

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

MARIA HEATON, AN INDIVIDUAL,

Appellant,

vs.

ELLIS, BANDT, BIRKIN, KOLLINS &  
WONG, PLLC, A NEVADA DOMESTIC  
PROFESSIONAL LIMITED LIABILITY  
COMPANY, D/B/A DESERT  
RADIOLOGY; SHELIN AGRAWAL &  
HYER, PLLC, A NEVADA DOMESTIC  
PROFESSIONAL LIMITED LIABILITY  
COMPANY, D/B/A DESERT  
RADIOLOGY; AND FARHAD SANI,  
M.D.,

Respondents.

**Supreme Court No. 84926**

Electronically Filed  
Jul 26, 2022 02:34 p.m.  
District Court Case No. A818370  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENTS' JOINT MOTION**  
**TO DISMISS APPEAL**

COMES NOW Respondent FARHAD SANI, M.D., by and through his counsel of record, the law firm of MESSNER REEVES LLP, and Respondents ELLIS, BANDT, BIRKIN, KOLLINS & WONG, PLLC, A NEVADA DOMESTIC PROFESSIONAL LIMITED LIABILITY COMPANY, D/B/A DESERT RADIOLOGY AND SHELIN, AGRAWAL & HYER, PLLC, A NEVADA DOMESTIC PROFESSIONAL LIMITED LIABILITY COMPANY, D/B/A DESERT RADIOLOGY, by and through their counsel of record, the law firm of McBRIDE HALL, and hereby submits their Motion to Dismiss Appeal for lack of standing pursuant to NRAP 3A(a).

This Motion is made and based on the papers and pleadings on file herein, the points and authorities attached hereto, and such argument of counsel which the Court may permit.

DATED this 26<sup>th</sup> day of July, 2022.

MESSNER REEVES LLP

/s/ Courtney Christopher

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

DATED this 25<sup>th</sup> day of July, 2022.

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 for Respondents  
Ellis Bandt Birkin Kollins and Wong,  
PLLC dba Desert Radiology and  
Shelin, Agrawal & Hyer, PLLC, dba  
Desert Radiology*

# **MEMORANDUM OF POINTS AND AUTHORITIES**

## **I.**

### **INTRODUCTION**

On June 27, 2022, a Notice of Appeal was filed. Within Appellants Case Appeal Statement and Docketing Statement, Teresa Gubler and Margaret R. Leavitt, individually and as Co-Special Administrators of the Estate of Maria Heaton, Deceased, were identified as the Appellants in this appeal.

Neither Teresa Gubler nor Margaret R. Leavitt were parties to the underlying District Court matter and neither made an appearance in the underlying matter. As such, neither is a party with standing to bring this appeal pursuant to NRAP 3A(a). Respondents respectfully jointly request this Honorable Court dismiss this appeal as neither appellant has standing to bring or maintain this appeal.

## **II.**

### **ISSUE PRESENTED**

#### **A. APPELLANTS TERESA GUBLER AND MARGARET R. LEAVITT LACK STANDING TO BRING THIS APPEAL.**

## **III.**

### **LEGAL STANDARD**

NRAP 3A(a) provides: “A party who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a

new trial.” A “person or entity is not a party within the meaning of NRAP 3A(a) unless that person or entity has been served with process, appeared in the court below and has been named as a party of record in the trial court.” *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994).

“If respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss.” NRAP 14(f). Respondents believe that pursuant to NRAP 3(A)(a), Appellants Teresa Gubler and Margaret R. Leavitt are not “parties” and as such, lack standing to maintain this appeal.

#### IV.

#### **STATEMENT OF FACTS**

On July 22, 2020, Plaintiff Maria Heaton filed her Complaint in the Eighth Judicial District Court of Nevada, naming as Defendants Ellis, Bandt, Birkin, Kollins & Wong, PLLC d/b/a Desert Radiology, Shelin, Agrawal & Hyper, PLLC d/b/a Desert Radiology, and Farhad Sani, M.D.<sup>1</sup> On June 15, 2021, Plaintiff Maria Heaton passed away.<sup>2</sup> On September 20, 2021, Plaintiff’s counsel filed a Suggestion of Death upon the Record, which identified Teresa Gubler and Margaret R. Leavitt as Co-Special Administrators of Maria Heaton’s Estate.<sup>3</sup>

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<sup>1</sup> See Notice of Appeal at 3, 11, attached hereto as **Exhibit “A”**.

<sup>2</sup> See *id.* at 6.

<sup>3</sup> *Id.*



Following the filing of the Suggestion of Death, Plaintiff's counsel had 180 days to file a Motion to Substitute a proper party as the plaintiff in the underlying matter. The deadline expired on March 21, 2022, and Plaintiff's counsel failed to file a Motion to Substitute.

On March 23, 2022, Respondent Dr. Sani filed a Motion to Dismiss for failure to timely substitute a proper party pursuant to NRCP 25(a)(1).<sup>4</sup> On March 28, 2022, Respondents Ellis, Bandt, Birkin, Kollins & Wong, PLLC d/b/a Desert Radiology and Shelin, Agrawal & Hyper, PLLC d/b/a Desert Radiology filed a Joinder to the Motion to Dismiss.<sup>5</sup>

On May 9, 2022, the District Court held a hearing on Respondent Dr. Sani's Motion to Dismiss and the Joinder thereto, and granted the Motion and Joinder, dismissing Plaintiff's Complaint in its entirety.<sup>6</sup> On May 24, 2022, the District Court entered the Order Dismissing Plaintiff's Complaint, and on May 24, 2022, Respondent Dr. Sani filed a Notice of Entry of the Order.<sup>7</sup> Of note, Teresa Gubler and Margaret R. Leavitt were never substituted or added as parties to the underlying matter.<sup>8</sup>

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<sup>4</sup> *See id.* at 4.

<sup>5</sup> *See id.* at 5.

<sup>6</sup> *See id.* at 44-45.

<sup>7</sup> *See id.* at 7-8, 12-26.

<sup>8</sup> *See id.* at 3-9.

On June 22, 2022, Plaintiff’s counsel filed a Notice of Appeal and incorrectly identified as the Plaintiffs in the underlying matter as “Teresa Gubler and Margaret R. Leavitt, individually and as Co-Special Administrators of the Estate of Maria Heaton, Deceased.”<sup>9</sup> On July 19, 2022, a Case Appeal Statement was filed noting that the appellants filing the Statement were “Teresa Gubler and Margaret R. Leavitt, Co-Administrators to the Estate of Maria Heaton.”<sup>10</sup> On July 19, 2022, Counsel for Appellants also filed a Docketing Statement and indicated his clients for this appeal are “Teresa Gubler and Margaret R. Leavitt, Co-Admin’s Estate of Maria Heaton.”<sup>11</sup> Additionally, in the Docketing Statement, Counsel for Appellants incorrectly identified “Teresa Gubler and Margaret R. Leavitt individually and as Co-Special Administrators of the Estate of Maria Heaton, Deceased”, as parties in the District Court Matter.<sup>12</sup>

## V.

### ARGUMENT

#### **A. APPELLANTS TERESA GUBLER AND MARGARET R. LEAVITT LACK STANDING TO BRING THIS APPEAL.**

Neither Teresa Gubler nor Margaret R. Leavitt were parties to this matter in

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<sup>9</sup> *See id.* 1-2.

<sup>10</sup> *See* Case Appeal Statement, attached hereto as **Exhibit “B”**.

<sup>11</sup> *See* Docketing Statement, attached hereto as **Exhibit “C”**.

<sup>12</sup> *Id.*

the District Court in any capacity.<sup>13</sup> As such, neither have standing pursuant to NRAP 3A(a) to maintain this appeal. Both Teresa Gubler and Margaret R. Leavitt were identified in the underlying matter as potential plaintiffs following the death of Plaintiff Maria Heaton. However, neither were substituted into this matter as plaintiffs or made any appearance as a plaintiff in this matter.<sup>14</sup>

Pursuant to NRAP 3A(a), only “[a] **party** who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a new trial.” (Emphasis added). It is well established law that “[o]nly an aggrieved party has standing to appeal to [the Nevada Supreme Court].” *Hughes’ Estate v. First Nat. Bank of Nevada*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980). The Nevada Supreme Court has interpreted this section very restrictively. *See Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 874 P.2d 729 (1994).

In *Ginsburg*, the Nevada Supreme Court held that a “person or entity is not a party within the meaning of NRAP 3A(a) unless that person or entity has been served with process, **appeared in the court below and has been named as a party of record in the trial court.**” *Id.* 110 Nev. at 448, 874 P.2d at 735 (emphasis added). In *Hughes’ Estate* the Nevada Supreme Court held that “[t]he appellants are not

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<sup>13</sup> See Exhibit A, 3-10

<sup>14</sup> *Id.*

aggrieved parties, and the instant appeal must therefore be dismissed.” *Hughes’ Estate*, 96 Nev. at 181, 605 P.2d at 1150.

Here, neither Teresa Gubler nor Margaret R. Leavitt were parties in the underlying District Court matter, and as such, are not aggrieved parties pursuant to NRAP 3A. As neither Appellant is an aggrieved party, they do not have standing to maintain this appeal. Because Appellants’ lack standing, Respondents respectfully request this Court to dismiss this appeal.

## VI.

### CONCLUSION

Based on the foregoing, Respondents respectfully request that this Honorable Court grant Respondents’ Joint Motion to Dismiss Appeal for lack of standing pursuant to NRAP 3A(a).

DATED this 26<sup>th</sup> day of July, 2022.

MESSNER REEVES LLP

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

DATED this 25<sup>th</sup> day of July, 2022.

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 for Respondents  
Ellis Bandt Birkin Kollins and Wong,  
PLLC dba Desert Radiology and  
Shelin, Agrawal & Hyer, PLLC, dba  
Desert Radiology*

## **CERTIFICATE OF SERVICE**

On this 26<sup>th</sup> day of July, 2022, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **RESPONDENTS' JOINT MOTION TO DISMISS APPEAL** to be transmitted to the person(s) identified in the E-Service List for this captioned case as follows. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

Travis E. Shetler, Esq. (NBN 04747)  
LAW OFFICES OF TRAVIS E.  
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*Attorneys for Plaintiff*

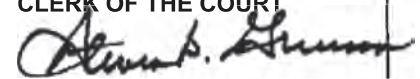
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*Attorneys for Defendants Ellis Bandt  
Birkin Kollins and Wong, PLLC dba  
Desert Radiology and Shelin,  
Agrawal & Hyer, PLLC, dba Desert  
Radiology*

/s/ Tya Frabott  
Employee of MESSNER REEVES LLP

**INDEX OF EXHIBITS**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
<b>A</b>	<b>Notice of Appeal</b>	<b>48</b>
<b>B</b>	<b>Case Appeal Statement</b>	<b>5</b>
<b>C</b>	<b>Docketing Statement</b>	<b>95</b>

# Exhibit A



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

1 **TRAVIS E. SHETLER, ESQ.**  
Nevada Bar No. 4747  
2 [travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)  
3 **LAW OFFICE OF TRAVIS E. SHETLER, PC**  
3202 W. Charleston Boulevard  
Las Vegas, Nevada 89102  
4 (702) 931-9700 Telephone  
(702) 931-9800 Facsimile  
5 *Attorney for Plaintiff*

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

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.

