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3 **LAW OFFICE OF TRAVIS E. SHETLER, PC**
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5 *Attorney for Plaintiff*

Electronically Filed
Jun 27 2022 02:39 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8
9 TERESA GUBLER and MARGARET R.
LEAVITT individually and as Co-Special
10 Administrators of the ESTATE OF MARIA
HEATON, Deceased

CASE NO.: A-20-818370-C
DEPT. NO.: 15

11 Plaintiff,

12 vs.

13
14 ELLIS, BANDT, BIRKIN, KOLLINS &
WONG, PLLC, a Nevada Domestic
15 Professional Limited Liability Company, dba
DESERT RADIOLOGY; SHELIN,
16 AGRAWAL & HYER, PLLC, a Nevada
Domestic Professional Limited Liability
17 Company, dba DESERT RADIOLOGY;
FARHAD SANI, MD, DOES 1 through 10,
18 inclusive; and ROE ENTITIES 1 through 10,
inclusive;

19 Defendants.

20 **NOTICE OF APPEAL**

21 Notice is hereby given that MARIA HEATON., defendant above named, hereby appeals to the
22 Supreme Court of Nevada from the Order Granting Defendant's Motion to dismiss entered in this
23

24 ...

25 ...

26 ...
27
28

1 action on May 24, 2022.

2 DATED this 22nd day of June, 2022.

3 By: 

4 Travis E. Shetler, Esq.
5 Law Office of Travis E. Shetler, PC
6 Nevada Bar No. 004747
7 travis@shetlerlawfirm.com
8 3202 W. Charleston Blvd.
9 Las Vegas, Nevada 89102
10 Attorney for Plaintiff

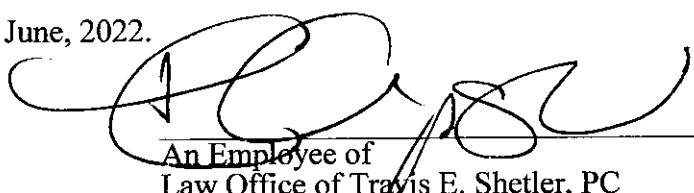
11 **CERTIFICATE OF SERVICE**

12 I certify that on this 20th day of January, 2021, I served a copy of the foregoing **NOTICE OF**
13 **APPEAL** was served on the following by ☒ Electronic Service pursuant to NEFR 9 ☐ Electronic
14 Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail
15 ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with
16 first class postage prepaid, addressed a follows:

17 Sean M. Kelly, Esq.
18 McBride Hall
19 8329 W. Sunset Road, Suite 260
20 Las Vegas, Nevada 89113
21 Attorney for Defendants
22 *Ellis Bandt Birkin Kollins and Wong, PLLC dba*
23 *Desert Radiology and Shelin, Agrawal & Hyer, PLLC, dba Desert Radiology*

24 David J. Mortensen, Esq.
25 Courtney Christopher, Esq.
26 Messner Reeves LLP
27 8945 W. Russell Road, Suite 300
28 Las Vegas, Nevada 89148
Attorneys for Defendant
Farhad Sani, M.D.

DATED this 22nd day of June, 2022.


An Employee of
Law Office of Travis E. Shetler, PC

CASE SUMMARY**CASE NO. A-20-818370-C****Maria Heaton, Plaintiff(s)****vs.****Ellis, Bandt, Birkin, Kollins & Wong, PLLC, Defendant
(s)**§
§
§
§
§Location: **Department 15**
Judicial Officer: **Hardy, Joe**
Filed on: **07/22/2020**
Case Number History:
Cross-Reference Case Number: **A818370****CASE INFORMATION**Case Type: **Malpractice - Medical/Dental**Case Status: **07/22/2020 Open****DATE****CASE ASSIGNMENT****Current Case Assignment**Case Number A-20-818370-C
Court Department 15
Date Assigned 04/07/2021
Judicial Officer Hardy, Joe**PARTY INFORMATION***Lead Attorneys***Plaintiff****Heaton, Maria****Defendant****Ellis, Bandt, Birkin, Kollins & Wong, PLLC****Sani, Farhad, M.D.**Removed: 05/24/2022
Dismissed**Shelin, Agrawal & Hyer, PLLC**Removed: 05/24/2022
Dismissed**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

07/22/2020

Initial Appearance Fee Disclosure
Filed By: Plaintiff Heaton, Maria
[1] Initial Appearance Fee Disclosure

07/22/2020

Complaint
Filed By: Plaintiff Heaton, Maria
[2] Complaint

07/22/2020

Summons Electronically Issued - Service Pending
Party: Plaintiff Heaton, Maria
[3] Summons - Shelin

07/22/2020

Summons Electronically Issued - Service Pending
Party: Plaintiff Heaton, Maria
[4] Summons - Sani












07/22/2020



Summons Electronically Issued - Service Pending

CASE SUMMARY

CASE NO. A-20-818370-C

	<p>Party: Plaintiff Heaton, Maria <i>[5] Summons - Ellis</i></p>
08/25/2020	<p> Summons Filed by: Plaintiff Heaton, Maria <i>[6] Summons and Proof of Service - Shelin</i></p>
08/25/2020	<p> Summons Filed by: Plaintiff Heaton, Maria <i>[7] Summons and Proof of Service - Ellis</i></p>
08/25/2020	<p> Summons Filed by: Plaintiff Heaton, Maria <i>[8] Summons and Proof of Service - Sani</i></p>
08/27/2020	<p> Answer to Complaint Filed by: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC; Defendant Shelin, Agrawal & Hyer, PLLC <i>[9] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal & Hyer, PLLC, dba Desert Radiology S Answer to Plaintiff's Complaint</i></p>
08/27/2020	<p> Initial Appearance Fee Disclosure Filed By: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC; Defendant Shelin, Agrawal & Hyer, PLLC <i>[10] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal & Hyer, PLLC, dba Desert Radiology s Initial Appearance Fee Disclosure</i></p>
08/27/2020	<p> Demand for Jury Trial Filed By: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC; Defendant Shelin, Agrawal & Hyer, PLLC <i>[11] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal & Hyer, PLLC, dba Desert Radiology's Demand for Jury Trial</i></p>
08/27/2020	<p> Disclosure Statement Party: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC; Defendant Shelin, Agrawal & Hyer, PLLC <i>[12] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal & Hyer, PLLC, dba Desert Radiology's 7.1 Disclosure Statement</i></p>
09/10/2020	<p> Answer to Complaint Filed by: Defendant Sani, Farhad, M.D. <i>[13] Defendant Farhad Sani, M.D.'s Answer to Complaint</i></p>
09/10/2020	<p> Initial Appearance Fee Disclosure Filed By: Defendant Sani, Farhad, M.D. <i>[14] Defendant Farhad Sani, M.D.'s Initial Appearance Fee Disclosure</i></p>
09/10/2020	<p> Demand for Jury Trial Filed By: Defendant Sani, Farhad, M.D. <i>[15] Defendant Farhad Sani, M.D.'s Demand for Jury Trial</i></p>
09/14/2020	<p> Notice of Early Case Conference Filed By: Plaintiff Heaton, Maria <i>[16] Notice of Early Case Conference</i></p>
10/20/2020	












