact,
16 Plaintiffs failed to do anything until December 3, 2021 at which time, they requested an extension
17 of time to oppose CHH's separate motion for attorneys' fees pursuant to N.R.C.P. 68, N.R.S. §§
18 17.117, 7.085, 18.010(2), and EDCR 7.60.⁴ As evident from the full email chain, CHH's agreement
19 to extend a professional courtesy to oppose the one opposable document, namely the motion for
20 attorneys' fees, excluded any implication that Plaintiffs could in any way attempt to retax costs, a
21 wholly separate statutory device.

22 Now, in an effort to undo their further failure to follow the law and recognize statutorily imposed
23 deadlines, Plaintiffs' counsel seeks judicial intervention to extricate them from the continuing mess

24 ¹ Exhibit "A"

25 ² Exhibit "B"

26 ³ Exhibit "C"

27 ⁴ Exhibit "D"

1 they brought upon themselves by filing a frivolous, untimely lawsuit. That stops now.

2 **III. LEGAL ARGUMENT**

3 **A. NRS 18.110(4) Does Not Permit Extensions for Retaxing Costs**

4 NRS 18.110 states in pertinent part:

5 1. The party in whose favor judgment is rendered, and who claims
6 costs, must file with the clerk, and serve a copy upon the adverse
7 party, within 5 days after the entry of judgment, or such further time
8 as the court or judge may grant, a memorandum of the items of the
9 costs in the action or proceeding, which memorandum must be
verified by the oath of the party, or the party's attorney or agent, or
by the clerk of the party's attorney, stating that to the best of his or
her knowledge and belief the items are correct, and that the costs have
been necessarily incurred in the action or proceeding.

10 * * *

11 4. Within 3 days after service of a copy of the memorandum, the
12 adverse party may move the court, upon 2 days' notice, to retax and
13 settle the costs, notice of which motion shall be filed and served on
the prevailing party claiming costs. Upon the hearing of the motion
the court or judge shall settle the costs.

14 As previously demonstrated, CHH filed its memorandum of costs in accordance with NRS
15 18.110(1) on November 22, 2021, well within the 5 days permitted after notice of entry of the order
16 granting summary judgment was served. Once notice of entry was served, Plaintiffs were on notice
17 that the memorandum of costs was coming, since they knowingly rejected CHH's Rule 68 Offer of
18 Judgment for a waiver of costs. As expected, the memorandum was timely served. Plaintiffs
19 normally would have had until November 25, 2021, to retax costs. However, given the
20 Thanksgiving holiday, their time to do so was extended. Giving Plaintiffs every benefit of the doubt,
21 and even assuming they were excused from filing their retaxed memo of costs on Friday, November,
22 26, 2021, giving them until November 29, 2021, to do so, Plaintiffs offer no excuse whatsoever why
23 they failed to do so at that time, or on November 30, or on December 1. The answer is simple –
24 there is no excuse. Thanksgiving is not the reason for their failure, incompetent practice is the
25 reason. They are not permitted a judicial pass for incompetence. That is what legal malpractice
26 suits are predicated upon.

27 The only judicial discretion mentioned in NRS 18.110 pertains to subsection (1) and the 5
28 days within which a prevailing party is given to file its memorandum of costs in the first place. The

1 absence of any provision for judicial extension in subsection (4) provides clear guidance that there
2 is no discretion allowed when the losing party fails to timely retax costs.

3 Plaintiffs' entire motion is predicated on a misinterpretation of NRCP 6 and its applicability
4 to NRS 18.110(4).

5 Specifically, NRS 6(b) states:

6 (b) Extending Time.

7 (1) In General. When an act may or must be done within a specified
8 time:

9 (A) the parties may obtain an extension of time by stipulation if
10 approved by the court, provided that the stipulation is submitted
11 to the court before the original time or its extension expires; or

12 (B) the court may, for good cause, extend the time:

13 (i) with or without motion or notice if the court acts, or if a request is
14 made, before the original time or its extension expires; or

15 (ii) on motion made after the time has expired if the party failed to act
16 because of excusable neglect.

17 (2) Exceptions. A court must not extend the time to act under Rules
18 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(c)(1), and must not
19 extend the time after it has expired under Rule 54(d)(2).

20 As expressed in *Moseley v. Eighth Judicial Dist. Court of Nev.*, 124 Nev. 654, 662, 188 P.3d
21 1136, 1142 (2008), cited by Plaintiffs in support of their motion, "NRCP 6(b)(2) **applies to most**
22 **acts required by the rules of civil procedure** unless they are specifically excluded." (emphasis
23 supplied). The retaxing of costs is an act required by NRS 18.110(4), **not** the NRCP. As such,
24 NRCP 6 does not apply and it is unavailing to Plaintiffs.

25 "[T]he rules of statutory interpretation apply to Nevada's Rules of
26 Civil Procedure." *Webb ex rel. Webb v. Clark Cty. Sch. Dist.*, 125
27 Nev. 611, 618, 218 P.3d 1239, 1244 (2009). Furthermore, in
28 interpreting the language of a rule or statute, this court has repeatedly
held that "the expression of one thing is the exclusion of
another." *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246
(1967).

NRCP 6(b) provides, in relevant part, as follows:

When by these rules or by a notice given thereunder or by order of
court an act is required or allowed to be done at or within a specified
time, . . . the court for cause shown may at any time in its discretion .

1 . . upon motion made after the expiration of the specified period
2 permit the act to be done where the failure to act was the result
3 of excusable neglect . . . (Emphasis added.) Under the rule's plain
4 language, a court has discretion to enlarge time when an act is
5 "required . . . to be done at or within a specified time" under "these
6 rules or by a notice given thereunder or by order of court." NRCP
7 6(b). The rule does not mention acts to be done pursuant to statutes,
and thus, we conclude NRCP 6(b) unambiguously does not apply to
statutory time limits. *See Galloway*, 83 Nev. at 26, 422 P.2d at
246; *cf. Romaine v. State Farm Mut. Auto. Ins. Co.*, 87 Nev. 257, 258-
59, 485 P.2d 102, 103 & n.2 (1971) (holding NRCP 6(a) applied to a
statute of limitations period under NRS 11.190 where the rule, by its
plain terms, applied to statutory time limits).

8 *Fink v. Markowitz (In re Estate of Black)*, 132 Nev. 73, 76-77, 367 P.3d 416, 418-19 (2016). *Fink*
9 makes it clear that NRCP 6(b) is unavailing to Plaintiffs as the relief sought does not pertain to the
10 NRCP but rather to a statute, and statutory deadlines are not extendable under the NRCP.

11 In fact, there are no cases in which NRCP 6 relief was ever granted to a party seeking to
12 retax costs. There are only two cases in which NRS 18.110 was even invoked in the context of
13 "excusable neglect" and neither is availing to Plaintiffs. In *Ross v. Wynn Las Vegas*, 2021 Nev.
14 Dist. LEXIS 736, Case No. A-18-769503-C (Eighth Jud. Dist., May 13, 2021), in which it was the
15 prevailing party who was late in filing the memorandum of costs in accordance with the 5 day rule
16 imposed by NRS 18.110(1). The *Ross* Court granted relief and extended the time to file the
17 memorandum of costs based upon the express language of the statute which gave a court discretion
18 specifically to extend the time. There was no mention of NRS 18.110(4) in that decision whatsoever.
19 The *Ross* Court did note, however:

20 NRS 18.110 must be "strictly construed" and a district court "should
21 exercise restraint" in awarding costs because statutes permitting the
22 award of costs are in derogation of the common law. *Bobby*
23 *Beronsini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d. 383
24 (1998). However, the Nevada Supreme Court has held the time
25 deadline provided by NRS 18.110(1) is not a jurisdictional
26 requirement. *Gonzalez v. Las Vegas Metro. Police Dep't*, 129 Nev.
27 1118 (2013); *Eberle v. State ex rel. Nell J. Redfield Trust*, 108 Nev.
28 587, 590, 836 P.2d 67, 69 (1992); *see also Vill. Builders 96, L.P. v.*
U.S. Labs., Inc., 121 Nev. 261, 276, 112 P.3d 1082, 1092
(2005) (citing *Eberle* and holding that the five-day deadline is not
jurisdictional). While the deadline is not jurisdictional, the Court can
use its discretion to decide that a party waived their right to file by not
filing the memorandum of costs within the required
deadline. *Gonzalez*, 129 Nev. 1118 (2013); *Linville v. Scheeline*, 30
Nev. 106, 111, 93 P. 225, 227 (1908); *see also Valladares v. DMJ,*
Inc., 110 Nev. 1291, 1293-944, 885 P.2d 580, 582 (1994) (holding).

1
2 *Ross v. Wynn Las Vegas*, 2021 Nev. Dist. LEXIS 736, *2-3. Thus, NRS 18.110 must be strictly
3 construed, and in so doing, the absence of any discretion as it pertains to NRS 18.110(4) versus the
4 specific discretion granted pursuant to NRS 18.110(1) requires that Plaintiffs' motion be summarily
5 denied. There is no statutory allowance for any judicial discretion with respect to retaxing costs. In
6 granting the prevailing party's motion to extend the time to have filed the initial memorandum of
7 costs, the Court held:

8 While the Court has discretion, **it would be irresponsible for it to**
9 **use it without some reason other than "we just did not file it**
10 **timely."** Rule 6 of the Nevada Rules of Civil Procedure governs the
11 computation and extension of time for statutes with deadlines which
12 do not have their own computation or extension provisions. Rule
13 6(b)(1)(B) provides, "[w]hen an act may or must be done within a
14 specified time . . . the court may, for good cause, extend the time . . . on
15 motion made after the time has expired if the party failed to act
16 because of excusable neglect." Again, while Rule 6 allows the Court
17 significant discretion, the Court has the responsibility to act for good
18 cause including excusable neglect. *See also Fairfield v. Ahlstrom*, 206 Cal. App. 2d 590, 24 Cal. Rptr. 70 (Ct. App. 1962) (finding no abuse of discretion in denying motion for relief from order striking memorandum of costs on ground that it was not timely filed where counsel only asserted it was necessary to examine original files to determine amount of taxable costs, counsel needed to give substantial time to other matters and encountered difficulty in verifying certain costs).

18 *Ross v. Wynn Las Vegas*, 2021 Nev. Dist. LEXIS 736, *5-6 (emphasis supplied).

19 Plaintiffs are doing here what the *Ross* Court warned was improper and the basis upon which
20 no excusable neglect may be proffered, namely "we just did not file it timely." The Thanksgiving
21 holiday is a ruse in the instant case. Plaintiffs had time after the holiday to retax but never did. Now
22 they want a "pass." They are not entitled to one nor does the law provide for same. A specific
23 showing of mistake, inadvertence, surprise or excusable neglect is required for granting a motion to
24 set aside a judgment. *Nev. Indus. Guar. Co. v. Sturgeon*, 80 Nev. 254, 258, 391 P.2d 862, 864 (1964).
25 Where no showing is made of mistake, inadvertence, surprise or excusable neglect, a motion to set
26 aside the judgment must be denied. *Id.* Plaintiffs here fail to make a showing of mistake,
27 inadvertence, surprise or excusable neglect. They knew or should have been aware of the impending
28 memorandum of costs. They timely received it. They knew or should have been aware of the

1 statutory deadline for retaxing. They missed it. Holiday or not, they went days beyond that before
2 waking up to their negligent conduct. That is not excusable neglect and a judicial pass to them in
3 that regard would be an abuse of discretion.

4 **B. Plaintiffs Failed to Proffer Excusable Neglect**

5 Even if this Court was to impermissibly extend NRS 18.110(1)'s permissive extension to
6 NRS 18.110(4) (which would contradict the very narrowly tailored statutory scheme), Plaintiffs
7 failed to proffer any excusable neglect nor any other element of that judicially created concept. As
8 expressed in *Moseley*,

9 Although excusable neglect has been defined in other contexts, *e.g.*,
10 NRCp 60(b), we have not defined excusable neglect under NRCp 6.
11 Again, we turn to federal caselaw dealing with excusable neglect to
12 consider our guidelines for NRCp 6. Under federal Rule 6(b), a party
13 may obtain an extension of time to act under a particular rule when
14 the time to act has expired and the party seeking an extension
demonstrates good faith, a reasonable basis for not complying within
the specified period, and an absence of prejudice to the nonmoving
party. The key factor in the federal decisions is whether the plaintiff
asserted a reasonable basis for not complying.

15 *Moseley, supra* 124 Nev. at 665, 188 P.3d at 1144. Therefore, Plaintiffs were required to
16 demonstrate (1) good faith, (2) they exercised due diligence, (3) had a reasonable basis for not
17 complying within the time allotted, and (4) the absence of prejudice to CHH. They failed in all four
18 respects, especially the key factor that *Moseley* stated the courts must look to before finding
19 excusable neglect, namely the reasonable basis for noncompliance.

20 In the first place, Plaintiffs provide not one indicia of any good faith basis to retax costs.
21 CHH provided a memorandum of costs along with the requisite declaration and substantiated costs
22 with a disbursement summary. Proper references to the statutory provisions to which they costs
23 pertained were provided. In their motion, Plaintiffs provided no one shred of evidence, much like
24 they failed to do in opposition to CHH's summary judgment motion, again for good reason – THEY
25 LACK ANY.

26 Second, they failed to demonstrate they exercised due diligence. It would be one thing if
27 Plaintiffs sought to extend the time prior to its expiration due to the holiday. Even if Plaintiffs were
28 not given an extension by CHH, they could have at least argued that they recognized their deadline

1 and could not comply. This they failed to do. In fact, Plaintiffs let the time come and go, waiting
2 days beyond the deadline to even broach the subject. It was CHH which raised the issue when
3 granting a courtesy extension of Plaintiffs' opposition deadline to CHH's motion for attorneys' fees,
4 a completely separate device, when Plaintiffs realized that they blew their deadline. Plaintiffs failed
5 to demonstrate that they were in any way diligent in pursuing their right to retax within the deadline
6 imposed by statute.