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

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 22<sup>nd</sup> 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](mailto: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 20<sup>th</sup> 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 22<sup>nd</sup> 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 &amp; Wong, PLLC; Defendant Shelin, Agrawal &amp; Hyer, PLLC  <i>[9] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal &amp; 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 &amp; Wong, PLLC; Defendant Shelin, Agrawal &amp; Hyer, PLLC  <i>[10] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal &amp; 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 &amp; Wong, PLLC; Defendant Shelin, Agrawal &amp; Hyer, PLLC  <i>[11] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal &amp; Hyer, PLLC, dba Desert Radiology's Demand for Jury Trial</i></p>
08/27/2020	<p> Disclosure Statement            Party: Defendant Ellis, Bandt, Birkin, Kollins &amp; Wong, PLLC; Defendant Shelin, Agrawal &amp; Hyer, PLLC  <i>[12] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal &amp; 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 &amp; 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 &amp; 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 &amp; 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 &amp; 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 &amp; Wong, PLLC; Defendant Shelin, Agrawal &amp; Hyer, PLLC  <i>[34] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC Dba Desert Radiology and Shelin, Agrawal &amp; 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 <i>[44] Notice of Hearing</i>
03/28/2022	 Joinder To Motion Filed By: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC; Defendant Shelin, Agrawal & Hyer, PLLC <i>[45] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal &amp; Hyer, PLLC dba Desert Radiology's Peremptory Joinder to Motion to Dismiss Plaintiff's Complaint</i>
04/01/2022	 Opposition to Motion to Dismiss Filed By: Plaintiff Heaton, Maria <i>[46] Plaintiff's Opposition to Defendant' Farhad Sani, M.D.'s Motion to Dismiss Plaintiff's Complaint &amp; Defendants Ellis Bandt Birkin Kollins and Wong, PLLC DBA Desert Radiology and Shelin, Agrawal &amp; Hyer, PLLC, DBA Desert Radiology's Peremptory Joinder to Motion to Dismiss Plaintiff's Complaint</i>
04/04/2022	 Opposition to Motion Filed By: Plaintiff Heaton, Maria <i>[47] Plaintiff's Opposition to Defendant Farah Sani, M.D.'s Motion to Dismiss Plaintiff's Complaint &amp; Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal &amp; Hyer, PLLC, dba Desert Radiology's Peremptory Joinder to Motion to Dismiss Plaintiff's Complaint</i>
04/14/2022	 Reply to Opposition Filed by: Defendant Sani, Farhad, M.D. <i>[48] Defendant Farhad Sani, M.D's Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint</i>
04/19/2022	 Joinder Filed By: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC; Defendant Shelin, Agrawal & Hyer, PLLC <i>[49] Defendants Ellis Bandt Birkin Kollins and Wong, PLLC DBA Desert Radiology and Shelin, Agrawal &amp; Hyer, PLLC, DBA Desert Radiology's Joinder to Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's Complaint</i>
05/24/2022	 Order Granting Motion Filed By: Defendant Sani, Farhad, M.D. <i>[50] Order Granting Defendant Sani's Motion to Dismiss Plaintiff's Complaint and Joinder</i>
05/24/2022	 Notice of Entry of Stipulation and Order Filed By: Defendant Sani, Farhad, M.D. <i>[51] Notice of Entry of Order</i>
05/31/2022	 Memorandum of Costs and Disbursements <i>[52] Verified Memorandum of Costs and Disbursements</i>
06/01/2022	 Memorandum of Costs and Disbursements Filed By: Defendant Ellis, Bandt, Birkin, Kollins & Wong, PLLC <i>[53] Defendants Verified Memorandum of Costs and Disbursements</i>
06/22/2022	 Notice of Appeal <i>[54] Notice of Appeal</i>
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><b>Motion to Dismiss</b> (9:00 AM) (Judicial Officer: Hardy, Joe)</p> <p><b>04/25/2022, 05/09/2022</b></p> <p><i>Defendant Farhad Sani, MD's Motion to Dismiss Plaintiff's Complaint</i></p> <p>Continued;</p>
04/25/2022	<p><b>Joinder</b> (9:00 AM) (Judicial Officer: Hardy, Joe)</p> <p><b>04/25/2022, 05/09/2022</b></p> <p><i>Defendants Ellis Bandt Birkin Kollins and Wong, PLLC dba Desert Radiology and Shelin, Agrawal &amp; Hyer, PLLC dba Desert Radiology's Peremptory Joinder to Motion to Dismiss Plaintiff's Complaint</i></p> <p>Continued;</p>
04/25/2022	<p><b>Joinder</b> (9:00 AM) (Judicial Officer: Hardy, Joe)</p> <p><b>04/25/2022, 05/09/2022</b></p> <p><i>Defendants Ellis Bandt Birkin Kollins and Wong, PLLC DBA Desert Radiology and Shelin, Agrawal &amp; 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> <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Hardy, Joe)</p> <p><b>04/25/2022, 05/09/2022</b></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 &amp; 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><b>CANCELED Status Check: Trial Readiness</b> (9:00 AM) (Judicial Officer: Hardy, Joe)</p> <p><i>Vacated</i></p>
06/06/2022	<p><b>CANCELED Status Check</b> (9:30 AM) (Judicial Officer: Hardy, Joe)</p> <p><i>Vacated - per Stipulation and Order</i></p>
07/11/2022	<p><b>CANCELED Pre Trial Conference</b> (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	<i>CANCELED Calendar Call (9:00 AM) (Judicial Officer: Hardy, Joe) Vacated</i>
07/27/2022	<i>CANCELED Calendar Call (8:30 AM) (Judicial Officer: Hardy, Joe) Vacated - per Stipulation and Order</i>
08/08/2022	<i>CANCELED Jury Trial (10:00 AM) (Judicial Officer: Bluth, Jacqueline M.) Vacated</i>
08/08/2022	<i>CANCELED Jury Trial (10:30 AM) (Judicial Officer: Hardy, Joe) Vacated - per Stipulation and Order</i>
01/18/2023	<i>CANCELED Status Check (9:30 AM) (Judicial Officer: Hardy, Joe) Vacated</i>
02/22/2023	<i>CANCELED Pre Trial Conference (8:30 AM) (Judicial Officer: Hardy, Joe) Vacated</i>
03/08/2023	<i>CANCELED Calendar Call (8:30 AM) (Judicial Officer: Hardy, Joe) Vacated</i>
03/27/2023	<i>CANCELED Jury Trial - FIRM (10:30 AM) (Judicial Officer: Hardy, Joe) Vacated JURY TRIAL - SET DURING MED. MAL. SWEEPS.</i>

**DATE****FINANCIAL INFORMATION**

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

# 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

<b>Real Property</b>  <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input checked="" type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b>  <b>Other Torts</b> <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
<b>Probate</b>  <b>Probate</b> <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 <b>Estate Value</b> <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	<b>Construction Defect &amp; Contract</b>  <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <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	<b>Judicial Review/Appeal</b>  <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b>  <b>Civil Writ</b> <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		<b>Other Civil Filing</b>  <b>Other Civil Filing</b> <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.*

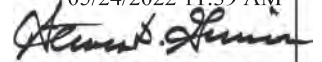
**July 22, 2020**

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.  
Nevada Bar No. 2547  
COURTNEY CHRISTOPHER, ESQ.  
Nevada Bar No. 12717  
DEREK LINFORD, ESQ.  
Nevada Bar No. 14909  
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[cchristopher@messner.com](mailto:cchristopher@messner.com)  
[dlinford@messner.com](mailto: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  
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

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 “decendent’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 “decendent’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**

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**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:**

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**From:** Derek Linford  
**Sent:** Monday, May 23, 2022 3:05 PM  
**To:** 'Sean M. Kelly' <[smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)>; Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>  
**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[spreScott@messner.com](mailto: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](mailto:dlinford@messner.com)  
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

---

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



**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto: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](mailto:smkelly@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)

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



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.

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**From:** Derek Linford <[DLinford@messner.com](mailto:DLinford@messner.com)>  
**Sent:** Friday, May 20, 2022 12:57 PM  
**To:** Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>  
**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:dlinford@messner.com)  
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

---

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

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:DLinford@messner.com)>

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

**To:** Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto: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](mailto:travis@shetlerlawfirm.com)

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:dlinford@messner.com)

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

---

**From:** Sean M. Kelly <[smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)>

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

**To:** Derek Linford <[DLinford@messner.com](mailto:DLinford@messner.com)>

**Cc:** [travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com); Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto: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](mailto:smkelly@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)

[8329 West Sunset Road](#)

[Suite 260](#)

[Las Vegas, Nevada 89113](#)

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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](mailto: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](mailto:dlinford@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

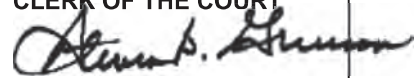
25 Derek Linford

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@mcbridchall.com



**NEOJ**

DAVID J. MORTENSEN, ESQ.  
Nevada Bar No. 2547  
COURTNEY CHRISTOPHER, ESQ.  
Nevada Bar No. 12717  
DEREK LINFORD, ESQ.  
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[dlinford@messner.com](mailto: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  
Professional Limited Liability Company, dba  
DESERT RADIOLOGY; SHELIN,  
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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A-20-818370-C

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DATED this 24<sup>th</sup> day of May, 2022.

---

/s/ *Derek Linford*

DAVID J. MORTENSEN, ESQ. (NBN 2547)  
COURTNEY CHRISTOPHER, ESQ. (NBN 12717)  
DEREK LINFORD, ESQ. (NBN 14909)  
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*Attorneys for Defendant Farhad Sani, M.D.*



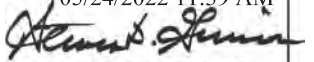
1 **CERTIFICATE OF SERVICE**

2 On this 24<sup>th</sup> 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](mailto:sb@steveburrislaw.com)  
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14 P: 702-258-6238  
15 *Attorneys for Plaintiff*

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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

  
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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[dlinford@messner.com](mailto: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  
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 “decendent’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 “decendent’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](mailto:smkelly@mcbridehall.com)>; Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>  
**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[spreScott@messner.com](mailto: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](mailto:dlinford@messner.com)  
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

---

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

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto: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](mailto:smkelly@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)

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---

**From:** Derek Linford <[DLinford@messner.com](mailto:DLinford@messner.com)>  
**Sent:** Friday, May 20, 2022 12:57 PM  
**To:** Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>  
**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:dlinford@messner.com)  
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

---

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



**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:DLinford@messner.com)>

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

**To:** Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto: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](mailto:travis@shetlerlawfirm.com)

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:dlinford@messner.com)

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

---

**From:** Sean M. Kelly <[smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)>

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

**To:** Derek Linford <[DLinford@messner.com](mailto:DLinford@messner.com)>

**Cc:** [travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com); Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto: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](mailto:smkelly@mcbridehall.com) | [www.mcbridehall.com](http://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)



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](tel:(702)792-5855), AND DESTROY THE ORIGINAL TRANSMISSION AND ITS ATTACHMENTS WITHOUT READING OR SAVING THEM TO DISK. THANK YOU.

On May 11, 2022, at 12:44 PM, Derek Linford <[DLinford@messner.com](mailto: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](mailto:dlinford@messner.com)

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

---

[www.messner.com](http://www.messner.com)

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**Disclaimer**

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This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

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@mcbridchall.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**

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A-20-818370-C	Maria Heaton, Plaintiff(s) vs. Ellis, Bandt, Birkin, Kollins & Wong, PLLC, Defendant(s)
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<b>January 12, 2022</b>	<b>8:00 AM</b>	<b>Status Check: Medical/Dental Malpractice</b>
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<b>HEARD BY:</b> Wiese, Jerry A.	<b>COURTROOM:</b> RJC Courtroom 14A
----------------------------------	-------------------------------------

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

**RECORDER:** Vanessa Medina

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	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)

April 25, 2022

Minutes Date: February 10, 2021

**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 &amp; 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),

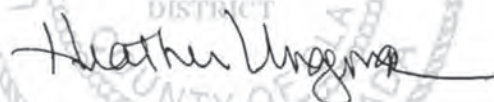
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Dept No: XV

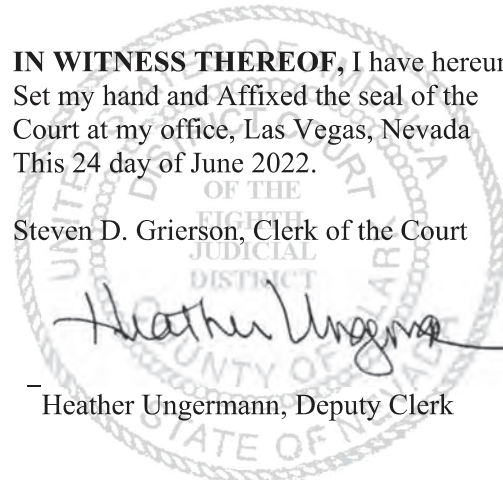
now on file and of record in this office.

**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



# Exhibit B

**TRAVIS E. SHETLER, ESQ.**  
Nevada Bar No. 4747  
[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)  
**LAW OFFICE OF TRAVIS E. SHETLER, PC**  
3202 W. Charleston Boulevard  
Las Vegas, Nevada 89102  
(702) 931-9700 Telephone  
(702) 931-9800 Facsimile  
*Attorney for Plaintiff*

Electronically Filed  
Jul 19 2022 03:16 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

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

Supreme Court No.: 84926  
District Court Case No.: A818370

Plaintiff,

vs.

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;

Defendants.

**CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:

**Teresa Gubler and Margaret R. Leavitt, Co-Administrators to the Estate of  
Maria Heaton.**

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

**Honorable Joe Hardy**

...

...



- 1           3.     Identify each appellant and the name and address of counsel for each appellant:  
2                     **Appellants: Teresa Gubler and Margaret R. Leavitt, Co-Administrators to the**  
3                     **Estate of Maria Heaton**  
4                     **Attorney: Travis E. Shetler, Esq. of Law Office of Travis E. Shetler, 3202 W.**  
5                     **Charleston Blvd., Las Vegas, Nevada 89102**  
6  
7           4.     Identify each respondent and the name and address of appellate counsel, if known, for  
8                     each respondent (if the name of a respondent's appellate counsel is unknown, indicate  
9                     as much and provide the name and address of that respondent's trial counsel):  
10                    **Respondent: Ellis, Bandt, Birkin, Kollins & Wong, PLLC, Shelin, Agrawal**  
11                    **& Hyer, PLLC,**  
12                    **Attorney: Robert C. McBride, Esq. of McBride Hall, 8329 W. Sunset Road,**  
13                    **Suite 260, Las Vegas, Nevada 89113**  
14  
15                    **Respondent: Farhad Sani, M.D**  
16                    **Attorney: David J. Mortensen, Esq. Of Messner Reeves, LLP, 8945 W. Russell**  
17                    **Road, Suite 300, Las Vegas, Nevada 89148**  
18  
19           5.     Indicate whether any attorney identified above in response to question 3 or 4 is not  
20                     licensed to practice law in Nevada and, if so, whether the district court granted that  
21                     attorney permission to appear under SCR 42 (attach a copy of any district court  
22                     order granting such permission):  
23  
24           6.     Indicate whether appellant was represented by appointed or retained counsel in the  
25                     district court:  
26                     **Retained**  
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7. Indicate whether appellant is represented by appointed or retained counsel on appeal:  
**Retained**
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:  
**No**
9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):  
**Complaint file on July 22, 2020**
10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:  
**Medical Malpractice**
11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:  
**No**
12. Indicate whether this appeal involves child custody or visitation:  
**No**

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

**Yes**

DATED this 19<sup>th</sup> day of July,

*/s/ Travis E. Shetler*  
By: \_\_\_\_\_  
Travis E. Shetler, Esq.  
Nevada Bar No. 004747  
Law Office of Travis E. Shetler, PC  
[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)  
3202 W. Charleston Blvd.  
Las Vegas, Nevada 89102  
Tel: (702) 931-9700  
*Attorney for Plaintiff*

# Exhibit C

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

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

Plaintiff,

vs.

