

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  
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Supreme Court No.:

District Court No. 7-19-28878-C

Electronically Filed  
Feb 27 2023 01:55 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

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15                                   **RESPONDENTS' APPENDIX VOLUME VII**

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## INDEX TO APPENDIX VOLUME VII

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E	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	2/2/2022	760-769
F	Plaintiff's Opposition to Defendant Valley Health System LLC's Motion for Reconsideration of The Court's Denial of Its Application for Fees and Costs	3/9/2022	770-803
G	Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center's Reply In Further Support of Motion for Attorneys' Fees Pursuant to N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), and EDCR 7.60	3/23/2022	804-844
H	Order to Show Cause	4/29/2022	845-847

this 24<sup>th</sup> day of February, 2023

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth

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Attorneys for Respondent Valley Health System,  
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1 **CERTIFICATE OF SERVICE**

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

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14 By /s/ Heidi Brown  
15 An Employee of  
16 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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Judgment Per Writ of Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys Fee and a Verified Memorandum of Costs. Defendants Conrado Concio, MD and Vishal Shah, MD filed a Verified Memorandum of Costs and Disbursements on 11/23/21, and a Motion for Attorney's Fees and Costs on 12/10/21.

On 12/3/21, Plaintiffs filed the present Motion to Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received an Order Shortening Time on 12/10/21. The Court notes that as of the date that the Court is preparing this Order, Plaintiffs have still not filed a Motion to Retax.

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

Pursuant to NRCP 6(b)(1)(B)(ii) and EDCR 2.35(a), Plaintiffs request additional time to respond to the Defendants' Memorandums of Costs. Plaintiffs' counsel states that it received Defendants' Memorandums on 11/22/21 and 11/23/21, but the office was closed and consequently Plaintiffs were unable to timely respond. Further, Plaintiffs' counsel states they contacted Defendants' counsel to request an extension, but Defendants' counsel declined. Given the Thanksgiving holiday, Plaintiffs argue that good cause exists to extend the deadline for their responsive briefing. Finally, Plaintiffs contend that they meet the four requirements for a determination of excusable neglect, as set forth in the case of *Moseley v. Eighth Judicial District Court*, 124 Nev. 654, 668 n.66 (2008), and that Defendants will not suffer significant prejudice as an extended deadline will be slight and no additional costs will accrue.

Defendant Valley Health System, LLC, filed an Opposition and Countermotion on 12/20/21. Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center (CHH) argues that Plaintiffs' requested relief falsely relies on NRCP 6(b)(1)(B)(ii), to request additional time to respond to the Memorandums of Costs. Summary judgment in favor of Defendants entitles Defendants to an award of attorneys' fees pursuant to NRCP 68. However, Plaintiff's Motion to Extend Time to Retax is predicated on a memorandums of costs, which are subject to NRS 17.117, NRS 18.005, NRS 18.020, and NRS 18.110, not the NRCP.

Further, CHH timely served its Memorandum of Costs on 11/22/21, within five days of the Notice of Entry of Order on 11/19/21, as required by NRS 18.110(1).

1 Cotemporaneous with the filing of CHH's memorandum of costs, CHH separately  
2 moved for attorneys' fees pursuant to N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2),  
3 and EDCR 7.60, on 11/22/21. Pursuant to EDCR 2.20(e), Plaintiffs had until 12/6/21 to  
4 oppose CHH's Motion for Fees. Plaintiffs did nothing to retax costs within the 3 days  
5 provided by NRS 18.110(4). Rather, Plaintiffs failed to act until 12/3/21 at which time,  
6 they requested an extension of time to oppose CHH's separate motion for attorneys'  
7 fees pursuant to N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), and EDCR 7.60. CHH  
8 provided the Court with an email chain as an exhibit, which evidences CHH's  
9 agreement to extend a professional courtesy to oppose the one opposable document-  
10 the Motion for Attorney's Fees. CHH excluded any implication that Plaintiffs could  
11 attempt to retax costs, a wholly separate statutory device. CHH states this is another  
example of Plaintiffs counsel's failure to follow the law and statutory deadlines.

12 NRS 18.110(1) requires that a party in whose favor judgment is rendered, and  
13 who claims costs, must file with the clerk, and serve a copy upon the adverse party,  
14 within 5 days after the entry of judgment, a verified memorandum of costs. See NRS  
15 18.110(1). Once notice of entry was served, Plaintiffs were on notice that the  
16 memorandum of costs was coming, since they knowingly rejected CHH's Rule 68 Offer  
17 of Judgment for a waiver of costs. While Plaintiffs normally would have had only until  
18 11/25/21 to retax costs, the Thanksgiving holiday extended their deadline. Even  
19 assuming the deadline was extended until 11/29/21 (Monday); Plaintiffs offer no excuse  
for why they failed to act until 12/3/21 (Friday).

20 Moreover, CHH argues that NRS 18.110's lack of provision for judicial extension  
21 under subsection (4) clearly indicates that there is no judicial discretion when a party  
22 fails to timely retax costs. As expressed in *Moseley v. Eighth Judicial Dist. Court of*  
23 *Nev.*, 124 Nev. 654, 662, 188 P.3d 1136, 1142 (2008), cited by Plaintiffs in support of  
24 their motion, "NRCP 6(b)(2) applies to most acts required by the rules of civil  
25 procedure unless they are specifically excluded." The retaxing of costs is an act required  
26 by NRS 18.110(4), not the NRCP. As such, NRCP 6 does not apply and it is unavailing to  
27 Plaintiffs. NRS 18.110 must be strictly construed, and in so doing, the absence of any  
28 discretion as it pertains to NRS 18.110(4) versus the specific discretion granted  
pursuant to NRS 18.110(1) requires that Plaintiffs' motion be summarily denied. There  
is no statutory allowance for any judicial discretion with respect to retaxing costs.

1 Pursuant to *Moseley*, Plaintiffs were required to demonstrate (1) good faith, (2)  
2 they exercised due diligence, (3) had a reasonable basis for not complying within the  
3 time allotted, and (4) the absence of prejudice to CHH. They failed in all four respects,  
4 especially the key factor that *Moseley* stated the courts must look to before finding  
5 excusable neglect, namely the reasonable basis for noncompliance. Similarly, EDCR  
6 2.35 is unavailing, as it relates to discovery issues.

7 Finally, CHH argues that it is entitled to attorneys' fees and costs under EDCR  
8 7.60(b)(1) and NRS 18.010(b) because Plaintiffs' Motion is frivolous and brought  
9 without any statutory or case law authority.

10 Defendants Concio and Shah filed an Opposition on 12/21/21. They oppose  
11 Plaintiffs' Motion on essentially the same grounds as CHH. These Defendants note that  
12 at the time of filing their Opposition, Plaintiffs still did not file a Motion to Retax.

13 Plaintiffs filed a Reply to the Valley Health Opposition, on 12/27/21. Plaintiffs  
14 argue that the Court does have discretion to allow Plaintiffs additional time to respond  
15 to Defendants' Memoranda of Costs. Plaintiffs argue that Defendants seek to take  
16 advantage of a deadline to prevent Plaintiffs from responding, despite AO-21-04  
17 (issued 6/4/21), which admonishes attorneys not to "press for unwarranted tactical  
18 deadlines..."