CASE SUMMARY

CASE NO. A-20-818370-C

	 Joint Case Conference Report Filed By: Plaintiff Heaton, Maria <i>[17] Joint Case Conference Report</i>
12/31/2020	 Motion to Compel Filed By: Plaintiff Heaton, Maria <i>[18] (3/9/21 Withdrawn) Motion to Compel Production of Client File and Motion to Enjoin Steven M. Burris, Esq. from Further Threatening & Harassing Communications</i>
01/01/2021	 Motion to Compel Filed By: Plaintiff Heaton, Maria <i>[19] (3/9/21 Withdrawn) Motion to Compel Production of Client File and Motion to Enjoin Steven M. Burris, Esq. from Further Threatening & Harassing Communications</i>
01/05/2021	 Clerk's Notice of Hearing <i>[20] Clerk's Notice of Hearing</i>
01/06/2021	 Clerk's Notice of Nonconforming Document <i>[21] Clerk's Notice of Nonconforming Document</i>
01/06/2021	 Clerk's Notice of Nonconforming Document <i>[22] Clerk's Notice of Nonconforming Document</i>
01/14/2021	 Opposition to Motion to Compel Filed By: Plaintiff Heaton, Maria <i>[23] Opposition to Motion to Compel Production of Client File and Motion to Enjoin Steven M. Burris, Esq. From Further Threatening and Harassing Communications</i>
01/20/2021	 Order <i>[24] Order to Appear for Mandatory Discovery Conference</i>
01/20/2021	 Reply to Opposition Filed by: Plaintiff Heaton, Maria <i>[25] Reply to Opposition to Motion to Compel Production of Client File and Motion to Enjoin Steven M. Burris, Esq. from Further Threatening & Harassing Communications</i>
01/21/2021	 Supplement to Opposition Filed By: Plaintiff Heaton, Maria <i>[26] SUPPLEMENT TO OPPOSITION TO MOTION TO COMPEL PRODUCTION OF CLIENT FILE AND MOTION TO ENJOIN STEVEN M. BURRIS, ESQ. FROM FURTHER THREATENING AND HARASSING COMMUNICATIONS</i>
01/28/2021	 Substitution of Attorney Filed by: Plaintiff Heaton, Maria <i>[27] Substitution of Attorney</i>
02/08/2021	 Notice of Rescheduling of Hearing <i>[28] Notice of Rescheduling of Hearing</i>
02/23/2021	 Stipulation and Order Filed by: Plaintiff Heaton, Maria <i>[29] Stipulation and Order to Continue Motion to Compel and Status Check</i>
02/24/2021	 Notice of Entry of Order

CASE SUMMARY

CASE NO. A-20-818370-C

	<p>Filed By: Plaintiff Heaton, Maria <i>[30] Notice of Entry of Order</i></p>
03/05/2021	<p> Notice <i>[31] Instruction for Bluejeans Videoconferencing</i></p>
03/09/2021	<p> Notice of Withdrawal of Motion Filed By: Plaintiff Heaton, Maria <i>[32] NOTICE OF WITHDRAWAL OF MOTION TO COMPEL PRODUCTION OF CLIENT FILE AND MOTION TO ENJOIN STEVEN M. BURRIS, ESQ. FROM FURTHER THREATENING & HARASSING COMMUNICATIONS</i></p>
03/29/2021	<p> Scheduling and Trial Order <i>[33] Scheduling Order and Order Setting Civil Jury Trial and Calendar Call</i></p>
04/06/2021	<p> Peremptory Challenge Filed by: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC; Defendant Shelin, Agrawal & Hyer, PLLC <i>[34] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC Dba Desert Radiology and Shelin, Agrawal & Hyer, PLLC, Dba Desert Radiology's Peremptory Challenge of Judge Jacqueline Bluth</i></p>
04/07/2021	<p> Notice of Department Reassignment <i>[35] Notice of Department Reassignment</i></p>
05/14/2021	<p> Notice of Attorney Lien Filed By: Plaintiff Heaton, Maria <i>[36] Notice of Attorney's Lien and Attorney's Lien</i></p>
09/20/2021	<p> Suggestion of Death Filed by: Attorney Shetler, Travis E <i>[37] Suggestion of Death Upon the Record</i></p>
11/30/2021	<p> Order Setting Civil Jury Trial <i>[38] Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call</i></p>
12/11/2021	<p> Order Setting Medical/Dental Malpractice Status Check <i>[39] Order Setting Medical/Dental Malpractice Status Check and Trial Setting Conference</i></p>
01/10/2022	<p> Stipulation and Order to Extend Discovery Deadlines <i>[40] Stipulation and Order to Extend Discovery Deadlines and Reset Trial Date (First Request)</i></p>
01/11/2022	<p> Notice of Entry of Stipulation and Order Filed By: Defendant Sani, Farhad, M.D. <i>[41] Notice of Entry of Stipulation and Order to Extend Discovery Deadlines and Reset Trial Date</i></p>
01/20/2022	<p> Order Setting Civil Jury Trial <i>[42] Second Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call</i></p>
03/23/2022	<p> Motion to Dismiss Filed By: Defendant Sani, Farhad, M.D. <i>[43] Defendant Farhad Sani, MD's Motion to Dismiss Plaintiff's Complaint</i></p>

CASE SUMMARY

CASE NO. A-20-818370-C

03/24/2022



Clerk's Notice of Hearing

[44] Notice of Hearing

03/28/2022



Joinder To Motion

Filed By: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC; Defendant Shelin, Agrawal & Hyer, PLLC

[45] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal & Hyer, PLLC dba Desert Radiology's Peremptory Joinder to Motion to Dismiss Plaintiff's Complaint

04/01/2022



Opposition to Motion to Dismiss

Filed By: Plaintiff Heaton, Maria

[46] Plaintiff's Opposition to Defendant Farhad Sani, M.D.'s Motion to Dismiss Plaintiff's Complaint & Defendants Ellis Bandt Birkin Kollins and Wong, PLLC DBA Desert Radiology and Shelin, Agrawal & Hyer, PLLC, DBA Desert Radiology's Peremptory Joinder to Motion to Dismiss Plaintiff's Complaint

04/04/2022



Opposition to Motion

Filed By: Plaintiff Heaton, Maria

[47] Plaintiff's Opposition to Defendant Farah Sani, M.D.'s Motion to Dismiss Plaintiff's Complaint & Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal & Hyer, PLLC, dba Desert Radiology's Peremptory Joinder to Motion to Dismiss Plaintiff's Complaint

04/14/2022



Reply to Opposition

Filed by: Defendant Sani, Farhad, M.D.

[48] Defendant Farhad Sani, M.D.'s Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint

04/19/2022



Joinder

Filed By: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC; Defendant Shelin, Agrawal & Hyer, PLLC

[49] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC DBA Desert Radiology and Shelin, Agrawal & Hyer, PLLC, DBA Desert Radiology's Joinder to Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's Complaint

05/24/2022



Order Granting Motion

Filed By: Defendant Sani, Farhad, M.D.

[50] Order Granting Defendant Sani's Motion to Dismiss Plaintiff's Complaint and Joinder

05/24/2022



Notice of Entry of Stipulation and Order

Filed By: Defendant Sani, Farhad, M.D.

[51] Notice of Entry of Order

05/31/2022



Memorandum of Costs and Disbursements

[52] Verified Memorandum of Costs and Disbursements

06/01/2022



Memorandum of Costs and Disbursements

Filed By: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC

[53] Defendants Verified Memorandum of Costs and Disbursements

06/22/2022



Notice of Appeal

[54] Notice of Appeal

06/22/2022



Notice

CASE SUMMARY

CASE NO. A-20-818370-C

[55] Notice of Failure to File Request for Retax of Defendant Farhad Sani, M.D.'s Verified Memorandum of Costs and Disbursements

06/23/2022



Notice

Filed By: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC

[56] Notice of Failure to File Request for Retax of Defendants Verified Memorandum of Costs and Disbursements

DISPOSITIONS

05/24/2022

Order of Dismissal (Judicial Officer: Hardy, Joe)

Debtors: Maria Heaton (Plaintiff)

Creditors: Ellis, Bandt, Birkin, Kollins & Wong, PLLC (Defendant), Shelin, Agrawal & Hyer, PLLC (Defendant), Farhad Sani, MD. (Defendant)

Judgment: 05/24/2022, Docketed: 05/25/2022

HEARINGS

02/10/2021



Mandatory Rule 16 Conference (10:00 AM) (Judicial Officer: Bluth, Jacqueline M.)