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 1 through 10, inclusive;  
Defendants.

No.

84926

Electronically Filed  
Jul 19 2022 03:38 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DOCKETING STATEMENT  
CIVIL APPEALS

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 6  
County Clark Judge Honorable Joe Hardy  
District Ct. Case No. A-20-818370-C

**2. Attorney filing this docketing statement:**

Attorney Travis E. Shetler, Esq. Telephone 702-931-9700  
Firm Law Office of Travis E. Shetler  
Address 3202 W. Charleston Blvd.  
Las Vegas, Nevada 89102

Client(s) Teresa Gubler and Margaret R. Leavitt, Co-Admin's Estate of Maria Heaton

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Robert C. McBride, Esq. Telephone 702-792-5855  
Firm McBride Hall  
Address 8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113

Client(s) Ellis, Bandt, Birkin, Kollins & Wong, PLLC, Shelin, Agrawal & Hyer, PLLC,

Attorney David J. Mortensen, Esq. Telephone 702-363-5100  
Firm Messner Reeves, LLP  
Address 8945 W. Russel Road, Suite 300  
Las Vegas, Nevada 89148

Client(s) Farhad Sani, M.D

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input checked="" type="checkbox"/> Dismissal:                                |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                                 |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                             |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                                 |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input checked="" type="checkbox"/> Other (specify): <u>Motion to Dismiss</u> |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                      |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification       |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____                   |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

n/a

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

n/a

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

Medical Malpractice

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Defendant filed Motion to Dismiss -- failure to timely substitute party for deceased Plaintiff.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

n/a



**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☒ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This is not presumptively retained by the Supreme Court of Nevada.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** 05/24/2022

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** 05/24/2022

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** 06/22/2022

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order: Appellant has a right to appeal from a Final Judgment in District Court.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

MARIA HEATON; TERESA GUBLER and MARGARET R. LEAVITT individually and as Co-Special Administrators of the ESTATE OF MARIA HEATON, Deceased; 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 Co dba DESERT RADIOLOGY; FARHAD SANI, MD

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

n/a

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Plaintiff brought a claim for failure to diagnose

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:



(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

The Dismissal Order is independently appealable under NRAP 3A(b)

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Teresa Gubler, Margaret Leavitt

Name of appellant

Travis E. Shetler

Name of counsel of record

06/22/2022

Date

Signature of counsel of record

Nevada, Clark County

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 22nd day of June, 2022, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Robert McBride, Esq.  
Sean M. Kelly, Esq.  
McBride Hall  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Attorney for Defendants  
Ellis Bandt Birkin Kollins and Wong, PLLC dba  
Desert Radiology and Shelin, Agrawal & Hyer,  
P.L.L.C., dba Desert Radiology

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

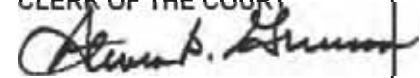
Dated this 22nd day of June, 2022

Signature

# EXHIBIT 1

# EXHIBIT 1





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

**COMP**  
**STEVEN M. BURRIS, ESQ.**  
Nevada Bar No. 000603  
[sb@steveburrislaw.com](mailto:sb@steveburrislaw.com)  
**TRAVIS E. SHETLER, ESQ.**  
Nevada Bar No. 004747  
[ts@steveburrislaw.com](mailto:ts@steveburrislaw.com)  
**LAW OFFICES OF STEVEN M. BURRIS**  
2810 W. Charleston Blvd., Suite F-58  
Las Vegas, Nevada 89102  
(702) 258-6238 - Telephone  
(702) 258-8280 - Facsimile

*Attorneys for Plaintiff*

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

MARIA HEATON, an individual,  
  
Plaintiff,

vs.

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;

Defendants.

CASE NO.:  
DEPT. NO.:

**ARBITRATION EXEMPTION CLAIMED:  
MEDICAL MALPRACTICE**

**COMPLAINT**

Plaintiff, MARIA HEATON, an individual, by and through her attorneys of record, STEVEN M. BURRIS, ESQ. and TRAVIS E. SHETLER, ESQ. of the LAW OFFICES OF STEVEN M. BURRIS, and for Plaintiff's causes of action against Defendants, and each of them, complains and alleges as follows:

1. At all times relevant herein, Plaintiff, MARIA HEATON, ("MS. HEATON"), was a resident of, and received medical services in, Clark County, Nevada.

1           2.       At all times relevant herein, Defendant, ELLIS, BANDT, BIRKIN, KOLLINS &  
2 WONG, PLLC, is and was a Nevada Company, dba DESERT RADIOLOGY and is and was  
3 licensed and authorized to provide medical and health care services in the State of Nevada.

4           3.       At all times relevant herein, Defendant, AGRAWAL & HYER, PLLC, is and was a  
5 Nevada Company, dba DESERT RADIOLOGY and is and was licensed and authorized to provide  
6 medical and health care services in the State of Nevada.

7           4.       At all times relevant herein, Defendant, FARHAD SANI, M.D., is and was licensed  
8 and authorized to provide medical and health care services in the State of Nevada.

9           5.       Jurisdiction is proper in Clark County, Nevada.

10          6.       The true names, identities and capacities of those individuals named herein as  
11 DOES 1 through 10 are presently unknown to Plaintiff, who therefore sues said Defendants by  
12 such fictitious names. Plaintiff is informed and believes and therefore alleges that each of the  
13 Defendants designated herein as a DOE is legally responsible in some manner for the events and  
14 happenings herein referred to and caused damages proximately to Plaintiff as herein alleged and  
15 Plaintiff will ask leave of the Court to amend the Complaint to insert the true names and identities  
16 of DOES 1 through 10 when the same have been ascertained.

17          7.       That the true names or capacities of those individuals, corporations, associates,  
18 business entities or otherwise, of the Defendants named herein as ROE ENTITIES 1 through 10,  
19 inclusive, are presently unknown to Plaintiff, who therefore sues said Defendants by such  
20 fictitious names. Plaintiff is informed and believes and therefore alleges that each of the  
21 Defendants designated herein as ROE ENTITIES are the owners, operators, managers, employers,  
22 agents, business entities or otherwise of the medical facility and medical and health care providers  
23 identified herein, and therefore vicariously and/or legally responsible in some manner for the  
24 events and happenings referred to and caused damages proximately to Plaintiff as herein alleged,  
25 and Plaintiff will ask leave of the Court to amend the Complaint to insert the true names and  
26 capacities of ROE ENTITIES 1 through 10, inclusive, when the same have been ascertained, and  
27 to join such Defendants in the action.

28

1           8.       On September 28, 2018, Plaintiff MARIA HEATON underwent imaging at  
2 Defendant DESERT RADIOLOGY. Following the procedure, Defendant FARHAD SANI, MD,  
3 an employee of defendant DESERT RADIOLOGY, working in the course and scope of his  
4 employment or agency, was the doctor who was charged to review the results and sign the report  
5 regarding the imaging. In the course of doing so, Defendant FARHAD SANI, MD failed to  
6 describe and include in the report, the existence of a 4.4 cm right lateral wall soft tissue mass  
7 which was evident in the diagnostic scan. As a result of this failure, Plaintiff MARIA HEATON  
8 remained unaware of this mass until her next diagnostic study, performed on July 25, 2019. At  
9 that time she discovered that there was this mass which had been present and shown in the  
10 diagnostic study of September 28, 2018. Additionally, in the interim, the mass had grown  
11 substantially, was in fact cancerous and as a result of the unchecked growth, had become larger,  
12 much more deadly, and therefore was less susceptible to successful treatment. Following this  
13 discovery, Plaintiff MARIA HEATON sought treatment for her cancer, but she has learned now  
14 that her condition is terminal. The failure to note and report the mass in September of 2018  
15 breached the standard of care and proximately caused the terminal condition Plaintiff MARIA  
16 HEATON now finds herself in, or, at the very least, caused her to lose a significant and substantial  
17 chance at successful life saving or life prolonging treatment. On information and belief, it is  
18 alleged that Defendants, in order to maximize profits, had instituted a system where a high volume  
19 number of studies were to be analyzed by insufficient numbers of board certified radiologists; that  
20 computer software and/or persons who were not American radiologists, or, board certified  
21 radiologists, were used to verify the computer's readouts, or, the computer readouts were not  
22 checked at all by human eyes before reports were electronically signed by physicians; that, had a  
23 board certified radiologist actually checked the first study, the cancerous mass would have been  
24 obvious and would have been reported; and that as a result of this conscious and reckless  
25 disregard for the safety of patients, this cancer was missed; and that therefore Plaintiff is entitled  
26 to punitive damages. It is further alleged that Defendant FARHAD SANI, MD's electronic  
27 signature was affixed to the report without his having actually ever viewed the study/report, and as  
28 such, was fraudulent, and this entitles Plaintiff to punitive damages.

1           9. Defendant FARHAD SANI, MD performed the procedure on September 28, 2018  
2 at Defendant DESERT RADIOLOGY. Defendants are required to take the time necessary to  
3 properly interpret and report on diagnostic studies, by a board certified radiologist, that is the sole  
4 scope of the medical services provided by Defendants. The Defendants' failure to take the time to  
5 do this could not have been done 'accidentally,' but the shortcomings of the assembly line, with  
6 no human eyes involved process, was known to all involved, and as such, was done with  
7 conscious and reckless disregard for the safety of patients, likely in an effort to speed up the  
8 "assembly line" and therefore increase income made by the facility. It is further alleged, upon  
9 information and belief, that the Defendants scheduled too many procedures to be done safely with  
10 available resources, and this was done with reckless and conscious disregard of the patient's  
11 safety. All of which is despicable, done with implied malice, and entitles plaintiff to punitive  
12 damages.

13           10. The Declaration of Expert ROBERT HARRIS, MD, is attached hereto as **Exhibit**  
14 **"1,"** and incorporated fully herein by reference. Said Declaration complies with NRS 41A.071  
15 and supports the allegations of negligence against Defendant FARHAD SANI, MD and Defendant  
16 DESERT RADIOLOGY.

17           11. At all times alleged herein, Defendant DESERT RADIOLOGY was vicariously  
18 liable under the legal doctrine of *respondeat superior* for the negligent actions and inactions of its  
19 employees, agents, officers, managers and contractors including, but not limited to Defendant  
20 Farhad Sani, MD and the JOE and ROE Defendants.

21           12. As a direct and proximate cause of the negligence and/or professional negligence of  
22 Defendants, and each of them, as alleged herein and incorporated herein by reference to **Exhibit**  
23 **"1,"** MARIA HEATON has incurred special and general damages in an amount in excess of  
24 Fifteen Thousand Dollars (\$15,000.00).

25           **WHEREFORE,** Plaintiff, expressly reserving her right to amend this Complaint at the time  
26 of trial of the action herein to include all items of damages not yet ascertained, demands judgment  
27 against Defendants, and each of them, as follows.

28

1. For general and compensatory damages against Defendants, including, but not limited to, damages for pain and suffering, discomfort and anxiety, loss of enjoyment of life; in accordance with proof at trial, all of which are in excess of Fifteen Thousand Dollars (\$15,000.00);
2. For special damages, including past and future medical expenses against Defendants, in accordance with proof at trial, household services past and future; life care plan such as household services; all of which are in excess of Fifteen Thousand Dollars (\$15,000.00);
3. For punitive damages in excess of Fifteen Thousand Dollars (\$15,000);
4. For an award of reasonable attorney's fees;
5. For the costs of suit incurred herein;
6. For prejudgment and post-judgment interest at the maximum amount allowed by law; and,
7. For such other and further relief as the Court deems just and proper.

DATED this 22nd day of July, 2020.