19 Plaintiffs argue that because the time limits in NRS 18.110(1) permit the Court to  
20 accept untimely memorandum of costs by a prevailing party, it would only be just that  
21 the same discretion apply to NRS 18.119(4). *Eberle v. State ex. Rel. Nell J. Redfield*  
22 *Trust*, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992); *Valladares v. DMJ, Inc.*, 110 Nev.  
23 1291, 885 P.2d 589 (1994) (considering a party's "due diligence" or lack thereof in  
24 deciding whether to accept an untimely memorandum of costs). Further, Plaintiffs  
25 argue that the language in NRS 18.110(4) is permissive not mandatory. Subsection (4)  
26 provides:

27 Within 3 days after service of a copy of the memorandum, the adverse party  
28 **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 hearing of the motion the court shall settle the costs

See NRS 18.110(4) (emphasis added).

Plaintiffs contend that the presence of the word "may" in subsection (4) of NRS  
18.110 substantially refutes Defendants' contention that there is no "judicial discretion"

1 in subsection (4). As a permissive mandate, the exercise of judicial discretion is  
2 appropriate and Plaintiffs should be allowed an extension to file their motion to retax  
3 and settle beyond the permissive period established in NRS § 18.110(4). There is no  
4 language in subsection (4) or any case law interpreting NRS §18.110(4), which  
5 indicates that subsection (4)'s "3 day after service" is as a de facto "statute of  
6 limitations" deadline, such that any filing beyond the 3 days would be an absolute  
7 jurisdictional bar. Such an interpretation leaves no leeway for motions for an extension  
8 of time, or to file a motion to retax and settle costs filed after the three days. Instead,  
9 NRS 18.110(4) uses "may."

10 The issue before the Court is not the absence or failure of Plaintiffs to file a  
11 motion to retax and settle costs. Instead, the issue is whether under the factual  
12 circumstances in which the memorandum of costs were served, may the Court consider  
13 (1) a motion for extension of permissive time frame set forth in subsection (4); and/or  
14 (2) a motion to retax and settle costs filed more than the time period suggested in NRS  
15 18.110(4), with a showing of excusable neglect.

16 Plaintiffs filed a Reply to the Opposition filed by Concio and Shah, on 12/27/21  
17 This Reply contains the same arguments as Plaintiffs' Reply to CHH. However, in this  
18 Reply, Plaintiffs argue that they are under no obligation to file a Motion to Retax or  
19 objection to the Defendants' Memorandums pending the Court's ruling on this Motion.

## 20 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

21 NRS 18.110 provides the following:

### 22 **NRS 18.110 Verified memorandum of costs: Filing and 23 service; witness' and clerk's fee; retaxing and settling costs.**

24 1. The party in whose favor judgment is rendered, and who claims  
25 costs, **must file** with the clerk, **and serve** a copy upon the adverse party,  
26 **within 5 days after the entry of judgment, or such further time**  
27 **as the court or judge may grant,** a memorandum of the items of the  
28 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.

2. The party in whose favor judgment is rendered shall be entitled to  
recover the witness fees, although at the time the party may not actually  
have paid them. Issuance or service of subpoena shall not be necessary to  
entitle a prevailing party to tax, as costs, witness fees and mileage,  
provided that such witnesses be sworn and testify in the cause.

1           3. It shall not be necessary to embody in the memorandum the fees  
2 of the clerk, but the clerk shall add the same according to the fees of the  
3 clerk fixed by statute.

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

9 NRS 18.110 (emphasis added).

10           The Court acknowledges that the plain language of NRS 18.110 does provide that  
11 if a party claims costs, the party “must file . . . and serve” a Memorandum of Costs,  
12 “within 5 days after the entry of judgment.” The statute does specifically give the Court  
13 discretion to extend the time, as the statute indicates, “or such further time as the court  
14 or judge may grant. . . .” With regard to a Motion to Retax Costs, NRS 18.110 indicates  
15 that “within 3 days after service of a copy of the memorandum, the adverse party ‘may’”  
16 move the Court to retax such costs. Although Plaintiffs argue that the permissive “may”  
17 language, means that the 3-day time period is somehow discretionary with the Court,  
18 this Court finds and concludes that the permissive “may” language in NRS 18.110(4),  
19 simply applies to the party’s ability to file a Motion to Retax “if they find such a motion  
20 necessary.” On the other hand, however, the Court acknowledges the argument that if  
21 the Legislature intended to allow the Court discretion to extend the time for filing the  
22 Memorandum of Costs, why would the Legislature not have intended to provide the  
23 same discretion to the Court as it relates to a Motion to Retax costs.

24           In *Valladares v. DMJ, Inc.*, 110 Nev. 1291, 885 P.2d 580 (1994), the Nevada  
25 Supreme Court held that the Court had discretion to extend the time for filing the  
26 memorandum of costs under NRS 18.110(1). The Court upheld the District Court’s  
27 decision not to allow a late amendment, due to a lack of diligence, when Valladares  
28 received a bill from his expert on 4/8/93, but did not file an amended memo of costs  
until 4/21/93, and did not file a motion to amend until 5/7/93. *Id.*, at 1294. Similarly,  
in *Eberle v. State ex rel. Nell J. Redfield Trust*, 108 Nev. 587, 836 P.2d 67 (1992), the  
Court held that the statutory period set forth in NRS 18.110(1) was not a jurisdictional  
requirement, and that the Court has discretion to reach the merits of the motion. Also,  
in *Gonzalez v. LVMPD*, 129 Nev. 1118 (Unpublished 2013), the Nevada Supreme Court  
confirmed that NRS 18.110 is not jurisdictional, and the Court specifically indicated



1 that “The plain language of NRS 18.110(1) grants the district court discretion to  
2 consider a memorandum of costs filed outside the statutory time frame.” *Id.*, at \*2.

3 Although the Court has specifically indicated that the District Courts have  
4 discretion as it relates to NRS 18.110(1), there are no Nevada cases specifically  
5 indicating that the Court has such discretion when dealing with NRS 18.110(4). In  
6 *Randono v. Turk*, 86 Nev. 123, 466 P.2d 218 (1970), the Supreme Court indicated that  
7 the trial court did not err when it denied a Motion to Retax, when it was not timely  
8 filed. The Court simply cited to the language of the statute, which reads, “The Motion  
9 to Retax must be filed ‘within 3 days after service of a copy of the memorandum . . .’”  
10 *Id.*, at 132, citing NRS 18.110(4).

11 The Nevada Court of Appeals issued an unpublished opinion in 2017, citing to  
12 *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 117 P.3d 219 (2005), and  
13 stating that “In order to preserve an issue regarding costs, a party must file a motion to  
14 retax and settle the costs within three days of service of the memorandum of costs.”  
15 *Rosaschi v. Carter*, 133 Nev. 1068 (Unpublished 2017), referencing NRS 18.110(4).

16 Similarly, in *Terry v. Cruea*, 133 Nev. 1082 (Unpublished, 2017), the Nevada  
17 Supreme Court indicated, “by failing to file a motion to retax costs, Cruea waived any  
18 appellate review of that issue.” *Id.*, citing *Sheehan* at 493. The Court recognized that  
19 Cruea had filed an opposition to the untimely motion for attorney fees, which included  
20 a copy of the previously filed memorandum of costs, but it “fail[ed] to satisfy NRS  
21 18.110(4)’s requirement that a motion to retax costs be filed within 3 days of service of  
22 the memorandum.” *Id.*, at fn 2.