Off Calendar;

Journal Entry Details:

Court noted the Motion To Compel was moved to February 24th and Mr. Shetler would like the Mandatory Rule 16 Conference moved as well. Mr. Shetler concurred. Mr. Kelly stated there's no opposition. Mr. Shetler noted he's substituted as counsel, does not have the file and is not sure if he'll be prepared to do all on the same day. Colloquy regarding continuation of Mandatory Rule 16 Conference. Court stated February 24th it will be addressed when the Mandatory Rule 16 Conference will be held and ORDERED, matter SET for status check. 2-24-21 9:00 AM STATUS CHECK: MANDATORY RULE 16 CONFERENCE ;

03/10/2021

Motion to Compel (9:30 AM) (Judicial Officer: Allf, Nancy)

Motion to Compel Production of Client File and Motion to Enjoin Steven M Burris, Esq From Further Threatening and Harassing Communications

2/8/21 Notice of Rescheduling of Hearing

Withdrawn;

03/10/2021

Status Check (9:30 AM) (Judicial Officer: Allf, Nancy)

Status Check: Mandatory Rule 16 Conference

Matter Heard;

03/10/2021



All Pending Motions (9:30 AM) (Judicial Officer: Allf, Nancy)

Matter Heard;

Journal Entry Details:

STATUS CHECK: MANDATORY RULE 16 CONFERENCE...MOTION TO COMPEL PRODUCTION OF CLIENT FILE AND MOTION TO ENJOIN STEVEN M. BURRIS, ESQ FROM FURTHER THREATENING AND HARASSING COMMUNICATIONS All parties present via the BlueJeans Videoconferencing Application. Upon inquiry of Court if the Motion to Compel Production of Client File and Motion to Enjoin Steven M Burris, Esq From Further Threatening and Harassing Communications was being withdrawn, Mr. Shelter stated it was. COURT SO ORDERED. Colloquy regarding time needed for discovery and setting out requested discovery date. COURT ORDERED, discovery cut-off would be April 29, 2022, with dispositive motions due May 31, 2022, a calendar call setting of July 26, 2022 at 9:30 a.m., and SET on the August 1, 2022 trial stack. Upon inquiry of counsel regarding a firm trial setting, Court directed counsel to contact the Judicial Executive Assistant in Department 6 for firm trial dates. 7/26/2022 9:30 AM CALENDAR CALL 8/1/2022 10:00 AM JURY TRIAL;

01/12/2022



Status Check: Medical/Dental Malpractice (8:00 AM) (Judicial Officer: Wiese, Jerry A.)


Trial Date Set;

Journal Entry Details:

Also present M. Courtney Christopher (NV Bar # 12717). The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Colloquy regarding status of the case. COURT ORDERED, matter SET for trial on March 27, 2023. 03/27/2023 JURY TRIAL - FIRM (10 DAYS);

CASE SUMMARY

CASE NO. A-20-818370-C

04/25/2022	<p>Motion to Dismiss (9:00 AM) (Judicial Officer: Hardy, Joe)</p> <p>04/25/2022, 05/09/2022</p> <p><i>Defendant Farhad Sani, MD's Motion to Dismiss Plaintiff's Complaint</i></p> <p>Continued;</p>
04/25/2022	<p>Joinder (9:00 AM) (Judicial Officer: Hardy, Joe)</p> <p>04/25/2022, 05/09/2022</p> <p><i>Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal & Hyer, PLLC dba Desert Radiology's Peremptory Joinder to Motion to Dismiss Plaintiff's Complaint</i></p> <p>Continued;</p>
04/25/2022	<p>Joinder (9:00 AM) (Judicial Officer: Hardy, Joe)</p> <p>04/25/2022, 05/09/2022</p> <p><i>Defendants Ellis Bandt Birkin Kollins and Wong, PLLC DBA Desert Radiology and Shelin, Agrawal & Hyer, PLLC, DBA Desert Radiology's Joinder to Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's Complaint</i></p> <p>Continued;</p>
04/25/2022	<p> All Pending Motions (9:00 AM) (Judicial Officer: Hardy, Joe)</p> <p>04/25/2022, 05/09/2022</p> <p>Matter Heard;</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>ALL PENDING MOTIONS...DEFENDANTS FARHAD SANI, MD'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT... DEFENDANT'S ELLIS, BANDT, BIRKIN, KOLLINS AND WONG, PLLC AND SHELIN, AGRAWAL & HYER, PLLC JOINDER The Court noted it had read the pleadings and welcomed arguments. Mr. Linford argued the timeline allowed for substitution following a Suggestion of Death upon the Record pursuant to NRCP 25(a)(1) has passed; therefore this matter should be dismissed. Mr. Linford further argued there is no excusable neglect shown here. Mr. Shetler indicated he mixed up this case, and the probate case and unfortunately, this case slipped through. Mr. Shetler noted tactically it makes sense to bring the motion, but requested elasticity to allow for the timeline to be adjusted. Upon the Court's inquiry as to excusable neglect, Mr. Shetler noted it wasn't intentional, and was just a mistake. Mr. Kelly indicated he had nothing to add. The Court found although not a ruling the court takes pleasure in finding, does find it is compelled to grant the motion and the joinder under NRCP 25 (a)(1). The Court found under the facts here, cannot find there to be excusable neglect. The Court noted for better or for worse, the probation action here ensures it's that Mr. Shetler knew of the appointment in this case. Court found notwithstanding the lack of due diligence and the lack of excusable neglect, the Court is compelled in the granting of the motion in this matter. COURT ORDERED Defendant's Motion and the Joinder to Dismiss Complaint HEREBY GRANTED. -Mr. Lindord to prepare the Order, submit it to co-counsel's for review and approval, then to the court. ;</i></p> <p>Matter Heard;</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Mr. Kelly indicated parties had filed a Stip and Order on Friday to continue the instant matter. Mr. Kelly further indicated Plaintiff's Counsel had a conflict and could not be here today. Upon the Court's inquiry as to when to continue it to, Mr. Kelly noted any time after May 3rd, 2022 would be preferable. COURT ORDERED, MATTER CONTINUED. CONTINUED TO: 05/09/2022 09:00 AM 01/18/2023 09:30 AM STATUS CHECK: TRIAL READINESS 02/22/2023 08:30 AM PRE-TRIAL CONFERENCE 03/08/2023 08:30 AM CALENDAR CALL 03/27/2023 10:30 AM JURY TRIAL;</i></p>
05/18/2022	<p>CANCELED Status Check: Trial Readiness (9:00 AM) (Judicial Officer: Hardy, Joe)</p> <p><i>Vacated</i></p>
06/06/2022	<p>CANCELED Status Check (9:30 AM) (Judicial Officer: Hardy, Joe)</p> <p><i>Vacated - per Stipulation and Order</i></p>
07/11/2022	<p>CANCELED Pre Trial Conference (8:30 AM) (Judicial Officer: Hardy, Joe)</p> <p><i>Vacated - per Stipulation and Order</i></p>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. A-20-818370-C**

07/26/2022	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Vacated</i>
07/27/2022	CANCELED Calendar Call (8:30 AM) (Judicial Officer: Hardy, Joe) <i>Vacated - per Stipulation and Order</i>
08/08/2022	CANCELED Jury Trial (10:00 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated</i>
08/08/2022	CANCELED Jury Trial (10:30 AM) (Judicial Officer: Hardy, Joe) <i>Vacated - per Stipulation and Order</i>
01/18/2023	CANCELED Status Check (9:30 AM) (Judicial Officer: Hardy, Joe) <i>Vacated</i>
02/22/2023	CANCELED Pre Trial Conference (8:30 AM) (Judicial Officer: Hardy, Joe) <i>Vacated</i>
03/08/2023	CANCELED Calendar Call (8:30 AM) (Judicial Officer: Hardy, Joe) <i>Vacated</i>
03/27/2023	CANCELED Jury Trial - FIRM (10:30 AM) (Judicial Officer: Hardy, Joe) <i>Vacated</i> JURY TRIAL - SET DURING MED. MAL. SWEEPS.

DATE**FINANCIAL INFORMATION**

Defendant Sani, Farhad, M.D.	
Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 6/24/2022	0.00
Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC	
Total Charges	703.00
Total Payments and Credits	703.00
Balance Due as of 6/24/2022	0.00
Plaintiff Heaton, Maria	
Total Charges	294.00
Total Payments and Credits	294.00
Balance Due as of 6/24/2022	0.00
Plaintiff Heaton, Maria	
Appeal Bond Balance as of 6/24/2022	500.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-20-818370-C
Department 6

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <p style="text-align: center;">MARIA HEATON, an individual,</p>	Defendant(s) (name/address/phone): ELLIS, BANDT, BIRKIN, KOLLINS & WONG, PLLC, a Nevada Domestic Professional Limited Liability Company, dba DESERT RADIOLOGY; SHELIN, AGRAWAL & HYER, PLLC, a Nevada Domestic Professional Limited Liability Company, dba DESERT RADIOLOGY; FARHAD SANI, MD, DOES 1 through 10, inclusive: and ROE ENTITIES 1through 10, inclusive;
Attorney (name/address/phone): <p style="text-align: center;">Steven M. Burris, Esq. 2810 W. Charleston Blvd., Suite F58 Las Vegas, NV 89102 702-258-6238</p>	Attorney (name/address/phone):

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input checked="" type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

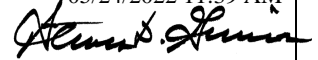
July 22, 2020

Date

/s/ Travis E. Shelter, Esq.