LAW OFFICES OF STEVEN M. BURRIS

*/s/ Travis E. Shetler*

By: \_\_\_\_\_  
Steven M. Burris, Esq.  
Nevada Bar No. 000603  
[sb@steveburrislaw.com](mailto:sb@steveburrislaw.com)  
Travis E. Shetler, Esq.  
Nevada Bar No. 004747  
[ts@steveburrislaw.com](mailto:ts@steveburrislaw.com)  
2810 W. Charleston Blvd., Suite F-58  
Las Vegas, Nevada 89102  
*Attorneys for Plaintiff*

**EXHIBIT 1**  
**to Complaint**

**EXHIBIT 1**  
**to Complaint**



I, ROBERT HARRIS, MD, AMERICAN BOARD OF RADIOLOGY CERTIFIED in DIAGNOSTIC RADIOLOGY, declare under penalty of perjury as set forth in the state of Nevada, that the following is true and correct:

1. I am familiar with the concept of standard of medical care to be observed by physicians & radiologists. My CV is attached and incorporated herein as Exhibit 1.
2. My opinions, as a diagnostic radiologist, below are rendered to a degree of reasonable medical probability.
3. I have been provided, and have reviewed, the following medical or other records or items related to Maria Heaton:

- o Desert Radiology

An electronic disc containing these records is attached to my Declaration as Exhibit 2, and the information and data contained thereon is incorporated herein.

4. I have reviewed the Memorandum of History of relevant events, attached hereto as Exhibit 3, and the information and data therein is incorporated herein.
5. My opinions are based on currently available data, and are subject to supplementation as other subsequently supplied data may become known by me.
6. It is my opinion that the diagnostic rendering of the Ms. Heaton's CT scan of interest 9/28/18 falls below the reasonable standard of care by Farhad Sani, MD; as a result Maria Heaton was caused to suffer a substantial delay in diagnosis of her cancer. My opinions can be summarized at this time as follows: Farhad Sani, MD, failed to note in his CT interpretation report a 4.4 cm. (or 2 inches) right lateral abdominal wall soft tissue mass which was evident in the CT scan of September 28, 2018.

This was below the standard of care.

The above is declared by me, under penalty of the perjury laws in the state of Nevada, to be true and correct.

Dated: 7/17/2020

Signed: Robert D Harris MD

**EXHIBIT 1**

**EXHIBIT 1**



**CURRICULUM VITAE**  
**Robert D. Harris, MD, MPH, FACR**  
**June, 2020**

**PERSONAL INFORMATION:**

**Work**

USC Radiology Department  
USC-Keck University Medical Center  
1500 San Pablo St., 2<sup>nd</sup> floor  
Los Angeles, CA 90033  
Work Email: robert.harris@med.usc.edu

**Home: 2446 E. Mountain St.  
Pasadena, CA 91104**

Citizenship: U.S.A.

**EDUCATION AND PROFESSIONAL APPOINTMENTS**

Education:

1977	BA, Middlebury College Middlebury, Vermont
1982	MD, University of Vermont College of Medicine Burlington, Vermont

Post-Graduate Training:

1982-1983	Flexible (rotating) Internship St. Mary's / McGill University Hospital, Montreal, Quebec
2009	M.P.H. The Dartmouth Institute for HealthCare Policy and Research Dartmouth College
1983-1986	Residency, Body Imaging (US/CT/MRI) Massachusetts General Hospital, Boston, Massachusetts
1986-1987	Fellowship, Body Imaging (US/CT/MRI) University of Washington Hospital, Seattle, Washington

Academic Appointments:

1987-1991	Assistant Professor of Diagnostic Radiology	Dartmouth Medical School Dartmouth College, Hanover, NH
1991-2005	Associate Professor of Diagnostic Radiology and Obstetrics/Gynecology	Dartmouth Medical School Dartmouth College, Hanover, NH
2005-2016	Professor of Diagnostic Radiology and Obstetrics/Gynecology	Geisel School of Medicine Dartmouth College, Hanover, NH
2015-2016	Professor of Radiology and Obstetrics/Gynecology	University of Rwanda Kigali, Rwanda

2016-present	Honorary Professor, Radiology and OB/GYN	University of Rwanda, Kigali, Rwanda
2016-2017	Clinical Professor of Radiology	Carver College of Medicine University of Iowa, Iowa City, IA
2018-2019	Professor of Radiology	School of Medicine, University of Washington, Seattle, WA
2019-present	Professor of Clinical Radiology	Keck School of Medicine, USC, Los Angeles, CA

## **LICENSURE CERTIFICATIONS:**

### **LICENSURE:**

1983-1986	Massachusetts
1986-1987	Washington
1987-2001	New Hampshire
2000-2009	Vermont
2016-2019	Iowa
2018-present	Washington
2019-present	California

### **BOARD CERTIFICATION OR ELIGIBILITY:**

1986	Diplomate, Diagnostic Radiology
1986	American Board of Radiology

### **SPECIALTY CERTIFICATION:**

1982	National Board of Medical Examiners
------	-------------------------------------

DEA # BH0931724  
NPI# 1134148034

## **HONORS, AWARDS:**

1977	Cum Laude	Middlebury College
1981	Alpha Omega	University of Vermont College of Medicine
2000	Fellow	American College of Radiology
2004	Fellow	Society of Radiology in Ultrasound
2006	Recipient	AIUM's Endowment for Education and Research Grant
2012	Fellow	American Institute of Ultrasound in Medicine
2019	Distinguished Reviewer	Silver Achievement Award, AJR

## **TEACHING**

### **DIDACTIC TEACHING:**

<i>Dartmouth Medical School, Dartmouth College</i>		
1995-2015	Radiology and OB/GYN Residents	Informal Didactic Teaching
2000-2015	Ultrasound Curriculum for Radiology Residents and Fellows	Director
2001-2015	Multi-Disciplinary Conference	Director of Maternal-Fetal Medicine Conf
2007-2015	Regularly Scheduled Sessions And Visiting Professors	Director
2010-2013	Dartmouth College Undergraduate	Lecturer

	Course Lectures, Global Health and Bio-Engineering Course	
2013-2015	Global Radiology Senior Elective	Director

*Special Interests: Teaching/training and Donation of Equipment in Low Resource Settings in Radiology, especially Compact Ultrasound:*

2003-2005	Serbia
2006	Nicaragua
2008	Vietnam
2009	Sierra Leone
2010	Haiti
2011	Tanzania
2012	Sierra Leone/Togo
2012	Guinea
2013	Haiti
2013	Republic of Congo
2014	Haiti (2 trips-1 supervising senior resident for global elective),
2015	Ecuador, Puyo (Amazon basin) (supervising 2 senior residents for global elective)
2015-2016	Rwanda, (11 months with HRH grant)
2016	Phillipines (RSNA International Visiting Prof)
2017, 2018	Rwanda

## SERVICES

### **MEDICAL SCHOOL SERVICE:**

April 23-24, 90	Visiting Professor	University of Virginia, Department of Radiology, Charlottesville, Virginia
Jan 13-17, 97	Visiting Professor	Sveti Duh Hospital, Dept. of Obstetrics and Gynecology, University of Zagreb, Zagreb, Croatia.
Mar 17, 1997	Visiting Professor	George Washington University Hospital, Department of Radiology, Washington, D.C.
Feb 23, 1998	Visiting Professor	University of Texas at Houston Medical School Hermann Hospital, Dept. of Radiology, Houston, Texas
Nov 24-25,98	Visiting Professor	University of Pittsburgh Medical Center Dept. of Radiology, Pittsburgh, PA
Nov 18, 1999	Visiting Professor	Mayo Clinic, Dept. of Radiology Rochester, Minnesota
Jan 21, 2000	Visiting Professor	Fletcher Allen Health Care/UVM College of Medicine, Dept. of Radiology, Burlington, VT
April 6, 2000	Visiting Professor	Massachusetts General Hospital, Harvard Medical School, Dept of Radiology, Boston, MA.
June 11, 2000	Visiting Professor	Sveti Duh Hospital / University of Zagreb Dept. of OB/GYN, Zagreb, Croatia
May 15, 2003	Visiting Professor	Tufts Medical School/New England Medical Center, Dept. of Radiology, Boston, MA
Jan 5, 2004	Visiting Professor	University of Novi Sad Medical School Dept of Radiology, Novi Sad, Serbia
May 16, 2005	Visiting Professor	Ochsner Clinic, Dept. of Radiology New Orleans, LA
Jan 17-18, 06	Visiting Professor	Harvard-MGH-BWH Departments of Radiology, Boston, MA

Feb 6, 2006	Visiting Professor	Yale University Department of Radiology New Haven, CT
Mar 16, 2006	Visiting Professor	Cornell Medical College-NY Presbyterian Hospital, Department of Radiology, New York, NY
Jan 23-24, 09	Visiting Professor	Harvard-MGH-BWH Departments of Radiology, Boston MA.
April 10, 2009	Visiting Professor	UVM-Fletcher Allen Medical Center Department of Radiology, Burlington, VT
Dec 9, 2009	Visiting Professor	Miami Baptist Medical Center, Miami, FL
Mar 10, 2010	Visiting Professor	Mt. Sinai Medical Center, Dept. of Radiology New York, NY
Mar 24, 2010	Visiting Professor	University of Connecticut Medical Center Dept. of Radiology, Farmington, CT
July 21, 2010	Visiting Professor	University of Belgrade Medical School, Belgrade, Serbia, Dept. of Ob-Gyn.
Feb 27, 2012	Visiting Professor	University of New Mexico, Department of Radiology, Alberquerque, NM
April 4, 2013	Visiting Professor	Yale University Department of Radiology, New Haven CT
Nov 7, 2013	Visiting Professor	Lahey Clinic, Dept. of Radiology, Burlington, MA
Sept 20, 2014	Visiting Professor	University of Iowa Hospitals Dept. of Radiology, Iowa City, IA
Dec 12, 2014	Visiting Professor	Columbia Presbyterian University Medical Center, Dept. of Radiology, New York City, NY
April 10, 2015	Visiting Professor	University of Vermont College of Medicine
Feb 11-2016	Visiting Professor	RSNA International Visiting Professorship, Manila and Cebu City, Philippines
Feb 15, 2019	Visiting Professor	USC-LAC Medical Centers, Radiology Dept Los Angeles, CA
1995-1999	Mentor	Dartmouth College Women in Science Project Radiology Dept, Burlington, VT
2018-2019	CPI Committee	University of Washington School of Medicine
2020-present	Program Manager	RAD-AID, Rwanda

#### **HOSPITAL OR MEDICAL GROUP SERVICE:**

1987-1999	Director of Body MRI	Department of Radiology, Dartmouth Hitchcock Medical Center, Hanover, NT
1988-1994	Quality Assurance Committee	Radiology Liaison to Medical Staff Mary Hitchcock Memorial Hospital
1989-1993	Selection Committee	Radiology Residency Dartmouth Hitchcock Medical Center
1990-1992	Committee	Student Performance Dartmouth Medical School
1992-1995	Committee	Clinical Therapeutics Program Dartmouth Hitchcock Medical Center
1992-2003	Cross-Sectional Imaging	Dartmouth Hitchcock Medical Center

	Fellowship Director	
1993-2013	Radiology Representative	Urology Tumor Board Dartmouth Hitchcock Medical Center
1998-2008	Incorporator	Hitchcock Foundation Dartmouth Hitchcock Medical Center
1996-2006	Committee	Medical Records and Informatics Dartmouth Hitchcock Medical Center
1996-2001	Committee	Academic and Clinical Practice Dartmouth Hitchcock Medical Center
1999-2015	Co-Director of Ultrasound	Department of Radiology, Dartmouth Hitchcock Medical Center, Hanover, NH
2001 Fall	Study Section	Department of Defense, Prostate Cancer Research Program, Dartmouth Hitchcock Medical Center
2005-2011	Committee Chair	Research Committee, Radiology Dartmouth Hitchcock Medical Center
2002-2012	Committee	Clinic Pension & Benefits Dartmouth Hitchcock Medical Center
2003 Spring	Study Section	Department of Defense, Prostate Cancer Research Program, Dartmouth Hitchcock Medical Center
2011-2013	Director	Regional Radiology Planning Dartmouth Hitchcock Medical Center
2012-2015	Education Committee	Dartmouth Hitchcock Medical Center Radiology Department

#### PROFESSIONAL SERVICE:

1977-1978	Preparatory School Teacher and Coach	Cate School, Carpinteria, CA
1993-1996	Secretary-Treasurer	NH Chapter of American College of Radiology
1994-1995	Co-Chairman	Educational Committee New England Roentgen Ray Society
1995-2003	Committee	Educational and Executive Committees New England Roentgen Ray Society
1996-1999	President	NH Chapter of American College of Radiology
1998-2001	Committee	Research Committee Society of Radiologists in Ultrasound
1998-2001	Committee	Standards and Practice, SRU
1999-2000	Subcommittee	Curriculum Evaluation American Roentgen Ray Society