23 This Court finds and concludes that NRS 18.110 is not jurisdictional. Although  
24 neither the case law nor the statute itself indicates that the Court has discretion to allow  
25 a late filed Motion to Retax under NRS 18.110(4), this Court finds that if it has  
26 discretion to allow a late filed Memorandum of Costs, equity would require that the  
27 Court also have discretion to allow a late filed Motion to Retax Costs. Additionally,  
28 NRCP 6(b) provides authority for the Court to extend time if it finds excusable neglect.  
See NRCP 6(b)(1)(ii) (the exceptions contained in sub (2) do not preclude application of  
that rule to the instant case).

Both sides have cited to *Moseley v. Eighth Judicial Dist. Court, ex rel. County of Clark*, 124 Nev. 654, 188 P.3d 1136 (2008), for the factors which the Court is to

1 consider in determining whether excusable neglect has been established. In that case,  
2 the Supreme Court indicated the following:

3 a party seeking relief from NRCP 25(a)(1) under NRCP 6(b)(2) is required  
4 to demonstrate that (1) it acted in good faith, (2) it exercised due  
5 diligence, (3) there is a reasonable basis for not complying within the  
6 specified time, and (4) the nonmoving party will not suffer prejudice.

7 *Id.*, at 668.

8 In considering the Moseley factors, this Court finds that there is no evidence that  
9 the Plaintiff failed to act in good faith, and the Court finds that the non-moving party  
10 would probably suffer no prejudice, but the Court finds that Plaintiff failed to exercise  
11 due diligence, and there is really no reasonable basis for not complying within the  
12 specified time. Because of the Thanksgiving holiday, it is understandable that a Motion  
13 to Retax was not filed on the 25<sup>th</sup> or 26<sup>th</sup> (holidays), or the 27<sup>th</sup> or 28<sup>th</sup> (weekend), but  
14 there seems to be no good cause for not filing the Motion to Retax on Monday,  
15 November 29, or thereafter. The Memoranda of Costs were filed on November 22, and  
16 23, 2021. If we did not count Court Holidays or weekend days, the Motions to Retax  
17 would have been due on November 30, and December 1, 2021, respectively. Plaintiffs'  
18 counsel apparently did not even seek an extension from opposing counsel until  
19 December 3, 2021. This Court finds and concludes that the lack of diligence on the part  
20 of Plaintiffs, prevents this Court from granting the Plaintiffs' Motion to Extend time.  
21 The Court further notes that the Plaintiff still has not filed a Motion to Retax.

22 Defendants have sought fees, pursuant to EDCR 7.60(b)(1), based on the  
23 argument that Plaintiffs have filed a frivolous, unnecessary, or unwarranted Motion.  
24 The Court cannot so find, and consequently, no fees are appropriate.

## 25 **CONCLUSION/ORDER**

26 Based upon the foregoing, and good cause appearing,


27 **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Extend Time to Respond  
28 to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and  
Dr. Fishal S. Shah's Memoranda of Costs, is hereby **DENIED**.

**IT IS FURTHER ORDERED** that Defendant, Valley Health's Countermotion  
for Costs and Fees Pursuant to EDCR 7.60 is also **DENIED**.

The Court requests that counsel for Defendant, Valley Health/CHH, prepare and  
process the Notice of Entry relating to this Order.

Because this matter has been decided on the pleadings, the hearing scheduled for 1/26/22 will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear.

**Dated this 24th day of January, 2022**



**778 D93 C440 21D3**  
**Jerry A. Wiese**  
**District Court Judge**

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

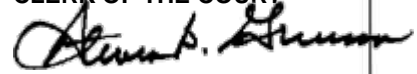
15 Service Date: 1/24/2022

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# EXHIBIT F



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

15 ESTATE OF REBECCA POWELL, through  
16 Brian Powell as Special Administrator; DARCI  
17 CREECY, individually; TARYN CREECY,  
18 individually; ISAIAH KHOSROF,  
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20 Plaintiffs,

21 vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT. 30

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

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

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

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

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

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

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



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

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

## 10 MEMORANDUM OF POINTS AND AUTHORITIES

### 11 I.

#### 12 BACKGROUND AND PROCEDURAL HISTORY

13 The Nevada Supreme Court issued an Order on October 18, 2021 granting VHS's  
14 petition for a writ of mandamus challenging this Court's denial of a motion for summary  
15 judgment. Exhibit 1. The Supreme Court's Order did not award any fees or costs. Instead, the  
16 Order simply instructed "the district court to vacate its order denying petitioner's motion for  
17 summary judgment and enter summary judgment in favor of petitioners." Id.  
18  
19

20  
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22  
23 <sup>3</sup> A party may not simply estimate costs. Without evidence to determine whether a cost was  
24 reasonable and necessary, a district court may not award costs. Cadle Company v. Woods &  
25 Erickson, LLP, 131 Nev. 114, 121 (2015) (*citing* Bobby Berosini, Ltd. v. PETA, 114 Nev.  
1348, 1353 (1998)).

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

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

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

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

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

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

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

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

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

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

13 On February 15, 2022 (with Notice of Entry filed the next day), the Court issued an Order  
14 denying VHS's motion for attorney's fees of \$110,930.85 (roughly twice the fees incurred by  
15 co-Defendants) by finding, among other things, that "Plaintiffs' decision to reject the offer and  
16 proceed to trial was not grossly unreasonable or in bad faith." Exhibit 2. In rejecting VHS's  
17 motion for attorney's fees, the Court also found that VHS's counsel failed to provide the Court  
18 with proper documentation that would have allowed the Court to decide the reasonableness of  
19 fees sought. *Id.* To this point, the Court further noted "[a]lthough the Defendant [VHS] has  
20 offered to submit a billing ledger to the Court in camera, it would have been necessary for the  
21 Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so that the  
22 reasonableness could have been addressed by all parties, and by the Court." *Id.* As for VHS'  
23 request for \$42,492.03 in purported costs, the Court, citing several Nevada Supreme Court  
24 *Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.*  
25 District Court Case No. A-19-788787-C, Dept. 30  
26 Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Reconsideration  
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28

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

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

## 6 II.

### 7 ARGUMENT

#### 8 **A. THE STANDARD OF REVIEW APPLICABLE TO A MOTION FOR RECONSIDERATION**

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

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

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

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

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

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

1 Court properly noted in its February 15, 2022 Order, VHS's sole reliance on a Disbursement  
2 Diary is exactly the type of evidence the Nevada Supreme Court has rejected to support a cost  
3 award. Bobby Berosini, Ltd. v. PETA, 114 Nev. At 1353. And to that end, it is just as notable  
4 that VHS submits a declaration from its counsel, Adam Garth, Esq., which is conspicuously  
5 silent in explaining why the nearly 600 pages of documents now being provided to the Court  
6 (including purported expert invoices) were previously withheld from the Court. It is  
7 indisputable that most of the evidence relied on by VHS for seeking to have this Court reconsider  
8 its decision on costs was never included with its Memorandum of Costs. Accordingly, VHS's  
9 claim that evidence attached to its motion for reconsideration "was originally submitted to this  
10 Court" in support of VHS's Memorandum of Costs is demonstrably false. *See* VHS' Motion  
11 for Reconsideration, p. 12 (line 13). The only thing that was attached to the Memorandum of  
12 Costs filed with the Court on November 22, 2021 by VHS was a Disbursement Diary and a  
13 collection of irrelevant emails. None of this constitutes the type of reliable evidence a district  
14 court may rely upon in awarding costs.  
15  
16