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

ORDR

DAVID J. MORTENSEN, ESQ.
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Attorneys for Defendant Farhad Sani, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIA HEATON, an individual,

Plaintiffs,

vs.

ELLIS, BANDT, BIRKIN, KILLINS &
WONG, PLLC, a Nevada Domestic
Professional Limited Liability Company, dba
DESERT RADIOLOGY; SHELIN,
AGRAWAL & HYER, PLLC, a Nevada
Domestic Professional Limited Liability
Company, dba DESERT RADIOLOGY;
FARHAD SANI, MD, DOES 1 through 10,
inclusive; and ROE ENTITIES 1 through 10,
inclusive;

Defendants.

Case No. A-20-818370-C

Dept. No. 15

**ORDER GRANTING DEFENDANT
FARHAD SANI, MD'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT
AND DEFENDANTS ELLIS BANDT
BIRKIN KOLLINS AND WONG, PLLC
DBA DESERT RADIOLOGY AND
SHELIN, AGRAWAL & HYER, PLLC,
DBA DESERT RADIOLOGY'S
PEREMPTORY JOINDER TO MOTION
TO DISMISS PLAINTIFF'S COMPLAINT**

On March 23, 2022, Defendant FARHAD SANI, MD (hereinafter "Dr. Sani") filed a Motion to Dismiss Plaintiff's Complaint and on March 28, 2022, Defendants ELLIS, BANDT, BIRKIN, KILLINS & WONG, PLLC, dba DESERT RADIOLOGY and SHELIN, AGRAWAL & HYER, PLLC, dba DESERT RADIOLOGY (hereinafter "Desert Radiology Defendants") filed a Joinder to

1 the Motion to Dismiss. Thereafter, Plaintiff filed an Opposition to the Motion to Dismiss and Joinder
2 on April 1, 2022, Defendant Dr. Sani filed a Reply on April 14, 2022, and Desert Radiology
3 Defendants filed a Joinder to the Reply on April 19, 2022.

4 On May 9, 2022, Defendant Dr. Sani's Motion to Dismiss and Desert Radiology Defendants'
5 Joinder came before this court for oral argument. Travis E. Shetler, Esq. appeared on behalf of
6 Plaintiff, Derek Linford, Esq. appeared on behalf of Defendant Dr. Sani, and Sean M. Kelly, Esq.
7 appeared on behalf of Desert Radiology Defendants. Pursuant to the arguments of said hearing, the
8 pleadings and papers on file, and good cause appearing, the Court hereby GRANTS Defendant Dr.
9 Sani's Motion to Dismiss and Desert Radiology Defendants' Joinder thereto.

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint is
11 DISMISSED in its entirety pursuant to NRCP 25(a)(1).

12 On June 15, 2021, Plaintiff Maria Heaton, the sole Plaintiff in this lawsuit passed away. On
13 September 20, 2021, Plaintiff's counsel filed a Suggestion of Death Upon the Record. Pursuant to
14 NRCP 25(a)(1), Plaintiff's counsel had 180 days after the filing of the Suggestion of Death Upon the
15 Record to file a Motion to Substitute a proper party, which expired on March 21, 2022. Plaintiff's
16 counsel failed to file the required Motion to Substitute by March 21, 2022, and as such the Court is
17 compelled to dismiss Plaintiff's Complaint.

18 NRCP 25(a)(1) provides that if the motion is not made within 180 days the claims by or
19 against the decedent must be dismissed. However, Nevada case law has provided a possible exception
20 to this rule. The Nevada Supreme Court has held that the deadline to substitute a proper party may be
21 extended after it has expired under NRCP 6(b) only on a showing of excusable neglect. *Moseley v.*
22 *Eighth Jud. Dist. Ct.*, 124 Nev. 654 (2008). In *Moseley*, the Nevada Supreme Court ruled that to
23 establish excusable neglect and extend the time to file for substitution under NRCP 25(a)(1), the party
24 must "demonstrate that (1) it acted in good faith, (2) it exercised due diligence, (3) there is a
25 reasonable basis for not complying within the specified time, and (4) the nonmoving party will not
26 suffer prejudice." *Id.* at 667-68.

27 The facts of the case are important. Plaintiff's counsel was the attorney for the appointment
28

1 of Special Co-Administrators for Plaintiff Maria Heaton's Estate. As such, Plaintiff's counsel was
2 aware of the appointment, and this is not a case where Plaintiff's counsel was not aware of the
3 appointment. The appointment of Special Co-Administrators occurred well before the 180-day
4 deadline to file a motion to substitute expired. There was no obstruction on the part of Defendants or
5 Defendants' counsel in this matter. Plaintiff's counsel represented that prior to the deadline to file the
6 motion to substitute, he asked his paralegal if the document had been filed. Plaintiff's counsel was
7 not specific as to which document he was speaking, and as a result, when the question was answered
8 in the affirmative, it was for the wrong case. Plaintiff's counsel's reliance on his paralegal's response
9 is not excusable neglect. The lateness of Plaintiff's Suggestion of Death does not factor into this
10 Court's decision.

11 The facts of this case are not similar to the facts of the *George v. United States*, 208 F.R.D.
12 29 (D. Conn. 2001) or *Al-Jundi v. Estate of Rockefeller*, 757 F.Supp. 206 (W.D.N.Y. 1990), wherein
13 the *Moseley* Court noted excusable neglect could exist. First, in the *George* case, excusable neglect
14 was found because "any delay in moving for substitution was not due to any inaction on the part of
15 the deceased plaintiffs counsel" and that "she moved for an extension of time to be substituted as the
16 personal representative...four days after receiving the documentation reflecting the appointment."
17 *Moseley*, 124 Nev. at 666. This ruling does not apply to this case as the delay in moving for
18 substitution was due to inaction on the part of Plaintiff's counsel.

19 Second, in the *Al-Jundi* case, the court noted excusable neglect existed when following the
20 defendant's death "decedent's daughter refused to be appointed, but she also objected to the plaintiff's
21 efforts to have an administrator ad litem appointed" and the "decedent's attorney attempted to stall
22 any substitution." *Moseley*, 124 Nev. at 667. This ruling also does not apply to this case as there was
23 no obstruction or interference by Defendants or Defendants' counsel.

24 In applying the four factors identified by the *Moseley* Court to the facts of this case, the Court
25 finds that there is no question Plaintiff's counsel acted in good faith and there would be no prejudice
26 in this matter. However, the Court finds that Plaintiff's counsel did not exercise due diligence and
27 Plaintiff's counsel did not have a reasonable basis for not complying within the specified time. Based

on the finding of lack of due diligence and no reasonable basis for failing to comply within the specified time on behalf of Plaintiff's counsel, the Court cannot find excusable neglect. As such the Court is compelled to Grant the Motion to Dismiss and Joinder thereto and dismiss Plaintiff's Complaint.