1999-2000	Vice President	New England Roentgen Ray Society
1999-2003	Councilor	NH Chapter of American College of Radiology
2001-2004	Committee	Scientific Program Committee American Roentgen Ray Society
2001-2004	Program Committee	Society of Radiologists in Ultrasound
2002-2005	Committee	Human Resources ACR Commission of Ultrasound
2002-2005	Committee	Education, ACR Commission of Ultrasound
2002-2005	Committee	Economics, ACR Commission of Ultrasound
2002-2005	Committee	Guidelines and Standards ACR Commission of Ultrasound
2002-2005	Representative	Joint Review Commission on Education Diagnostic Medical Sonography, ACR
2002-2005	Accreditation Committee	American Institute of Ultrasound of Medicine
2003-2004	Chair	GU/OB/GYN Program Committee American Roentgen Ray Society
2004-2013	Oral Board Examiner	Ultrasound, American Board of Radiology
2005-2010	Publications Committee	Society of Radiologists in Ultrasound
2005-2010	Committee	Corporate Affairs, SRU
2006-2014	Representative	NH Chapter of American College of Radiology
2008-2010	Committee, Edu Exhibits	Ob/GYN Subcommittee, RSNA
2008-2010	Fellowship Committee	Society of Radiologists in Ultrasound
2010-2013	Chair, Educational Exhibits	OB/GYN Subcommittee, RSNA
2010-2015	Committee	ACR Foundation International Outreach Committee
2010-2015	Member	Diagnostic Radiology, Non-Interpretive Skills MOC Committee, American Board of Radiology
2011-2015	Committee	ACR Appropriateness Guidelines Committee Women's Imaging (M. Javitt Chair)
2012-2014	Vice Chair	Education and Outreach Committee Society of Radiologists in Ultrasound
2013-2015	Executive Council	Society of Radiologists in Ultrasound
2017-present	Expert Panel Faculty	CPI Self-Assessment Modules, ACR Ultrasonography

2017-present	Committee	Corporate Affairs Committee, SRU
2017-present	Committee	Education and Outreach, SRU

#### CONSULTANTSHIPS AND ADVISORY BOARDS:

1999-2006	Advisory Council	RADPAC Advisory Council, New Hampshire Delegate, American Board of Radiology
2013-2015	Advisory Committee	Radiology Representative, Continuing Medical Education Advisory Committee, Dartmouth Hitchcock Medical Center

#### PROFESSIONAL SOCIETY MEMBERSHIPS:

1984-present	New England Roentgen Ray Society
1985-present	Radiological Society of North America
1986-present	American Roentgen Ray Society
1987-present	American College of Radiology
1987-present	New Hampshire State Medical Society
1991-2003	Association of University Radiologists
1993-present	American Institute of Ultrasound in Medicine
1993-present	Society of Radiologists in Ultrasound
1995-2000	Society of Uroradiology

### RESEARCH AND SCHOLARSHIP

#### EDITORSHIPS AND EDITORIAL BOARDS:

1998-2002	Editor	Applied Radiology
2000-2004	Editor	Emergency Radiology
2000-2010	Advisory Editorial Board Member	Journal of Ultrasound in Medicine
2010-2013	Associate Editor	Journal of Ultrasound in Medicine
2015-present	Editor	Global Radiology

#### MANUSCRIPT REVIEW:

1990-present	American Journal of Roentgenology
1992-2014	Journal of Clinical Ultrasound
1993-2015	Journal of Ultrasound in Medicine
2000-2004	Academic Radiology
1998-present	Ultrasound Quarterly
1990-2013	Radiology
2016-present	Global Radiology
1999-2015	ACR and AIUM Ultrasound Accreditation Programs

#### MAJOR AREAS OF RESEARCH INTEREST

#### GRANT SUPPORT - PAST:

<i>Grant No. (PI) 901-03B</i>	<i>Dates of Award 1991-1992</i>
<i>Agency Oncomembranc, Inc., Seattle WA</i>	<i>Percent Effort</i>
<i>Patients Undergoing Magnetic Resonance Imaging of Upper Abdomen</i>	
<i>Description</i>	
<i>Role:</i>	
<i>Total Direct Costs \$40,000.</i>	

<i>Grant No. (PI)</i>	<i>Dates of Award 1992-1993</i>
<i>Agency Berlex Laboratories, Inc., Wayne, NJ</i>	<i>Percent Effort</i>
<i>Pilot Study to Image Breast Prostheses with MRI an Gsdolinium</i>	
<i>Description</i>	
<i>Role:</i>	
<i>Total Direct Costs \$1,500.</i>	

<i>Grant No. (PI)</i>	<i>Dates of Award 1992-1993</i>
<i>Agency MedRad, Pittsburgh, PA</i>	<i>Percent Effort</i>
<i>Pilot Study to Evaluate Pre and Post Biopsy Change in Endorectal Coil MRI for Prostate Cancer</i>	
<i>Description</i>	
<i>Role:</i>	
<i>Total Direct Costs \$1,000</i>	

<i>Grant No. (PI)</i>	<i>Dates of Award 1996-1997</i>
<i>Agency Advanced Magnetics, Inc. Princetonm NJ</i>	<i>Percent Effort</i>
<i>Multicenter Phase III Trial of Combidex as an MRI contrat agent for Imph node metastases.</i>	
<i>Description</i>	
<i>Role:</i>	
<i>Total Direct Costs \$10,000.</i>	

<i>Grant No. (PI)</i>	<i>Dates of Award 2000-2001</i>
<i>Agency Vical Corportion, San Diego, CA</i>	<i>Percent Effort</i>
<i>Leuvectin Gene Therapy for Metastatic Renal Cell Carcinoma</i>	
<i>Description</i>	
<i>Role:</i>	
<i>Total Direct Costs \$10,000.</i>	

<i>Grant No. (PI)</i>	<i>Dates of Award 2000-2001</i>
<i>Agency DuPont Corporation, Andover, MA</i>	<i>Percent Effort</i>
<i>Phase III Ultrasound Contrast Trial for Liver and Renal Masses, DMP 110 (Definity)</i>	
<i>Description</i>	
<i>Role:</i>	
<i>Total Direct Costs \$15,000.</i>	

<i>Grant No. (PI)</i>	<i>Dates of Award 2002-2003</i>
<i>Agency Bristol-Myers Squibb Medical Imaging, Inc., Andoverm</i>	<i>Percent Effort</i>
<i>MA</i>	
<i>Phase III Comparison of DEFINITY-Enhanced Ultrasound vs. Contrast Enhanced CT for Characterization of Liver Lesions,</i>	
<i>Description</i>	
<i>Role:</i>	
<i>Total Direct Costs \$8,000.</i>	

<i>Grant No. (PI)</i>	<i>Dates of Award 2004-2006</i>
<i>Agency Quality Reseach Grant Program, DHMC</i>	<i>Percent Effort</i>
<i>Analysis of Ultrasound-Guided Thyroid Fine Needle Biopsies: On-Site Cytologic Assistance vs. Non Assisted Biopsy</i>	



*Description*

*Role:*

*Total Direct Costs \$7,500.*

*Grant No. (PI)*

*Dates of Award 2006*

*Agency Unrestricted grant, Philips Ultrasound Systems*

*Percent Effort*

*For teleultrasound project*

*Description*

*Role:*

*Total Direct Costs \$5,000.*

*Grant No. (PI)*

*Dates of Award 2006*

*Agency AIUM Endowment for Education and Research Award*

*Percent Effort*

*For Teleultrasound Project*

*Description*

*Role:*

*Total Direct Costs \$8,500.*

*Grant No. (PI)*

*Dates of Award 2014*

*Agency Haiti Outreach- Dartmouth Program*

*Percent Effort*

*Awarded for Radiology outreach efforts in Mirebalais, Haiti*

*Description*

*Role:*

*Total Direct Costs \$5,200.00*

#### **INVITED LECTURES, SYMPOSIA, KEYNOTE ADDRESSES**

Oct 1986	Lecture	Shoulder Sonography: Technique and Interpretation. Presented to the Department of Radiology, Massachusetts General Hospital, Boston, MA
Dec 1987	Lecture	Magnetic Resonance Imaging: Clinical State of the Art. Presented to Medical Staff, Littleton Hospital, Littleton, New Hampshire
Jan 1988	Lecture	Body Magnetic Resonance Imaging. Presented to Medical Staff, Brattleboro Memorial Hospital, Brattleboro, Vermont
Jan 1988	Lecture	Body Magnetic Resonance Imaging. Presented to Medical Staff, Rutland Regional Medical Center, Rutland, Vermont
Mar 1988	Lecture	MRI and the General Surgeon, Surgical Grand Rounds, Dartmouth-Hitchcock Medical Center, Hanover, New Hampshire
Mar 1988	Lecture	MRI of the Abdomen and Genitourinary Tract, Urology Rounds, Dartmouth Hitchcock Medical Center, Hanover, New Hampshire
Apr 1988	Lecture	MRI in Sports Medicine, presented at Vermont/ New Hampshire State Radiological Societies Meeting, Woodstock, Vermont
Apr 1988	Lecture	Ultrasound of Extra-CNS Fetal Anomalies; presented at The Fetus as a Patient Conference sponsored by New Hampshire Regional Perinatal Program and Dartmouth Medical School, Hanover, NH
Sept 1989	Lecture	Magnetic Resonance Imaging - When and Why. Regional Meeting of the American College of Physicians, Hanover, New Hampshire
Apr 1990	Lecture	Non-fetal Aspects of Obstetrical Ultrasound, presented to the Department of Radiology, University of Virginia, Charlottesville, Virginia
Apr 1990	Lecture	Ultrasound of the Placenta, Membranes, and Amniotic Fluid, presented at the 1st Annual OB-GYN Ultrasound for the 90's Conference, Dartmouth-Hitchcock Medical Center, Hanover, New Hampshire

Oct 1990	Lecture	MRI of the Knee: Pathology and Pitfalls, presented at the Practical MRI Course of the New England Roentgen Ray Society, Cape Cod, Massachusetts
Dec 1991	Lecture	Update on Ob/Gyn Ultrasound, presented to Medical Staff, Springfield Hospital, Springfield, Vermont
Oct 1992	Lecture	Principles and Indications for Body MRI, presented to Medical Staff, Chelmsford MRI, Chelmsford, MA
Apr 1993	Lecture	GU Radiology in Primary Care, presented at Urology for the Primary Care Physician, Dartmouth-Hitchcock Medical Center, Lebanon, New Hampshire
Mar 1994	Lecture	MRI of the Knee and Shoulder: The Dartmouth Experience. Presented to the Maine Radiological and Orthopaedic Societies, Sugarloaf, Maine
Mar 1994	Lecture	Body MRI: Problem Solving Diagnostic Tool. Presented to the Maine Radiological Society, Sugarloaf, Maine
Apr 1994	Lecture	Sonography of the Fetal Environment: The Placenta, Amniotic Fluid, and Gravid Uterus. Refresher Course, 94th Annual Meeting of the American Roentgen Ray Society, New Orleans
Apr 1995	Lecture	Update on Sonography of the Placenta, 3rd Annual OB-GYN Ultrasound Course, DHMC, Lebanon, NH
May 1995	Lecture	MRI of the Prostate, 1st Annual DHMC Frontiers in Radiology Course, Woodstock, VT
Jun 1996	Lecture	Update on Non-fetal Obstetrical Ultrasound, 2nd Annual DHMC Frontiers in Radiology Course, Lebanon, NH
Oct 1996	Lecture	The Placenta: the Forgotten Organ, Granite State Sonographers Society, Manchester, NH
Jan 1997	Lecture	Ultrasound of the Placenta and Membranes, Sveti Duh Hospital, University of Zagreb, Zagreb, Croatia
Feb 1997	Lecture	Sonography of the Placenta, New England Roentgen Ray Society Meeting, Boston, MA
Mar 1997	Lecture	Ultrasound of the Scrotum: Doppler Plays a Role, Dartmouth-Hitchcock Medical Center, Lebanon, NH, 1997 Ultrasound Biannual Course
Mar 1997	Lecture	The Placenta: the Forgotten Organ, Department of Radiology, George Washington University Hospital, Washington, D.C.
Oct 1997	Lecture	Update on New Applications of Body MRI, Medical Grand Rounds, Springfield Hospital, Springfield, VT
Feb 1998	Lecture	Problems in the Placenta, UT-Houston Medical School, Hermann Hospital, Houston, Texas
Apr 1998	Lecture	Urinary Tract Infections and Renal Colic, When to Image and How. Primary Care Radiology, DHMC, Lebanon, NH
Jul 1998	Lecture	GU Complications of Pregnancy, presented at the 25th annual meeting of the Society of Uroradiology, Bermuda
Nov 1998	Lecture	Scrotal Ultrasound: Pearls and Pitfalls, Univ. of Pittsburgh Medical Center, Pittsburgh, PA
Dec 1998	Lecture	Liver MRI with Ferridex, Oncology Outreach Program, DHMC, Lebanon, NH
Dec 1998	Lecture	Imaging Complications of Pregnancy, OB-GYN Grand Rounds, DHMC, Lebanon, NH
Mar 1999	Lecture	Imaging of Maternal Complications of Pregnancy, Ultrasound 1999 Biannual Course, Dartmouth-Hitchcock Medical Center, Lebanon, NH
Sept 1999	Lecture	Imaging of Renal Tumors, 41 <sup>st</sup> New England Conference of Radiologic Technologists, Manchester NH
Sept 1999	Lecture	Abdominal and Pelvic Ultrasound for Vascular Sonographers: Life Beyond Doppler, New England Vascular Technology Symposium, Lebanon, NH
Jan 2000	Lecture	Maternal Genito-urinary Complications of Pregnancy, New England Society of Ultrasound in Medicine, Boston MA
Jan 2000	Lecture	New Concepts in Imaging of the Placenta, Grand Rounds, Radiology Dept., Fletcher Allen Health Care, Burlington, VT
Jan 2000	Lecture	Grand Rounds-Scrotal Ultrasound 2000. UVM College of Medicine, Radiology Dept., Fletcher Allen Health Care, Burlington, VT
Apr 2000	Lecture	Scrotal Ultrasound, MGH-Harvard Medical School, Department of Radiology,