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

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

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

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

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

Here, the Court denied VHS's request for attorneys fees based upon its finding that (1) Plaintiffs did not act in bad faith or in a grossly unreasonable manner when they rejected VHS zero dollar Offer of Judgment and (2) the documentation in support of the request for attorney's fees was lacking. While the first finding by itself ends the inquiry into whether fees can be awarded, in this case the Court also found that "[a]lthough the Defendant [VHS] has offered to submit a billing ledger to the Court in camera, it would have been necessary for the Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so that the reasonableness could have been addressed by all parties, and by the Court." See Exhibit 2, p. 11. Given that this

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

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

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

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

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

5  
6 **III.**

7 **CONCLUSION**

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

11  
12 PAUL PADDA LAW, PLLC

13 /s/ Paul S. Padda

14 /s/ Srilata R. Shah

15 Paul S. Padda, Esq.

16 Nevada Bar No. 10417

17 Srilata R. Shah, Esq.

18 Nevada Bar No. 6820

19 4560 South Decatur Boulevard, Suite 300

20 Las Vegas, Nevada 89103

21 *Attorneys for Plaintiffs*

22 Dated: March 9, 2022

**CERTIFICATE OF SERVICE**

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

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

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# EXHIBIT 1

# EXHIBIT 1

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.<sup>1</sup> Thus, petitioners contend that the

---

<sup>1</sup>Petitioner 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).<sup>2</sup> 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.

<sup>2</sup>Petitioners 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 Szyborski 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).<sup>3</sup> 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.<sup>4</sup> Thus, the real parties in interest

---

<sup>3</sup>The 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.

<sup>4</sup>The 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

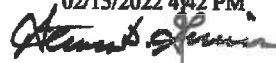
  
\_\_\_\_\_, J.  
Herndon

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).



# EXHIBIT 2

# EXHIBIT 2

  
CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

-oOo-

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

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

Plaintiffs,

vs.

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

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

Defendants.

**INTRODUCTION**

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

**FACTUAL AND PROCEDURAL HISTORY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

22 *Id.*, at 650-651.

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

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

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

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

14 NRCP 68 provides in pertinent part as follows:

15 **Rule 68. Offers of Judgment**

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

22 . . . .

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

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

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

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

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

(f) Penalties for Rejection of Offer.

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

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

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

....

#### NRCP 68.

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

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

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

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

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

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

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

11 **CONCLUSION/ORDER**

12 Based upon the foregoing, and good cause appearing,

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

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

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

20 Dated this 15th day of February, 2022

21 

22  
23 **99B B52 25DC 68DD**  
24 **Jerry A. Wiese**  
25 **District Court Judge**  
26  
27  
28

1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

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

**CASE NO: A-19-788787-C**

8 **vs.**

**DEPT. NO. Department 30**

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

11  
12 **AUTOMATED CERTIFICATE OF SERVICE**

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

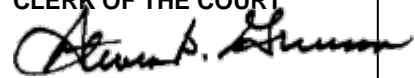
15 **Service Date: 2/15/2022**

16 <b>Paul Padda</b>	<b>psp@paulpaddalaw.com</b>
17 <b>S. Vogel</b>	<b>brent.vogel@lewisbrisbois.com</b>
18 <b>Jody Foote</b>	<b>jfoote@jhcottonlaw.com</b>
19 <b>Jessica Pincombe</b>	<b>jpinnacle@jhcottonlaw.com</b>
20 <b>John Cotton</b>	<b>jhcotton@jhcottonlaw.com</b>
21 <b>Brad Shipley</b>	<b>bshipley@jhcottonlaw.com</b>
22 <b>Tony Abbatangelo</b>	<b>Tony@thevegaslawyers.com</b>
23 <b>Adam Garth</b>	<b>Adam.Garth@lewisbrisbois.com</b>
24 <b>Paul Padda</b>	<b>civil@paulpaddalaw.com</b>
25 <b>Diana Escobedo</b>	<b>diana@paulpaddalaw.com</b>

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# EXHIBIT G





1 **RIS**  
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9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

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

17 Plaintiffs,

18 vs.

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

28 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

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

**Hearing Date: March 30, 2022  
Hearing Time: 9:00 a.m.**

23 Defendant VALLEY HEALTH SYSTEM, LLC ("CHH") by and through its counsel of  
24 record, S. Brent Vogel and Adam Garth of the Law Firm LEWIS BRISBOIS BISGAARD & SMITH  
25 LLP, hereby files its Reply in Further Support of Its Motion for Reconsideration of Its Motion for  
26 Attorneys' 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 Motion in Chief, the Memorandum of Points and Authorities  
28 below, the pleadings and papers on file herein, any oral argument which may be entertained by the

1 Court at the hearing of this matter.

2 DATED this 23<sup>rd</sup> day of March, 2022

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LEWIS BRISBOIS BISGAARD & SMITH LLP

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By /s/ Adam Garth

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff's entire opposition is predicated on their assertion that CHH "has not presented any  
4 new or substantially different evidence than what it had the opportunity to present when it filed its  
5 original Verified Memorandum of Costs and separate Motion for Attorneys' Fees on November 22,  
6 2021. . ."<sup>1</sup> Not only is that statement patently false, but it fails to take into account that CHH's instant  
7 motion is predicated on this Court's clearly erroneous decision to: (1) refuse to sign a judgment for  
8 an undisputed amount of legally awardable costs to which CHH is entitled, and (2) to deny additional  
9 costs and attorneys' fees stemming from Plaintiff's commencement and maintenance of an action  
10 that the Supreme Court found was not only untimely, but that this Court's decision to deny summary  
11 judgment in light of the evidence was a manifest abuse of discretion.

12 "A district court may reconsider a previously decided issue if substantially different evidence  
13 is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors v.*  
14 *Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Thus, this Court is  
15 permitted to reconsider its decision on at least two bases: (1) substantially different evidence which  
16 is introduced, or (2) the underlying decision is clearly erroneous. CHH fulfilled both of these bases  
17 in their motion.

18 In derogation of EDCR 2.20, Plaintiffs failed to oppose CHH's motion on the "clearly  
19 erroneous" basis, which " . . . may be construed as an admission that the motion and/or joinder is  
20 meritorious and a consent to granting the same." On this basis alone, CHH's motion should be  
21 granted in its entirety.

22 Moreover, CHH presented evidence on its original motion in the form of a declaration and  
23 copies of the firm disbursement log. Both the declaration and the disbursement log documented the  
24 timekeepers, number of hours and rates expended by each and the expenses incurred for which  
25 reimbursement was sought. In response thereto, Plaintiffs interposed NOTHING, not one shred of  
26 evidence contradicting the expenses incurred or the time and fees expended by CHH and its counsel.