Respectfully submitted by:

MESSNER REEVES LLP

/s/ Derek Linford

David J. Mortensen, Esq. (NBN 2547)
Courtney Christopher, Esq. (NBN 12717)
Derek Linford, Esq. (NBN 14909)
8945 West Russell Road, Suite 300
Las Vegas, Nevada 89148
*Attorneys for Defendant
Farhad Sani, M.D.*

Approved as to form and content by:

LAW OFFICES OF TRAVIS E. SHETLER, PC

Refused to sign

Travis E. Shetler, Esq. (NBN 004747)
3202 W. Charleston Blvd.
Las Vegas, NV 89102
Attorney for Plaintiff

Approved as to form and content by:

McBRIDE HALL

/s/ Sean Kelly

Robert C. McBride, Esq. (NBN 7082)
Sean M. Kelly, Esq. (NBN 10102)
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113
*Attorneys Defendants
Ellis Bandt Birkin Kollins and Wong, PLLC
dba Desert Radiology and Shelin, Agrawal &
Hyer, PLLC, dba Desert Radiology*

ORDER

Pursuant to the foregoing, and good cause appearing therefrom:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant FARHAD SANI, MD's Motion to Dismiss and Defendants ELLIS, BANDT, BIRKIN, KILLINS & WONG, PLLC, dba DESERT RADIOLOGY and SHELIN, AGRAWAL & HYER, PLLC, dba DESERT RADIOLOGY's Joinder are GRANTED pursuant to NRCP 25(a)(1), and Plaintiff's Complaint is DISMISSED in its entirety.

IT IS SO ORDERED.

Dated this 24th day of May, 2022


DISTRICT JUDGE

**61B 4AD 69F6 408A
Joe Hardy
District Court Judge**

From: Derek Linford
Sent: Monday, May 23, 2022 3:10 PM
To: Tya Frabott
Cc: Stephanie Prescott; Courtney Christopher
Subject: FW: Heaton adv. Sani / Our File No. 10555.0025 / ORDER - DUE TODAY
Attachments: ORDR - Order Granting Motion to Dismiss (06351674xA9B4D).docx

Follow Up Flag:
Flag Status:

From: Derek Linford
Sent: Monday, May 23, 2022 3:05 PM
To: 'Sean M. Kelly' <smkelly@mcbridehall.com>; Travis Shetler <travis@shetlerlawfirm.com>
Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>
Subject: RE: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Good Afternoon,

Our office will go ahead and submit our proposed Order today. We will indicate that Plaintiff's counsel does not approve and attach our emails to the submission.

Thank you,
Derek

DEREK K. LINFORD
Attorney
Messner Reeves LLP
O: 702.363.5100 **E:** dlinford@messner.com
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

From: Sean M. Kelly <smkelly@mcbridehall.com>
Sent: Friday, May 20, 2022 1:01 PM
To: Derek Linford <DLinford@messner.com>; Travis Shetler <travis@shetlerlawfirm.com>

Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>
Subject: [EXTERNAL] - RE: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

I would agree...Judge Hardy wanted a detailed Order, one that is likely more detailed than the court's minutes.

Sean M. Kelly, Esq.
smkelly@mcbridehall.com | www.mcbridehall.com

8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
Telephone: (702) 792-5855
Facsimile: (702) 796-5855



MCBRIDE HALL
ATTORNEYS AT LAW

NOTICE: THIS MESSAGE IS CONFIDENTIAL, INTENDED FOR THE NAMED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS (I) PROPRIETARY TO THE SENDER, AND/OR, (II) PRIVILEGED, CONFIDENTIAL, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE STATE AND FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, PRIVACY STANDARDS IMPOSED PURSUANT TO THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"). IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY REPLY E-MAIL OR BY TELEPHONE AT (702) 792-5855, AND DESTROY THE ORIGINAL TRANSMISSION AND ITS ATTACHMENTS WITHOUT READING OR SAVING THEM TO DISK. THANK YOU.

From: Derek Linford <DLinford@messner.com>
Sent: Friday, May 20, 2022 12:57 PM
To: Travis Shetler <travis@shetlerlawfirm.com>
Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>; Sean M. Kelly <smkelly@mcbridehall.com>
Subject: RE: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Hi Travis,

Do you have any suggestions on how to edit the proposed Order to limit it? I based the Order on my notes from Judge Hardy's ruling at the hearing. I do believe Judge Hardy had asked that the Order include his detailed findings. I am available this afternoon to discuss further if you would like. I can be reached on my cell at 208-965-4408.

Thank you,
Derek

DEREK K. LINFORD
Attorney
Messner Reeves LLP
O: 702.363.5100 **E:** dlinford@messner.com
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

From: Travis Shetler <travis@shetlerlawfirm.com>
Sent: Friday, May 20, 2022 12:29 PM
To: Derek Linford <DLinford@messner.com>

Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>; Sean M. Kelly <smkelly@mcbridehall.com>

Subject: [EXTERNAL] - RE: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Good afternoon,

I have reviewed the order.

I do not think the Order should include language which stretches so far beyond the court minutes. I will sign off if we can limit it accordingly

Thank you and enjoy your weekends.

Travis

From: Derek Linford <DLinford@messner.com>

Sent: Thursday, May 19, 2022 8:08 AM

To: Travis Shetler <travis@shetlerlawfirm.com>

Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>; Sean M. Kelly <smkelly@mcbridehall.com>

Subject: FW: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Hi Travis,

I wanted to follow-up on our proposed Order. The Order is due to the Court Monday, 5/23. Let me know if you have any requested changes, or if it is approved to submit with your e-signature.

Thank you,
Derek

DEREK K. LINFORD

Attorney

Messner Reeves LLP

O: 702.363.5100 **E:** dlinford@messner.com

8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

From: Derek Linford

Sent: Thursday, May 12, 2022 2:14 PM

To: travis@shetlerlawfirm.com

Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>; Sean M. Kelly <smkelly@mcbridehall.com>

Subject: RE: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Hi Travis,

I just wanted to follow-up on our proposed Order. Please let me know if there are any requested changes, or if it is approved to submit with your e-signature.

Thank you,

Derek

DEREK K. LINFORD

Attorney

Messner Reeves LLP

O: 702.363.5100 E: dlinford@messner.com

8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

From: Sean M. Kelly <smkelly@mcbridehall.com>

Sent: Wednesday, May 11, 2022 12:46 PM

To: Derek Linford <DLinford@messner.com>

Cc: travis@shetlerlawfirm.com; Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>

Subject: [EXTERNAL] - Re: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Thanks for preparing. You can use my e-signature.

Thank you,

Sean M. Kelly, Esq.

smkelly@mcbridehall.com | www.mcbridehall.com

[8329 West Sunset Road](#)

[Suite 260](#)

[Las Vegas, Nevada 89113](#)

Telephone: [\(702\) 792-5855](tel:(702)792-5855)

Facsimile: [\(702\) 796-5855](tel:(702)796-5855)



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On May 11, 2022, at 12:44 PM, Derek Linford <DLinford@messner.com> wrote:

Good afternoon Travis and Sean,

Attached please find our proposed Order Granting the Motion to Dismiss and Joinder thereto. Please advise of any suggested changes, or if approved to submit with your e-signatures.

Thank you,
Derek

DEREK K. LINFORD

Attorney

☎: 702.363.5100 E: dlinford@messner.com

8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

www.messner.com



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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Maria Heaton, Plaintiff(s)

CASE NO: A-20-818370-C

7 vs.

DEPT. NO. Department 15

8 Ellis, Bandt, Birkin, Kollins &
9 Wong, PLLC, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/24/2022

15 Robert McBride rcmcbride@mcbridehall.com

16 Sean Kelly smkelly@mcbridehall.com

17 Kristine Herpin kherpin@mcbridehall.com

18 David Mortensen dmortensen@messner.com

19 Stephanie Prescott sprescott@messner.com

20 Tya Frabott tfrabott@messner.com

21 Candace Cullina ccullina@mcbridehall.com

22 Travis Shetler travis@shetlerlawfirm.com

23 Susan Dolorfino sdolorfino@messner.com

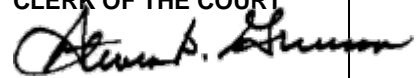
24 Courtney Christopher cchristopher@messner.com

25 Derek Linford Dlinford@messner.com

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Lauren Smith	lsmith@mcbridehall.com
Natalie Jones	njones@mcbridehall.com
Madeline VanHeuvelen	mvanheuvelen@mcbridehall.com
Ericka Lemus	elemus@mcbridehall.com



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dlinford@messner.com

Attorneys for Defendant Farhad Sani, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIA HEATON, an individual,

Plaintiffs,

vs.

ELLIS, BANDT, BIRKIN, KILLINS &
WONG, PLLC, a Nevada Domestic
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AGRAWAL & HYER, PLLC, a Nevada
Domestic Professional Limited Liability
Company, dba DESRT RADIOLOGY;
FARHAD SANI, MD, DOES 1 through 10,
inclusive; and ROE ENTITIES 1 through 10,
inclusive;

Defendants.