		Boston MA
Jun 2000	Lecture	Advances in Fetal Urologic Imaging, International Congress of Pediatric Urologists, Tours, France
Jun 2000	Lecture	Fetal MR Imaging, Departments of Radiology and Obstetrics and Gynecology, Sveti Duh Hospital, Zagreb, Croatia
Mar 2001	Lecture	New Concepts in Scrotal Sonography, New England Roentgen Ray Society Ultrasound Refresher Course, Boston MA
Apr 2001	Lecture	Placental Ultrasound 2001, and Imaging of Maternal Complications of Pregnancy, Rhode Island Society of Diagnostic Medical Sonographers, Providence, RI
Apr 2002	Keynote	Keynote Address, "Fetal MRI: Great Hope or Hype", American Roentgen Ray Society, 102 <sup>nd</sup> Annual Meeting, Atlanta GA
Apr 2002	Moderator	GU Session Moderator, American Roentgen Ray Society, 102 <sup>nd</sup> Annual Meeting, Atlanta GA
Oct 2002	Moderator	Abdominal Ultrasound Session Moderator, Society of Radiologists in Ultrasound, Denver, CO
Mar 2003	Lecture	Imaging of Maternal Complications of Pregnancy, presented at the annual US meeting of the New England Roentgen Ray Society, Boston, MA
May 2003	Lecture	Update on the Placenta and Gravid Cervix, Tufts-NEMC, Dept. of Radiology, Boston, MA
Sept 2003	Lecture	Imaging of Non-obstetrical Complications of Pregnancy, DHMC Dept. of OB-GYN, Lebanon, NH
Oct 2003	Lecture	Interesting Obstetrical Ultrasound Cases, Presented to the Society of Radiologists in Ultrasound. Chicago, IL
May 2004	Moderator	Lecture Moderator, Scientific Session, GU/OB/GYN, ARRS 104 <sup>th</sup> Annual Meeting, Miami Beach, FL
Oct 2004	Lecture	Placental Insufficiency and Cervical Incompetence: Out with the "In's", presented at the Society of Radiologists in Ultrasound annual meeting, Washington D.C.
Jan 2005	Lecture	Imaging of Maternal Complications in Pregnancy, given to regional medical society, Zrejanin, Serbia
Jan 2005	Lecture	Abdominal Unknown Cases, Film Panel Moderator, New England Roentgen Ray Society, Boston MA
May 2005	Lecture	Placental Sonography, Ochsner Clinic, New Orleans, LA
Jun 2005	Lecture	Imaging of GU Maternal Complications in Pregnancy, AIUM Meet the Professor Session. Orlando, FL
Sept 2005	Lecture	Primer on First Trimester Ultrasound, presented to OB/GYN Dept. Grand Rounds, DHMC, Lebanon, NH
Jan 2006	Lecture	Imaging of GU Maternal Complications of Pregnancy, presented to MGH and BWH, Department of Radiology, Boston, MA
Feb 2006	Lecture	Update on Placental and Cervical Sonography, Dept. of Radiology, Yale University School of Medicine, New Haven, CT
Mar 2006	Lecture	Imaging of Maternal Complications of Pregnancy, Dept. of Radiology, Cornell Medical College, New York City, NY
May 2007	Lecture	High-risk Obstetrical ultrasound cases, ARRS Case Review session, May 9, 2007, ARRS annual meeting, Orlando, FL
May 2007	Lecture	Ob-Gyn Grand Rounds, DHMC, May 31, 2007. The Role of Compact 200 Ultrasound in Developing Countries. Lebanon, NH
Sept 2007	Lecture	First trimester sonography: basic concepts and newer developments. 30 <sup>th</sup> A Annual Postgraduate Seminar in Diagnostic Ultrasound, Pontiac Michigan. also, Sonography of the Placenta and Gravid Cervix, and Sonography and Imaging of Maternal Complications of Pregnancy.
Oct 2007	Lecture	Potpourri of Difficult U/S Cases, Presented at the Annual meeting of the Society of Radiologists in Ultrasound, Chicago, IL
Mar 2008	Lecture	Series of Lectures on Ultrasound, Hanoi National Pediatrics Hospital, Vietnam.
Nov 2008	Lecture	New Topics in Scrotal Sonography, Granite State Sonography Society annual meeting, Manchester, NH

Jan 2009	Lecture	New Topics in Scrotal Sonography, MGH-BWH Hospitals, Depts. of Radiology, Boston, MA
Apr 2009	Lecture	Testicular Ultrasound and Bayes Theorem: Mixing Radiology and Epidemiology, Department of Radiology, Fletcher Allen-UVM Health Care, Burlington, VT
Dec 2009	Lecture	Placental Ultrasound: Morphologic and Doppler Assessment, Baptist Health South Florida Hospitals, Radiology Grand Rounds, Miami, FL
Mar 2010	Lecture	A Rational Approach to Fetal MRI: Where It Really Helps, Mt. Sinai Medical Center, Dept. of Radiology, NYC, NY
Mar 2010	Lecture	Testicular Sonography Update: 2010, UConn. Medical Center, Dept. of Radiology Grand Rounds, Farmington, CT
Jul 2010	Lecture	First Trimester U/S: New Thoughts, and Ultrasound of the Ovary: Benign Disease. University of Belgrade Medical School, Dept. of OB-GYN. Serbia
Oct 2010	Lecture	Newer Concepts in Testicular Sonography, Society of Radiologists in Ultrasound, Las Vegas, NV
Oct 2011	Lecture	You made the Diagnosis on OB ultrasound: Now what? Society of Radiologists in Ultrasound, Chicago, IL
Jan 2012	Lecture	Lectures on basic OB and abdominal ultrasound, Ola During Pediatric and Princess Christian Maternity Hospitals, Freetown, Sierra Leone
Feb 2012	Lecture	Borderland Findings on Obstetrical Ultrasound, University of New Mexico Hospital. New Mexico, NM
Apr 2013	Lecture	Soft Marker Findings for Aneuploidy on Obstetrical Ultrasound, AIUM National Meeting. New York, NY
Nov 2013	Lecture	Borderlands in Obstetrical Ultrasound, Lahey Clinic Visiting Professor Rounds
Mar 2014	Lecture	Imaging of Superficial Lumps and Bumps, ACR Radiology Education Days, Port-au-Prince, Haiti
Sept 2014	Lecture	Global Radiology Resident Education: Opportunities, Challenges, and Implementation Strategies, University of Iowa, Iowa City, IA
Oct 2014	Lecture	Natural History and Clinical Course of Gallbladder Sludge Diagnosed in Outpatients, Denver, SRU Fellows meeting
Oct 2014	Lecture	Imaging of Superficial Lumps and Bumps, Workshop Sessions, SRU Denver, CO
Dec 2014	Lecture	Global Radiology Resident Education: Opportunities, Challenges, and Implementation Strategies, Columbia-Presbyterian Medical Center, NYC
Feb 2016	Lecture	Four lectures on OB-GYN Ultrasound, presented at the Philippines Congress of Radiology, Manila, Philippines
Oct 2017	Lecture	Iowa State Radiology Annual Meeting, Oct. 21, 2017, Iowa City, IA. New Concepts in Testicular Ultrasound including US contrast and elastography.
Aug 2018	Lecture	Hot Topics in OB/GYN Ultrasound: New Findings in the First Trimester. Presented to the University of Washington Emergency Radiology Annual Meeting, Seattle, WA
Feb 2019	Lecture	Borderlands in Obstetrical Ultrasound: An Update. USC -Keck School of Medicine, Los Angeles, CA
Sept 2020	Lecture	Borderlands in Obstetrical Ultrasound, given at USC Alumni Radiology Course, Palm Desert, CA

## **PUBLICATIONS:**

### **REFEREED JOURNAL ARTICLES:**

1. **Harris RD**, Simeone JF, Mueller PR, Butch RJ. Portable Ultrasound Examination in Intensive Care Unit. J Ultrasound Med 1985;4:463-465.
2. **Harris RD**, Nyberg DA, Mack LA, Weinberger E. Ano-rectal atresia: Accuracy of Prenatal Diagnosis by Ultrasound and Clinical Significance. AJR 1987; 149:395-400.

3. **Harris RD**, Askin FB, Vincent LM. Yolk sac calcification: A Sonographic Finding Associated with In Utero Fetal Demise. *Radiology* 1988; 166:109-110.
4. Mack LA, Nyberg DA, Matsen RF, Kilcoyne RF, **Harris RD**, Harvey DA. Sonographic Evaluation of the Post-operative Rotator Cuff. *AJR* 1988; 150:1089-1094.
5. **Harris RD**, Harris JH Jr, The Prevalence and Significance of Missed Scapular Fractures in Blunt Chest Trauma. *AJR* 1988; 151:747-750
6. DeRoo TD, **Harris RD**, Sargent SK, Denholm TA, Crow, HC. Fetal Choroid Plexus Cysts: Prevalence, Clinical Significance, and Sonographic Appearance. *AJR* 1988; 151:1179-1181.
7. **Harris RD**, Heaney JA, Sueoka BL, Burke PR. Retroperitoneal Leiomyosarcoma: A Rare Cause of Adrenal Psuedotumor on CT and MRI. *Urologic Radiology* 1988;10:186-188.
8. **Harris RD**, Simpson W. MRI of Splenic Hemangioma Associated withThrombocytopenia. *Gastrointestinal Radiology*, 1989; 14:308-310.
9. **Harris RD**, Roberts DW, Cromwell, LD. Magnetic Resonance Imaging of Corpus Callosotomy. *AJNR*, 1989; 10:677-680.
10. Sueoka BL, Kasales CJ, **Harris RD**, Heaney JA. MR and CT Imaging of Perirenal Amyloidosis. *Urologic Radiology*, 1989; 11:97-99.
11. Edwards MK, **Harris RD**, Spiegel PK. Offset Electrocardiographic Electrode Simulating a Pulmonary Nodule on Radiographs. *Radiology* 1989; 172:281-282.
12. **Harris RD**, Simpson W, Marin-Padilla M, Pet R, Crow, HC. Placental Sonolucencies and Infarction: Sonographic-Pathologic Correlation. *Radiology* 1990; 176:75-80.
13. Chung T, **Harris RD**. Tuberculous Epididymo-Orchitis: Sonographic Findings. *Journal of Clinical Ultrasound* 1991, 19:367-369.
14. Weaver JB, **Harris RD**, Spiegel PK. Limited Field of View Spin Echo MR Imaging. *Magnetic Resonance Imaging* 1991; 9:389-394.
15. **Harris RD**, Barth RA. Sonography of the Gravid Uterus and Placenta: Current Concepts, *AJR* 1993;160:955-966.
16. Stommel EW, Ward TN, **Harris RD**. MRI Findings in a Case of Ophthalmoplegic Migraine. *Headache*, 1993;33:234-237.
17. Bacic G, Lui KJ, O'Hara JA, **Harris RD**, Szybinski K, Goda F and Swartz HM. Oxygen Tension in a Murine Tumor: A Combined EPR and MRI Study. *Magnetic Resonance in Medicine* 1993;30:568-572.
18. Patten RM, Lo SK, Phillips JJ, Bowman SC, Glazer, GM, Wall SD, Bova JG, **Harris RD**, et al. Positive Bowel Contrast Agent for MR Imaging of the Abdomen: Phase II and III Clinical Trials. *Radiology* 1993;189(1)277-283.
19. Amdur RJ, Conine FE, **Harris RD**, Leopold KA. Arytenoid Sparing During Irradiation of Early Stage Vocal Cord Cancer. *Int J Radiat Onc Biol Phys*, 1995, 32 (3):801-808.
20. **Harris RD**, Schned AS, Heaney JA. Staging of Prostate Cancer by Endorectal MRI: Lessons from a Learning Curve. *Radiographics*, 1995; 15 (813-829) and Author's Response, p.832.
21. Blackmore CC, Ratcliffe NR, **Harris RD**. Verrucous Carcinoma of the Bladder. *Abdominal Imaging* 1995, 20:480-482.