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiffs' Opposition, p. 2, lines 9-13

1 Further detailed documentation was offered to the Court on an *in camera* basis. Instead of  
2 conducting a hearing on the underlying motion, this Court summarily issued a written decision  
3 which ignored the request for *in camera* review of any evidence it required, with Plaintiffs’  
4 opportunity to review same as well, and denied any request for statutorily permitted costs and fees  
5 which was never opposed by Plaintiffs, and also denied the discretionary motion for attorneys’ fees  
6 and costs predicated on other legal and statutory bases. These denials were based upon this Court’s  
7 abuse of its discretion and refusal to accept the underlying findings of the Supreme Court pertaining  
8 to the evidence Plaintiffs knowingly possessed which demonstrated clear inquiry notice within one  
9 month of the decedent’s death. The ruling by the Supreme Court, and the findings which formed  
10 the basis of it, demonstrated Plaintiffs’ complete lack of good faith in not only bringing the  
11 underlying case when they did, but maintaining it after the overwhelming evidence required  
12 discontinuance of the action. This was especially true due to the Plaintiffs’ exclusive possession of  
13 the very evidence of inquiry notice which defeated their case. Therefore, for this Court to not grant  
14 CHH’s motion for costs and fees, and simultaneously refuse to sign a judgment for statutory costs  
15 which was uncontested by Plaintiffs, was clearly erroneous.

## 16 **II. LEGAL ARGUMENT**

### 17 **A. Plaintiffs Failed to Oppose or Address CHH’s Motion for Reconsideration** 18 **Predicated on the Clearly Erroneous Standard**

19 EDCR 2.20 states in pertinent part that a party’s failure oppose a written motion “. . . may  
20 be construed as an admission that the motion and/or joinder is meritorious and a consent to granting  
21 the same.” “A district court may reconsider a previously decided issue if substantially different  
22 evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry & Tile*  
23 *Contractors v. Jolley, Urga & Wirth Ass’n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). *Masonry*  
24 *Tile* articulates two bases for reconsideration: (1) substantially different evidence which is  
25 introduced, or (2) the underlying decision is clearly erroneous. CHH based its motion on both  
26 standards. In opposition, Plaintiffs never even addressed the clearly erroneous standard, thus  
27 admitting the meritoriousness of CHH’s position on that issue, and an effective consent to the  
28 granting of CHH’s instant motion on this basis alone. Therefore, CHH’s motion for reconsideration

1 based upon the Court's clearly erroneous decision standard should be granted in its entirety as  
2 unopposed.

3 **B. Plaintiffs' Failure to Either Address or Oppose CHH's Costs, Disbursements or**  
4 **Attorneys' Fees Effectively Acts as Consent to the Meritoriousness Thereof**

5 EDCR 2.21 requires that affidavits or declarations be submitted either in support or  
6 opposition to a motion along with factual and evidentiary matter to be considered. CHH submitted  
7 the declaration of Adam Garth, Esq. in conjunction with a disbursement log containing the  
8 statutorily sought costs and disbursements. Moreover, the declaration specifically outlined all of  
9 the time expended by all timekeepers in this matter, the billable hourly rates and the experience of  
10 the respective billing individuals. In opposition to that submission, Plaintiffs submitted nothing,  
11 instead choosing to reargue their position that Ms. Powell died at CHH and that somehow they  
12 should be compensated for that loss. As expressed in *Peccole v. Peccole Nev.*, 2017 Nev. Dist.  
13 LEXIS 1635, \*43, Case No A-16-739654-C, decided January 31, 2017, the Court noted that the  
14 Plaintiff failed to attach any affidavit as required by EDCR 2.21 to attack the reasonableness or  
15 the attorneys' fees and costs incurred, the necessity of the attorneys' fees and costs, or the accuracy  
16 of the attorneys' fees and costs incurred and that failure can be construed as an admission that the  
17 Motion was meritorious and should be granted.

18 In this case, like in *Peccole*, Plaintiffs failed to interpose any substantive opposition or any  
19 evidence to address the attorneys' fees and costs issues on the underlying motion, but still this Court  
20 refused to grant the motion or order a hearing to obtain further evidence. That decision was an abuse  
21 of discretion and erroneous in light of admissible evidence submitted by CHH. As if that evidence  
22 was insufficient, on this motion, CHH submitted 195 pages of bills and invoices substantiating the  
23 very time contained in Mr. Garth's declaration. As on the underlying motion, Plaintiffs do not  
24 dispute the reasonableness or the attorneys' fees and costs incurred, the necessity of  
25 the attorneys' fees and costs, or the accuracy of the attorneys' fees and costs incurred. Their failure  
26 to even address these issues is tantamount to an admission that they are undisputed and meritorious,  
27 requiring the granting of the instant motion.

1           C.     **The Court's Interpretation of Case and Statutory Authority Was Clearly**  
2                   **Erroneous in Light of the Evidence Submitted by CHH On the Underlying**  
3                   **Motion and the Absence of Any Opposition to the Memorandum of Costs and**  
4                   **Fees**

5           It is uncontroverted that Plaintiffs failed to timely move to retax costs. As previously noted  
6 in its Motion in Chief, this Court properly denied Plaintiffs' motion to extend time to move to retax  
7 costs, having abjectly failed to timely move for that relief, and in the absence of any statutory or  
8 legal authority offered by Plaintiffs for such relief.

9           In *Terry v. Cruea*, 133 Nev. 1082, 404 P.3d 396 (2017), the Nevada Supreme Court stated:

10                   Turning to Terry's arguments on appeal, she asserts that she was the  
11 prevailing party below and, because the memorandum of costs was  
12 timely and Cruea did not move to retax those costs, she is entitled to  
13 an award of all the costs sought in the memorandum. We agree;  
14 by failing to file a motion to retax costs, Cruea waived any appellate  
15 review of that issue, *Sheehan & Sheehan v. Nelson Malley & Co.*, 121  
16 Nev. 481, 493, 117 P.3d 219, 227 (2005) (concluding that a party  
17 waived any appellate review of the award of costs by not filing a  
18 timely motion to retax and settle the costs), and we therefore will not  
19 consider it. And, because Terry sought to recover more than \$2500  
20 and prevailed, "[c]osts must be allowed." NRS 18.020(3). Based on  
21 the foregoing, we reverse and remand this case to the district court for  
22 it to enter an order awarding Terry her costs as requested in her  
23 memorandum of costs.

24           Similarly, in *Williams v. Doutel*, 2017 Nev. App. Unpub. LEXIS 603, \*9, 133 Nev. 1094,  
25 the Court of Appeals held in an unpublished opinion<sup>2</sup>:

26                   appellant has waived any contest to the award of costs because  
27 he failed to file a motion to retax costs and, even if this court were  
28 inclined to liberally construe his opposition as a motion to retax, he  
included no substantive argument regarding the reasonableness of the  
costs and expert witness fees requested, and thus provided the district  
court no objection to respondents' request for fees in excess of the  
\$1,500 presumptive limit. *See Sheehan & Sheehan v. Nelson Malley*  
& *Co.*, 121 Nev. 481, 493, 117 P.3d 219, 227 (2005) (holding a party  
waived the right to contest costs on appeal by failing to move the  
district court to retax costs); *Old Aztec Mine, Inc.*, 97 Nev. at 52, 623  
P.2d at 983 ("A point not urged in the trial court, unless it goes to the  
jurisdiction of that court, is deemed to have been waived and will not  
be considered on appeal.").

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<sup>2</sup> Per N.R.A.P. 36(c)(2), on or after January 1, 2016, an unpublished decision may be cited for its  
persuasive value, if any. Supreme Court Rule 123 prohibiting citation to unpublished decisions was  
repealed on November 12, 2015.

1 As the Court stated in *Peccole, supra*, “Such a Motion [to retax costs] should have been filed  
2 on or before December 15, 2016 . . . Plaintiffs failed to file any Motion to Retax Costs, or any  
3 objection to the costs whatsoever. Plaintiffs have therefore waived any objection to the  
4 Memorandum of Costs, and the same is now final. *Peccole, supra*, 2017 Nev. Dist. LEXIS 1635,  
5 \*55.

6 Likewise, in the instant case, Plaintiffs failed to move to retax costs. This failure not only  
7 precludes appellate review of costs contained in the memorandum of costs, it constitutes a waiver  
8 of any objection to said costs and operates as a finalization of those very costs. Effectively, this  
9 Court stepped into the role of advocate, interposing its own opposition which Plaintiffs were  
10 foreclosed from interposing. That is wholly improper. Therefore, this Court’s refusal to sign a  
11 judgment with respect to those costs and disbursements incurred was clearly erroneous requiring  
12 the granting of the instant motion with respect to the Memorandum of Costs and the associated  
13 judgment.

14 With respect to the justification and evidentiary submissions both on the underlying motion  
15 and the instant motion, this Court failed to properly apply to standards imposed by *Cadle Co. v.*  
16 *Woods & Erickson, Ltd. Liab. P’ship*, 131 Nev. 114, 345 P.3d 1049 (2015) and *Bobby Berosini, Ltd.*  
17 *v. PETA*, 114 Nev. 1348, 971 P.2d 383 (1998).

18 NRS 18.020 and NRS 18.050 give district courts wide, but not  
19 unlimited, discretion to award costs to prevailing parties. Costs  
20 awarded must be reasonable, NRS 18.005; *Bobby Berosini, Ltd. v.*  
21 *PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998), but parties  
22 may not simply estimate a reasonable amount of costs. *See Gibellini*  
23 *v. Klindt*, 110 Nev. 1201, 1205-06, 885 P.2d 540, 543 (1994) (holding  
24 that a party may not estimate costs based on hours billed). Rather,  
25 NRS 18.110(1) requires a party to file and serve "a memorandum [of  
costs] . . . verified by the oath of the party . . . 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."  
Thus, costs must be reasonable, necessary, and actually incurred. We  
will reverse a district court decision awarding costs if the district court  
has abused its discretion in so determining. *Vill. Builders 96, L.P. v.*  
*U.S. Labs., Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005).

26 In *Bobby Berosini, Ltd.*, we explained that a party must "demonstrate  
27 how such [claimed costs] were necessary to and incurred in the  
28 present action." 114 Nev. at 1352-53, 971 P.2d at 386. Although cost  
memoranda were filed in that case, we were unsatisfied with the  
itemized memorandum and demanded further justifying

1 documentation. *Id.* It is clear, then, that "justifying documentation"  
2 must mean something more than a memorandum of costs. In order to  
3 retax and settle costs upon motion of the parties pursuant to NRS  
4 18.110, a district court must have before it evidence that the costs  
5 were reasonable, necessary, and actually incurred. *See Gibellini*, 110  
6 Nev. at 1206, 885 P.2d at 543 (reversing award of costs and  
7 remanding for determination of actual reasonable costs incurred).

8 Without evidence to determine whether a cost was reasonable and  
9 necessary, a district court may not award costs. *PETA*, 114 Nev. at  
10 1353, 971 P.2d at 386. Here, the district court lacked sufficient  
11 justifying documentation to support the award of costs for  
12 photocopies, runner service, and deposition transcripts. Woods &  
13 Erickson did not present the district court with evidence enabling the  
14 court to determine that those costs were reasonable and necessary.

15 *Cadle Co.*, *supra*, 131 Nev. at 120-21, 345 P.3d at 1054 (2015).

16 This Court erroneously concluded that CHH submitted no documentary evidence or  
17 explanation of costs attendant to the verified memorandum of costs. In fact, the verified  
18 memorandum of costs<sup>3</sup> contained not only a complete listing of disbursements which are allowable  
19 under the law for these purposes, but the declaration explained that the expenses were accurate and  
20 were incurred and were reasonable. Moreover, the memorandum explained and justified each of  
21 the costs, supported by case authority and an application of the respective factors considered to the  
22 specific facts and circumstances of this case. There was more than ample evidentiary justification  
23 for the costs claimed including court filing fees and the expert fees which were justified by the  
24 explanations contained in the verified memorandum.

25 For this Court to somehow assert complete ignorance of the legal and appellate history of  
26 this case was clearly erroneous. Additionally, Plaintiffs never disputed, nor to this day dispute, the  
27 veracity and accuracy of the costs contained in the verified memorandum of costs. There was no  
28 absence of evidence justifying the costs. The Court just chose to ignore it and improperly declared  
they were insufficient, citing to the aforementioned authority. However, that authority does stand for the  
proposition for which they are cited or was misapplied by the Court. The authority cited involved  
no evidence or documentation. CHH not only provided evidence, it justified the costs, especially  
of the voluminous number of experts needed for retention due to the blunderbuss of allegations

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<sup>3</sup> Exhibit "I" hereto



1 asserted by Plaintiffs which needed to be addressed by multiple specialists.

2 Contained in the instant motion is an even more expanded listing of every charge, bill,  
3 invoice and time entry for every action taken on this case by any timekeeper or expert on this case  
4 as well as an even further explanation of the time required to defend against the ridiculous set of  
5 allegations which Plaintiffs initially leveled in their Complaint. Then, after having used their “go  
6 to” expert for purposes of fulfilling NRS 41A.071, Plaintiffs interposed medical expert reports from  
7 multiple providers who had to agree with CHH’s experts that Plaintiffs’ Ativan theory was bogus,  
8 and further having to acknowledge that Ms. Powell died from an acute mucous plug event which  
9 could not have been prevented or predicted. All of CHH’s experts debunked Plaintiffs’ experts’  
10 theories in detailed reports requiring exhaustive review of medical records and a review of the latest  
11 medical literature attendant to the Plaintiffs’ allegations. CHH’s costs which it incurred were not  
12 only necessary but entirely reasonable under the circumstances since Plaintiffs leveled a blunderbuss  
13 of allegations against CHH and other co-defendants for whom CHH would be vicariously liable  
14 under an ostensible agency theory, and required multiple experts in the implicated medical  
15 specialties to defend against them. Unlike Plaintiffs, CHH obtained admissible evidence supporting  
16 its defense, as opposed to Plaintiffs’ counsel’s manufactured allegation of “confusion” to cover up  
17 for his late filing of Plaintiffs’ action.

18 **D. Dismissal By the Supreme Court, and Eventually By This Court, Was Definitive**  
19 **Evidence of Plaintiffs’ Bad Faith Implicating the Imposition of Attorneys’ Fees**  
20 **and Costs**

21 In reaching its decision on the underlying motion for costs and attorneys’ fees, this Court  
22 concluded that the Plaintiffs’ action was brought and maintained in good faith. Given the Supreme  
23 Court’s decision and findings in this matter, this Court’s finding of good faith was clearly erroneous.  
24 As demonstrated in CHH’s Motion in Chief for reconsideration, the Supreme Court held that this  
25 Court “manifestly abused its discretion when it denied summary judgment.”