Case No. A-20-818370-C

Dept. No. 15

NOTICE OF ENTRY OF ORDER

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DATED this 24th day of May, 2022.

/s/ Derek Linford

Attorneys for Defendant Farhad Sani, M.D.

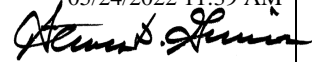
1 **CERTIFICATE OF SERVICE**

2 On this 24th day of May, 2022, pursuant to Administrative Order 14-2 and Rule 9 of the
3 NEFCR, I caused the foregoing **NOTICE OF ENTRY OF ORDER** to be transmitted to the
4 person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the
5 Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report
6 reported service as complete and a copy of the service transmission report will be maintained with
7 the document(s) in this office.

8 Steven M. Burris, Esq. (NBN 00603)
9 Travis E. Shetler, Esq. (NBN 04747)
10 LAW OFFICES OF STEVEN M. BURRIS
11 2810 W. Charleston Blvd, Suite F-58
12 Las Vegas, NV 89102
13 Email: sb@steveburrislaw.com
14 ts@steveburrislaw.com
15 P: 702-258-6238
16 *Attorneys for Plaintiff*

Robert C. McBride, Esq. (NBN 07082)
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P: 702-792-5855
*Attorneys for Defendants Ellis Bandt Birkin
Kollins and Wong, PLLC dba Desert Radiology
and Shelin, Agrawal & Hyer, PLLC, dba Desert
Radiology*

17 /s/ Tya Frabott
18 Employee of MESSNER REEVES LLP
19
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27


CLERK OF THE COURT

ORDR

DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 2547
COURTNEY CHRISTOPHER, ESQ.
Nevada Bar No. 12717
DEREK LINFORD, ESQ.
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cchristopher@messner.com
dlinford@messner.com

Attorneys for Defendant Farhad Sani, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIA HEATON, an individual,

Plaintiffs,

vs.

ELLIS, BANDT, BIRKIN, KILLINS &
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Professional Limited Liability Company, dba
DESERT RADIOLOGY; SHELIN,
AGRAWAL & HYER, PLLC, a Nevada
Domestic Professional Limited Liability
Company, dba DESERT RADIOLOGY;
FARHAD SANI, MD, DOES 1 through 10,
inclusive; and ROE ENTITIES 1 through 10,
inclusive;

Defendants.

Case No. A-20-818370-C

Dept. No. 15

**ORDER GRANTING DEFENDANT
FARHAD SANI, MD'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT
AND DEFENDANTS ELLIS BANDT
BIRKIN KOLLINS AND WONG, PLLC
DBA DESERT RADIOLOGY AND
SHELIN, AGRAWAL & HYER, PLLC,
DBA DESERT RADIOLOGY'S
PEREMPTORY JOINDER TO MOTION
TO DISMISS PLAINTIFF'S COMPLAINT**

On March 23, 2022, Defendant FARHAD SANI, MD (hereinafter "Dr. Sani") filed a Motion to Dismiss Plaintiff's Complaint and on March 28, 2022, Defendants ELLIS, BANDT, BIRKIN, KILLINS & WONG, PLLC, dba DESERT RADIOLOGY and SHELIN, AGRAWAL & HYER, PLLC, dba DESERT RADIOLOGY (hereinafter "Desert Radiology Defendants") filed a Joinder to

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A-20-818370-C

1 the Motion to Dismiss. Thereafter, Plaintiff filed an Opposition to the Motion to Dismiss and Joinder
2 on April 1, 2022, Defendant Dr. Sani filed a Reply on April 14, 2022, and Desert Radiology
3 Defendants filed a Joinder to the Reply on April 19, 2022.

4 On May 9, 2022, Defendant Dr. Sani's Motion to Dismiss and Desert Radiology Defendants'
5 Joinder came before this court for oral argument. Travis E. Shetler, Esq. appeared on behalf of
6 Plaintiff, Derek Linford, Esq. appeared on behalf of Defendant Dr. Sani, and Sean M. Kelly, Esq.
7 appeared on behalf of Desert Radiology Defendants. Pursuant to the arguments of said hearing, the
8 pleadings and papers on file, and good cause appearing, the Court hereby GRANTS Defendant Dr.
9 Sani's Motion to Dismiss and Desert Radiology Defendants' Joinder thereto.

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint is
11 DISMISSED in its entirety pursuant to NRCP 25(a)(1).

12 On June 15, 2021, Plaintiff Maria Heaton, the sole Plaintiff in this lawsuit passed away. On
13 September 20, 2021, Plaintiff's counsel filed a Suggestion of Death Upon the Record. Pursuant to
14 NRCP 25(a)(1), Plaintiff's counsel had 180 days after the filing of the Suggestion of Death Upon the
15 Record to file a Motion to Substitute a proper party, which expired on March 21, 2022. Plaintiff's
16 counsel failed to file the required Motion to Substitute by March 21, 2022, and as such the Court is
17 compelled to dismiss Plaintiff's Complaint.

18 NRCP 25(a)(1) provides that if the motion is not made within 180 days the claims by or
19 against the decedent must be dismissed. However, Nevada case law has provided a possible exception
20 to this rule. The Nevada Supreme Court has held that the deadline to substitute a proper party may be
21 extended after it has expired under NRCP 6(b) only on a showing of excusable neglect. *Moseley v.*
22 *Eighth Jud. Dist. Ct.*, 124 Nev. 654 (2008). In *Moseley*, the Nevada Supreme Court ruled that to
23 establish excusable neglect and extend the time to file for substitution under NRCP 25(a)(1), the party
24 must "demonstrate that (1) it acted in good faith, (2) it exercised due diligence, (3) there is a
25 reasonable basis for not complying within the specified time, and (4) the nonmoving party will not
26 suffer prejudice." *Id.* at 667-68.

27 The facts of the case are important. Plaintiff's counsel was the attorney for the appointment
28

1 of Special Co-Administrators for Plaintiff Maria Heaton’s Estate. As such, Plaintiff’s counsel was
2 aware of the appointment, and this is not a case where Plaintiff’s counsel was not aware of the
3 appointment. The appointment of Special Co-Administrators occurred well before the 180-day
4 deadline to file a motion to substitute expired. There was no obstruction on the part of Defendants or
5 Defendants’ counsel in this matter. Plaintiff’s counsel represented that prior to the deadline to file the
6 motion to substitute, he asked his paralegal if the document had been filed. Plaintiff’s counsel was
7 not specific as to which document he was speaking, and as a result, when the question was answered
8 in the affirmative, it was for the wrong case. Plaintiff’s counsel’s reliance on his paralegal’s response
9 is not excusable neglect. The lateness of Plaintiff’s Suggestion of Death does not factor into this
10 Court’s decision.

11 The facts of this case are not similar to the facts of the *George v. United States*, 208 F.R.D.
12 29 (D. Conn. 2001) or *Al-Jundi v. Estate of Rockefeller*, 757 F.Supp. 206 (W.D.N.Y. 1990), wherein
13 the *Moseley* Court noted excusable neglect could exist. First, in the *George* case, excusable neglect
14 was found because “any delay in moving for substitution was not due to any inaction on the part of
15 the deceased plaintiffs counsel” and that “she moved for an extension of time to be substituted as the
16 personal representative...four days after receiving the documentation reflecting the appointment.”
17 *Moseley*, 124 Nev. at 666. This ruling does not apply to this case as the delay in moving for
18 substitution was due to inaction on the part of Plaintiff’s counsel.

19 Second, in the *Al-Jundi* case, the court noted excusable neglect existed when following the
20 defendant’s death “decedent’s daughter refused to be appointed, but she also objected to the plaintiff’s
21 efforts to have an administrator ad litem appointed” and the “decedent’s attorney attempted to stall
22 any substitution.” *Moseley*, 124 Nev. at 667. This ruling also does not apply to this case as there was
23 no obstruction or interference by Defendants or Defendants’ counsel.