22. Manganiello PD, Adams LV, **Harris RD**, Ornvold K. Virilization during pregnancy with spontaneous resolution postpartum: a case report and review of the English literature. *Obstetrical & Gynecological Survey*, 1995; 50(5):404-10.
23. Schned AR, Wheeler K, Heaney JA, Ernstoff MS, Amdur RJ, **Harris RD**. Tissue Shrinkage Correction Factor in the Calculation of Prostate Cancer Am J Surg Pathol 1996;20:1501-1506.
24. Glazier DB, Heaney JA, Amdur RJ, Schned AR, **Harris RD**, Fukui I, Ernstoff MS. 5-Fluorouracil and Allopurinol Combined with Recombinant Interferon- $\alpha$ 2b in the Treatment of Patients with Advanced Prostate Cancer: A Phase I/II Study. *J Urology* 1996;155, 624-627.
25. **Harris RD**, Wells WA, Chertoff JD, Poplack SP, Sargent SK, Black WC, Crow HC. Accuracy of Prenatal Ultrasound in Revealing Circumvallate Placenta, *AJR* 1997; 168:1603-1608.
26. **Harris RD**. On Being an Academic Radiologist in a Small Department, or Bigger Ain't Necessarily Better. *Academic Radiology* 1997; 4:785-787.
27. Kurjak A, Kupesic S, Hafner T, Latin V, Kos M, **Harris R**. Intervillous blood flow in patients with missed abortion. *Croatian Medical Journal* 1998;39:41-44.
28. Amdur RJ, Gladstone D, Leopold, KA, **Harris RD**. Prostate Seed Implant Quality Assessment Using MR And CT Image Fusion, *Int. J Rad Onc BiolPhys*, 1999;43:67-72.
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**EXHIBIT 2**

**EXHIBIT 2**



Heaton v. Desert Radiology / Dr. Sani  
Exh 2 to Complaint  
Expert Dr. Robert Harris

700 MB

52x

80 min

CD-R



**EXHIBIT 3**

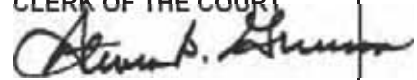
**EXHIBIT 3**

## **Case Overview**

This case involves a 65-year-old female with a history of ovarian cancer who saw an oncologist for followup. The physician ordered a CT of her abdomen and pelvis on 9/28/18. The radiologist allegedly reported nothing suspicious. A year later, she saw the oncologist again. When the patient had a second CT on 9/28/19, there was a soft tissue mass on the right 11th rib. This time, the radiologist reviewing the study identified the lesion. After further testing, the patient started chemotherapy and radiation. We are looking for an expert in radiology to review the images and provide an opinion.

# EXHIBIT 2

# EXHIBIT 2



1 **ANSW**  
2 ROBERT C. MCBRIDE, ESQ.  
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4 SEAN M. KELLY, ESQ.  
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14 *Ellis Bandt Birkin Kollins and Wong, PLLC*  
15 *dba Desert Radiology and Shelin, Agrawal*  
16 *& Hyer, PLLC, dba Desert Radiology*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 MARIA HEATON, individually,  
14  
15 Plaintiff,

15 vs.

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

21 Defendants.

**CASE NO.: A-20-818370-C**  
**DEPT NO.: 6**

**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**

23 COME NOW, Defendants, ELLIS BANDT BIRKIN KOLLINS and WONG, PLLC dba  
24 DESERT RADIOLOGY and SHELIN, AGRAWAL & HYER, PLLC, dba DESERT  
25 RADIOLOGY, by and through their counsel of record, ROBERT C. McBRIDE, ESQ. and SEAN  
26 M. KELLY, ESQ. of the law firm of McBRIDE HALL, and hereby submits their Answer as  
27 follows:

28 ///

1. Answering Paragraph 1 of Plaintiff's Complaint, these Answering Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore deny the same.

2. Answering Paragraphs 2, 3 and 4 of Plaintiff's Complaint, these Answering Defendants admit each and every allegation contained therein.

3. Answering Paragraphs 5, 6, and 7 of Plaintiff's Complaint, these Answering Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore deny the same.

4. Answering Paragraphs 8 and 9 of Plaintiff's Complaint, these Answering Defendants deny each and every allegation contained therein as it pertains to them. As to the remaining allegations, these Answering Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore denies the same.

5. Answering Paragraph 10 of Plaintiff's Complaint, these Answering Defendants admit there is an affidavit from Robert Harris, M.D. attached as Exhibit "1". These Answering Defendants specifically deny that this affidavit has merit or provides support for Plaintiff's claims.

6. Answering Paragraphs 11 and 12 of Plaintiff's Complaint, these Answering Defendants deny each and every allegation contained therein as it pertains to them. As to the remaining allegations, these Answering Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore denies the same.

## AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim against these answering Defendants upon which relief can be granted.

2. Defendants allege that in all medical attention and care rendered to Plaintiff, these answering Defendants possessed and exercised that degree of skill and learning ordinarily possessed and exercised by members of the medical profession in good standing practicing in similar localities and that at all times these answering Defendants used reasonable care and diligence in the exercise of skill and application of learning, and at all times acted in accordance with best medical judgment.

1           3.       Defendants allege that any injuries or damages alleged sustained or suffered by the  
2 Plaintiff at the times and places referred to in Plaintiff's Complaint were caused in whole or in part  
3 or were contributed to by the negligence or fault or want of care of the Plaintiff, and the negligence,  
4 fault or want of care on the part of the Plaintiff was greater than that, if any, of these answering  
5 Defendants.

6           4.       That in all medical attention rendered by these answering Defendants to the  
7 Plaintiff, these Defendants possessed and exercised the degree of skill and learning ordinarily  
8 possessed and exercised by members of their profession in good standing, practicing in similar  
9 localities, and that at all times, these answering Defendants used reasonable care and diligence in  
10 the exercise of their skills and the application of their learning, and at all times acted according to  
11 best judgment; that the medical treatment administered by these Defendants was the usual and  
12 customary treatment for the physical condition and symptoms exhibited by the Plaintiff, and that  
13 at no time were these Defendants guilty of negligence or improper treatment; that, on the contrary,  
14 these Defendants performed each and every act of such treatment in a proper and efficient manner  
15 and in a manner approved and followed by the medical profession generally and under the  
16 circumstances and conditions as they existed when such medical attention was rendered.

17           5.       Defendants allege that they made, consistent with good medical practice, a full and  
18 complete disclosure to the Plaintiff of all material facts known or reasonably believed be true  
19 concerning the Plaintiff's physical condition and the appropriate alternative procedures available  
20 for treatment of such condition. Further, each and every service rendered to the Plaintiff by these  
21 answering Defendants was expressly and impliedly consented to and authorized by the Plaintiff  
22 on the basis of said full and complete disclosure.

23           6.       Defendants allege that they are entitled to a conclusive presumption of informed  
24 consent pursuant to NRS §41A.110.

25           7.       Defendants allege that the Complaint is barred by the applicable statute of  
26 limitations.

27           8.       Defendants allege that Plaintiff assumed the risks of the procedures, if any,  
28 performed.

1           9.     Plaintiff's damages, if any, were caused by and due to an unavoidable condition or  
2 occurrence.

3           10.    Plaintiff has failed to mitigate her damages.

4           11.    Defendants allege that the injuries and damages, if any, alleged by the Plaintiff were  
5 caused in whole or in part by the actions or inactions of third parties over whom these answering  
6 Defendants had no liability, responsibility or control.

7           12.    Defendants allege that the injuries and damages, if any, complained of by the  
8 Plaintiff were unforeseeable.

9           13.    Defendants allege that the injuries and damages, if any, complained of by the  
10 Plaintiff were caused by forces of nature over which these answering Defendants had no  
11 responsibility, liability or control.

12           14.    Defendants allege that the injuries and damages, if any, complained of by the  
13 Plaintiff were not proximately caused by any acts and/or omissions on the part of these answering  
14 Defendants.

15           15.    Plaintiff's Complaint violates the Statute of Frauds.

16           16.    Defendants allege that pursuant to Nevada law, they would not be jointly liable,  
17 and that if liability is imposed, such liability would be several for that portion of the Plaintiff's  
18 damages, if any, that represents the percentage attributed to these answering Defendants.

19           17.    Defendants allege that the injuries and damages, if any, suffered by the Plaintiff  
20 were caused by new, independent, intervening and superseding causes and not by these answering  
21 Defendants' alleged negligence or other actionable conduct, the existence of which is specifically  
22 denied.

23           18.    Defendants allege that Plaintiff's damages, if any, are subject to the limitations and  
24 protections as set forth in Chapter 41A of the Nevada Revised Statutes including, without  
25 limitation, several liability and limits on non-economic damages.

26           19.    Defendants allege that it has been necessary to employ the services of an attorney  
27 to defend this action and a reasonable sum should be allowed these Defendants for attorney's fees,  
28 together with the costs expended in this action.

1           20. Defendants allege that it is not guilty of fraud, oppression or malice, express or  
2 implied, in connection with the care rendered to Plaintiff at any of the times or places alleged in  
3 the Complaint.

4           21. Defendants allege that at all relevant times these Defendants were acting in good  
5 faith and not with recklessness, oppression, fraud or malice.

6           22. Defendants allege that Defendants never engaged in conduct which constitutes  
7 battery, abuse, neglect or exploitation of Plaintiff.

8           23. Defendants allege that the injuries and damages, if any, suffered by Plaintiff can  
9 and do occur in the absence of negligence.

10          24. Plaintiff has failed to allege any facts sufficient to satisfy Plaintiff's burden of proof  
11 by clear and convincing evidence that these answering Defendants engaged in any conduct that  
12 would support an award of punitive damages.

13          25. No award of punitive damages can be awarded against these answering Defendants  
14 under the facts and circumstances alleged in Plaintiff's Complaint.

15          26. Plaintiff's Complaint and attached affidavit fail to satisfy the requirements of NRS  
16 41A.071.

17          27. To the extent Plaintiff has been reimbursed from any source for any special  
18 damages claimed to have been sustained as a result of the incidents alleged in Plaintiff's  
19 Complaint, Defendants may elect to offer those amounts into evidence and, if Defendants so elect,  
20 Plaintiff's special damages shall be reduced by those amounts pursuant to NRS §42.021.

21          28. Pursuant to N.R.C.P. 11 all possible affirmative defenses may not have been alleged  
22 since sufficient facts were not available and, therefore, these Defendants reserve the right to amend  
23 this Answer to allege additional affirmative defenses if subsequent investigation warrants.  
24 Additionally, one or more of these Affirmative Defenses may have been pled for the purposes of  
25 non-waiver.

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1 WHEREFORE, Defendants pray for relief as follows:

- 2 1. That Plaintiff take nothing by way of the Complaint on file herein.
- 3 2. For reasonable attorney's fees and costs incurred in defending this litigation.
- 4 3. For such other and further relief as this Court deems just and proper in the premises.

5 DATED this 27<sup>th</sup> day of August 2020.

6 McBRIDE HALL

7

8 /s/ Sean M. Kelly

9 Robert C. McBride, Esq.

10 Nevada Bar No.: 7082

11 Sean M. Kelly, Esq.

12 Nevada Bar No.: 10102

13 8329 W. Sunset Road, Suite 260

14 Las Vegas, Nevada 89113

15 Attorneys for Defendants

16 *Ellis Bandt Birkin Kollins and Wong, PLLC*

17 *dba Desert Radiology and Shelin, Agrawal*

18 *& Hyer, PLLC, dba Desert Radiology*

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☒ **VIA ELECTRONIC SERVICE:** by mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or

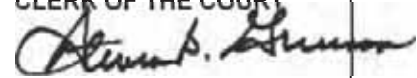
☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada; or

☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number indicated on the service list below.

*/s/ Kellie Piet*  
An Employee of *McBRIDE HALL*

# EXHIBIT 3

# EXHIBIT 3



ANS

DAVID J. MORTENSEN, ESQ.  
Nevada Bar No. 2547  
CANDACE C. HERLING, ESQ.  
Nevada Bar No. 13503  
MESSNER REEVES LLP  
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Facsimile: (702) 363-5101  
E-mail: [dmortensen@messner.com](mailto:dmortensen@messner.com)  
[cherling@messner.com](mailto:cherling@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  
Professional Limited Liability Company, dba  
DESERT RADIOLOGY; SHELIN,  
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. 6

**DEFENDANT FARHAD SANI, M.D.'S**  
**ANSWER TO COMPLAINT**

COMES NOW Defendant FARHAD SANI, M.D. (hereinafter referred to as "Defendant") by and through its attorneys of record, DAVID J. MORTENSEN, ESQ. and CANDACE C. HERLING, ESQ. of the law firm MESSNER REEVES LLP, and hereby answers Plaintiff MARIA HEATON'S (hereinafter referred to as "Plaintiff") Complaint as follows:

1           1.       Answering Paragraph 1 of Plaintiff's Complaint, Answering Defendant is without  
2 knowledge and or information sufficient to form a belief as to the truth of the allegations contained  
3 in said paragraph and therefore denies the allegations contained therein.

4           2.       Answering Paragraph 2 of Plaintiff's Complaint, Answering Defendant is without  
5 knowledge and or information sufficient to form a belief as to the truth of the allegations contained  
6 in said paragraph and therefore denies the allegations contained therein.

7           3.       Answering Paragraph 3 of Plaintiff's Complaint, Answering Defendant is without  
8 knowledge and or information sufficient to form a belief as to the truth of the allegations contained  
9 in said paragraph and therefore denies the allegations contained therein.

10          4.       Answering Paragraph 4 of Plaintiff's Complaint, Answering Defendant admits he is a  
11 physician licensed to practice medicine in the State of Nevada pursuant to Chapter 630 of the Nevada  
12 Revised Statutes. As to any remaining allegations contained in said paragraph, this Answering  
13 Defendant states that it is without sufficient information to form a belief as the truth of the allegations  
14 and therefore denies the allegations contained therein.

15          5.       Answering Paragraph 5 of Plaintiff's Complaint, Answering Defendant is without  
16 knowledge and or information sufficient to form a belief as to the truth of the allegations contained  
17 in said paragraph and therefore denies the allegations contained therein.

18          6.       Answering Paragraph 6 of Plaintiff's Complaint, Answering Defendant is without  
19 knowledge and or information sufficient to form a belief as to the truth of the allegations contained  
20 in said paragraph and therefore denies the allegations contained therein.

21          7.       Answering Paragraph 7 of Plaintiff's Complaint, Answering Defendant is without  
22 knowledge and or information sufficient to form a belief as to the truth of the allegations contained  
23 in said paragraph and therefore denies the allegations contained therein.

24          8.       Answering Paragraph 8 of Plaintiff's Complaint, Answering Defendant denies said  
25 allegations contained therein as it pertains to him. As to the remaining allegations, this Answering  
26 Defendant is without knowledge and or information sufficient to form a belief as to the truth of the  
27 allegations contained in said paragraph and therefore denies the allegations contained therein.

9. Answering Paragraph 9 of Plaintiff's Complaint, Answering Defendant denies said allegations contained therein as it pertains to him. As to the remaining allegations, this Answering Defendant is without knowledge and or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies the allegations contained therein.

10. Answering Paragraph 10 of Plaintiff's Complaint, Answering Defendant admits there is a declaration from Robert Harris, M.D. attached as Exhibit "1". This Answering Defendant specifically denies that this declaration has merit or provides support for Plaintiff's claims or complies with NRS 41A.071.

11. Answering Paragraph 11 of Plaintiff's Complaint, Answering Defendant denies said allegations contained therein as it pertains to him. As to the remaining allegations, this Answering Defendant is without knowledge and or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies the allegations contained therein.

12. Answering Paragraph 12 of Plaintiff's Complaint, Answering Defendant denies said allegation in said paragraph.

## FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint on file herein fails to state a claim against this Defendant upon which relief can be granted.

## SECOND AFFIRMATIVE DEFENSE

The injuries, if any, complained of by Plaintiff in her Complaint were proximately caused by the acts or omissions of unknown third parties or other persons over whom the Defendant exercised no control and over whom this Answering Defendant had no right or duty to control; nor ever has had a right or duty to exercise control; and for whom this Answering Defendant cannot be held vicariously or directly liable.

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**THIRD AFFIRMATIVE DEFENSE**

Plaintiff did not exercise ordinary care, caution or prudence in the conduct of her affairs relating to the allegations of the Complaint herein for damages in order to avoid the injuries or damages of which Plaintiff complains; said injuries or damages, if any, were directly and proximately contributed to or caused by the fault, carelessness and negligence of the Plaintiff.

**FOURTH AFFIRMATIVE DEFENSE**

The fault of Plaintiff, relating to the allegations of the Complaint, exceeded that of Defendant, if any, and Plaintiff is therefore barred from any recovery.

**FIFTH AFFIRMATIVE DEFENSE**

The damages, if any, alleged by Plaintiff were not the result of any acts of omission, or commission, or negligence, but were the result of a known risk which was consented to by the Plaintiff, such risks being inherent in the nature of the care rendered and such risks were assumed by the Plaintiff when he consented to treatment.

**SIXTH AFFIRMATIVE DEFENSE**

In all medical attention rendered by the Defendant to the Plaintiff, this Defendant possessed and exercised that degree of skill and learning ordinarily possessed and exercised by the members of their profession in good standing, practicing in similar localities, and that at all times this Defendant used reasonable care and diligence in the exercise of their skills and the application of their learning, and at all times acted according to their best judgment; that the medical treatment administered by this Defendant was the usual and customary treatment for the physical condition and symptoms exhibited by Plaintiff and that at no time was this Defendant guilty of negligence or improper treatment; that, on the contrary, this Defendant did perform each and every act of such treatment in a proper and efficient manner and in a manner most thoroughly approved and followed by the medical profession generally and under the circumstances and conditions as they existed when such medical attention was rendered.

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1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff is comparatively at fault; Plaintiff's recovery, if any, should be reduced in proportion  
3 to his own fault, or in the event his fault exceeds that of Defendant, he is not entitled to any recovery.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 Defendant denies each and every allegation of Plaintiff's Complaint not specifically admitted  
6 or otherwise pled to herein.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 Plaintiff's non-economic damages, if any, may not exceed \$350,000 pursuant to NRS  
9 41A.035; Defendant is otherwise entitled to all protections, benefits, and set offs available to  
10 Defendant in professional negligence actions under NRS Chapters 41A and 42.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 To the extent Plaintiff is entitled to recover any damages from Defendant, Defendant may be  
13 held severally liable only for that portion of any judgment which represents the percentage of  
14 negligence attributable to this answering Defendant pursuant to NRS 41A.045 and NRS 41.141.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 To the extent Plaintiff have been reimbursed from any source for any special damages claimed  
17 to have been sustained as a result of the incidents alleged in Plaintiff's Complaint, Defendant may  
18 elect to offer those amounts into evidence and, if Defendant so elect, Plaintiff's special damages shall  
19 be reduced by those amounts pursuant to NRS 42.021.

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**

21 To the extent Plaintiff is entitled to recover any future damages from Defendant, Defendant  
22 may satisfy that amount through periodic payments pursuant to NRS 42.021.

23 **NINETEENTH AFFIRMATIVE DEFENSE**

24 Defendant alleges that at all times mentioned in Plaintiff's Complaint, Plaintiff was suffering  
25 from a medical condition(s) which Defendant did not cause, nor was Defendant responsible for said  
26 medical condition(s).

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**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Having attached a Declaration of Expert to Plaintiff’s Complaint, Plaintiff is precluded from applying the doctrine of Res Ipsa Loquitur to this case pursuant to NRS 41A.100(3).

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Defendant alleges that her made, consistent with good medical practice, a full and complete disclosure to the Plaintiff of all material facts known or reasonably believed be true concerning the Plaintiff’s physical condition and the appropriate alternative procedures available for treatment of such condition. Further, each and every service rendered to the Plaintiff by these answering Defendants was expressly and impliedly consented to and authorized by the Plaintiff on the basis of said full and complete disclosure.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff’s damages, if any, were caused by and due to an unavoidable condition or occurrence.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Defendant alleges that it is not guilty of fraud, oppression or malice, express or implied, in connection with the care rendered to Plaintiff at any of the times or places alleged in the Complaint.

**THIRTIETH AFFIRMATIVE DEFENSE**

Plaintiff’s Complaint violates the Statute of Frauds.

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1 **PRAYER FOR RELIEF**

2 Answering Defendant denies Plaintiff is entitled to any of the requested relief as Contained  
3 within Plaintiff's Complaint.

4 Wherefore, Defendant prays for judgment as follows:

- 5 1. That Plaintiff takes nothing by virtue of her Complaint;  
6 2. For reasonable attorneys' fees and costs of suit incurred herein; and  
7 3. For such other and further relief as the Court deems just and proper.

8 DATED this 10th day of September, 2020.

9 MESSNER REEVES LLP

10 /s/ *David J. Mortensen, Esq.*

11 

---

DAVID J. MORTENSEN, ESQ. (NBN 2547)  
12 CANDACE C. HERLING, ESQ. (NBN 13503)  
13 8945 West Russell Road, Suite 300  
14 Las Vegas, Nevada 89148  
15 Telephone: (702) 363-5100  
16 Facsimile: (702) 363-5101  
17 E-mail: [dmortensen@messner.com](mailto:dmortensen@messner.com)  
[cherling@messner.com](mailto:cherling@messner.com)

18 *Attorneys for Defendant*  
19 *Farhad Sani, M.D.*

1 **CERTIFICATE OF SERVICE**

2 On this 10th day of September, 2020, pursuant to Administrative Order 14-2 and Rule 9 of  
3 the NEFCR, I caused the foregoing **DEFENDANT FARHAD SANI, M.D.'S ANSWER TO**  
4 **COMPLAINT** to be transmitted to the person(s) identified in the E-Service List for this captioned  
5 case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of  
6 Nevada. A service transmission report reported service as complete and a copy of the service  
7 transmission report will be maintained with the document(s) in this office.

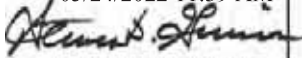
8 Steven M. Burris, Esq. (NBN 00603)  
9 Travis E. Shetler, Esq. (NBN 04747)  
10 LAW OFFICES OF STEVEN M. BURRIS  
11 2810 W. Charleston Blvd, Suite F-58  
12 Las Vegas, NV 89102  
13 Email: [sb@steveburrislaw.com](mailto:sb@steveburrislaw.com)  
14 [ts@steveburrislaw.com](mailto:ts@steveburrislaw.com)  
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P: 702-792-5855

14 /s/ Tya Frabott  
15 Employee of MESSNER REEVES LLP

# EXHIBIT 4

# EXHIBIT 4

  
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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*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

10555.0025

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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](mailto:smkelly@mcbridehall.com)>; Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>  
**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto: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](mailto:dlinford@messner.com)

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

---

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

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto: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](mailto:smkelly@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)

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



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---

**From:** Derek Linford <[DLinford@messner.com](mailto:DLinford@messner.com)>  
**Sent:** Friday, May 20, 2022 12:57 PM  
**To:** Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>  
**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:dlinford@messner.com)  
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

---

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

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:DLinford@messner.com)>

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

**To:** Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto: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](mailto:travis@shetlerlawfirm.com)

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:dlinford@messner.com)

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

---

**From:** Sean M. Kelly <[smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)>

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

**To:** Derek Linford <[DLinford@messner.com](mailto:DLinford@messner.com)>

**Cc:** [travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com); Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[spreScott@messner.com](mailto: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](mailto:smkelly@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)

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

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On May 11, 2022, at 12:44 PM, Derek Linford <[DLinford@messner.com](mailto: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](mailto:dlinford@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

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18 David Mortensen

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19 Stephanie Prescott

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23 Susan Dolorfino

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24 Courtney Christopher

cchristopher@messner.com

25 Derek Linford

Dlinford@messner.com

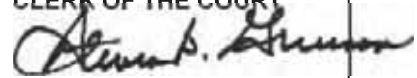
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Lauren Smith	lsmith@mcbridehall.com
Natalie Jones	njones@mcbridehall.com
Madeline VanHeuvelen	mvanheuvelen@mcbridehall.com
Ericka Lemus	elemus@mcbridehall.com

# EXHIBIT 5

# EXHIBIT 5



**NEOJ**

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](mailto:cchristopher@messner.com)  
[dlinford@messner.com](mailto: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  
Professional Limited Liability Company, dba  
DESERT RADIOLOGY; SHELIN,  
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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A-20-818370-C

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DATED this 24<sup>th</sup> day of May, 2022.

/s/ Derek Linford

*Attorneys for Defendant Farhad Sani, M.D.*

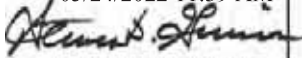
1 **CERTIFICATE OF SERVICE**

2 On this 24<sup>th</sup> 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](mailto:sb@steveburrislaw.com)  
14 [ts@steveburrislaw.com](mailto:ts@steveburrislaw.com)  
15 P: 702-258-6238  
16 *Attorneys for Plaintiff*

Robert C. McBride, Esq. (NBN 07082)  
Sean M. Kelly, Esq. (NBN 10102)  
McBRIDE HALL  
8329 W. Sunset Rd., Suite 260  
Las Vegas, NV 89113  
Email: [rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)  
[smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)  
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

  
CLERK OF THE COURT

**ORDR**

DAVID J. MORTENSEN, ESQ.  
Nevada Bar No. 2547  
COURTNEY CHRISTOPHER, ESQ.  
Nevada Bar No. 12717  
DEREK LINFORD, ESQ.  
Nevada Bar No. 14909  
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[cchristopher@messner.com](mailto:cchristopher@messner.com)  
[dlinford@messner.com](mailto: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  
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

10555.0025

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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:**

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**From:** Derek Linford  
**Sent:** Monday, May 23, 2022 3:05 PM  
**To:** 'Sean M. Kelly' <[smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)>; Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>  
**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto: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](mailto:dlinford@messner.com)  
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

---

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

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto: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](mailto:smkelly@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)

8329 West Sunset Road  
Suite 260  
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**From:** Derek Linford <[DLinford@messner.com](mailto:DLinford@messner.com)>  
**Sent:** Friday, May 20, 2022 12:57 PM  
**To:** Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>  
**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:dlinford@messner.com)  
8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

---

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

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:DLinford@messner.com)>

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

**To:** Travis Shetler <[travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com)>

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto: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](mailto:travis@shetlerlawfirm.com)

**Cc:** Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[sprescott@messner.com](mailto:sprescott@messner.com)>; Sean M. Kelly <[smkelly@mcbridehall.com](mailto: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](mailto:dlinford@messner.com)

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

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**From:** Sean M. Kelly <[smkelly@mcbridehall.com](mailto:smkelly@mcbridehall.com)>

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

**To:** Derek Linford <[DLinford@messner.com](mailto:DLinford@messner.com)>

**Cc:** [travis@shetlerlawfirm.com](mailto:travis@shetlerlawfirm.com); Courtney Christopher <[CChristopher@messner.com](mailto:CChristopher@messner.com)>; Stephanie Prescott <[spreScott@messner.com](mailto: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](mailto:smkelly@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)

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On May 11, 2022, at 12:44 PM, Derek Linford <[DLinford@messner.com](mailto: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

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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

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24 Courtney Christopher

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