7 Third, and most important, Plaintiffs failed to provide a reasonable basis for non-
8 compliance. Plaintiffs' sole excuse was the Thanksgiving holiday. Given that the holiday passed
9 and Plaintiffs had time to retax, they failed to do so. They provided no excuse for that. In fact, they
10 provided no excuse why it took 10 days for them to ask for any extension, and even then, only as it
11 pertained to the one remaining item to which any extension could be granted, namely the motion for
12 attorneys' fees. On that, they received an extension to oppose. They provide no proof whatsoever
13 that they even knew they had 3 days to retax. The truth is that they did not know the law, or if they
14 did, they ignored it. Plaintiffs' sole "excuse" is that they just did not timely file. That is not
15 excusable neglect. That is malpractice. Judicial cures for practice failures are not what court are
16 here to provide. Courts are guardrails to force parties to comply with the rules imposed upon them
17 and to make sure justice is delivered. They are not here to provide an avenue for non-excusable
18 attorney failures.

19 Finally, Plaintiffs failed to demonstrate an absence of prejudice to CHH. In fact, CHH would
20 be severely prejudiced. CHH timely filed its memorandum of costs. Lacking any dispute, CHH is
21 entitled to same. A judgment thereon has been submitted and CHH wants the money that Plaintiffs
22 forced them to incur and to which CHH is statutorily entitled. Delaying that delays the justice which
23 CHH has finally obtained, and as the expression goes, justice delayed is justice denied.

24 "[T]he concept [excusable neglect] applies to instances where some external factor beyond
25 a party's control affects the party's ability to act or respond as otherwise required." *Clark v. Coast*
26 *Hotels & Casinos, Inc.*, 130 Nev. 1164 (2014). There was nothing beyond Plaintiffs' counsel's
27 control preventing them from timely filing to retax. The only limiting factor was their own
28 inexcusable failure to read the statute and comply with its dictates. That is far from excusable

1 neglect.

2 Plaintiffs failure to satisfy any one of the *Moseley* elements is sufficient to justify denial of
3 their motion. Their failure to demonstrate all four seals the deal. Their motion must be denied.

4 **C. Plaintiffs' Reference to EDCR 2.35 is Unavailing**

5 Again, Plaintiffs attempt to utilize a local court rule to apply to a statutory time limit which
6 bears no resemblance to the local rule itself. EDCR 2.35 relates to discovery issues. Issues
7 pertaining to discovery and extensions of time are covered by the NRCP and the EDCR. As noted
8 earlier in this opposition, statutory rules are not subject to extensions of time as contemplated by
9 NRCP 6(b) or any local rule. *Fink, supra*, confirms that statutory rules cannot be extended by a
10 Court unless specifically authorized therein. NRS 18.110(4) does not provide for judicial discretion,
11 and therefore any attempt to utilize EDCR 2.35 to explain "excusable neglect" when that standard
12 cannot be applied to a statute in which judicial discretion is not subject is wholly inappropriate.

13 **D. CHH Should Receive Its Costs and Fees for Responding to this Frivolous**
14 **Motion**

15 Pursuant to E.D.C.R. 7.60(b)(1), the Court may, after notice and an opportunity to be heard,
16 impose upon an attorney or party any and all sanctions which may, under the facts of the case, be
17 reasonable, including the imposition of attorney's fees, when an attorney or party without just cause:
18 presents to the Court a motion which is obviously frivolous, unnecessary or unwarranted.

19 Similarly, NRS § 18.010(b) states:

20 Without regard to the recovery sought, when the court finds that the
21 claim, counterclaim, cross-claim or third-party complaint or defense
22 of the opposing party was brought or maintained without reasonable
23 ground or to harass the prevailing party. The court shall liberally
24 construe the provisions of this paragraph in favor of awarding
25 attorney's fees in all appropriate situations. It is the intent of the
26 Legislature that the court award attorney's fees pursuant to this
paragraph and impose sanctions pursuant to Rule 11 of the Nevada
Rules of Civil Procedure in all appropriate situations to punish for and
deter frivolous or vexatious claims and defenses because such claims
and defenses overburden limited judicial resources, hinder the timely
resolution of meritorious claims and increase the costs of engaging in
business and providing professional services to the public.

27 Plaintiffs' motion is the classic definition of frivolous, and was brought without any
28 reasonable ground, as Plaintiffs fail to provide for any statutory or cause authority to support their

1 position, and the position they did advance was done in derogation of existing case law
2 demonstrating the unavailability of the remedy they seek.

3 **IV. CONCLUSION**

4 Based upon the legal authority and reasons stated above, CHH respectfully requests the
5 Court deny Plaintiffs' motion to extend in its entirety and grant CHH's counter-motion for costs and
6 fees pursuant to EDCR 7.60.

7 DATED this 17th day of December, 2021.

8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9

10
11 By /s/ Adam Garth

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19 *Attorneys for Attorneys for Defendant Valley*
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21 *Medical Center*
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1 **CERTIFICATE OF SERVICE**

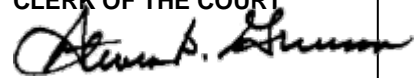
2 I hereby certify that on this 19th day of December, 2021, a true and correct copy
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**
4 **HOSPITAL'S OPPOSITION TO PLAINTIFFS' MOTION TO EXTEND TIME TO RETAX**
5 **COSTS AND COUNTERMOTION FOR COSTS AND FEES PURSUANT TO EDCR 7.60**
6 was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve
7 system and serving all parties with an email-address on record, who have agreed to receive electronic
8 service in this action.

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19 By /s/ Tiffany Dube
20 An Employee of
21 LEWIS BRISBOIS BISGAARD & SMITH LLP
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EXHIBIT “A”



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8 *Center*

9
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

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

22 Defendants.

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

23
24 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
25 captioned matter on the 19th day of November 2021, a copy of which is attached hereto.

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DATED this 19th day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth
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Medical Center*

1 **CERTIFICATE OF SERVICE**

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

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15 By /s/ Roya Rokni
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 ///

27 ///

28 ///

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

4 Dated this 19th day of November, 2021

5 Dated: _____.



DISTRICT COURT JUDGE

8 DATED this ____ day of November, 2021.

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

UNSIGNED

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DATED this 18th day of November, 2021

/s/ Brad Shipley

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Las Vegas, Nevada 89118
*Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center*

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

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Adam,

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

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

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

Counsel,

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

Adam Garth



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

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

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

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

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

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

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth

Partner

Las Vegas Rainbow

702.693.4335 or x7024335

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

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

From: Paul Padda <psp@paulpaddalaw.com>
Sent: Friday, November 12, 2021 9:56 AM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
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As you know, there is a motion for rehearing pending in the Supreme Court. Given that fact, and the lack of prejudice to Defendants, please advise if Defendants are willing to stay enforcement of the Supreme Court's decision which is the subject of a motion for rehearing? Thanks.

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

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

California Office:
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300 South Grand Avenue, Suite 3840
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Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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Adam Garth

Adam Garth

Partner

Las Vegas Rainbow

702.693.4335 or x7024335

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
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6 Estate of Rebecca Powell,
Plaintiff(s)

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/19/2021

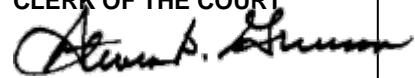
16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Paul Padda	civil@paulpaddalaw.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com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

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Diana Escobedo	diana@paulpaddalaw.com
Srilata Shah	sri@paulpaddalaw.com
Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
Maria San Juan	maria.sanjuan@lewisbrisbois.com
Karen Cormier	karen@paulpaddalaw.com

EXHIBIT B



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

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

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

15 Plaintiffs,

16 vs.

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

22 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM LLC'S VERIFIED
MEMORANDUM OF COSTS**

24
25 Defendant VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills
26 Hospital Medical Center", hereinafter "CHH") as the prevailing party, by and through their
27 attorneys, the law firm of Lewis Brisbois Bisgaard & Smith LLP, hereby submit the following
28 Verified Memorandum of Costs to be recovered against Plaintiffs pursuant N.R.S. 18.005, 18.020,

1 18.110, 17.117, and N.R.C.P. 68(f):

2	Clerk's fees	Allowed by NRS 18.005(1)	\$515.50
3	Expert fees	Allowed by NRS 18.005(5)	\$41,724.10
4	Process Server fees	Allowed by NRS 18.005(7)	\$27.43
5	Other	Allowed by NRS 18.005(17)	\$225.00

6
7 **TOTAL** **\$42,492.03**

8 Supporting documentation for the items set forth above is attached hereto as Exhibit "A" in
9 the form of a disbursement log. According to the log, a total of \$45,267.03 was incurred as
10 recoverable disbursements. However, the \$3,000 arbitration fee is being refunded except for a \$225
11 administrative fee. The amount contained in this memorandum reflects the yet to be refunded
12 arbitration fees less the administrative fee. In accordance with NRS 18.005 and NRS 18.020,
13 Defendants are entitled to a cost award of **\$42,492.03**. Further, Plaintiff rejected an Offer of
14 Judgment by Defendants dated August 28, 2020 and failed to obtain a more favorable judgment.¹
15 Therefore, the costs set forth above are recoverable by Defendants pursuant to N.R.C.P. 68(f) and
16 N.R.S. 17.117(10).

17 The expert costs incurred in this case were reasonable, necessarily incurred and are
18 recoverable pursuant to NRS 18.005. Pursuant to NRS 41A.100, professional negligence claims
19 require expert medical testimony be given on standard of care and causation. *See also, Williams v.*
20 *Dist. Ct.*, 262 P. 3d 360, 127 Nev. 518 (2011). The amount of "reasonable costs" for experts is
21 limited to the three distinct expert witnesses at \$1,500 per expert, "unless the court allows a larger
22 fee after determining that the circumstances surrounding the expert's testimony were of such
23 necessity as to require the larger fee." NRS 18.005(5). For complicated professional negligence
24 cases as this one, courts can and often do permit expert fees in excess of \$1,500.

25 The experts retained by CHH all meet the factors set out in *Frazier v. Drake*, 357 P.3d 365, 377
26

27 ¹ See Offer of Judgment, attached hereto as Exhibit "A", and Notice of Entry of Summary
28 Judgment, attached hereto as Exhibit "B".

1 (Nev.App. 2015) for granting expert fees in excess of \$1,500. CHH needed to dispel the medically
2 incorrect assertion by Plaintiffs that the administration of Ativan to Ms. Powell caused suppressed
3 breathing. Richard Ruffalo, M.D., a pharmacologist was required to analyze Ms. Powell's medical
4 records of more than 1,600 pages and formulate opinions and rebuttals of Plaintiffs' experts in this
5 case who advanced medically impossible theories. Furthermore, Hiren Shah, M.D., a hospitalist,
6 and Abraham Ishaaya, M.D., a critical care specialist, were retained to rebut the allegations that both
7 a critical care expert was needed to attend to Ms. Powell, and that the care she received while
8 hospitalized in a non-ICU setting was entirely appropriate under the circumstances. All three of
9 these experts opined on causation, and Drs. Shah and Ishaaya commented on standard of care as
10 well. Moreover, Plaintiffs' submitted a wholly unsubstantiated economist's report based upon not
11 one shred of evidence as to lost earning capacity of Ms. Powell. CHH retained an economist to
12 completely discredit Plaintiffs' report due to the absence of any proof whatsoever of any economic
13 losses.

14 The three medical experts expended many hours reviewing the voluminous medical records in
15 this case and prepared two written reports including initial and rebuttal reports. Drs. Shah, Ishaaya,
16 and Ruffalo each independently meet the *Frazier* factors for a fee in excess of \$1,500 for each of
17 their respective services.

18 Eric Volk, a forensic economist rebutted the report of Plaintiffs' economist and needed to
19 research the theory upon which Plaintiffs' expert predicated his completely unsubstantiated opinion.
20 Mr. Volk spent numerous hours reviewing Plaintiffs' expert report and researching the lack of basis
21 for Plaintiffs' expert's opinions based upon no evidence whatsoever. He prepared a rebuttal report.
22 Mr. Volk meets the *Frazier* factors for a fee in excess of \$1,500.

23 CHH respectfully requests this Court exercise its discretion and allow the recovery of all
24 expert costs incurred by CHH secondary to the complex nature of Plaintiffs' alleged medical
25 injuries, the causation of those injuries, and Plaintiff's complicated claims of economic injury.

26 ///

27 ///

28 ///

DECLARATION OF ADAM GARTH IN SUPPORT OF VERIFIED
MEMORANDUM OF COSTS

I, Adam Garth, under penalty of perjury of the State of Nevada declares:

1. I am an attorney for Valley Health System, LLC in this matter;
2. I have personal knowledge that the costs and disbursements set forth above in the Memorandum are true and correct to the best of my belief and they have been necessarily incurred and paid in this action; and
3. I am informed and believe that the exhibits attached hereto are true and correct copies of what they are represented to be herein.

Further declarant sayeth naught.

/s/ *Adam Garth*

Adam Garth

No notarization required pursuant to NRS 53.045

DATED this 22nd day of November, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth

S. BRENT VOGEL

Nevada Bar No. 6858

ADAM GARTH

Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

Attorneys for Attorneys for Defendant Valley

Health System, LLC dba Centennial Hills Hospital

Medical Center

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 22nd day of November, 2021, a true and correct copy
3 of **DEFENDANT VALLEY HEALTH SYSTEM LLC'S VERIFIED MEMORANDUM OF**
4 **COSTS** was served by electronically filing with the Clerk of the Court using the Odyssey E-File &
5 Serve system and serving all parties with an email-address on record, who have agreed to receive
6 electronic service in this action.