24 In applying the four factors identified by the *Moseley* Court to the facts of this case, the Court
25 finds that there is no question Plaintiff’s counsel acted in good faith and there would be no prejudice
26 in this matter. However, the Court finds that Plaintiff’s counsel did not exercise due diligence and
27 Plaintiff’s counsel did not have a reasonable basis for not complying within the specified time. Based

on the finding of lack of due diligence and no reasonable basis for failing to comply within the specified time on behalf of Plaintiff's counsel, the Court cannot find excusable neglect. As such the Court is compelled to Grant the Motion to Dismiss and Joinder thereto and dismiss Plaintiff's Complaint.

Respectfully submitted by:

MESSNER REEVES LLP

/s/ Derek Linford

David J. Mortensen, Esq. (NBN 2547)
Courtney Christopher, Esq. (NBN 12717)
Derek Linford, Esq. (NBN 14909)
8945 West Russell Road, Suite 300
Las Vegas, Nevada 89148
*Attorneys for Defendant
Farhad Sani, M.D.*

Approved as to form and content by:

LAW OFFICES OF TRAVIS E. SHETLER, PC

Refused to sign

Travis E. Shetler, Esq. (NBN 004747)
3202 W. Charleston Blvd.
Las Vegas, NV 89102
Attorney for Plaintiff

Approved as to form and content by:

McBRIDE HALL

/s/ Sean Kelly

Robert C. McBride, Esq. (NBN 7082)
Sean M. Kelly, Esq. (NBN 10102)
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113
*Attorneys Defendants
Ellis Bandt Birkin Kollins and Wong, PLLC
dba Desert Radiology and Shelin, Agrawal &
Hyer, PLLC, dba Desert Radiology*

ORDER

Pursuant to the foregoing, and good cause appearing therefrom:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant FARHAD SANI, MD's Motion to Dismiss and Defendants ELLIS, BANDT, BIRKIN, KILLINS & WONG, PLLC, dba DESERT RADIOLOGY and SHELIN, AGRAWAL & HYER, PLLC, dba DESERT RADIOLOGY's Joinder are GRANTED pursuant to NRCP 25(a)(1), and Plaintiff's Complaint is DISMISSED in its entirety.

IT IS SO ORDERED.

Dated this 24th day of May, 2022


DISTRICT JUDGE

**61B 4AD 69F6 408A
Joe Hardy
District Court Judge**

From: Derek Linford
Sent: Monday, May 23, 2022 3:10 PM
To: Tya Frabott
Cc: Stephanie Prescott; Courtney Christopher
Subject: FW: Heaton adv. Sani / Our File No. 10555.0025 / ORDER - DUE TODAY
Attachments: ORDR - Order Granting Motion to Dismiss (06351674xA9B4D).docx

Follow Up Flag:
Flag Status:

From: Derek Linford
Sent: Monday, May 23, 2022 3:05 PM
To: 'Sean M. Kelly' <smkelly@mcbridehall.com>; Travis Shetler <travis@shetlerlawfirm.com>
Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <spreScott@messner.com>
Subject: RE: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Good Afternoon,

Our office will go ahead and submit our proposed Order today. We will indicate that Plaintiff's counsel does not approve and attach our emails to the submission.

Thank you,
Derek

DEREK K. LINFORD
Attorney
Messner Reeves LLP
O: 702.363.5100 **E:** dlinford@messner.com
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

From: Sean M. Kelly <smkelly@mcbridehall.com>
Sent: Friday, May 20, 2022 1:01 PM
To: Derek Linford <DLinford@messner.com>; Travis Shetler <travis@shetlerlawfirm.com>

Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>
Subject: [EXTERNAL] - RE: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

I would agree...Judge Hardy wanted a detailed Order, one that is likely more detailed than the court's minutes.

Sean M. Kelly, Esq.
smkelly@mcbridehall.com | www.mcbridehall.com

8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
Telephone: (702) 792-5855
Facsimile: (702) 796-5855



MCBRIDE HALL
ATTORNEYS AT LAW

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From: Derek Linford <DLinford@messner.com>
Sent: Friday, May 20, 2022 12:57 PM
To: Travis Shetler <travis@shetlerlawfirm.com>
Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>; Sean M. Kelly <smkelly@mcbridehall.com>
Subject: RE: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Hi Travis,

Do you have any suggestions on how to edit the proposed Order to limit it? I based the Order on my notes from Judge Hardy's ruling at the hearing. I do believe Judge Hardy had asked that the Order include his detailed findings. I am available this afternoon to discuss further if you would like. I can be reached on my cell at 208-965-4408.

Thank you,
Derek

DEREK K. LINFORD
Attorney
Messner Reeves LLP
O: 702.363.5100 **E:** dlinford@messner.com
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

From: Travis Shetler <travis@shetlerlawfirm.com>
Sent: Friday, May 20, 2022 12:29 PM
To: Derek Linford <DLinford@messner.com>

Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>; Sean M. Kelly <smkelly@mcbridehall.com>

Subject: [EXTERNAL] - RE: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Good afternoon,

I have reviewed the order.

I do not think the Order should include language which stretches so far beyond the court minutes. I will sign off if we can limit it accordingly

Thank you and enjoy your weekends.

Travis

From: Derek Linford <DLinford@messner.com>

Sent: Thursday, May 19, 2022 8:08 AM

To: Travis Shetler <travis@shetlerlawfirm.com>

Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>; Sean M. Kelly <smkelly@mcbridehall.com>

Subject: FW: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Hi Travis,

I wanted to follow-up on our proposed Order. The Order is due to the Court Monday, 5/23. Let me know if you have any requested changes, or if it is approved to submit with your e-signature.

Thank you,
Derek

DEREK K. LINFORD

Attorney

Messner Reeves LLP

O: 702.363.5100 **E:** dlinford@messner.com

8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

From: Derek Linford

Sent: Thursday, May 12, 2022 2:14 PM

To: travis@shetlerlawfirm.com

Cc: Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <sprescott@messner.com>; Sean M. Kelly <smkelly@mcbridehall.com>

Subject: RE: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Hi Travis,

I just wanted to follow-up on our proposed Order. Please let me know if there are any requested changes, or if it is approved to submit with your e-signature.

Thank you,

Derek

DEREK K. LINFORD

Attorney

Messner Reeves LLP

O: 702.363.5100 E: dlinford@messner.com

8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

From: Sean M. Kelly <smkelly@mcbridehall.com>

Sent: Wednesday, May 11, 2022 12:46 PM

To: Derek Linford <DLinford@messner.com>

Cc: travis@shetlerlawfirm.com; Courtney Christopher <CChristopher@messner.com>; Stephanie Prescott <spreScott@messner.com>

Subject: [EXTERNAL] - Re: Heaton adv. Sani / Our File No. 10555.0025 / PROPOSED ORDER GRANTING MOTION TO DISMISS

Thanks for preparing. You can use my e-signature.

Thank you,

Sean M. Kelly, Esq.

smkelly@mcbridehall.com | www.mcbridehall.com

[8329 West Sunset Road](#)

[Suite 260](#)

[Las Vegas, Nevada 89113](#)

Telephone: [\(702\) 792-5855](tel:(702)792-5855)

Facsimile: [\(702\) 796-5855](tel:(702)796-5855)



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On May 11, 2022, at 12:44 PM, Derek Linford <DLinford@messner.com> wrote:

Good afternoon Travis and Sean,

Attached please find our proposed Order Granting the Motion to Dismiss and Joinder thereto. Please advise of any suggested changes, or if approved to submit with your e-signatures.

Thank you,
Derek

DEREK K. LINFORD

Attorney

☎: 702.363.5100 E: dlinford@messner.com

8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

www.messner.com



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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Maria Heaton, Plaintiff(s)

CASE NO: A-20-818370-C

7 vs.