26 A manifest abuse of discretion is “[a] clearly erroneous interpretation  
27 of the law or a clearly erroneous application of a law or rule.” Steward  
28 v. McDonald, 330 Ark. 837, 958 S.W.2d 297, 300 (Ark.  
1997); see Jones Rigging and Heavy Hauling v. Parker, 347 Ark. 628,  
66 S.W.3d 599, 602 (Ark. 2002) (stating that a manifest abuse of  
discretion “is one exercised improvidently or thoughtlessly and  
without due consideration”); Blair v. Zoning Hearing Hd. of Tp. of

1           Pike, 676 A.2d 760, 761 (Pa. Commw. Ct. 1996) ("[M]anifest abuse  
2           of discretion does not result from a mere error in judgment, but occurs  
3           when the law is overridden or misapplied, or when the judgment  
          exercised is manifestly unreasonable or the result of partiality,  
          prejudice, bias or ill will.").

4   *State v. Eighth Judicial Dist. Court of Nev.*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011). Under  
5   the Supreme Court's own definition, a manifest abuse of discretion is one where a court so  
6   erroneously interprets the law or rule, or where the result is so unreasonable that it demonstrates  
7   prejudice, partiality or bias that it must be corrected. Such is the case here. In light of the Supreme  
8   Court's finding in this regard, it remains abundantly clear that this matter was frivolously brought  
9   and frivolously maintained. Under those circumstances, the law provides for and even requires the  
10   recovery of costs, disbursements and attorneys' fees. To deny same disregards the Supreme Court's  
11   conclusion as well as the laws and cases interpreting them requiring the impositions of costs and  
12   attorneys' fees on the counsel who perpetrated the frivolous action.

13           In *Centennial Gateway v. Home Consignment Ctr.*, 465 P.3d 218 (Nev. 2020), the Supreme  
14   Court addressed the issue of when to award attorneys' fees and costs after the dismissal of an action.

15           Centennial next challenges the district court's award of attorney fees  
16           as a sanction. We review for an abuse of discretion, *see Edwards v.*  
17           *Emperor's Garden Rest.*, 122 Nev. 317, 330, 130 P.3d 1280, 1288  
18           (2006) (explaining that this court will not overturn an award of  
19           attorney fees as a sanction absent a manifest abuse of discretion), and  
20           disagree. **The record supports that Centennial knew of and**  
21           **concealed information** showing its lack of standing to enforce the  
22           lease and guarantees until trial began. *See* NRS 18.010(2)(b)  
23           **(providing that a court may award attorney fees upon finding that**  
24           **a claim "was brought or maintained without reasonable**  
25           **ground")**; *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 967-  
26           68, 194 P.3d 96, 106 (2008) **(requiring the district court to "inquire**  
27           **into the actual circumstances of the case" when considering**  
28           **whether to award attorney fees pursuant to NRS**  
          **18.010(2)(b))**; *see also Rosenberg Living Tr. v. MacDonald*  
          *Highlands Realty, LLC*, 134 Nev. 570, 580-81, 427 P.3d 104, 113  
          (2018) **(reviewing a district court's finding that a claim was**  
          **unreasonably brought or maintained for credible**  
          **evidence)**. Because the district court did not abuse its discretion in  
          awarding the fees, it similarly did not abuse its discretion in denying  
          Centennial's motion to reconsider that order. *See AA Primo Builders*,  
          126 Nev. at 589, 245 P.3d at 1197; *see also Masonry & Tile*  
          *Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev.  
          737, 741, 941 P.2d 486, 489 (1997) ("A district court may reconsider  
          a previously decided issue if substantially different evidence is  
          introduced or the decision is clearly erroneous.").

1 Centennial's jurisdictional challenge to the award also fails. **NRS**  
2 **18.010(2)(b) allows district courts to award attorney fees to a**  
3 **defendant based on a complaint's dismissal.** *See Logan v. Abe*, 131  
4 Nev. 260, 264, 350 P.3d 1139, 1141 (2015) (reviewing de novo a  
5 party's eligibility for a fee award pursuant to statute); *see also MB*  
*Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88-89, 367 P.3d 1286,  
1292-93 (2016) (**recognizing that dismissal of a plaintiff's**  
**complaint is "sufficient to find [a defendant is] a prevailing party**  
**... entitled to an award of attorney fees under NRS 18.010").**

6 *Centennial Gateway v. Home Consignment Ctr.*, 465 P.3d 218 (Nev. 2020) (emphasis supplied).

7 As previously noted in the Motion in Chief, Plaintiffs initiated this lawsuit 8 months beyond the  
8 expiration of the statute of limitations. They went to the trouble of getting a special administrator  
9 appointed for Ms. Powell's estate for the express purpose of obtaining Ms. Powell's medical records  
10 from CHH. Plaintiffs obtained all records from CHH within one month of Ms. Powell's death,  
11 giving them inquiry notice as of that date, as the Supreme Court so noted. Plaintiffs submitted those  
12 very records to their medical expert who prepared a declaration they used to file their Complaint.  
13 Plaintiffs further made complaints to two State agencies alleging medical malpractice by CHH.  
14 However, for the purposes of summary judgment, they feigned ignorance of their actions and their  
15 lawyer, not even Plaintiffs themselves, posited some half-baked theory of "confusion" which this  
16 Court used to justify its initial decision to deny summary judgment.

17 It took a determination by the Supreme Court that the overwhelming evidence of inquiry  
18 notice, supplied by Plaintiffs themselves, to right the wrong initiated by Plaintiffs which was  
19 perpetuated with this Court's blessing. Rather than accepting the Supreme Court's decision and  
20 rationale, this Court's denial of CHH's motion and the rationale behind that decision continues to  
21 perpetuate the false notion that the action was either brought or maintained in good faith, a fact  
22 completely dispelled by the Supreme Court's decision. Thus, denying costs and attorneys' fees in  
23 light of the Supreme Court's decision is not only clearly erroneous, it is also a manifest abuse of  
24 discretion which the instant motion seeks to redress.

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

1 would have been submitted had the *in camera* inspection thereof been considered. What is even  
2 more telling is that throughout the entirety of the post-appeal process, Plaintiffs have not yet to come  
3 forward with any contradictory evidence or substantive opposition to the costs and fees CHH  
4 incurred. They failed to timely move to retax costs. They failed to come forth with any evidence  
5 in opposition to the instant motion, just as they failed to oppose the motion for summary judgment  
6 which brought about all of this. However, CHH is somehow being punished for its defense of  
7 litigation against it which was improperly brought, improperly maintained, and for which no proper  
8 opposition on any post-judgment motion was ever interposed.

9 In light of all of the overwhelming and unopposed evidence CHH submitted both on the  
10 original motion and now, this Court's refusal to (1) sign a judgment for unopposed costs and (2) to  
11 grant CHH's separate motion for costs and attorneys' fees is clearly erroneous.

### 12 **III. CONCLUSION**

13 Based upon the legal authority and reasons stated above and in CHH's Motion in Chief,  
14 CHH respectfully requests the Court grant their Motion for Reconsideration and award it  
15 **\$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  
16 68 offer fees and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60. Moreover, this  
17 Court must sign the judgment already submitted to it for the undisputed **\$42,492.03** in costs to which  
18 CHH is already entitled by law.  
19

20 DATED this 23<sup>rd</sup> day of March, 2022.

21 LEWIS BRISBOIS BISGAARD & SMITH LLP

22 By /s/ Adam Garth

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27 6385 S. Rainbow Boulevard, Suite 600

28 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**

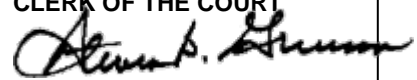
2 I hereby certify that on this 23<sup>rd</sup> day of March, 2022, a true and correct copy  
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**  
4 **HOSPITAL MEDICAL CENTER'S REPLY IN FURTHER SUPPORT OF MOTION FOR**  
5 **RECONSIDERATION REGARDING ITS MOTION FOR ATTORNEYS' FEES**  
6 **PURSUANT TO N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), AND EDCR 7.60** was served  
7 by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and  
8 serving all parties with an email-address on record, who have agreed to receive electronic service in  
9 this action.

10 Paul S. Padda, Esq.  
11 PAUL PADDA LAW, PLLC  
12 4560 S. Decatur Blvd., Suite 300  
13 Las Vegas, NV 89103  
14 Tel: 702.366.1888  
15 Fax: 702.366.1940  
16 [psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
17 *Attorneys for Plaintiffs*

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Brad Shipley, Esq.  
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[bshipleyr@jhcottonlaw.com](mailto:bshipleyr@jhcottonlaw.com)  
*Attorneys for Defendants Dionice S. Juliano,  
M.D., Conrado Concio, M.D And Vishal S.  
Shah, M.D.*

18 By /s/ Heidi Brown  
19 An Employee of  
20 LEWIS BRISBOIS BISGAARD & SMITH LLP  
21  
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# EXHIBIT I



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

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA  
11

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

15 Plaintiffs,  
16

17 vs.

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

23 Defendants.  
24

Case No. A-19-788787-C

Dept. No.: 30

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

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.<sup>1</sup>  
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 <sup>1</sup> 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.

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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.

/s/ *Adam Garth*

No notarization required pursuant to NRS 53.045

LEWIS BRISBOIS BISGAARD &amp; SMITH LLP

822

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 22<sup>nd</sup> 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  
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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 An Employee of  
19 LEWIS BRISBOIS BISGAARD & SMITH LLP  
20  
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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	
<b><u>Disbursements by Type:</u></b>								
EXPM		Medical Expert Services				3,437.50		
<b>Matter Total</b>						<b>3,437.50</b>		

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

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

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

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\*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.
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 &amp; 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

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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:**

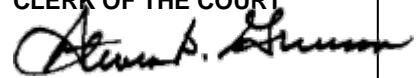
5	Court filing fee	515.50
AM	E121-Arbitrators/Mediators Fees	3,000.00
CS	E123-Consulting Services	10,694.10
EXPM	Medical Expert Services	31,030.00
Q	Filing Services	27.43

**Matter Total****45,267.03**



EXHIBIT ‘B’

EXHIBIT ‘B’



1 **NEOJ**  
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2 Nevada Bar No. 06858  
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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 19<sup>th</sup> day of November 2021, a copy of which is attached hereto.

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DATED this 19<sup>th</sup> day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth  
S. BRENT VOGEL  
Nevada Bar No. 06858  
ADAM GARTH  
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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 19<sup>th</sup> 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*

John H. Cotton, Esq.  
Brad Shipley, Esq.  
JOHN. H. COTTON & ASSOCIATES  
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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

26 ///

27 ///

28 ///



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

4 Dated this 19th day of November, 2021

5 Dated: \_\_\_\_\_.

  
DISTRICT COURT JUDGE

6  
7  
8 DATED this \_\_\_\_ day of November, 2021.

9 DATED this 18<sup>th</sup> 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](mailto:psp@paulpaddalaw.com)  
20 Attorneys for Plaintiffs

21 DATED this 18<sup>th</sup> 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  
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28 Tel: 702.832.5909  
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[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)  
Attorneys for Defendants Dionice S. Juliano,  
M.D., Conrado Concio, M.D And Vishal S.  
Shah, M.D.

/s/ Adam Garth

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

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

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Adam,

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

Brad Shipley, Esq.  
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7900 W. Sahara ave. #200  
Las Vegas, NV 89117  
[bshipley@jhcottonlaw.com](mailto: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](mailto:Adam.Garth@lewisbrisbois.com)  
**T: 702.693.4335 F: 702.366.9563**

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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

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

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Rokni, Roya <[Roya.Rokni@lewisbrisbois.com](mailto:Roya.Rokni@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; [jhcotton@jhcottonlaw.com](mailto: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](mailto: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](#)

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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**  
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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

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

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Rokni, Roya <[Roya.Rokni@lewisbrisbois.com](mailto:Roya.Rokni@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)

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Adam Garth



**Adam Garth**

**Partner**

[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)

**T: 702.693.4335 F: 702.366.9563**

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---

**From:** Garth, Adam <[Adam.Garth@lewisbrisbois.com](mailto:Adam.Garth@lewisbrisbois.com)>

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

**To:** Srilata Shah <[sri@paulpaddalaw.com](mailto:sri@paulpaddalaw.com)>; Paul Padda <[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)>; Brad Shipley <[bshipley@jhcottonlaw.com](mailto:bshipley@jhcottonlaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Rokni, Roya <[Roya.Rokni@lewisbrisbois.com](mailto:Roya.Rokni@lewisbrisbois.com)>; San Juan, Maria <[Maria.SanJuan@lewisbrisbois.com](mailto:Maria.SanJuan@lewisbrisbois.com)>; Sirsy, Shady <[Shady.Sirsy@lewisbrisbois.com](mailto:Shady.Sirsy@lewisbrisbois.com)>; [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)

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

**Importance:** High

Counsel:

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Adam Garth

**Adam Garth**

**Partner**

Las Vegas Rainbow

702.693.4335 or x7024335

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/19/2021

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

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Karen Cormier	karen@paulpaddalaw.com



# EXHIBIT H

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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

No. 84402

**FILED**

**APR 29 2022**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

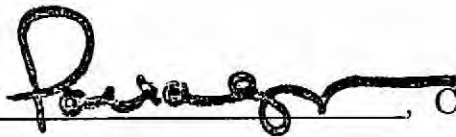
*ORDER TO SHOW CAUSE*

This is an appeal from a postjudgment order denying appellant's motion for attorney fees and costs. Preliminary review of the docketing statement, the documents submitted to this court pursuant to NRAP 3(g), and the district court docket entries reveals a potential jurisdictional defect. Specifically, the notice of appeal appears to be prematurely filed under NRAP 4(a) because it appears that it was filed after the timely filing of a tolling motion for reconsideration and before that motion has been formally resolved. *See AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010) (a motion for reconsideration may be considered a tolling motion to alter or amend); *Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. 923, 314 P.3d 946 (2013) (tolling motions directed at an appealable post-judgment order also toll the period to appeal from that order). A timely tolling motion terminates the 30-day appeal period,

and a notice of appeal is of no effect if it is filed after such a tolling motion is filed and before the district court enters a written order finally resolving the motion. *See* NRAP 4(a)(2).

Accordingly, appellant shall have 30 days from the date of this order within which to show cause why this appeal should not be dismissed for lack of jurisdiction. Failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The briefing schedule in this appeal shall be suspended pending further order of this court. Respondents may file any reply within 14 days from the date that appellant's response is served.

It is so ORDERED.

 C.J.

cc: Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Paul Padda Law, PLLC