7 Paul S. Padda, Esq.
8 PAUL PADDALAW, PLLC
9 4560 S. Decatur Blvd., Suite 300
10 Las Vegas, NV 89103
11 Tel: 702.366.1888
12 Fax: 702.366.1940
13 psp@paulpaddalaw.com
14 *Attorneys for Plaintiffs*

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

15
16
17 By /s/ Roya Rokni
18 An Employee of
19 LEWIS BRISBOIS BISGAARD & SMITH LLP
20
21
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23
24
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EXHIBIT ‘A’

EXHIBIT ‘A’

DBDRYP02

Disbursement Diary

10/26/2021 10:47:02 patricia.jose

Page 1

28094

UHS of Delaware, Inc.

From 0/00/00 Through 10/31/21

AM

*Public/ladc-sqln01#acct/LDBData

190

Estate of Rebecca Powell v. Centennial Hills

Selections: Client-Matter: 28094-190 to 28094-190 WIP Only *Include Write-Offs* *Include A/P Invoices Sent to Client for Direct Payment*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Expert medical services rendered on 06/14/21.	337132			10,350.00-	W	A/P-P
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Inv#:2538 Expert medical services rendered on 06/14/21.	337211			10,350.00	W	A/P-P
10/09/21	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:5POWELL Expert medical services rendered on 09/16/21 - 10/01/21.				3,437.50	A/P	
<u>Disbursements by Type:</u>								
EXPM		Medical Expert Services				3,437.50		
Matter Total						3,437.50		

DBDRYP02

Disbursement Diary

10/26/2021 10:34:12 patricia.jose

Page 1

28094 UHS of Delaware, Inc.
190 Estate of Rebecca Powell v. Centennial Hills

From 0/00/00 Through 10/31/21

AM

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Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
6/15/20	Q	Filing Services: American Legal Investigation Services Nevada, Inc. Inv#:37 06/03/20 McBride Hall 5150163	304417			27.43	P A/P-P	2701173
7/14/20	5	Court filing fee: Comerica Commercial Card Services Inv#:063020STMT- ANOUWELS Trans Date: 06/08/2020 Nvefile* 006153274-0, Filing fee for substitution of attorney for defendant Valley Health System, LLC dba Centen Hills Hospital Medical Center.				3.50	P A/P-P	2723465
7/22/20	CS	E123-Consulting Services: Ruffalo & Associates, Inc. Inv#:2441 Professional services rendered on 06/24/20 - 07/22/20.	305674			4,350.00	P A/P-P	2723465
8/26/20	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:POWELL,R-080220 Expert medical services rendered on 08/02/20 - 08/10/20.	309051			6,710.00	P A/P-P	2756453
9/15/20	5	Court filing fee: Comerica Commercial Card Services Inv#:083120STMT- ANOUWELS Trans Date: 08/10/2020 Nvefile* 006448171-0, Filing fee for non opposition.				3.50	P A/P-P	2777320
9/15/20	CS	E123-Consulting Services: Ruffalo & Associates, Inc. Inv#:2449 Professional services rendered on 09/10/20.	310480			1,800.00	P A/P-P	2777320
9/17/20	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:#2POWELL Expert medical services rendered on 09/13/20 - 09/15/20.	310408			1,375.00	P A/P-P	2777320
10/15/20	5	Court filing fee: Comerica Commercial Card Services Inv#:093020STMT- ANOUWELS Trans Date: 09/02/2020 Nvefile* 006565123-0, Filing fee for Valley Health System, LLC and Universal Health Services, Inc.'s motion for summary judgment based upon the expiration of the statute of limitations.				209.50	P A/P-P	2808914
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT- ANOUWELS Trans Date: 10/21/2020 Nvefile* 006809393-0, Filing fee for reply opposition.				3.50	P A/P-P	2836962
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT- ANOUWELS Trans Date: 10/26/2020 Nvefile* 006836433-0, Filing fee for defendants Valley Health System, LLC and Universal Health Services, Inc.'s amended ex parte application to strike non- conforming document pursuant to EDCR 8. 03 and replace non-conforming pages.				3.50	P A/P-P	2836962
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT- ANOUWELS Trans Date: 10/26/2020 Nvefile* 006834234-0, Filing fee for defendants' application to strike non-conforming document pursuant to EDCR and replace non-conforming document on defendants' motion for summary judgment based upon expiration of statute of limitations.				3.50	P A/P-P	2836962
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT- ANOUWELS Trans Date: 10/28/2020 Nvefile* 006850481-0, Filing fee for notice entry of order.				3.50	P A/P-P	2836962
12/14/20	5	Court filing fee: Comerica Commercial Card Services Inv#:113020STMT- ANOUWELS Trans Date: 11/02/2020 Nvefile* 006870224-0, Filing fee for notice entry of order.				3.50	P A/P-P	2853363
12/14/20	5	Court filing fee: Comerica Commercial Card Services Inv#:113020STMT-						

Stat: blank-WIP Open; W-WIP Written-off; B-Billed & Unpaid; P-Paid; SN-Sent to client for direct payment; PW-partially paid/partially written-off.

Source: A/P-Accounts Payable Vendor Not Paid; A/P-P-Accounts Payable-Vendor Paid; DSB-Disb entry; APWFL-A/P Workflow

DBDRYP02

Disbursement Diary

10/26/2021 10:34:13 patricia.jose

Page 2

28094
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Estate of Rebecca Powell v. Centennial Hills

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Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
1/15/21	5	ANOUWELS Trans Date: 11/20/2020 Nvfile* 006968470-0, Filing fee for defend Valley Health System LLC's reply to plaintiff's opposition to motion for st shortening time.				3.50	P A/P-P	2853363
1/15/21	5	Court filing fee: Comerica Commercial Card Services Inv#:123120STMT-ANOUWELS Trans Date: 12/17/2020 Nvfile* 007108178-0, Filing fee for notice entry of order.				3.50	P A/P-P	2885307
2/12/21	5	Court filing fee: Comerica Commercial Card Services Inv#:123120STMT-ANOUWELS Trans Date: 12/23/2020 Nevada Supreme Court, Filing fee for petiti for writ of mandamus.				250.00	P A/P-P	2885307
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:013121STMT-ANOUWELS Trans Date: 01/21/2021 Nvfile* 007268304-0, Filing fee for notice entry of order.				3.50	P A/P-P	2915500
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/06/2021 Nvfile* 007678289-0, Filing fee for exhibi m to defendant Valley Health System LLC's motion to reconsider.				3.50	P A/P-P	2994277
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/06/2021 Nvfile* 007677918-0, Filing fee for defend Valley Health System LLC's motion to reconsider motion for stay pending pet for writ of mandamus.				3.50	P A/P-P	2994277
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/09/2021 Nvfile* 007699690-0, Filing fee for notice entry of order.				3.50	P A/P-P	2994277
5/19/21	EXPM	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/16/2021 Nvfile* 007734419-0, Filing fee for defend Valley Health System LLC's reply in further support of its motion to recons motion for stay pending petition for writ of mandamus and in reply to plain opposition.	331469			3.50	P A/P-P	2994277
6/15/21	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:#3POWELL Expert medical services rendered on 05/14/21 - 05/18/21.	337132			6,187.50	P A/P-P	2982480
7/15/21	5	Medical Expert Services: Ruffalo & Associates, Inc. Inv#:2538 Expert medica services rendered on 06/14/21.				10,350.00	P A/P-P	3026387
7/15/21	5	Court filing fee: Comerica Commercial Card Services Inv#:063021STMT-ANOUWELS Trans Date: 06/04/2021 Nvfile* 007997526-0, Filing fee for notice entry of order.				3.50	B A/P-P	3043957
7/15/21	5	Court filing fee: Comerica Commercial Card Services Inv#:063021STMT-ANOUWELS Trans Date: 06/18/2021 Nvfile* 008073913-0, Filing fee for initia expert disclosure.				3.50	B A/P-P	3043957
8/12/21	AM	Medical Expert Services: Abraham Ishaaya Inv#:POWELL,R-071521 Expert medical services rendered on 07/15/21.	336584			2,970.00	B A/P	3043957
		E121-Arbitrators/Mediators Fees: JAMS, INC. Inv#:5821548 Mediation/arbitrat services rendered on 08/10/21. -Approved by Richard Kim from UHS of Delawar						

Stat: blank-WIP Open; W-WIP Written-off; B-Billed & Unpaid; P-Paid; SN-Sent to client for direct payment; PW-partially paid/partially written-off.

Source: A/P-Accounts Payable Vendor Not Paid; A/P-P-Accounts Payable-Vendor Paid; DSB-Disb entry; APWFL-A/P Workflow

DBDRYP02

Disbursement Diary

10/26/2021 10:34:14 patricia.jose

Page 3

28094
190UHS of Delaware, Inc.
Estate of Rebecca Powell v. Centennial Hills

From 0/00/00 Through 10/31/21

AM

*Public/ladc-sqln01#acct/LDBData

Selections: Client-Matter: 28094-190 to 28094-190 *Include Write-Offs* *Include A/P Invoices Sent to Client for Direct Payment*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
		on 08/11/21.				3,000.00	P A/P-P	3072540
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Expert medical services rendered on 06/14/21.	337132			10,350.00-	W A/P-P	
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Inv#:2538 Expert medical services rendered on 06/14/21.	337211			10,350.00	W A/P-P	
8/26/21	CS	E123-Consulting Services: J.S. Held, LLC Inv#:1274938 Professional services rendered on 06/21/21 - 08/26/21.	341295			688.50	P A/P-P	3069107
9/13/21	CS	E123-Consulting Services: J.S. Held, LLC Inv#:1278635 Professional services rendered on 08/09/21 - 08/24/21.				3,855.60	B A/P	3102586
10/09/21	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:5POWELL Expert medical services rendered on 09/16/21 - 10/01/21.				3,437.50	A/P	

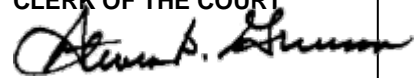
Disbursements by Type:

5	Court filing fee	515.50
AM	E121-Arbitrators/Mediators Fees	3,000.00
CS	E123-Consulting Services	10,694.10
EXPM	Medical Expert Services	31,030.00
Q	Filing Services	27.43

Matter Total**45,267.03**

EXHIBIT ‘B’

EXHIBIT ‘B’



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

9
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

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

22 Defendants.

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

23
24 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
25 captioned matter on the 19th day of November 2021, a copy of which is attached hereto.

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DATED this 19th day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

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

1 **CERTIFICATE OF SERVICE**

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

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

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Brad Shipley, Esq.
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*Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.*

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

ORDR

S. BRENT VOGEL
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Las Vegas, Nevada 89118
Telephone: 702.893.3383
Facsimile: 702.893.3789
*Attorneys for Defendant Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Dated this 19th day of November, 2021

5 Dated: _____.


DISTRICT COURT JUDGE

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

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

11 *UNSIGNED*

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

21 DATED this 18th day of November, 2021

22 /s/ Brad Shipley

23 John H. Cotton, Esq.
24 Brad Shipley, Esq.
25 JOHN H. COTTON & ASSOCIATES
26 7900 W. Sahara Ave., Suite 200
27 Las Vegas, NV 89117
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Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

/s/ Adam Garth

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

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

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Adam,

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

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

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

Counsel,

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

Adam Garth



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

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

[Representing clients from coast to coast. View our locations nationwide.](#)

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

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

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

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

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

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth

Partner

Las Vegas Rainbow

702.693.4335 or x7024335

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

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

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

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

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

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

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

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

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

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

Importance: High

Counsel,

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

Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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

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

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

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

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth

Partner

Las Vegas Rainbow

702.693.4335 or x7024335

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/19/2021

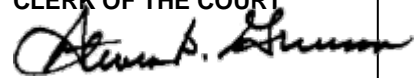
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Karen Cormier	karen@paulpaddalaw.com

EXHIBIT “C”



1 S. BRENT VOGEL
Nevada Bar No. 6858
2 Brent.Vogel@lewisbrisbois.com
ADAM GARTH
3 Nevada Bar No. 15045
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6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
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*Attorneys for Defendant Valley Health System,
7 LLC dba Centennial Hills Hospital Medical
Center*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

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

Plaintiffs,

16 vs.
17

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

Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM, LLC DBA CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER'S
MOTION FOR ATTORNEYS' FEES
PURSUANT TO N.R.C.P. 68, N.R.S. §§
17.117, 7.085, 18.010(2), AND EDCR 7.60**

HEARING REQUESTED

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

27 This Motion is based upon the Memorandum of Points and Authorities below, the pleadings
28 and papers on file herein, any oral argument which may be entertained by the Court at the hearing

1 of this matter and the Declaration of Adam Garth, below.
2

3 DATED this 22nd day of November, 2021
4

5 LEWIS BRISBOIS BISGAARD & SMITH LLP
6

7 By /s/ Adam Garth
8 S. BRENT VOGEL
9 Nevada Bar No. 6858
10 ADAM GARTH
11 Nevada Bar No. 15045
12 6385 S. Rainbow Boulevard, Suite 600
13 Las Vegas, Nevada 89118
14 Tel. 702.893.3383
15 *Attorneys for Attorneys for Defendant Valley*
16 *Health System, LLC dba Centennial Hills Hospital*
17 *Medical Center*
18
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1 **DECLARATION OF ADAM GARTH IN SUPPORT OF MOTION FOR ATTORNEYS'**
2 **FEES**

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 practice
5 law in the State of Nevada. I am competent to testify to the matters set forth herein, and will
6 do so if called upon.
- 7 2. I am one of the attorneys of record representing Defendant Valley Health System, LLC dba
8 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
10 of Nevada, Case No. A-19-788787-C.
- 11 3. I make this Declaration on behalf of DEFENDANT VALLEY HEALTH SYSTEM, LLC
12 DBA CENTENNIAL HILLS HOSPITAL MEDICAL CENTER’S MOTION FOR
13 ATTORNEYS’ FEES PURSUANT TO N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2),
14 AND EDCR 7.60.
- 15 4. I have been counsel of record for Defendants for much of this case, including for all times
16 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 to
19 N.R.C.P. 68, N.R.S. 17.115¹, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437
20 P.3d 1050 (2019) for a waiver of any presently or potentially recoverable costs in full and
21 final settlement of the matter. At the time of the Offer, Defendants’ expended costs and fees
22 totaled \$58,514.36. The Offer was not accepted by Plaintiff and expired on September 11,
23 2020.
- 24 6. Since the date the Offer of Judgment: I billed 405.6 hours for a total charge to the client of
25 \$91,260; S. Brent Vogel, Esq. billed 39.8 hours for a total charge to the client of \$8,955;
26 Heather Armantrout, Esq. billed 33.1 hours for a total charge to the client of \$6,404.85. I

27
28 ¹ Currently N.R.S. 17.117.

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

13

14 No notarization required pursuant to NRS 53.045

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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 According to the Complaint, Rebecca Powell overdosed on Benadryl, Cymbalta, and Ambien on
7 May 3, 2017. Plaintiffs further alleged that EMS was called and came to Ms. Powell’s aid,
8 discovering her with labored breathing and vomit on her face. Plaintiffs alleged that Ms. Powell
9 was transported to CHH where she was admitted.

10 Plaintiffs claim on May 10, 2017, Ms. Powell complained of shortness of breath, weakness,
11 and a drowning feeling, and Defendant Vishal Shah, MD, ordered Ativan to be administered via IV
12 push. Plaintiffs assert that on May 11, 2017, Defendant Conrado Concio, MD, ordered two doses
13 of Ativan via IV push.

14 To assess her complaints, Plaintiffs alleged that a chest CT was ordered, but chest CT was
15 not performed due to Ms. Powell’s anxiety, and she was returned to her room. Plaintiffs further
16 alleged that Ms. Powell was placed in a room with a camera monitor.

17 Plaintiffs’ expert stated in his affidavit used to support the Complaint that pursuant to the
18 doctor’s orders, a dose of Ativan was administered at 03:27. Thereafter, Ms. Powell allegedly
19 suffered acute respiratory failure, which resulted in her death on May 11, 2017.

20 Plaintiffs commenced their action in this matter on February 4, 2019 alleging professional
21 negligence. NRS 41A.097(2) imposes a statute of limitations of 3 years after the date of injury or 1
22 year after the plaintiff discovers or through the use of reasonable diligence should have discovered
23 the injury, whichever occurs first. In this case, decedent’s date of death of May 11, 2017 presents
24 the earliest date for accrual of the statute of limitations.

25 On May 25, 2017, MRO, a medical records retrieval service responsible for supplying
26 medical records to those requesting same on behalf of CHH, received a request for medical records
27 from Plaintiff Taryn Creecy along with a copy of a court order requiring that Centennial Hills
28 Hospital provide a complete copy of Rebecca Powell’s medical chart.

1 On June 2, 2017, the request for the medical records for Mrs. Powell was processed by MRO
2 personnel. On June 5, 2017, MRO determined that the records for Mrs. Powell were requested by
3 Taryn Creecy, her daughter, that the records were requested to be sent to a post office box, and
4 verified the court order for same. On June 7, 2017, MRO invoiced Ms. Creecy which included all
5 fees associated with the provision of 1165 pages of Mrs. Powell's medical records from CHH. The
6 1165 pages invoiced represented the entirety of medical records for Mrs. Powell with no exclusions.
7 On June 12, 2017, MRO received payment for the 1165 pages of records and the next day, June 13,
8 2017, MRO sent out the complete 1165 pages to Ms. Creecy to the address provided on the request.

9 MRO received the package back from the United States Postal Service due to
10 undeliverability to the addressee on June 23, 2017. MRO contacted Ms. Creecy on June 28, 2017
11 regarding the returned records, and she advised MRO that the post office box to which she requested
12 the records be sent was in the name of her father, Brian Powell, and that the Post Office likely
13 returned them since she was an unknown recipient at the post office box. She thereafter requested
14 that MRO resend the records to him at that post office box address. On June 29, 2017, MRO re-
15 sent the records addressed to Mr. Powell at the post office box previously provided, and MRO never
16 received the records back thereafter.

17 MRO provided copies of all medical records for Mrs. Powell and no records for this patient
18 were excluded from that packet. CHH's custodian of records stated that she compared the 1165
19 pages of records supplied in June, 2017 to Ms. Creecy to CHH's electronic medical records system
20 and she verified that the totality of the medical records for Ms. Powell was provided to Ms. Creecy
21 without excluding any records.

22 Contemporaneously with Plaintiffs' obtaining Ms. Powell's medical records from CHH,
23 Plaintiff Brian Powell personally initiated two investigations with State agencies including the
24 Nevada Department of Health and Human Services ("HHS") and the Nevada State Nursing Board.
25 Plaintiffs failed to disclose Mr. Powell's complaint to HHS, but they did disclose HHS's May 23,
26 2017 acknowledgement of his complaint alleging patient neglect (presumably the complaint Mr.
27 Powell initiated was prior to May 23, 2017). Mr. Powell's complaint to the Nursing Board dated
28 June 11, 2017 alleges that CHH's nursing staff failed to properly monitor Ms. Powell, that her care

1 was “abandoned by the nursing staff”, and that she passed away as a result of these alleged failures.
2 Moreover, Mr. Powell stated “Now I ask that you advocate for her, investigate, and ensure that this
3 doesn’t happen again.”

4 On February 4, 2019, which was one year, eight months, and twenty-four days after Ms.
5 Powell’s death, Plaintiffs filed the subject Complaint. Plaintiffs included the Affidavit of Sami
6 Hashim, MD, which set forth alleged breaches of the standard of care.

7 Plaintiffs’ claims sounded in professional negligence, which subjected the claims to NRS
8 41A.097(2)’s one-year statute of limitations requirement. Since Plaintiffs failed to file their
9 Complaint within one-year after they discovered or through the use of reasonable diligence should
10 have discovered the injury, CHH’s Motion for Summary Judgment was eventually granted after a
11 writ of mandamus petition was filed, accepted and ruled upon by the Nevada Supreme Court.

12 Pursuant to N.R.C.P. 68, CHH served Plaintiff with an Offer of Judgment on August 28,
13 2020.² In that Offer of Judgment, Defendants offered to waive any presently or potentially
14 recoverable costs in full and final settlement of the claims. At the time of the Offer, Defendants’
15 incurred costs were \$58,514.36. The Offer was not accepted by Plaintiff and expired on September
16 11, 2020.

17 The statute of limitations issue was first presented to this Court on June 19, 2019 by way of
18 a motion to dismiss by predecessor counsel. This Court held a hearing on September 25, 2019 and
19 denied that motion along other motions to dismiss and the respective joinders thereto.

20 Thereafter, the parties engaged in extensive written discovery. Discovery disputes emerged
21 during that time necessitating conferences pursuant to EDCR 2.34 and supplements to previously
22 provided requests for production and interrogatories. Moreover, due to the wide ranging allegations
23 in this matter and considering CHH’s potential liability not only as a direct defendant, but also under
24 the concept of ostensible agency, CHH engaged three medical experts to address the issues raised
25 by Plaintiffs, namely a pharmacologist, a hospitalist and an intensivist. In response to Plaintiffs’
26 expert disclosure, CHH engaged in an economist to rebut the Plaintiffs’ economist’s report which

27
28 ² See Offer of Judgment, attached hereto as Exhibit “A”.

1 was predicated on not one shred of evidence, but based upon a supplemental interrogatory response
2 from the decedent's ex-husband (dated one day before the economist's report), who provided no
3 basis for his guess about his ex-wife's prior earnings.

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

16 CHH filed its motion for summary judgment on September 2, 2020 providing proof of the
17 medical record request from CHH and the corresponding mailing thereof. Moreover, CHH provided
18 Plaintiffs own documents to the respective State agencies alleging the malpractice which is the
19 subject of this action. All of these materials definitively demonstrated that Plaintiffs were on inquiry
20 notice within days of the decedent's death, but at the latest, a month thereafter.

21 On October 29, 2020, this Court issued an order denying CHH's motion for summary
22 judgment finding a question of fact as to when Plaintiffs received inquiry notice based upon
23 Plaintiffs' counsel's representation, without any declaration or affidavit by one with personal
24 knowledge of the facts, that Plaintiffs' may have been confused as to the decedent's cause of death,
25 which the Court believed was confirmed by the February 5, 2018 HHS report.

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

1 2020.

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

10 On October 18, 2021, The Nevada Supreme Court issued an order granting the CHH's writ
11 petition and directing the Supreme Court Clerk to issue a writ of mandamus directing this Court to
12 vacate is order denying CHH's motion for summary judgment and enter summary judgment in favor
13 of all defendants.³

14 The Court entered judgment in favor of Defendants on November 19, 2021, and the Notice
15 of Entry of Judgement was filed the same day.⁴ Summary judgment in favor of Defendants entitles
16 them to an award of attorneys' fees pursuant to N.R.C.P. 68, N.R.S. 17.117, and interpreting case
17 authority. Moreover, NRS §§ 7.085 and 18.010(2) along with EDCR 7.60 entitle CHH to costs and
18 attorney fees due to the Plaintiffs' frivolous filing of a lawsuit 8 months after the statute of
19 limitations expired, with proof the exclusively provided, demonstrating that they possessed inquiry
20 notice of the alleged malpractice as early as the date of decedent's death, but no later than June 11,
21 2017; however, they chose to file a lawsuit in February, 2019, long after the one year statute of
22 limitations expired. Those statutes and rules, along with the cases interpreting them justify the
23 requested costs and fees.

24 ///

25 ///

26
27 ³ See Order Granting Petition, Exhibit "B" hereto

28 ⁴ See Order with Notice of entry, attached hereto as Exhibit "C".

1 **II. LEGAL ARGUMENT**

2 **A. An Award of Attorneys' Fees is Appropriate**

3 Plaintiff rejected CHH's Offer of Judgment and then failed to obtain a more favorable
4 judgment. Therefore, CHH is entitled to reasonable attorneys' fees under N.R.C.P. 68(f) and N.R.S.
5 17.117(10).

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

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

9 ...

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

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

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

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

17 (b) The offeree must pay the offeror's post-offer costs and expenses,
18 including a reasonable sum to cover any expenses incurred by the offeror for each
19 expert witness whose services were reasonably necessary to prepare for and
20 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.

21
22 This Court has discretion under N.R.C.P. 68(f) and N.R.S. 17.117(10) to award attorneys'
23 fees when the offeror prevailed and the offeree failed to obtain a more favorable judgment. While
24 exercising this discretion, a Court must consider the following factors: (1) whether the offeree
25 brought his claims in good faith; (2) whether the offeror's offer of judgment was also brought in
26 good faith in both timing and amount; (3) whether the offeree's decision to reject the offer of
27 judgment was in bad faith or grossly unreasonable; and (4) whether the amount of offeror's
28 requested fees is reasonable and justified. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833, 917 P.2d

1 786 (1985).

2 The circumstances of CHH's Offer of Judgment (premised on the waiver of an existing or
3 potential right to attorneys' fees and costs) was accepted and analyzed as a proper Offer of Judgment
4 by the Nevada Supreme Court in *Busick v. Trainer*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d 1050
5 (2019). In *Busick*, the Court upheld the trial court's award of attorneys' fees and costs to the
6 defendant following a verdict in favor of the defendant/physician. *Id.* at *6-7.

7 Generally, the "district court may not award attorney fees absent authority under a statute,
8 rule, or contract." *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022 (2006).
9 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
10 to recover certain costs and reasonable attorney fees that it incurs after the making an unimproved-
11 upon offer of judgment." *Logan v. Abe*, 131 Nev. 260, 268, 350 P.3d 1139 (2015).

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

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

23 Here, **irrefutable evidence demonstrates that the real parties in**
24 **interest were on inquiry notice by June 11, 2017 at the latest**, when
25 real party in interest Brian Powell, special administrator for the estate,
26 filed a complaint with the State Board of Nursing. There, Brian
27 alleged that the decedent, Rebecca Powell, "went into respiratory
28 distress" and her health care providers did not appropriately monitor
her, abandoning her care and causing her death. 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

1 circumstances by similarly trained and experienced providers of
2 health care." NRS 41A.015 (defining professional negligence); *Winn*,
3 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a "plaintiffs
4 general belief that someone's negligence may have caused his or her
5 injury" triggers inquiry notice).³ **That the real parties in interest
6 received Rebecca's death certificate 17 days later, erroneously
7 listing her cause of death as suicide, does not change this
8 conclusion.**⁴ Thus, the real parties in interest had until June 11, 2018,
9 at the latest, to file their professional negligence claim. Therefore,
10 their February 4, 2019 complaint was untimely.

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

24 **4 The real parties in interest do not adequately address why
25 tolling should apply under NRS 41A.097(3)** (providing that the
26 limitation period for a professional negligence claim "is tolled for
27 any period during which the provider of health care has concealed
any act, error or omission upon which the action is based"). Even
if they did, such an argument would be 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).

28 **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 favorable to the nonmoving
party, "demonstrate that **no genuine issue as to any material fact**
[remains] and that the moving party is entitled to a judgment as a

1 matter of law" (internal quotations omitted)) . . .⁵
2 The Supreme Court determined that Plaintiffs were certainly on notice of any alleged malpractice
3 no more than one month after decedent's death. The Court also determined that the very records
4 upon which Plaintiffs based their case were in their possession long before the statute of limitations
5 expired and that they knowingly initiated complaints to State agencies manifesting definitive
6 knowledge and belief of malpractice. Nevertheless, Plaintiffs chose to initiate a lawsuit which was
7 dead on arrival, continued to maintain it even after irrefutable evidence demonstrated its
8 untenability, and then used every opportunity to prevent the expenditure of additional resources in
9 order to prove the impropriety of the lawsuit. Plaintiffs were given every opportunity to exit the
10 matter gracefully, but they instead chose to pursue an untenable claim, with knowledge they were
11 doing so, utilizing an attorney who presented no evidence supportive of his own personal theories,
12 and did all of this to the financial detriment of CHH. There is a price to be paid for that, and the
13 statutes and case law cited above, coupled with the clear findings of the Supreme Court, entitle CHH
14 to be compensated, at least in part, for their losses.⁶

15 Second, CHH's Offer of Judgment was brought in good faith in both timing and amount. At
16 the time of the Offer, CHH incurred over \$58,000 in costs defending Plaintiffs' claims. The Offer
17 was served several days prior to CHH's motion for summary judgment and about 1 ½ years from
18 the lawsuit's commencement. Moreover, Plaintiffs were in possession of CHH's respective requests
19 for production of documents and interrogatories six weeks prior to the motion for summary
20 judgment having been filed, and produced they produced the "smoking gun" documents
21 demonstrating irrefutable evidence of inquiry notice prior to the motion for summary judgment
22 having been made and even while said motion was pending before this Court prior to the final
23 submission of the motion. Plaintiffs were on notice of the statute of limitations issues even as early
24 as the motion to dismiss made by predecessor counsel in July, 2019, just months after commencing

25 _____
26 ⁵ Exhibit "B" hereto, pp. 3-5 (emphasis supplied)

27 ⁶ Pursuant to NRCP 68 and NRS 17.117, CHH normally does not get compensated for
28 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 this action, yet thy still pursued their untenable claim while in full possession of the documents
2 which defeated it. That is bad faith, pure and simple. Given the likelihood of Plaintiffs losing on
3 this issue, the offered waiver of the right to seek reimbursement of costs was reasonable in both
4 timing and amount, especially given the multiple opportunities for Plaintiffs to be on notice of the
5 issue.

6 Third, Plaintiffs' decision to reject the Offer of Judgment was in bad faith and grossly
7 unreasonable. Instead of abandoning their untimely filed action, (and accepting CHH's Offer of
8 Judgment), Plaintiffs simply continued to push the litigation forward, blocking every opportunity
9 CHH provided to "stop the financial bleeding" by staying the litigation while this case dispositive
10 issue made its way through the courts. They opposed two stay motions and a motion to reconsider
11 a stay. They opposed a motion to dismiss and a motion for summary judgment, presenting not one
12 shred of evidence by anyone with personal knowledge of the facts, supporting their claim of a timely
13 commencement of the action. They forced CHH to incur substantial legal costs and expenses to
14 defend the action, requiring the engagement of counsel along with multiple experts, to pursue a
15 lawsuit they knew could not be maintained from the start. Furthermore, they provided unresponsive
16 answers to discovery requests seeking to avoid addressing the underlying claims in the lawsuit
17 necessitating EDCR 2..34 conferences and their supplementation of a large number of discovery
18 responses. At every turn and opportunity, Plaintiffs stonewalled providing materials and
19 information supportive of their claims while placing CHH in the position of having to incur massive
20 expenses to obtain that to which it was legally entitled and seek dismissal of what Plaintiffs clearly
21 knew was an untenable claim. The Plaintiffs' failure to accept CHH's Offer of Judgment was both
22 in bad faith and grossly unreasonable.

23 Finally, as set forth in detail below, the fourth factor regarding the reasonableness of CHH's
24 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may recover
25 their attorneys' fees from the date of service of the Offer of Judgment to the end of the matter. In
26 this case, the Offer of Judgment was served on August 28, 2020 and expired on September 11, 2020.

27 CHH incurred a total of \$110,930.85 in attorneys' fees alone (not inclusive of expenses)
28 from August, 28, 2020 to the present billing cycle (which does not include all fees incurred for

1 October, 2021). Additionally, CHH incurred \$31,401.10 in disbursements including expert fees and
2 other expenses incurred since August, 28, 2020. This amount of bills is reasonable for the massive
3 amounts of time and energy needed to defend this case, engage in extensive written discovery to
4 obtain the various documents proving the late filing of the case, extensive motions and appeals
5 practice, and, expert time and expense due to Plaintiffs' refusal to stipulate to stay the litigation
6 while the summary judgment issue made its way through the court system. Plaintiffs own actions
7 in this matter, including brining it late in the first place, caused all of the expenses here. Medical
8 malpractice cases are complex, involve substantial amounts of expert testimony, and require a great
9 deal of preparation. Supporting documentation for every time entry is available for *in camera*
10 review by this Court. The bills have not been attached hereto in order to preserve the attorney-client
11 privilege and protect the information contained within the descriptions of the attorney billing. These
12 fees were all reasonable and justified for the defense of claim against Defendants.

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

15 **B. Amount of Fees Incurred**

16 When awarding fees in the offer of judgment context under N.R.C.P. 68 and N.R.S. 17.115
17 [currently N.R.S. 17.117], the district court must also consider the reasonableness of the fees
18 pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* When
19 determining the amount of attorneys' fees to award, the District Court has wide discretion, to be
20 "tempered only by reason and fairness" *Shuette v. Beazer Homes*, 121 Nev. 837, 864 (2005).⁷ If
21 the district court's exercise of discretion is neither arbitrary nor capricious, it will not be disturbed
22 on appeal. *Schouweiler*, 101 Nev. at 833.

23 "In determining the amount of fees to award, the [district] court is not limited to one specific
24 approach; its analysis may begin with any method rationally designed to calculate a reasonable
25

26 ⁷ Reasonable attorneys' fees also include fees for paralegal and non-attorney staff "whose
27 labor contributes to the work product for which an attorney bills her client." *See Las Vegas*
28 *Metro. Police Dep't v. Yeghiazarian*, 312 P.3d 503, 510 (Nev. 2013).

1 amount, so long as the requested amount is reviewed in light of the . . . Brunzell factors." *See Haley*
2 *v. Eighth Judicial Dist. Court*, 128 Nev. 171 (2012); *see also, Gunderson v. D.R. Horton, Inc.*, 319
3 P.3d 606, 615-616, 130 Nev. Adv. Rep. 9 (2014).

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

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

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

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

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

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

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

14 Partner Adam Garth	405.6 hours	\$91,260.00
15 Partner Brent Vogel	39.8 hours	\$ 8,955.00
16 Associate Heather Armantrout	33.1 hours	\$ 6,404.85
17 Paralegal Arielle Atkinson	46.9 hours	\$ 4,221.00
18 Paralegal Joshua Daor	0.1 hours	\$ 90.00

19
20 **Total** **\$110,930.85**

21 Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on medical
22 malpractice. Both have practiced over either close to or equal to 30 years each and are partners at
23 Lewis 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 Medical malpractice cases are complex and require an in-depth understanding of both unique
26 legal issues as well as the medical care and course that is at issue. Plaintiffs claimed that they were
27 entitled to \$105,000,000.00 in damages including \$172,728.04 billed by CHH as a recoverable
28 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 a motion for summary judgment, two motions to stay proceedings (one in this Court and one in Supreme Court), a writ petition to the Nevada Supreme Court plus all that it implies, and extensive written discovery.

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

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

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

NRS § 7.085 provides the following:

1. If a court finds that an attorney has:

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

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

2. **The court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations.** It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to **punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.**

NRS § 7.085 (emphasis supplied).

As clearly documented above, Plaintiffs brought this action in the first place already having

1 personally alleged medical negligence pertaining to CHH to third parties, i.e., two State agencies.
2 They went to the trouble of obtaining a Special Administrator for decedent's estate for the express
3 purpose of obtaining her medical records from CHH which they received. Not only did they receive
4 the records, their counsel, with unmitigated gall, suggested that CHH was obligated to prove that
5 Plaintiffs received the medical records. Plaintiffs' counsel completely disregarded NRS 47.250(13)
6 in which a rebuttable presumption is created "[t]hat a letter duly directed and mailed was received
7 in the regular course of the mail." CHH submitted the declarations of two witnesses with personal
8 knowledge of the facts outlining their procedures for handling incoming medical records requests,
9 the specifics of how such procedures were implemented in this case, and that the medical records
10 here were mailed to the Plaintiffs twice, all within one month of decedent's death. Plaintiffs' counsel
11 produced nothing in rebuttal except his false and improper claim that CHH was required to prove
12 Plaintiffs actually received the records. Plaintiffs themselves never denied receiving them. What
13 made his statement even more disingenuous was the fact that he gave the very records to Dr. Hashim,
14 his own expert, for review. Dr. Hashim stated that he reviewed the records and formulated an
15 opinion which counsel used to file his Complaint. Plaintiffs' counsel even denied asserting a
16 fraudulent concealment argument and this Court found no such argument advanced by Plaintiffs. In
17 a footnote, the Nevada Supreme Court stated "**The real parties in interest do not adequately**
18 **address why tolling should apply** under NRS 41A.097(3) (providing that the limitation period for
19 a professional negligence claim "is tolled for any period during which the provider of health care
20 has concealed any act, error or omission upon which the action is based"). **Even if they did, such**
21 **an argument would be unavailing, as the medical records provided were sufficient for their**
22 **expert witness to conclude that petitioners were negligent in Powell's care."**⁸ Therefore, there
23 was no evidence that Plaintiffs lacked sufficient documentation to formulate their claim and the
24 Supreme Court confirmed it.

25 As noted by a sister Department, "NRS 7.085 essentially provides, where an attorney
26 violates NRS 18.010(2), NRCP 11 or EDCR 7.60, the delinquent lawyer may be required to
27

28 ⁸ Exhibit "B", note 4 (emphasis supplied)

1 personally pay the additional costs, expenses and/or attorney's fees in all appropriate situations.
2 Notably, as shown above, NRS 18.010(2)(b), EDCR 7.60 and NRS 7.085 do not require Defendants
3 to be "prevailing parties" and attorneys' fees may be awarded without regard to the recovery sought."
4 *Berberich v. S. Highland Cmty. Ass'n*, 2019 Nev. Dist. LEXIS 130, *11 (Nev. Dist. Ct., Case No.
5 A-16-731824-C, January 29, 2019).

6 Furthermore,

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

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

21 Hereinabove is a long documented recitation of case law and facts which specifically and
22 directly contradict anything and everything advanced by Plaintiffs' counsel in this matter. Plaintiffs'
23 counsel did everything he could to force CHH to incur expenses. He filed a case well beyond the
24 statute of limitations, despite clear case law demonstrating when inquiry notice commences. He
25 was faced with two motions on the issue and misrepresented the facts. He provided not one shred
26 of evidence to support his personal theories about confusion, refusing and unable to produce any
27 supporting evidence. He provided no support for a suggestion of fraudulent concealment, and
28 opposed any motions for a stay of proceedings while the statute of limitations issue made its way
through the appellate system. In short, Plaintiffs' counsel advanced a case which was dead on
arrival. He knew it, was reminded of it, and pursued it anyway, hoping for a judicial lifeline. The
Supreme Court made certain to cover all possible avenues for Plaintiffs' counsel's attempt to scurry
away from his late and improper case filing. Adding insult to injury, he did everything he could to
increase expenses. Elections have consequences. Those consequences are sanctions under NRS

1 7.085 which include the \$58,514.36 in pre-NRCP 68 offer fees and expenses incurred from the
2 commencement of this litigation. Based upon Plaintiffs counsel's violation of the two prongs of
3 NRS 7.085, the Supreme Court has determined:

4 The language of NRS 7.085 is straightforward. Subsection 1 of NRS
5 7.085 provides **that district courts "shall" hold attorneys**
6 **"personally" liable for "additional costs, expenses and attorney's fees"**
7 **under certain circumstances. If the statutory conditions are met,**
8 **"the court shall" impose a sanction of taxable fees and costs**
9 **"reasonably incurred because of such conduct."** *Id* With respect to
10 "such conduct," the statute requires no more than what it states: in
11 relevant part, that "a court find[] that an attorney has" (i) "[brought
or] maintained ... a civil action" that (ii) either (a) "is not well-
grounded in fact," (b) "is not warranted by existing law," or (c) "is not
warranted ... by a[] [good faith] argument for changing the existing
law." See 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).

12 *Washington v. AA Primo Builders, Ltd. Liab. Co.*, 440 P.3d 49 (Nev. 2019) (Emphasis supplied).
13 "The statutes are clear—parties who bring and maintain an action without grounds shall have
14 attorney fees imposed against them." *Lopez v. Corral*, Nos. 51541, 51972, 2010 Nev. LEXIS 69, at
15 *24, 2010 WL 5541115 (Dec. 20, 2010).

16 There is no clearer case for the imposition of attorney's fees than this one. Plaintiffs' motion
17 case was entirely frivolous as it was knowingly filed beyond the statute of limitations. Even if it
18 was not known from the outset, which the evidence clearly demonstrated that it was, it became
19 abundantly clear that the Plaintiffs themselves not only suspected, but actually accused CHH of
20 malpractice and sought investigations by the State into their allegations. Plaintiffs supplied the very
21 evidence damning their own assertions of "confusion" which make Plaintiffs' counsel's
22 advancement thereof all the more egregious.

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

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

EDCR 7.60(b) provides:

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

- (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
- (2) Fails to prepare for a presentation.
- (3) So multiplies the proceeding in a case as to increase costs unreasonably and vexatiously.
- (4) Fails or refuses to comply with these rules.
- (5) Fails or refuses to comply with any order of a judge of the court.

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

///

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

2 Likewise, CHH is entitled to an award of his attorney's fees and costs under NRS
3 §18.010(2)(b), which provides in pertinent part:

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

7 (b) Without regard to the recovery sought, when the court finds that
8 the claim, counterclaim, cross-claim or third-party complaint or
9 defense of the opposing party was brought or maintained without
10 reasonable ground or to harass the prevailing party. The court shall
11 liberally construe the provisions of this paragraph in favor of
12 awarding attorney's fees in all appropriate situations. It is the intent of
13 the Legislature that the court award attorney's fees pursuant to this
14 paragraph and impose sanctions pursuant to Rule 11 of the Nevada
15 Rules of Civil Procedure in all appropriate situations to punish for and
16 deter frivolous or vexatious claims and defenses because such claims
17 and defenses overburden limited judicial resources, hinder the timely
18 resolution of meritorious claims and increase the costs of engaging in
19 business and providing professional services to the public.

20 For the reasons discussed above, CHH respectfully requests an award of attorney's fees and
21 costs that it incurred in this matter, and enter an order awarding **\$110,930.85** in attorneys' fees per
22 N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant
23 to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

24 **III. CONCLUSION**

25 Based upon the legal authority and reasons stated above, Defendants respectfully request the
26 Court grant their Motion and award them **\$110,930.85** in attorneys' fees per N.R.C.P. 68 and
27 N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§
28 7.085, 18.010(2) and EDCR 7.60.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 22nd day of November, 2021, a true and correct copy
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**
4 **HOSPITAL MEDICAL CENTER'S MOTION FOR ATTORNEYS' FEES PURSUANT TO**
5 **N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), AND EDCR 7.60** was served by electronically
6 filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties
7 with an email-address on record, who have agreed to receive electronic service in this action.

8 Paul S. Padda, Esq.
9 PAUL PADDALAW, PLLC
10 4560 S. Decatur Blvd., Suite 300
11 Las Vegas, NV 89103
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13 Fax: 702.366.1940
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Shah, M.D.

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

EXHIBIT ‘A’

EXHIBIT ‘A’

1 S. BRENT VOGEL
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2 Brent.Vogel@lewisbrisbois.com
ADAM GARTH
3 Nevada Bar No. 15045
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4 LEWIS BRISBOIS BISGAARD & SMITH LLP
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*Attorneys for Defendant Valley Health System,
7 LLC dba Centennial Hills Hospital Medical
Center*
8

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

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

15 Plaintiffs,
16

17 vs.

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

22 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM, LLC'S RULE 68 OFFER TO
PLAINTIFFS**

24
25 TO: ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special
26 Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as
27 an Heir; ISALIAH KHORSOF, individually and as an Heir; LLOYD CREECY, individually,
28 Plaintiffs; and

1 TO: Paul S. Padda, Esq., PAUL PADDA LAW, PLLC, 4560 S. Decatur Blvd., Suite 300,
2 Las Vegas, NV 89103, their attorneys:

3 PLEASE TAKE NOTICE that pursuant to the provisions of N.R.C.P. 68 and *Busick v.*
4 *Trainor*, 2019 Nev. Unpub. LEXIS 378, 2019 WL 1422712 (Nev., March 28, 2019), 437 P.3d 1050,
5 Defendants VALLEY HEALTH SYSTEM, LLC (doing business as “Centennial Hills Hospital
6 Medical Center”), a foreign limited liability company (“Defendant”), by and through its counsel of
7 record, S. Brent Vogel, Esq. and Adam Garth, Esq. of LEWIS BRISBOIS BISGAARD & SMITH
8 LLP, hereby offer to waive any presently or potentially recoverable attorney’s fees and costs in full
9 and final settlement of the above-referenced case. At this time, Defendant has incurred \$53,389.90
10 in attorney’s fees and \$5,124.46 in costs.

11 This Offer shall not be construed to allow Plaintiffs to seek costs, attorney’s fees, or
12 prejudgment interest from the Court in addition to the amount stated in the Offer, should Plaintiffs
13 accept the Offer.

14 Pursuant to N.R.C.P. 68, this Offer shall be open for a period of fourteen (14) days from the
15 date of service. In the event this Offer is accepted by Plaintiffs, Defendant will obtain a dismissal
16 of the claim as provided by N.R.C.P. 68(d), rather than to allow judgment to be entered against
17 Defendant. Accordingly, and pursuant to these rules and statutes, judgment against Defendant could
18 not be entered unless ordered by the District Court.

19 ///

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1 This Offer is made solely for the purposes intended by N.R.C.P. 68, and is not to be construed
2 as an admission in any form, shape or manner that Defendant is liable for any of the allegations
3 made by Plaintiffs in the Complaint. Nor is it an admission that Plaintiffs are entitled to any relief,
4 including, but not limited to, an award of damages, attorney's fees, costs or interest. By virtue of
5 this Offer, Defendant waives no defenses asserted in their Answer to Plaintiffs' Complaint.

6
7 DATED this 28th day of August, 2020

8
9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10
11 By /s/ Adam Garth
12 S. BRENT VOGEL
13 Nevada Bar No. 6858
14 ADAM GARTH
15 Nevada Bar No. 15045
16 6385 S. Rainbow Boulevard, Suite 600
17 Las Vegas, Nevada 89118
18 Tel. 702.893.3383
19 *Attorneys for Attorneys for Defendant Valley*
20 *Health System, LLC dba Centennial Hills Hospital*
21 *Medical Center*
22
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 28th day of August, 2020, a true and correct copy
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC'S RULE 68 OFFER TO**
4 **PLAINTIFFS** was served by electronically filing with the Clerk of the Court using the Odyssey E-
5 File & Serve system and serving all parties with an email-address on record, who have agreed to
6 receive electronic service in this action.

7 Paul S. Padda, Esq.
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14 *Attorneys for Plaintiffs*

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

15
16
17 By /s/ Roya Rokni
18 Roya Rokni, an Employee of
19 LEWIS BRISBOIS BISGAARD & SMITH LLP
20
21
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EXHIBIT ‘B’

EXHIBIT ‘B’

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,
D/B/A CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER, A FOREIGN
LIMITED LIABILITY COMPANY; DR.
DIONICE S. JULIANO, M.D., AN
INDIVIDUAL; DR. CONRADO C.D.
CONCIO, M.D., AN INDIVIDUAL; AND
DR. VISHAL S. SHAH, M.D., AN
INDIVIDUAL,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JERRY A. WIESE, DISTRICT JUDGE,
Respondents,

and

ESTATE OF REBECCA POWELL
THROUGH BRIAN POWELL, AS
SPECIAL ADMINISTRATOR; DARCI
CREECY, INDIVIDUALLY AND AS
HEIR; TARYN CREECY,
INDIVIDUALLY AND AS AN HEIR;
ISAIAH KHOSROF, INDIVIDUALLY
AND AS AN HEIR; LLOYD CREECY,
INDIVIDUALLY,
Real Parties in Interest.

No. 82250

FILED

OCT 18 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

This is a petition for a writ of mandamus challenging a district court order denying a motion for summary judgment in a professional negligence matter on statute of limitations grounds.

Reviewing the summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we elect to entertain the petition and grant the requested relief as we conclude the district court manifestly abused its discretion when it denied summary judgment. *All Star Bail Bonds, Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 419, 422, 326 P.3d 1107, 1109 (2014) (“A writ of mandamus is available to compel the performance of an act that the law requires or to control a manifest abuse of discretion.” (internal quotation and citation omitted)); *Ash Springs Dev. Corp. v. O'Donnell*, 95 Nev. 846, 847, 603 P.2d 698, 699 (1979) (“Where an action is barred by the statute of limitations no issue of material fact exists and mandamus is a proper remedy to compel entry of summary judgment.”). While we generally disfavor petitions for mandamus relief challenging a district court’s summary judgment denial, *State ex rel. Dep’t of Transp. v. Thompson*, 99 Nev. 358, 361-62, 662 P.2d 1338, 1340 (1983), we nonetheless may consider such petitions “where no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court [was] obligated to dismiss [the] action.” *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997).

Petitioners argue that undisputed evidence demonstrates the real parties in interest were on inquiry notice of their professional negligence, wrongful death, and negligent infliction of emotional distress claims by June 11, 2017, at the latest.¹ Thus, petitioners contend that the

¹Petitioner Valley Health System filed the instant petition. We permitted Drs. Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D., to join the petition. However, the district court granted summary judgment in favor of Dr. Juliano. Thus, Dr. Juliano is not a proper

real parties in interest's February 4, 2019, complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an action for injury or death based on the negligence of a health care provider within three years of the date of injury and within one year of discovering the injury, whichever occurs first).² We agree.

The term injury in NRS 41A.097 means "legal injury." *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th ed. 2009)). While the accrual date for NRS 41A.097(2)'s one-year period is generally a question for the trier of fact, the district court may decide the accrual date as a matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462.

Here, irrefutable evidence demonstrates that the real parties in interest were on inquiry notice by June 11, 2017 at the latest, when real

party to the instant petition and we direct the clerk of this court to remove his name from the case caption.

²Petitioners argue, and the real parties in interest do not contest, that the at-issue claims all sound in professional negligence and are thus subject to the limitation period under NRS 41A.097(2). *See Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 642, 403 P.3d 1280, 1284 (2017) ("Allegations of breach of duty involving medical judgment, diagnosis, or treatment indicate that a claim is for medical malpractice.").

party in interest Brian Powell, special administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged that the decedent, Rebecca Powell, “went into respiratory distress” and her health care providers did not appropriately monitor her, abandoning her care and causing her death. 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 462 (explaining that a “plaintiff’s general belief that someone’s negligence may have caused his or her injury” triggers inquiry notice).³ That the real parties in interest received Rebecca’s death certificate 17 days later, erroneously listing her cause of death as suicide, does not change this conclusion.⁴ Thus, the real parties in interest

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

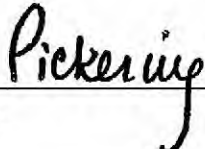
⁴The real parties in interest do not adequately address why tolling should apply under NRS 41A.097(3) (providing that the limitation period for a professional negligence claim “is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based”). Even if they did, such an argument would be


had until June 11, 2018, at the latest, to file their professional negligence claim. Therefore, their February 4, 2019 complaint was untimely.

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 favorable to the nonmoving party, “demonstrate that no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law” (internal quotations omitted)), we hereby

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order denying petitioners’ motion for summary judgment and enter summary judgment in favor of petitioners.


_____, J.
Cadish


_____, J.
Pickering

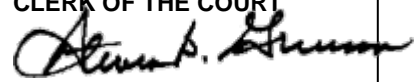

_____, J.
Herndon

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).

cc: Hon. Jerry A. Wiese, District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
John H. Cotton & Associates, Ltd.
Paul Padda Law, PLLC
Eighth District Court Clerk

EXHIBIT ‘C’

EXHIBIT ‘C’



1 **NEOJ**
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7 *Attorneys for Defendant Valley Health System,*
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8 *Center*

9
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

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

22 Defendants.

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

23
24 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
25 captioned matter on the 19th day of November 2021, a copy of which is attached hereto.

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DATED this 19th day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
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ADAM GARTH
Nevada Bar No. 15045
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702.893.3383
*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

1 **CERTIFICATE OF SERVICE**

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

6 Paul S. Padda, Esq.
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13 *Attorneys for Plaintiffs*

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

14
15 By /s/ Roya Rokni
16 An Employee of
17 LEWIS BRISBOIS BISGAARD & SMITH LLP
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ORDR

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Dated this 19th day of November, 2021

5 Dated: _____.


DISTRICT COURT JUDGE

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

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

11 *UNSIGNED*

12 Paul S. Padda, Esq.
13 Srilata Shah, Esq.,
14 PAUL PADDALAW, PLLC
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16 Las Vegas, NV 89103
17 Tel: 702.366.1888
18 Fax: 702.366.1940
19 psp@paulpaddalaw.com
20 Attorneys for Plaintiffs

21 DATED this 18th day of November, 2021

22 /s/ Brad Shipley

23 John H. Cotton, Esq.
24 Brad Shipley, Esq.
25 JOHN H. COTTON & ASSOCIATES
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Shah, M.D.

/s/ Adam Garth

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Nevada Bar No. 15045
SHADY SIRSY, ESQ.
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LEWIS BRISBOIS BISGAARD & SMITH
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6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center

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

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Adam,

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

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

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

Counsel,

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

Adam Garth



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

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

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

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

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth

Partner

Las Vegas Rainbow

702.693.4335 or x7024335

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

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

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

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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

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

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

California Office:
One California Plaza
300 South Grand Avenue, Suite 3840
Los Angeles, California 90071
Tele: (213) 423-7788



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

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

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

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

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

Importance: High

Counsel,

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

Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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

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

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

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

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

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth

Partner

Las Vegas Rainbow

702.693.4335 or x7024335

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/19/2021

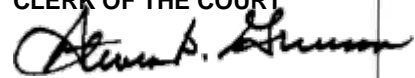
16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Paul Padda	civil@paulpaddalaw.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com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

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Diana Escobedo	diana@paulpaddalaw.com
Srilata Shah	sri@paulpaddalaw.com
Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
Maria San Juan	maria.sanjuan@lewisbrisbois.com
Karen Cormier	karen@paulpaddalaw.com

EXHIBIT “D”



MTN
PAUL S. PADDA, ESQ.
Nevada Bar Number: 10417
Email: psp@paulpaddalaw.com
SRILATA R. SHAH, ESQ.
Nevada Bar Number: 6820
Email: sri@paulpaddalaw.com
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888
Fax: (702) 366-1940
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. 30

**PLAINTIFFS' MOTION TO EXTEND
TIME TO RESPOND TO DEFENDANTS'
VALLEY HEALTH SYSTEMS, DR.
DIONICE S. JULIANO, DR. CONRADO
CONCIO, AND DR. VISHAL S. SHAH'S
MEMORANDUMS OF COSTS**

Hearing Date Requested

COMES NOW, Plaintiffs, ESTATE OF REBECCA POWELL, BRIAN POWELL,
DARCI CREECY, TARYN CREECY, ISAIAH KHOSROF, AND LLOYD CREECY by and
through their attorneys of record, PAUL S. PADDA, ESQ. and SRILATA R. SHAH, ESQ. of

1 PAUL PADDA LAW, PLLC, and submit their Motion to Extend Time to Respond to Defendants
2 Memorandum of Costs.

3 In support of this motion, Plaintiffs relies upon the memorandum of points and authorities
4 below, the exhibits attached hereto and all other papers on file in this case.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. FACTUAL BACKGROUND**

7
8 This is a medical malpractice/wrongful death case where it is alleged that Ms. Rebecca
9 Powell, age 42, died while in the care of Centennial Hills on account of negligence by the hospital
10 and its medical personnel. Following motion practice in the District Court, Defendant Valley
11 Health System filed a Petition for Writ of Mandamus with the Nevada Supreme Court on
12 December 22, 2020. On March 9, 2021, Defendant Dionice S. Juliano, MD., Conrado Concio,
13 M.D., and Vishal Shah, M.D. filed their Notice of Non-Opposition to Petitioner Valley Health
14 System, LLC's Application for Writ of Mandamus and Motion to Join Petition for Writ of
15 Mandamus. Defendants' Writ Petition challenged the District Court Order denying a Motion for
16 Summary Judgment in a professional negligence matter on a statute of limitations grounds. On
17 October 18, 2021, the Nevada Supreme Court issued an Order granting Defendants' Writ Petition
18 and directing the Clerk to issue a Writ of Mandamus instructing the District Court to vacate its
19 order denying Defendant's motion for summary judgment and enter summary judgment in favor
20 of the Defendants. The Writ of Mandamus was served on the District Court and the parties on
21 November 3, 2021.

22
23
24 On November 22, 2021, Defendant Valley Health System filed its Verified Memorandum
25 of Costs. The following day on November 23, 2021, Defendant Dionice S. Juliano, MD., Conrado
26 Concio, M.D., and Vishal Shah, M.D. filed their Verified Memorandum of Costs. Two (2) days
27
28

1 later Thanksgivings Day and Plaintiffs' counsel's office was closed in observance of the holiday.
2 Plaintiffs' counsel contacted Defendants' counsels and requested an extension to respond to their
3 Memorandums of Costs and Motion for Attorneys' Fees. Defense counsel for Valley Health
4 System approved the extension of time for Plaintiffs to respond to their Motions for Attorneys'
5 Fees. *See*, Email correspondence attached hereto as **Exhibit 1**. Then a few hours later, Defense
6 counsel for Valley Health System stated that they are only giving approval for the extension of
7 time for Plaintiffs respond to their Motion for Attorneys' Fees, not their Memorandum of Costs.
8 *Id.* Defense counsel for Dionice S. Juliano, MD., Conrado Concio, M.D., and Vishal Shah, M.D.
9 joined in Defendant Valley Health System's refusal to provide Plaintiffs an extension of time to
10 respond to their Memorandum of Costs. *Id.* As a result, Plaintiffs are forced to file the instant
11 Motion.
12

14 II. LEGAL ARGUMENT

15 A. Legal Standard

16 NRCP 6(b)(1)(B)(ii) permits a party "on motion made after the time has expired if the
17 party failed to act because of excusable neglect." This requirement is mirrored by EDCR 2.35(a)¹.
18 "Excusable neglect" within this context includes inadvertence, mistake, surprise, or any
19 intervening circumstance beyond a party's control. There is no published precedent as to the
20 meaning of "excusable neglect" under EDCR 2.35(a), nor as to whether EDCR 2.35(a)'s
21 definition of the term is synonymous to NRCP 6(b)(1)(B)(ii)'s. However, in at least one
22
23
24
25

26 ¹ **Rule 2.35. Extension of discovery deadlines.**

27 (a) Stipulations or motions to extend any date set by the discovery scheduling order must be in writing and
28 supported by a showing of good cause for the extension and be filed no later than 21 days before the discovery cut-
off date or any extension thereof. A request made beyond the period specified above shall not be granted unless the
moving party, attorney or other person demonstrates that the failure to act was the result of excusable neglect.

unpublished decision, the Nevada Supreme Court states that excusable neglect is present under EDCR 2.35 when “some external factor beyond a party’s control affects the party’s ability to act or respond as otherwise required.” *Clark v. Coast Hotels and Casinos, Inc.*, 2014 WL 3784262, 3 (Nev. 2014). On the other hand, the Nevada Supreme Court articulates the four requirements that must be met when determining if there was excusable neglect when a party is seeking relief from NRCP 25(a)(1) under NRCP 6(b) the requirements are: (1) the movant acted in good faith, (2) the movant exercised due diligence, (3) there is a reasonable basis for not complying within the specified time, and (4) the nonmoving party will not suffer prejudice. *Moseley v. Eighth Judicial Dist. Court*, 124 Nev. 654, 668 n.66 (2008).

B. There is “Excusable Neglect” to Justify the Extending Time to Respond to Defendants Memorandum of Costs

First, Plaintiff’s counsel received Defendants’ Memorandums for Costs during Thanksgiving week, November 22, 2021 and November 23, 2021. Plaintiff’s office was closed part of Thanksgiving week, therefore had limited time to respond to Defendants’ Memorandums for Costs. The timing of the filing and the intervening holiday was beyond Plaintiffs’ counsel’s control. Nonetheless, it was the underlying reason behind Plaintiffs’ inability to act in a timely manner.

Second, once Plaintiffs realized they were not going to be able to respond to Defendants’ Memorandums of Costs within the prescribed time, Plaintiffs’ counsel contacted Defendants’ counsels and requested an extension to respond to their Memorandums of Costs. Defense counsels both denied Plaintiffs’ informal request for additional time to respond to their Memorandum of Costs.

Plaintiffs’ counsel was unable to respond in a timely manner due to the already short deadline for responding to Defendants’ Memorandums of Costs being made even shorter by the

1 Thanksgiving holiday. Lastly, Defendants would not suffer any significant prejudice from
2 Plaintiffs' request for an extension because it will merely extend the time slightly, during which
3 period no additional costs will be accruing.

4 As all four *Moseley* factors are fulfilled, there is excusable neglect to justify Plaintiffs'
5 request for an Extension of Time to Respond to Defendants' Memorandums of Costs.
6

7 **III. CONCLUSION**

8 **WHEREFORE** based on the foregoing, Plaintiffs respectfully request this Court grant
9 Plaintiffs' Motion to Extend Time to Respond to Defendants' Memorandums of Costs.

10 DATED this ___3rd_ day of December, 2021.

11 **PAUL PADDA LAW**

12 */s/ Srilata R. Shah*

13
14 PAUL S. PADDA, ESQ.
15 Nevada Bar Number: 10417
16 SRILATA R. SHAH, ESQ.
17 Nevada Bar Number: 6820
18 4560 South Decatur Boulevard, Suite 300
19 Las Vegas, Nevada 89103
20 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the amendment to EDCR 7.26, and Administrative Order 14-2, I hereby certify that on December 3, 2021, I caused a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO EXTEND TIME TO RESPOND TO DEFENDANTS MEMORANDUM OF COSTS** to be served electronically to all parties with an email address on record, as follow

JOHN H. COTTON AND ASSOCIATES

JOHN H. COTTON, ESQ.

Nevada Bar No. 5268

BRAD J. SHIPLEY, ESQ.

Nevada Bar No. 12639

7900 W. Sahara Avenue, Ste. 200

Las Vegas, Nevada 89117

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

LEWIS BRISBOIS BISGAARD & SMITH

S. BRENT VOGEL, ESQ.

Nevada Bar No. 6858

ADAM GARTH, ESQ.

Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Ste. 600

Las Vegas, Nevada 89118

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

/s/ Karen Cormier,

Employee of Paul Padda Law

EXHIBIT 1

Karen Cormier

From: Srilata Shah
Sent: Thursday, December 2, 2021 5:06 PM
To: Brad Shipley; Garth, Adam; Paul Padda
Cc: Vogel, Brent; Rokni, Roya; San Juan, Maria; Sirsy, Shady; Diana Escobedo; Karen Cormier; Dube, Tiffany; DeSario, Kimberly
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

All:
Thank you for your emails and responses to our request. Sri

Srilata Shah, Esq.
PAUL PADDA LAW, PLLC
Websites: paulpaddalaw.com

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

California Office:
12655 West Jefferson Blvd., Fourth Floor
Los Angeles, California 90066
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From: Brad Shipley <bshipley@jhcottonlaw.com>
Sent: Thursday, December 2, 2021 5:01 PM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

We are in agreement to move the hearing on the motion, and either of the proposed dates is agreeable.

As to extending the time to file a motion to retax, we would join in the objection to any extension. We were required to serve our memorandum of costs almost immediately after notice of entry of order granting summary judgment. Once that notice of entry was served, you are reasonably on notice that the memorandum of costs would be served shortly thereafter.

The fact that your office may have been closed for a single judicial day is not availing as a basis for extending a deadline that has passed almost twice over, especially given that you had or reasonably should have had notice of a forthcoming memorandum of costs and the short deadline for retaxing the week *before* Thanksgiving, and furthermore have not provided anything to suggest that there is any good-faith basis for retaxing costs in the first place.

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

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Thursday, December 2, 2021 4:04 PM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; John Cotton <jhcotton@jhcottonlaw.com>; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: Re: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

We cannot agree to extend. The memorandum of costs was filed the week before Thanksgiving. You had 3 days to retax, giving you until Monday before Thanksgiving. Nothing was filed. You are now 13 days from our filing and 10 days beyond your deadline. An extension presumes you still have time. Unfortunately, your office failed to act. Extending any time, for which the statute does not provide, places my client at a disadvantage. Therefore, we will not consent.

As to the motion, I will agree to extend the professional courtesy of the extension as we agreed.

Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: [702.693.4335](tel:702.693.4335) F: [702.366.9563](tel:702.366.9563)

[6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118](#) | LewisBrisbois.com [lewisbrisbois.com]

[Representing clients from coast to coast. View our locations nationwide. \[\[lewisbrisbois.com\]\(http://lewisbrisbois.com\)\]](#)

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From: Srilata Shah <sri@paulpaddalaw.com>
Sent: Thursday, December 2, 2021 3:41:20 PM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com <jhcotton@jhcottonlaw.com>; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

Hi Adam:

In response to your email below, I am agreeable to filing our opposition to your Motion for Attorneys' Fees on or before December 16, 2021. However, we would like the opportunity to review your memorandum of costs and file an application to re-tax. I understand your position, however considering the filing of the memorandum of costs right before the Thanksgiving holiday we request additional time to respond to your memorandum of costs as well. If you are not agreeable, we will file a motion to extend our time to respond to the memorandum of costs with the Court. Thank you. Sri

Srilata Shah, Esq.
PAUL PADDA LAW, PLLC
Websites: paulpaddalaw.com

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

California Office:
12655 West Jefferson Blvd., Fourth Floor
Los Angeles, California 90066
Tele: (213) 423-7788



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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Thursday, December 2, 2021 2:49 PM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria

<Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

I'm fine for 1/19 with the reply due on 1/12. This presumes your opposition to our motion is served on or before 12/16 as you requested. I'm not certain of Brad Shipley's position on the extension pertaining to our pending motion, and he can certainly speak separately and for his client on that issue.

Just to clarify, the only extension to which we will agree is on our pending motion. There is no extension granted pertaining to our filing of the memorandum of costs we also filed. Per NRS 18.110(3), "Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs." The 3 day deadline within which to move to retax costs has long expired and no extension of time has been or will be granted as to the memorandum of costs.

Adam Garth

From: Srilata Shah <sri@paulpaddalaw.com>
Sent: Thursday, December 2, 2021 2:40 PM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

All:
I just spoke to Angela McBride, Judge Weiss' JEA. She provided two dates to move the current hearing date of December 29, 2021. We can move the hearing date to **January 19, 2022**, and the reply will be due on January 12, 2022, or we can move the hearing date to **January 26, 2022**, with the reply due on January 19, 2022. Please let me know your preference. Once we agree on the hearing date, we can forward an email to Ms. McBride, and she will move the hearing date. Thank you. Sri

Srilata Shah, Esq.
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From: Srilata Shah

Sent: Thursday, December 2, 2021 2:28 PM

To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>

Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

Hi Adam:

Let me contact the court and see if they can move the hearing date which will give you additional time to file the reply. The current hearing date is December 29, 2021. Thank you. Sri

Srilata Shah, Esq.

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

Sent: Thursday, December 2, 2021 1:53 PM

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

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>; Dube, Tiffany <Tiffany.Dube@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

I don't have a problem with it in theory, but you will have to seek an extension of the hearing date as we will have considerably less time to interpose our reply given the holidays. Please advise of proposed hearing date changes from the court and we will work out your request once we know more.

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com
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Representing clients from coast to coast. View our locations nationwide.

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From: Srilata Shah <sri@paulpaddalaw.com>

Sent: Thursday, December 2, 2021 9:44 AM

To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com; Diana Escobedo <diana@paulpaddalaw.com>; Karen Cormier <karen@paulpaddalaw.com>

Subject: RE: Estate of Rebecca Powell v. Valley Health Systems et al. - Request for a one-week extension to file opposition to Motions for Attorney's fees and Costs

All counsel:

Defense counsel have filed several motions for fees and costs on November 22, 2021, and November 23, 2021. I am requesting a ten-day extension to file our oppositions. Please let me know if you are amenable to granting the undersigned through December 16, 2021, to file our oppositions. Thank you. Sri

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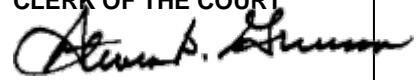
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EXHIBIT C



ROPP

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Tele: (702) 366-1888

Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT. 30

**PLAINTIFFS' REPLY TO DEFENDANT
VALLEY HEALTH SYSTEM, LLC DBA
CENTENNIAL HILLS HOSPITAL'S
OPPOSITION TO PLAINTIFFS'
MOTION TO EXTEND TIME TO
RETAX COSTS AND OPPOSITION TO
COUNTERMOTION FOR COSTS AND
FEES PURSUANT TO EDCR 7.60**

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

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

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

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

1 KHOSROF, individually; LLOYD CREECY, individually by the through their attorney of
2 record Srilata R. Shah, Esq. from the Paul Padda Law Firm hereby submits their Reply to
3 Defendant Valley Health System, LLC DBA Centennial Hills Hospital's (CHH) Opposition to
4 Plaintiffs' Motion to Extend Time to Retax Costs and Opposition to its Countermotion for Costs
5 and Fees Pursuant to EDCR 7.60.
6

7 For reasons set forth in its Motion, this Reply, and Opposition to Countermotion, this
8 Court should grant Plaintiff's Motion to Extend Time to Retax Costs and deny Defendant CCH
9 Countermotion for Costs and Fees Pursuant to EDCR 7.60. In support of these, Plaintiffs rely
10 upon the memorandum of points and authorities below, all papers on file in this litigation.
11

12 **I. INTRODUCTION**

13 This case is an example of Defendants seeking to take advantage of a timing issue to
14 secure a victory. Plaintiffs' received Defendants' Memorandum of Costs during the
15 Thanksgiving week when Plaintiffs' counsel's office was short staffed, subject to social
16 distancing rules and closed during part of that holiday. Consequently, Plaintiffs were unable to
17 respond in a timely manner. Nonetheless, it was never Plaintiffs' intention to forego their
18 opportunity to respond. In fact, Defendants cannot in good faith state that they were not expecting
19 Plaintiffs to respond. But instead of addressing the issue head-on, Defendants are attempting to
20 use this timing issue to prevent Plaintiffs from responding.
21

22 Notwithstanding this Court's AO 21-04 (issued June 4, 2021) admonishing attorneys that
23 this is "not the time to press for unwarranted tactical advantages, unreasonably deny continuances
24 or other accommodations, or otherwise take advantage of the challenges present during the
25 current pandemic" Defendants continue to oppose Plaintiffs' reasonable request for an extension.
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' Reply to Defendant Valley Health System, LLC DBA Centennial Hills Hospital's Opposition to
Plaintiffs' Motion to Extend Time to Retax Costs and Opposition to Countermotion for Costs and Fees
Pursuant to EDCR 7.60**

II. MEMORANDUM OF POINTS AND AUTHORITIES

A. NEVADA COURTS ROUTINELY EXERCISE JUDICIAL DISCRETION TO ALLOW EXTENTIONS OF TIME WITH RESPECT COSTS UNDER NRS §18.110

The time limits proscribed in NRS §18.110(1) are not a jurisdictional requirement. *Eberle v. State ex. Rel. Nell J. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992). Thus, a district court does not abuse its *discretion* by accepting an untimely filed memorandum of costs by a prevailing party. *Id.* (emphasis added); See also *Valladares v. DMJ, Inc.*, 110 Nev. 1291, 885 P.2d 589 (1994) (considering a party's "due diligence" or lack thereof in deciding whether to accept an untimely memorandum of costs). The court's discretion to accept untimely filed memoranda of costs from the party in whose favor judgment was entered exists despite statutory language in NRS §18.110(1) which provides that the filing party "**must file** with the clerk, and serve a copy upon the adverse party, within 5 days after the entry of judgment, or such further time as the court or judge may grant ..." Nev. Rev. Stat. § 18.110(1) (emphasis added).

It is only just the same discretion would be applicable to a party filing a Motion to Retax. Especially given that the language of NRS §18.110(4) contains permissive language as opposed to the mandatory language contained in subsection (1). Therefore, this Court has the discretion to allow Plaintiffs additional time to respond to CHH's Motion for Costs.

B. SUBSECTION (4) IS A PERMISSIVE RULE; NOT A "SHALL" MANDATE TO FILE WITHIN THREE DAYS AFTER SERVICE

Although the word "**or**" in subsection (1) provides for "further time as the court or judge may grant," subsection (4) provides a discretionary mandate providing that:

Within 3 days after service of a copy of the memorandum, **the adverse party may** move the court, upon 2 days' notice, to retax and settle the costs,

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

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

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

notice of which motion shall be filed and served on the prevailing party claiming costs. Upon hearing of the motion the court shall settle the costs

NRS §18.110(4) (emphasis added).

The emphasis above is on the word “may” which suggests permissive discretion as opposed to a mandatory directive implicit in the word “shall.” See *Village League to Save Incline Assets, Inc. v. State ex rel. Bd. of Equalization*, 124 Nev. 1079, 194 P.3d 1254 (2008) (observing that when used in a statute “[u]se of the word ‘shall’ usually, but not always, makes the action mandatory” and interpreting the word “may” as “permissive”); *S.N.E.A. v. Daines*, 108 Nev. 15, 19, 824 P.2d 276, 278 (1992) (“**I]n statutes, ‘may’ is permissive and ‘shall’ is mandatory** unless the statute demands a different construction to carry out the clear intent of the legislature”) (emphasis added); see also *Tarango v. State Indus. Ins. Sys.*, 117 Nev. 444, 25 P.3d 175 (2001) (“[W]hen the language of a statute is plain, its intention must be deduced from such language, and the court has no right to go beyond it”). The following interpretations are consistent with the language of subsection (4): First, the adverse party may choose not to file a motion to retax at all (i.e. either accept the costs as presented or file another motion to reduce judgment). Second, the adverse party may choose to ask for an extension or time by stipulation, or if denied, file a motion for extension of time. Here, Plaintiffs’ have done the latter.

The presence of the word “may” in subsection (4) of NRS 18.110 substantially refutes CHH’s contention that there is no “judicial discretion” in subsection (4). As a permissive mandate, the exercise of judicial discretion is appropriate and Plaintiffs should be allowed an extension to file its motion to retax and settle beyond the permissive time frame established in NRS § 18.110(4).

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

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

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

There is no language in subsection (4) or, as CHH also points out, any case law interpreting NRS §18.110(4) in a manner that clearly states that subsection (4) “3 day after service” is as a *de facto* “statute of limitations” type deadline such that any filing beyond the 3 days would be an absolute jurisdictional bar, providing no leeway for motions for an extension of time, or to file a motion to retax and settle costs filed after the three days. The interpretation of subsection (4) adopted by CHH in its Opposition is consistent with a statute that provides: Within 3 days after service of a copy of the memorandum, **the adverse party SHALL** move the court, upon 2 days’ notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. This is not what subsection (4) NRS 18.110(4) says, it says “may.” For the reasons set forth in Plaintiffs’ Motion, the Court should exercise its discretion and allow Plaintiffs (the adverse party here) have its motion for extension of time heard and file a Motion to Retax and Resettle, particularly when the time frame in subsection (4) is couched in “permissive” language and not “mandatory” terms.

There is no language in subsection (4) which states an adverse party waives the ability to request an extension of time to file a motion to retax or to otherwise move the court to retax costs if such motion is not made within the permitted “3 days after service” requirement.¹ Again, NRS

¹ A survey of Nevada case law referencing Nev. Rev. Stat. § 18.110, including a review of the annotations to the statute reveals no case law directly on-point or which stands for the proposition that a motion to retax and settle costs filed by an adverse party more than “3 days of service” should be rejected as jurisdictionally time barred, waived, or required to be disregarded by the Court. See generally, *Franchise Tax Board of State of California v. Hyatt*, 407 P.3d 717, 133 Nev. 826, *cert. granted*, 138 S.Ct. 2710, 201 L.Ed.2d 1095 (2017), *reversed and remanded, on other grounds*, 139 S.Ct. 1485, 203 L.Ed.2d 768 (2019), *on remand*, 445 P.3d 1250 (2019) (allowing supplement to request for costs to provide additional documentation, despite five-day time limit for filing memorandum of costs, where time limit was not jurisdictional, and state statute specifically allowed for further time as allowed); *Hodgman v. Las Vegas Motorcoach Partners, LLC*, 129 Nev. 1122, 2013 WL 1120835, at *2 (observing that “when the district court proceedings to award costs after the five-day window has elapsed, it has impliedly granted additional time”); *Valladares v. DMJ, Inc.*, 110 Nev. 1291, 885 P.2d 580 (1994) (applying “due diligence” standard in determining

§18.110(4) provides that an adverse party “the adverse party *may* move the court, upon 2 days’ notice, to retax and settle the costs..” NRS 18.110(4).

C. PLAINTIFFS’ REQUEST FOR EXTENSION OF PERMISSIVE TIME PERIOD SHOULD BE GRANTED

The issue is not the absence or complete failure on part of the Plaintiffs (the adverse party) to file a motion to retax and settle costs. *cf. Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 117 P.3d 219 (2005) (holding that an adverse party who did not file any motion to retax and settle costs waived appellate review of the issue of costs). The issue is whether, under the factual circumstances in which the memorandum of costs were served, may the Court consider (1) a motion for extension of permissive time frame set forth in subsection (4); and/or (2) a motion to retax and settle costs filed more than the time period suggested in NRS 18.110(4), with a showing of excusable neglect .

A favorable exercise of discretion by this Court allowing Plaintiffs an extension of time and/or to present their motion to retax and settle costs prevents a scenario where the Court renders a decision on fees and costs, essentially by default, and without any input from the Plaintiffs. To this end, the Nevada Supreme Court acknowledged that “[i]n order to retax and settle costs upon motion of the parties pursuant to NRS 18.110, a district court must have before it evidence that the costs were reasonable, necessary, and actually incurred.” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015); *Gibellini v. Klindt*, 110 Nev. 1201, 1206,

whether to consider an untimely filed memorandum of costs more than five days after entry of judgment); *Eberle v. State ex rel. Nell J. Redfield Trust*, 836 P.2d 67, 108 Nev. 587 (1992) (holding that statutory time limit for filing memorandum of costs by prevailing party is not a jurisdictional requirement); *compare Randon v. Turk*, 86 Nev. 123, 466 P.2d 218 (1970) (when interpreting that “[t]he Motion to Retax must be filed ‘(w)ithin 3 days after service of copy of the memorandum...’ in an equity action where awarding costs was discretionary is not the same).

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

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

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

885 P.2d 540, 543 (1994) (reversing award of costs and remanding for determination of actual reasonable costs incurred). “Without evidence to determine whether a cost was reasonable and necessary, a district court may not award costs.” *Id.* (citing *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1353, 971 P.2d 386, 385 (1998)).

D. RULE (6)(B)(2) “EXCUSABLE NEGLIGENCE” APPLIES BECAUSE SUBSECTION (4) IS NOT A MANDATORY DEADLINE; BUT A PERMISSIVE ONE

CHH contends that the “excusable neglect” standard does not apply because subsection (4) of NRS 18.110 provides for an express “statutory time limit” as a “statutory deadline.” CHH Opp., at p. 12, lines 4-10. However, as stated above, the time frame stated in subsection (4) is a permissive one by virtue of the appearance of the word “may” (as opposed to “shall”). For this reason, the case law cited in CHH’s Opposition does not diminish Plaintiffs’ argument. Plaintiffs agree that “NRS 18.110 must be ‘strictly construed’ and a district court ‘shall exercise restraint in awarding costs ...’” CHH Opposition, at p. 12, lines 18-21. A strict construction of NRS 18.110(4) with appropriate regard to the word “may” is consistent with Plaintiffs’ position requesting extension of time under a permissive statute.

E. CHH’S COUNTER-MOTION FOR FEES AND COSTS SHOULD BE DENIED BECAUSE PLAINTIFFS BRING A GOOD FAITH ARGUMENT FOR AN EXTENSION OF TIME UNDER A PERMISSIVE STATUTE

Based on the foregoing, Plaintiffs’ motion for an extension to have additional time beyond the permissive period set forth in subsection (4) of NRS 18.110 is not frivolous and grounded in good faith presentation of case law and statutory interpretation. As CHH concedes in its Opposition, there are no existing cases interpreting the NRS 18.110(4) and determining whether

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1 or not the time frame therein is a permissive or mandatory requirement. Therefore, Plaintiffs'
2 Motion for Extension of time to file its motion to retax and settle costs is not sanctionable conduct.

3 CHH's counter-motion for fees should be denied.

4 **III. CONCLUSION**

5 Plaintiffs respectfully request that this Court allow Plaintiff an extension of time to file its
6 motion to retax and settle costs and deny CHH's counter-motion for sanctions.
7

8 Dated this 27th day of December 2021.

9
10 PAUL PADDA LAW, PLLC

11 /s/ Srilata R. Shah

12 Paul S. Padda, Esq.

13 Nevada Bar No. 10417

14 Srilata R. Shah, Esq.

15 Nevada Bar No. 6820

16 4560 South Decatur Boulevard, Suite 300

17 Las Vegas, Nevada 89103

18 *Attorneys for Plaintiffs*

19
20
21
22
23 Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.

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

25 **Plaintiffs' Reply to Defendant Valley Health System, LLC DBA Centennial Hills Hospital's Opposition to**
26 **Plaintiffs' Motion to Extend Time to Retax Costs and Opposition to Counter-motion for Costs and Fees**
27 **Pursuant to EDCR 7.60**
28

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 27th day of December 2021, I served a true and correct copy of the above and foregoing document **PLAINTIFFS' REPLY TO DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS HOSPITAL'S OPPOSITION TO PLAINTIFFS' MOTION TO EXTEND TIME TO RETAX COSTS AND OPPOSITION TO COUNTERMOTION FOR COSTS AND FEES PURSUANT TO EDCR 7.60** on all parties/counsel of record in the above entitled matter through efileNV service.

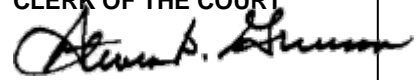
/s/ Karen Cormier
An Employee of Paul Padda Law, PLLC

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

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

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

EXHIBIT D



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7 LLC dba Centennial Hills Hospital Medical
Center*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

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

15 Plaintiffs,

16 vs.

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

23 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that the Order Regarding Plaintiffs' Motion to Extend Time to
25 Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and
26 Dr. Fishal S. Shah's Memorandum of Costs was entered on January 24, 2022, a true and correct
27 copy of which is attached hereto.
28

DATED this 25th day of January, 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 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 25th day of January, 2022, a true and correct copy of **NOTICE OF**
3 **ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the
4 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have
5 agreed to receive electronic service in this action.

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