DEPT. NO. Department 15

8 Ellis, Bandt, Birkin, Kollins &
9 Wong, PLLC, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/24/2022

15 Robert McBride rcmcbride@mcbridehall.com

16 Sean Kelly smkelly@mcbridehall.com

17 Kristine Herpin kherpin@mcbridehall.com

18 David Mortensen dmortensen@messner.com

19 Stephanie Prescott sprescott@messner.com

20 Tya Frabott tfrabott@messner.com

21 Candace Cullina ccullina@mcbridehall.com

22 Travis Shetler travis@shetlerlawfirm.com

23 Susan Dolorfino sdolorfino@messner.com

24 Courtney Christopher cchristopher@messner.com

25 Derek Linford Dlinford@messner.com

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Lauren Smith	lsmith@mcbridehall.com
Natalie Jones	njones@mcbridehall.com
Madeline VanHeuvelen	mvanheuvelen@mcbridehall.com
Ericka Lemus	elemus@mcbridehall.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

February 10, 2021

A-20-818370-C Maria Heaton, Plaintiff(s)
vs.
Ellis, Bandt, Birkin, Kollins & Wong, PLLC, Defendant(s)

**February 10, 2021 10:00 AM Mandatory Rule 16
Conference**

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Gandy, Jessica R. Attorney
 Kelly, Sean M. Attorney
 Shetler, Travis E Attorney

JOURNAL ENTRIES

- Court noted the Motion To Compel was moved to February 24th and Mr. Shetler would like the Mandatory Rule 16 Conference moved as well. Mr. Shetler concurred. Mr. Kelly stated there's no opposition. Mr. Shetler noted he's substituted as counsel, does not have the file and is not sure if he'll be prepared to do all on the same day. Colloquy regarding continuation of Mandatory Rule 16 Conference. Court stated February 24th it will be addressed when the Mandatory Rule 16 Conference will be held and ORDERED, matter SET for status check.

2-24-21 9:00 AM STATUS CHECK: MANDATORY RULE 16 CONFERENCE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

March 10, 2021

A-20-818370-C	Maria Heaton, Plaintiff(s)
	vs.
	Ellis, Bandt, Birkin, Kollins & Wong, PLLC, Defendant(s)

March 10, 2021 9:30 AM All Pending Motions

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT:	Gandy, Jessica R.	Attorney
	Kelly, Sean M.	Attorney
	Shetler, Travis E	Attorney

JOURNAL ENTRIES

- STATUS CHECK: MANDATORY RULE 16 CONFERENCE...MOTION TO COMPEL PRODUCTION OF CLIENT FILE AND MOTION TO ENJOIN STEVEN M. BURRIS, ESQ FROM FURTHER THREATENING AND HARASSING COMMUNICATIONS

All parties present via the BlueJeans Videoconferencing Application.

Upon inquiry of Court if the Motion to Compel Production of Client File and Motion to Enjoin Steven M Burris, Esq From Further Threatening and Harassing Communications was being withdrawn, Mr. Shelter stated it was. COURT SO ORDERED. Colloquy regarding time needed for discovery and setting out requested discovery date. COURT ORDERED, discovery cut-off would be April 29, 2022, with dispositive motions due May 31, 2022, a calendar call setting of July 26, 2022 at 9:30 a.m., and SET on the August 1, 2022 trial stack. Upon inquiry of counsel regarding a firm trial setting, Court directed counsel to contact the Judicial Executive Assistant in Department 6 for firm trial dates.

7/26/2022 9:30 AM CALENDAR CALL

8/1/2022 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

January 12, 2022

A-20-818370-C Maria Heaton, Plaintiff(s)
vs.
Ellis, Bandt, Birkin, Kollins & Wong, PLLC, Defendant(s)

**January 12, 2022 8:00 AM Status Check:
Medical/Dental
Malpractice**

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Michelle Jones
Pharan Burchfield
Stephanie Rapel
Nicole Cejas
David Gibson

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT: McBride, Robert C. Attorney

JOURNAL ENTRIES

- Also present M. Courtney Christopher (NV Bar # 12717).

The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Colloquy regarding status of the case. COURT ORDERED, matter SET for trial on March 27, 2023.

03/27/2023 JURY TRIAL - FIRM (10 DAYS)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

April 25, 2022

A-20-818370-C Maria Heaton, Plaintiff(s)
vs.
Ellis, Bandt, Birkin, Kollins & Wong, PLLC, Defendant(s)

April 25, 2022 9:00 AM All Pending Motions

HEARD BY: Hardy, Joe **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Jessica Mason

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Kelly, Sean M. Attorney

JOURNAL ENTRIES

- Mr. Kelly indicated parties had filed a Stip and Order on Friday to continue the instant matter. Mr. Kelly further indicated Plaintiff's Counsel had a conflict and could not be here today. Upon the Court's inquiry as to when to continue it to, Mr. Kelly noted any time after May 3rd, 2022 would be preferable. COURT ORDERED, MATTER CONTINUED.

CONTINUED TO: 05/09/2022 09:00 AM

01/18/2023 09:30 AM STATUS CHECK: TRIAL READINESS

02/22/2023 08:30 AM PRE-TRIAL CONFERENCE

03/08/2023 08:30 AM CALENDAR CALL

03/27/2023 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental**COURT MINUTES****May 09, 2022**

A-20-818370-C

Maria Heaton, Plaintiff(s)

vs.

Ellis, Bandt, Birkin, Kollins & Wong, PLLC, Defendant(s)

May 09, 2022**9:00 AM****All Pending Motions****HEARD BY:** Hardy, Joe**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Jessica Mason**RECORDER:** Matt Yarbrough**REPORTER:****PARTIES****PRESENT:**

Kelly, Sean M.

Attorney

Linford, Derek K

Attorney

Shetler, Travis E

Attorney

JOURNAL ENTRIES

- ALL PENDING MOTIONS...DEFENDANTS FARHAD SANI, MD'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT... DEFENDANT'S ELLIS, BANDT, BIRKIN, KOLLINS AND WONG, PLLC AND SHELIN, AGRAWAL & HYER, PLLC JOINDER

The Court noted it had read the pleadings and welcomed arguments. Mr. Linford argued the timeline allowed for substitution following a Suggestion of Death upon the Record pursuant to NRCP 25(a)(1) has passed; therefore this matter should be dismissed. Mr. Linford further argued there is no excusable neglect shown here. Mr. Shetler indicated he mixed up this case, and the probate case and unfortunately, this case slipped through. Mr. Shetler noted tactically it makes sense to bring the motion, but requested elasticity to allow for the timeline to be adjusted. Upon the Court's inquiry as to excusable neglect, Mr. Shetler noted it wasn't intentional, and was just a mistake. Mr. Kelly indicated he had nothing to add. The Court found although not a ruling the court takes pleasure in finding, does find it is compelled to grant the motion and the joinder under NRCP 25 (a)(1). The Court found under the facts here, cannot find there to be excusable neglect. The Court noted for better or for worse, the probation action here ensures it's that Mr. Shetler knew of the appointment in this case. Court found notwithstanding the lack of due diligence and the lack of excusable neglect, the

Court is compelled in the granting of the motion in this matter. COURT ORDERED Defendant's Motion and the Joinder to Dismiss Complaint HEREBY GRANTED.

-Mr. Lindord to prepare the Order, submit it to co-counsel's for review and approval, then to the court.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

TRAVIS E. SHETLER, ESQ.
3202 W. CHARLESTON BLVD.
LAS VEGAS, NV 89102

DATE: June 24, 2022
CASE: A-20-818370-C

RE CASE: MARIA HEATON vs. ELLIS, BANDT, BIRKIN, KOLLINS & WONG, PLLC dba DESERT RADIOLOGY; SHELIN, AGRAWAL & HYER, PLLC dba DESERT RADIOLOGY; FARHAD SANI, MD

NOTICE OF APPEAL FILED: June 22, 2022

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANT FARHAD SANI, MD'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND DEFENDANTS ELLIS BANDT BIRKIN KOLLINS AND WONG, PLLC DBA DESERT RADIOLOGY AND SHELIN, AGRAWAL & HYER, PLLC, DBA DESERT RADIOLOGY'S PEREMPTORY JOINDER TO MOTION TO DISMISS PLAINTIFF'S COMPLAINT; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

MARIA HEATON,

Plaintiff(s),

vs.

ELLIS, BANDT, BIRKIN, KOLLINS &
WONG, PLLC dba DESERT RADIOLOGY;
SHELIN, AGRAWAL & HYER, PLLC dba
DESERT RADIOLOGY; FARHAD SANI, MD,

Defendant(s),

Case No: A-20-818370-C

Dept No: XV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 24 day of June 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk