

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS A. PICKENS,
INDIVIDUALLY AND AS TRUSTEE
OF THE LV BLUE TRUST,

Appellant,

vs.

DR. DANKA K. MICHAELS,
INDIVIDUALLY AND AS TRUSTEE
OF THE MICH-MICH TRUST,

Respondent;

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Elizabeth A. Brown
Clerk of Supreme Court

S.C. DOCKET NO.: 83491
D.C. Case No. D-17-560737-D

APPENDIX

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ATTORNEYS FOR APPELLANT

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Plaintiff's Trial Exhibit 51 - 2016 1065 Income Tax Return for Patience One LLC	02/14/2020	XXVIII/ AA06673-06691
Plaintiff's Trial Exhibit 52 - 2008 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXVIII/ AA06692- XXIX/ AA06759
Plaintiff's Trial Exhibit 53 - 2009 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06760-06832
Plaintiff's Trial Exhibit 54 - 2010 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06833-06862
Plaintiff's Trial Exhibit 55 - 2011 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06863-06912
Plaintiff's Trial Exhibit 56 - 2012 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06913-06930
Plaintiff's Trial Exhibit 57 - 2013 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06931-06962
Plaintiff's Trial Exhibit 58 - 2014 1120 Income Tax Return for Blue Point Development LLC	02/14/2020	XXIX/ AA06963-06998

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Plaintiff's Trial Exhibit 63 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 05/29/2014 through 12/31/2014	02/14/2020	XXX/AA07001- 07002
Plaintiff's Trial Exhibit 65 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2015 through 12/31/2015	02/14/2020	XXX/AA07003- 07006
Plaintiff's Trial Exhibit 67 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2016 through 12/31/2016	02/14/2020	XXX/AA07007- 07008
Plaintiff's Trial Exhibit 69 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2017 through 12/31/2017	02/14/2020	XXX/AA07009- 07010
Plaintiff's Trial Exhibit 70 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2018 through 12/31/2018	02/14/2020	XXX/AA07011
Plaintiff's Trial Exhibit 71 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2019 through 04/30/19	02/14/2020	XXX/AA07012- 07013
Plaintiff's Trial Exhibit 74 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 07/01/2014 through 12/31/14	02/14/2020	XXX/AA07014

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Plaintiff's Trial Exhibit 78 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2016 through 12/31/16	02/14/2020	XXX/AA07017- 07050
Plaintiff's Trial Exhibit 79 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2017 through 12/31/17	02/14/2020	XXX/AA07051
Plaintiff's Trial Exhibit 80 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2018 through 04/30/18	02/14/2020	XXX/AA07052
Plaintiff's Trial Exhibit 82 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/30/10 through 12/15/11	02/14/2020	XXX/AA07053
Plaintiff's Trial Exhibit 83 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/16/11 through 12/14/12	02/14/2020	XXX/AA07054- 07057
Plaintiff's Trial Exhibit 84 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/15/12 through 12/15/13	02/14/2020	XXX/AA07058
Plaintiff's Trial Exhibit 85 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/16/13 through 12/15/14	02/14/2020	XXX/AA07059

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Plaintiff's Trial Exhibit 88 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/16 through 12/15/17	02/14/2020	XXX/AA07093-07095
Plaintiff's Trial Exhibit 89 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/17 through 12/15/18	02/14/2020	XXX/AA07096-07204
Plaintiff's Trial Exhibit 90 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/18 through 04/14/19	02/14/2020	XXX/AA07205-07228
Plaintiff's Trial Exhibit 93 - Lowes house summary with supporting Wells Fargo Home Mortgage #9607 (PMA #3436) titled in the names of Danka Katarina Michaels and Thomas A. Pickens 07/02/14 through 07/01/2016	02/14/2020	XXX/AA07229-07230
Plaintiff's Trial Exhibit 97 - American Express Statements #63006 titled in the name of Thomas Pickens 12/08/10 through 12/08/11	02/14/2020	XXX/AA07231
Plaintiff's Trial Exhibit 98 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/11 through 12/07/12	02/14/2020	XXX/AA07232-07236

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Plaintiff's Trial Exhibit 102 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/15 through 12/08/16	02/14/2020	XXXI/AA07251-07255
Plaintiff's Trial Exhibit 103 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/16 through 12/08/17	02/14/2020	XXXI/AA07256-07258
Plaintiff's Trial Exhibit 104 - American Express Statements #63006 titled in the name of Thomas Pickens 01/08/18 through 12/07/18	02/14/2020	XXXI/AA07259
Plaintiff's Trial Exhibit 105 - American Express Statements #63006 titled in the name of Thomas Pickens 12/08/18 through 05/08/19	02/14/2020	XXXI/AA07260
Plaintiff's Trial Exhibit 106 - American Express #51001 titled in the name of Blue Point Development 12/05/12 through 12/20/13	02/14/2020	XXXI/AA07261-07262
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Plaintiff’s Trial Exhibit 111 - American Express #51001 titled in the name of Blue Point Development 12/21/17 through 12/20/18	02/14/2020	XXXII/AA 07686-07687
Plaintiff’s Trial Exhibit 112 - American Express #51001 titled in the name of Blue Point Development 12/21/18 through 04/19/19	02/14/2020	XXXII/AA 07688-07689
Plaintiff’s Trial Exhibit 113 - Bank of America Bank Statements #2561 titled in the name of Blue Point Development 10/29/12 through 02/28/14	02/14/2020	XXXII/AA 07690-07691
Plaintiff’s Trial Exhibit 114 - Bank of America Bank Statements #0222 titled in the name of Patience One LLC 11/01/12 through 12/31/13	02/14/2020	XXXII/AA 07692-07693
Plaintiff’s Trial Exhibit 115 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 06/06/17 through 12/08/17	02/14/2020	XXXII/AA 07694-07695
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Plaintiff’s Trial Exhibit 119 - Wells Fargo Checking #8952 titled in the name of Thomas Pickens 01/01/19 through 04/30/19	02/14/2020	XXXII/AA 07703-07704
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Plaintiff’s Trial Exhibit 128 - Valic – Danka Michalecko statements 9/30/13, 12/31/13, and 9/30/15	02/14/2020	XXXIII/AA 07770-07772
Plaintiff’s Trial Exhibit 129 - Pinnacle Health Systems – Danka K. Michaels. Statements 9/30/13 and 12/31/13	02/14/2020	XXXIII/AA 07773-07778
Plaintiff’s Trial Exhibit 132 - Danka Michaels Pinnacle Health Systems Statement 7/1/15	02/14/2020	XXXIII/AA 07779-07780
Plaintiff’s Trial Exhibit 133 - Bank of the West – 2015 Porsche statement 12.2.14	02/14/2020	XXXIII/AA 07781-07841
Plaintiff’s Trial Exhibit 134 - Life Insurance Statement 11/25/15	02/14/2020	XXXIII/AA 07842-07849
Plaintiff’s Trial Exhibit 138 - Thomas Pickens UBS Retirement statements dated June 2017 and October-December 2017 (Supplemental Response to Request for Production No. 16.)	02/14/2020	XXXIII/AA 07850-07857
Plaintiff’s Trial Exhibit 144 - JP Morgan Statements, Danka K. Michaels IRA, August 31, 2019 through September 30, 2019	02/14/2020	XXXIII/AA 07858-07866
Plaintiff’s Trial Exhibit 146 - Plaintiff email dated April 3, 2014	02/14/2020	XXXIII/AA 07867-07919
Plaintiff’s Trial Exhibit 147 - Plaintiff email dated August 26, 2014	02/14/2020	XXXIII/AA 07920-07922
Plaintiff’s Trial Exhibit 148 - Plaintiff email dated May 22, 2013	02/14/2020	XXXIII/AA 07923-07930
Plaintiff’s Trial Exhibit 149 - Plaintiff email dated July 9, 2012	02/14/2020	XXXIII/AA 07931-07933

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Plaintiff’s Trial Exhibit 152 - Plaintiff email dated December 2, 2016	02/14/2020	XXXIII/AA 07999- XXXIV/AA 08018
Plaintiff’s Trial Exhibit 153 - Plaintiff email dated June 30, 2014	02/14/2020	XXXIV/AA 08019-08202
Plaintiff’s Trial Exhibit 154 - #002651 Emails between Dr. Michaels and R. Semonian	02/21/2020	XXXIV/AA 08203-08209
Plaintiff’s Trial Exhibit 155 – NV Prescription Monitoring Program	02/21/2020	XXXIV/AA 08210-08247
Plaintiff’s Trial Exhibit 156 – Request to appeal denial of unemployment benefits	02/21/2020	XXXIV/AA 08248
Defendant’s Trial Exhibit A – Plaintiff’s Response to Defendant’s First Request for Production of Documents and Tangible Things from Plaintiff (with certain attachments thereto)	02/14/2020	XXXIV/AA 08249
Defendant’s Trial Exhibit C – Documentation of \$450,000 loan taken by Danka K. Michaels, M.D., PC for tenant improvements	02/14/2020	XXXIV/AA 08250- XXXV/AA 08257
Defendant’s Trial Exhibit G – Records produced by Equity Title, LLC, in response to Subpoena Duces Tecum for Blue Mesa property (Affidavit and relevant documents)	02/14/2020	XXXV/AA 08258-08270
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Appendix of Exhibits in Support of Defendant’s Motion to Compel Discovery Responses	04/22/2019	II/AA00398-00440
Appendix of Exhibits in Support of Defendant’s Motion to Dismiss	11/29/2017	I/AA00025-00044

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Appendix of Exhibits to Plaintiff's Opposition to Defendant's Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees and Countermotion 1) to Dismiss or, in the Alternative, for Summary Judgement as to Defendant's Causes of Action for Intentional Misrepresentation/Fraud; Negligent Misrepresentation; Breach of Implied Covenant of Good Faith and Fair Dealing; Promissory Estoppel; Express Agreement; Implied Agreement; and Malicious Abuse of Process; (2) for Summary Judgement Setting Aside Deeds of Real Property and Assignment of LLC Interest; and (3) for Permission to Submit Points and Authorities in Excess of 30 Pages Pursuant to EDCR 5.503(e)	08/19/2019	V/AA00763-00813
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Defendant's Trial Exhibit G – Records produced by Equity Title, LLC, in response to Subpoena Duces Tecum for Blue Mesa property (Affidavit and relevant documents)	02/14/2020	XXXV/AA 08258-08270
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Defendant's Trial Exhibit K – Blue Point Development account statement and record produced by Wells Fargo Bank, in response to Subpoena Duces Tecum	02/14/2020	XXXV/AA 08272
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Plaintiff’s Trial Exhibit 116 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 12/09/17 through 12/07/18	02/14/2020	XXXII/AA 07696-07698
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Plaintiff’s Trial Exhibit 78 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2016 through 12/31/16	02/14/2020	XXX/AA07017-07050
Plaintiff’s Trial Exhibit 79 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2017 through 12/31/17	02/14/2020	XXX/AA07051
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Transcript RE: Non-Jury Trial Day 3	10/28/2021	XIII/AA02957- XIV/AA03007
Transcript RE: Non-Jury Trial Day 4	10/28/2021	XIV/AA03008- 03040
Transcript RE: Non-Jury Trial Day 5	10/28/2021	XIV/AA03041- 03054
Trial Subpoena	01/29/2020	V/AA00906- 00909
Trial Subpoena Robert Semonian	01/28/2020	V/AA00892- 00898
Trial Subpoena Shannon L. Evans, Esq.	01/28/2020	V/AA00899- 00905

1 Q Did Danka have any demands as far as you living in
2 the home with her in Queen Charlotte?

3 A As soon as I signed the documents, she informed me
4 that her son was at the house, and that I was to go get my
5 stuff and move out.

6 Q Was there anything instructed by Danka as to the
7 building?

8 A At that point, there was no discussion of me moving
9 out of the building.

10 Q Were you under the impression that you would not
11 have to move out of the building?

12 A Absolutely.

13 Q And at some point, did you find that you had to move
14 out of the building?

15 A Yes.

16 Q How did you find that out?

17 A They ended up, what do you call it, kicking me out
18 the building. So they -- they asked me to leave. They said I
19 was --

20 Q Who's they?

21 A Her son and her got a order from a judge saying I
22 was delinquent on a rent payment. And so they kicked me out
23 of the building.

24 Q So when you met with Shannon Evans on September 13,

1 2016, who else was present at that meeting?

2 A Just the three of us and her legal aide. I don't
3 know who that was.

4 Q So why did you sign two deeds relinquishing your
5 interest in the two homes that you bought together, and the
6 LLC that owned the building? Explain to the Court why you
7 would sign something like that.

8 A Because I was trying to make amends. I mean, I
9 didn't -- I was really messed up at that time.

10 Q How were you messed up?

11 A Just between everything that happened. The girl
12 that I had an affair with was pregnant. She had an abortion
13 the day I signed the documents. That completely threw me over
14 the, I mean, that threw me for a loop. Just the fact that
15 everything I worked so hard for was gone.

16 Q What does that mean, everything you worked so hard
17 for was gone?

18 A I worked so hard to get where we were. And I did
19 everything I could to make our lives better, and it just was
20 completely destroyed. I mean, everything.

21 Q So now when you met with Shannon Evans in September
22 of 2016, that wasn't the first time either you or Danka had
23 seen her, correct?

24 A That's correct.

1 Q Who did your estate planning?

2 A Shannon Evans.

3 Q Who did Danka's estate planning?

4 A Shannon Evans.

5 Q How did you find Shannon Evans?

6 A It was Danka's connection. I don't know how long
7 she's known Shannon. She did Danka's estate planning, and
8 Danka said well, just go have Shannon do yours. And I told
9 Shannon just whatever Danka did is fine. Just leave
10 everything to Danka and Jakub, and I was okay with that.

11 Q So now when you did your estate plan with Shannon
12 Evans, why would you sign a trust or a will that says that
13 you're an unmarried man?

14 A One, that was how Danka put it in her plan. And so
15 I did exactly what she did. I didn't --

16 Q Did you --

17 A Because we were married --

18 Q -- read Danka's plan?

19 A Because we were married, I didn't, you know, I left
20 everything to her. So it didn't, you know, didn't matter how
21 it got to her. It just got to her.

22 Q Now, during the marriage, you and Danka used the
23 same accountant?

24 A Yes.

1 Q Bob Samonian (ph)?

2 A That's correct.

3 Q So why would you sign tax returns that say you're an
4 unmarried man?

5 A When we went to Slovakia, we got married in
6 Slovakia. Everyone -- Bob knew we were -- got married in
7 Slovakia. When he filled out the tax returns, that's what he
8 put on it. And I am not an accountant. And whatever he said
9 was good. I signed, being stupid. But, I did.

10 Q Did you ever provide your accountant information
11 about the mortgages that were paid for purposes of deciding
12 which of the two of you would claim deductions for the
13 mortgages?

14 A Whenever we did taxes, I would send Bob all the bank
15 accounts, all the credit card accounts that we had on my
16 business, my personal stuff. He would prepare the bank
17 account, or the -- the taxes from there. I would gather
18 Danka's stuff and provide him with as much stuff as I could.
19 She wrote more checks than I did. I hardly ever wrote checks.
20 I did everything on online banking. So mine was much easier
21 to do.

22 Q So, following your executing the deeds and the
23 assignment of your interest in Patience One, LLC, did things
24 get better?

1 A No. No. They actually got worse. I mean, once she
2 kicked me out of the house, you know, I went back to Florida.
3 I had to finish the job that I was doing down there. I came
4 back. After I came back, I had to reestablish my life. I
5 ended up taking the money out of my 401k, purchasing a house,
6 the one I live in now, the 14, or the 4514 Blue Mason
7 property. So I bought all new furniture, everything I could
8 to reestablish my life here. So it was tough, and it still is
9 tough.

10 Q At any time, did you provide financial assistance to
11 Danka's son, Jakub?

12 A Yes. I mean, he was an employee. And after this --

13 Q He was an employee of yours?

14 A That's correct.

15 Q Of Bluepoint Development, you mean?

16 A That's correct.

17 Q Any other financial assistance you provided him
18 besides a job?

19 A The only other assistance I gave him, when he got
20 trouble, he was in trouble with DUI, he asked me to bail him
21 out, and I did.

22 Q When did that occur?

23 A I think 2017.

24 Q After you signed the deeds, you still bailed him

1 out?

2 A Yes.

3 MS. LOBELLO: Your Honor, could we take a brief
4 recess?

5 THE COURT: Yes, you may.

6 MS. LOBELLO: For comfort. And I will make sure --
7 I think I'm finished, but I just want to go through my exhibit
8 list briefly and make sure I didn't miss anything.

9 THE COURT: Ten minutes?

10 MS. LOBELLO: That would be lovely.

11 THE COURT: Let's do it.

12 (Off record)

13 (Recess from 3:49 p.m. to 4:06 p.m.)

14 THE COURT: Thank you. Have a seat, please. Before
15 we --

16 MS. LOBELLO: I have two more questions, and then I
17 will --

18 THE COURT: Two more questions, and then we'll talk
19 about logistics. Go ahead. We're back on the record.

20 BY MS. LOBELLO:

21 Q Mr. Pickens, you heard the witness who testified
22 prior to you, Dara, talk about a meeting scheduled with an
23 attorney. When you heard her testimony, was she referring to
24 your -- your understanding, she was referring to the meeting

1 that you had with Shannon Evans and Danka on September 13,
2 2016?

3 MS. ABRAMS: Objection, calls for speculation.

4 THE COURT: He can say what his opinion is.

5 THE WITNESS: Yes.

6 BY MS. LOBELLO:

7 Q Who made the appointment with Shannon Evans that you
8 attended on September 13, 2016?

9 A Danka.

10 MS. LOBELLO: No further questions.

11 THE COURT: All right. So here we are. Again, you
12 don't -- step down for now until we decide what we're going to
13 do next. We have one hour left, and hours are treasurable
14 things to have. I'm going to look at my calendar because I'll
15 be here all next week and the following week. You, of course,
16 are going to be on the 21st. There were some matters on there
17 with you. I moved them already.

18 MR. JONES: I feel comfortable that we can finish
19 next Friday. And --

20 THE COURT: I know. I just want a fall-back date in
21 the event.

22 MR. JONES: I think that's a great idea.

23 THE COURT: Can you --

24 MR. JONES: Plus, I -- I kind of agree with Counsel

1 about --

2 THE COURT: -- fast message Peggy (ph) and ask her

3 what --

4 MR. JONES: -- continuity of examination.

5 THE COURT: -- trial she vacated? Or whatever she

6 vacated.

7 MS. ABRAMS: Just admit it --

8 MR. JONES: It's absolutely not true.

9 MS. ABRAMS: -- you have a bottle of wine waiting

10 for you, right?

11 MR. JONES: That's absolutely not true. She's

12 giving me a hard time about it. I'm trying to be courteous.

13 MS. LOBELLO: I didn't hear what you said.

14 MS. ABRAMS: I said you just want to leave. It's

15 Valentine's Day. There's a bottle of wine cooling.

16 MR. JONES: You know what, there isn't one cooling

17 in the car, but I might get one.

18 MS. LOBELLO: His wife's already mad at him that he

19 had to be here on Valentine's Day.

20 THE COURT: Okay. So I'm not seeing a full chunk of

21 time.

22 MS. ABRAMS: Well, if you want to do written

23 closings, we could probably finish on Friday.

24 MR. JONES: And that's probably not a bad idea.

1 THE COURT: I think written closings --
2 MS. LOBELLO: I think written closings are helpful.
3 THE COURT: -- are probably a great idea because --
4 MR. JONES: And proposed findings.
5 THE COURT: -- then you can -- and proposed
6 findings. Yes, because I would like those to have -- you'd
7 have to get a copy of the --
8 MS. ABRAMS: Do we want --
9 THE COURT: -- transcript and --
10 MS. ABRAMS: Do we want to maybe start earlier?
11 Maybe start an hour earlier next week, and that way if we --
12 with the extra hour and written closings, I think we could
13 probably finish.
14 MR. JONES: 8:00 a.m.? I don't have an issue with
15 that.
16 THE COURT: I get up at 5:00 in the morning.
17 MS. ABRAMS: So do I.
18 MR. JONES: I was in the office at 5:45 this
19 morning, so --
20 THE COURT: All right. So we can go at --
21 MR. JONES: -- we can be here at 8:00 next Friday --
22 THE COURT: We can do 8:00.
23 MR. JONES: -- just to be safe.
24 MS. ABRAMS: At 8:00?

1 THE COURT: We can do 8:00 to be safe.

2 MR. JONES: Assuming your staff can.

3 MS. LOBELLO: Our first witness is Shannon Evans, so

4 you're going to start with Tom, and then stop at 9:00 for

5 Shannon, or --

6 MS. ABRAMS: Yeah. And I don't think that's --

7 THE COURT: Okay. Okay. Here -- here we go. I had

8 a cancellation because they were so fearful of me they got

9 back together again. Oh, Judge Steel's on the bench, we got

10 to -- we got to fix this.

11 MR. JONES: Not enough people look ahead to see

12 who's sitting. So they probably don't even know it's you.

13 THE COURT: On the 24th I have a full day available.

14 So if we don't --

15 MR. JONES: The 24th.

16 THE COURT: -- finish on the 21st --

17 MR. JONES: So that's Monday following next Friday.

18 THE COURT: -- we can do closings on the 24th.

19 MS. ABRAMS: I have -- I have four depositions that

20 day.

21 THE COURT: Sounds like a personal problem.

22 MS. ABRAMS: Not my -- not -- not for --

23 MR. JONES: You don't have anybody else who can

24 defend depos?

1 MS. ABRAMS: No, I'm taking four depositions that day.
2 THE COURT: All day long, then?
3 MS. ABRAMS: It is.
4 THE COURT: Well, four depositions would be all day.
5 MS. ABRAMS: Yes.
6 MS. LOBELLO: Doesn't sound like fun at all.
7 THE COURT: That's the only time that I can see
8 where I have a chunk of time, unless, let's see, we do our --
9 everything on the 21st. What about I'll be here on the 26th,
10 right?
11 THE CLERK: Yes.
12 THE COURT: And I'm not seeing anything after in the
13 afternoon.
14 THE CLERK: Correct.
15 THE COURT: How about the afternoon of the 26th?
16 MS. ABRAMS: I have just a quick hearing for one of
17 my CAP (ph) kids. But other than that, I can be available.
18 So --
19 THE COURT: For closings. In other words, you'll
20 finish up your trial on the 21st, and we'll come in and do
21 closing argument. That gives you time to put it down --
22 MS. ABRAMS: Oh, instead of doing written closings?
23 THE COURT: Whichever works.
24 MR. JONES: Listen, Judge, you know I don't ever

1 tire of hearing myself talk, so I'll do it whatever way --
2 THE COURT: I do like written closings.
3 MR. JONES: That's what I --
4 MS. ABRAMS: I would prefer --
5 MR. JONES: I figured --
6 MS. ABRAMS: I would prefer written.
7 MR. JONES: I figured that you would.
8 THE COURT: I would, too.
9 MS. ABRAMS: Yeah.
10 MR. JONES: I think -- I think it makes it easier
11 for the Court, frankly, particularly if there's --
12 THE COURT: Well, you got to show me how you proved
13 it and where you proved it.
14 MS. ABRAMS: Yes. I think that -- yeah.
15 THE COURT: That's -- yes. You have anything with
16 that?
17 MR. JONES: No.
18 THE COURT: Okay.
19 MR. JONES: In fact, I was probably going to suggest
20 written closings anyway.
21 THE COURT: Hopefully we'll get done on the 21st.
22 If we don't get done on the 21st, then we'll continue minimal
23 stuff to the 26th.
24 MS. LOBELLO: At what time? 1:30?

1 THE COURT: I'm showing --
2 THE CLERK: You can -- there's nothing on the
3 afternoon, so you can do whenever.
4 THE COURT: So anything?
5 THE CLERK: Yes.
6 THE COURT: So anytime. What time is your purported
7 child interview CAP thing?
8 MR. JONES: Those CAP kids are just nuisances, you
9 know?
10 THE COURT: Stop. You said that on the record.
11 MR. JONES: You know I'm kidding.
12 THE COURT: You can never run for office.
13 MS. ABRAMS: I know.
14 MR. JONES: You're right. You're right.
15 MS. ABRAMS: Oh my God. Okay. It is --
16 MR. JONES: Yeah, we're free.
17 MS. ABRAMS: It's a review hearing, so it should be
18 pretty quick. And --
19 THE COURT: What time?
20 MS. ABRAMS: It's from 1:30.
21 THE COURT: So why don't we do it -- anything we
22 need straggling will be 3:00 on Monday. We'll grind it down
23 'till we finish it.
24 MR. JONES: On Wednesday, the 26th?

1 THE COURT: Yeah.

2 MR. JONES: That's fine.

3 THE COURT: Does that work?

4 MR. JONES: Yeah.

5 MS. ABRAMS: Yeah.

6 THE COURT: That's only if you have trailing --

7 MS. LOBELLO: 3:00? Okay.

8 THE COURT: -- rebuttals or anything like that that

9 have to be heard.

10 MS. ABRAMS: Otherwise, we'll do written closings.

11 THE COURT: That's fine. I'm just trying to squeeze

12 it in so I don't have to take extra days. I'm already getting

13 paid for that day.

14 MS. ABRAMS: Oh, and are we --

15 THE COURT: So the taxpayers might as well benefit

16 from that.

17 MS. ABRAMS: Are we starting -- did we decide to

18 start at 8:00 next week, or at 9:00?

19 THE COURT: We can start at 8:00.

20 MS. ABRAMS: 8:00, okay.

21 THE COURT: So hopefully, we'll be done. But if

22 we're not, I've got a back drop day.

23 MR. JONES: I didn't want to be sitting at my desk

24 at 8:15 getting ready to leave.

1 MS. LOBELLO: I always review my notes with Heather
2 (ph) after the first day, don't worry.

3 THE COURT: Okay.

4 MS. LOBELLO: So we're coming back --

5 THE COURT: Now we're going to secure these things
6 somewhere?

7 MR. JONES: Yeah. I'm just putting our set back
8 here.

9 THE COURT: Okay.

10 MR. JONES: I'll put the witnesses' ones over here.

11 THE COURT: And we'll secure my judge's ones. And
12 what are you going to do with yours over here?

13 MS. ABRAMS: Oh, those we're taking with us.

14 THE COURT: All of them?

15 MS. ABRAMS: Yeah.

16 THE COURT: Those are his exhibits, right?

17 MS. ABRAMS: Yeah.

18 THE COURT: For you.

19 MS. ABRAMS: Those are our copies of his exhibits.

20 THE COURT: Okay. You're going to take them with
21 you?

22 MS. ABRAMS: We're going to --

23 THE COURT: They're leaving theirs here.

24 MR. JONES: Well, our copies of ours because we have

1 digital copies of everything organized as if it was in a book
2 anyway.

3 THE COURT: Okay. So you're going to take yours.

4 MS. ABRAMS: We're going to take ours.

5 THE COURT: You're putting yours here. My clerk's
6 going to take care of the Judge's copies, because I have other
7 trials and stuff. Otherwise --

8 (COURT AND CLERK CONFER BRIEFLY)

9 THE COURT: We're off the record then until we
10 return on Friday.

11 MR. JONES: 8:00 next Friday.

12 MS. ABRAMS: Thank you.

13 MR. JONES: Thank you very much for your time.

14 (Proceedings concluded at 4:06 p.m.)

15 * * * * *

16 ATTEST: I do hereby certify that I have truly and
17 correctly transcribed the digital proceedings in the
18 above-entitled case to the best of my ability.

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23

24

/s/ Michelle Rogan
Michelle Rogan

1 TRANS

2 ORIGINAL

FILED
SEP - 1 2020
Sharon L. Williams
CLERK OF COURT

3
4
5 EIGHTH JUDICIAL DISTRICT COURT
6 FAMILY DIVISION
7 CLARK COUNTY, NEVADA
8

9 THOMAS A. PICKENS,)
10 Plaintiff,) CASE NO. D-17-560737-D
11 vs.) DEPT. J
12 DANKA K. MICHAELS,) (SEALED)
13 Defendant.)
14

15
16 BEFORE THE HONORABLE CYNTHIA DIANNE STEEL
17 SENIOR DISTRICT COURT JUDGE

18 TRANSCRIPT RE: NON-JURY TRIAL DAY 2

19 FRIDAY, FEBRUARY 21, 2020
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23
24

1 APPEARANCES:

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I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Shannon Evans	10	--	--	--
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DEFENDANT'S
WITNESSES:

Shannon Evans	38	65	--	--
Danka Michaels	67/104	--	--	--
Robert Simonian	73	81	96	100
Todd Kilde	148	152	160	--

* * * * *

I N D E X O F E X H I B I T S

<u>PLAINTIFF'S EXHIBITS:</u>	<u>ADMITTED</u>
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Exhibit 154	Bates 2651 - 5/10/2017 email	96
Exhibit 155	Updated prescription log	118
Exhibit 156	Unemployment appeal documents	157

DEFENDANT'S EXHIBITS:

Exhibit B	Complete file produced by S. Evans	13
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1 LAS VEGAS, NEVADA

FRIDAY, FEBRUARY 21, 2020

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 08:20:44)

4

5 THE COURT: This is the Pickens versus Michaels
6 matter. This is case 560737. Could I have appearances?

7 MR. JONES: John Jones, bar number 6699, appearing
8 on behalf of the Plaintiff, who is present, with also Michelle
9 LoBello, bar number 5527.

10 THE COURT: Thank you.

11 MS. ABRAMS: Good morning, Your Honor. Jennifer
12 Abrams, bar number 7575, on behalf of Dr. Danka Michaels.

13 Your Honor, just as a preliminary matter, as we were
14 walking into the courthouse today my client received a text
15 message from her brother in Slovakia that her mother passed
16 away.

17 THE COURT: All right.

18 MS. ABRAMS: I asked her -- are you okay?

19 THE DEFENDANT: I'm good. I just don't want to talk
20 about it.

21 THE COURT: I'm uncomfortable --

22 MR. JONES: Some things are far more important
23 than --

24 THE COURT: Yes.

1 MR. JONES: -- than this, you know, so -- and if
2 there are matters that she needs to attend to --
3 MS. LOBELLO: It's totally up to her.
4 MR. JONES: Yeah.
5 MS. LOBELLO: I know my client would say the same.
6 THE PLAINTIFF: Yeah, that's --
7 MS. ABRAMS: She wants -- I've talked to her about
8 it. She wants to not waste everybody's time. She wants to go
9 forward today. But I'm just asking as her counsel, if I feel
10 like she's not able to --
11 THE COURT: We'll break.
12 MS. ABRAMS: -- to do this today that -- yeah.
13 MR. JONES: Well, and --
14 MS. ABRAMS: We have other witnesses. Obviously
15 we'll get through all of our other witnesses.
16 MR. JONES: Right.
17 MS. ABRAMS: But I would -- I was planning on
18 putting her on to testify today.
19 THE COURT: We may have to use our back -- well --
20 MS. ABRAMS: We may not --
21 MR. JONES: We only have a short period of time.
22 THE COURT: Short period of time on that day.
23 MR. JONES: And her testimony -- we would probably
24 need to find another day.

1 MS. ABRAMS: [Cross-talk] --

2 MR. JONES: I don't have any issue with -- I guess

3 we have Evans today, cross of our client, and that's all I

4 know other than --

5 MS. LOBELLO: Mr. Simonian (ph).

6 MR. JONES: And Simonian this afternoon, right?

7 THE COURT: Doctor, I will just say that -- my

8 condolences to you.

9 THE DEFENDANT: Thank you.

10 THE COURT: I know it was probably a surprise this

11 morning to get that text message. It might not hit you yet,

12 as you stand here saying that you can go forward. Any moment

13 that you feel like you just cannot manage it anymore, or you

14 can't assist your attorney with your claim, then you need to

15 let your attorney know right away and we can always move these

16 proceedings to another day.

17 THE DEFENDANT: I appreciate it. Thank you. I

18 think I will be fine. Thank you, Your Honor.

19 THE COURT: All right. Okay. So then let's have

20 appearance -- oh, we've already done appearances?

21 MS. ABRAMS: Yes.

22 THE COURT: No. We did?

23 MR. JONES: We have.

24 THE COURT: Okay. All right. So everybody have a

1 seat and I guess -- any other preliminary issues?

2 MR. JONES: There's -- there's a couple of
3 housekeeping matters. One was yesterday at 4:25 we received a
4 purported notice to appear by communication equipment for a
5 witness for the Defendant.

6 THE COURT: I haven't even seen that.

7 MR. JONES: Yeah. Well, the issue obviously is that
8 it's not timely, and you can't do it by anything other than
9 the court-mandated system, not by Skype or any personal
10 computer or anything of that -- and it would have to be five
11 days' notice, and there would have to be extraordinary
12 circumstances if they intend to call a witness without having
13 them present in the court.

14 MS. ABRAMS: And, Your Honor, this particular
15 witness, his wife had a stroke and he does not feel
16 comfortable leaving her alone, which is why he asked to appear
17 by electronic means.

18 MR. JONES: Still doesn't get around the notice
19 requirement by the statute.

20 THE COURT: Right.

21 MS. ABRAMS: He was -- he was noticed --

22 MR. JONES: No, no.

23 MS. ABRAMS: -- as a witness long ago.

24 MR. JONES: Hey, stop.

1 MS. ABRAMS: We just didn't realize that he --

2 MR. JONES: It's five days for notice to appear by
3 any other means.

4 THE COURT: Really missed the notice on that.

5 MS. ABRAMS: Okay. Well, then I will be making an
6 offer of proof. I will ask to call him. I'll make an offer
7 of proof as to what he would have testified to and then the
8 Court can do with it what the Courts wants to do with it.

9 MR. JONES: But there -- there's no offer of proof
10 in lieu of testimony at a trial.

11 THE COURT: I understand that.

12 MR. JONES: So --

13 THE COURT: I understand that. When she intends to
14 call him, she will at that point in time put it on the record
15 why it would be important enough for me to go around that
16 notice rule. But it's pretty strident.

17 MR. JONES: Well, I don't know that you -- I don't
18 know that you get --

19 THE COURT: Right.

20 MR. JONES: You could -- if there was proper notice
21 and I fought -- fought against it under the case law and the
22 statutory theory, you would have some level of discretion.
23 But without the proper notice --

24 THE COURT: Thanks for the heads up. Whenever

1 you're ready to call him, we'll deal with the issue at that
2 time.

3 MR. JONES: And then we didn't mention it the first
4 day of trial, but when we had our pretrial conference we asked
5 -- we asked Defendant's counsel if she was pursuing her
6 counterclaims at trial and she said she was not. I just
7 wanted to clarify that --

8 MS. ABRAMS: We are pursuing attorney fees.

9 MR. JONES: Right. But other than that, the other
10 counterclaims you're not?

11 MS. ABRAMS: Right. Right.

12 MR. JONES: Okay.

13 MS. ABRAMS: We're not going to spend the time to do
14 that. I think it's all encompassed within what we're doing.

15 THE COURT: Okay. All right. Then let's begin.

16 MR. JONES: Okay. I think Shannon Evans is outside.

17 THE COURT: Let's call her.

18 (Witness summoned)

19 THE COURT: And I need to set up over here.

20 MR. JONES: I think we'll be working out of
21 Defendant's exhibit book this morning with Ms. Evans.

22 THE COURT: Oh, okay.

23 MR. JONES: So it's only one, and it's small.

24 THE COURT: Yeah, but I've still got to set up.

1 MR. JONES: All right.

2 THE COURT: Go ahead and swear her in.

3 THE CLERK: You do solemnly swear the testimony
4 you're about to give in this action shall be the truth, the
5 whole truth, and nothing but the truth so help you God?

6 THE WITNESS: I do.

7 THE CLERK: You may be seated.

8 THE COURT: You may proceed.

9 MR. JONES: Thank you, Your Honor.

10 SHANNON EVANS

11 called as a witness on behalf of the Plaintiff and being first
12 duly sworn, testified as follows on:

13 DIRECT EXAMINATION

14 BY MR. JONES:

15 Q Can you please state your name for the Court?

16 A Shannon Evans.

17 Q And, Ms. Evans, are you an attorney licensed to
18 practice law in the State of Nevada?

19 A Yes, I am.

20 Q What is your bar number?

21 A 4266. No, 4262, I think.

22 THE COURT: 4262?

23 THE WITNESS: Yes.

24 BY MR. JONES:

1 Q And you have at various times represented both the
2 parties in this action?

3 A Yes.

4 Q In 2010 I believe you did an estate plan for the
5 Defendant --

6 A Yes.

7 Q -- Danka Michaels? Dr. Michaels?

8 A Yes.

9 Q And in 2012 you did an estate plan for the
10 Plaintiff?

11 A Yes.

12 Q And you also did some measure of work with regard to
13 forming an LLC for them?

14 A Correct.

15 Q Now, I've reviewed your file that was produced in
16 discovery. I noted that the only conflict waiver that exists
17 was one that was signed on September 13th, 2016, at the time
18 of the various transactions that we'll talk about in a little
19 bit.

20 A I believe that is correct.

21 Q Is that your understanding?

22 A I believe that is correct. But when I first did his
23 estate planning in 2012, my notes said there was another
24 conflict waiver which is standard, but I didn't see them in

1 the file.

2 Q And I -- I thought it was standard as well and I
3 didn't see one in the file --

4 A Yes.

5 Q -- for when you did his plan because of how they
6 were intertwined.

7 A But there were notes in my file that there was one,
8 but I didn't find it, so I'm not sure.

9 Q Now, before you is an exhibit binder labeled
10 Defendant's Trial Exhibits.

11 A Yes, sir.

12 Q Could you please turn to Exhibit B.

13 MR. JONES: And this has already been stipulated in,
14 right?

15 MS. ABRAMS: Yes.

16 MS. LOBELLO: No, it hasn't been.

17 MS. ABRAMS: Oh.

18 THE CLERK: No.

19 MS. LOBELLO: It has not been stipulated in.

20 MR. JONES: Do we have an issue with any of it?

21 MS. ABRAMS: No. It was in our book. We stipulate
22 to it, yes.

23 MS. LOBELLO: It wasn't agreed upon last time.

24 MR. JONES: Okay. Then we'll stipulate to it coming

1 in if that's --

2 THE COURT: All right. It will come in.

3 (DEFENDANT'S EXHIBIT B ADMITTED)

4 BY MR. JONES:

5 Q All right. I'm going to have you turn to --
6 actually before I go there, since the first day of trial our
7 office reached out to your office about the original operating
8 agreement for Patience One, LLC. Are you aware of that?

9 A Yes.

10 Q Did you search your office for the original
11 agreement?

12 A Yes.

13 Q And did you find it?

14 A No. A signed one you mean?

15 Q A signed one.

16 A Correct. I did not find a signed one. I found one
17 on our computer system that they had created an operating
18 agreement, but I do not have a copy of the signed one.

19 Q But it was called an amended operating agreement,
20 the one that was sent to us.

21 A It might have been.

22 Q But as far as an original operating agreement, you
23 didn't find any version of that?

24 A That's correct.

1 Q All right. If you could turn to -- and I'm sorry, I
2 don't know if -- how your eyes are, but the Bates numbers in
3 Exhibit B, Danka Michaels 000615, it is your item number 16
4 from your log.

5 A Okay. I have it.

6 Q Do you see that?

7 A Yes, I do.

8 Q All right. Now, is this an email that you received
9 from the Defendant on or about September 9th, 2016?

10 A It's an email that I provided to my paralegal.

11 Q Oh, I'm sorry. Right. So it's an email from you to
12 your staff.

13 A Correct.

14 Q Okay. And it's related to a conversation I'm
15 assuming you had with the Defendant?

16 A Exactly.

17 Q All right.

18 A No, excuse me. I think it was a conversation with
19 Ms. Michaels.

20 Q Right. The Defendant.

21 A Okay.

22 Q I'm sorry. I'll -- I -- so that I don't mess up not
23 calling her a doctor, since I don't want to be disrespectful,
24 I'm going to call her the Defendant throughout these

1 proceedings.

2 A Okay.

3 Q Now, do you believe that this email was sent roughly
4 around the time you received a phone call from the Defendant?

5 A Yes. It would have been the day before or that day.
6 Usually on Friday -- I don't usually have office hours on
7 Friday, so it probably was Thursday.

8 Q Thank you. Now, at the time you sent this email,
9 you were technically still the esate planning attorney and
10 business formation attorney for both parties, right?

11 A Correct.

12 Q Now, you mentioned -- if you look at the third line
13 down that reads: Since they do not need a divorce and he will
14 agree to assets being Danka's since she pays for the
15 properties and he is guilty, ASAP Monday or Tuesday please
16 prepare, colon.

17 Where did you get the idea that Danka pays for the
18 properties?

19 A My understanding was that all the finances came from
20 the practice and her income and that Mr. Pickens sometimes
21 provided construction services for the properties.

22 Q So and that's based upon something that the
23 Defendant told you?

24 A Probably, yes.

1 Q You never saw any financial documents showing Mr.
2 Pickens's financial contributions?

3 A No.

4 Q You never saw bank statements?

5 A No.

6 Q You never saw his tax returns?

7 A No.

8 Q So you don't know for a fact that that was true or
9 not true, right?

10 A That's fair, yes.

11 Q Now, what did you mean that he is guilty?

12 A That my understanding was that he was having a child
13 by another woman in Florida and that there was going to be a
14 separation of their relationship, and that obviously both
15 their trusts would be changed to reflect that, and that he was
16 going to be in Florida with his family.

17 Q And was that also based upon a conversation you had
18 with the Defendant?

19 A Yes.

20 Q Now, on September 13, did you have a conversation
21 with Tom and ask him why he would be doing this?

22 A I don't remember phone conversations. I know that
23 eventually we had a meeting together to discuss it.

24 Q I meant September 13th when the meeting occurred.

1 A Oh, when we had a meeting together we talked about
2 that. We didn't have a phone call though. We just talked
3 together, the two of them in the room with me.

4 Q You never talked to Tom independently?

5 A No.

6 Q Now, when you did the estate plan, or at least the
7 estate plan for Danka Michaels, for the Defendant, she had
8 named Tom Pickens as her durable power of attorney --

9 A Yes.

10 Q -- her agent for that purpose?

11 A Yes. Originally.

12 Q Originally, sure. In her initial estate plan.

13 A Yes.

14 Q There have been amendments since, right?

15 A Yes.

16 Q Okay. If you could turn to Bates number 609,
17 000609, your log number 12.

18 A Okay.

19 Q I note that in the initial estate planning document
20 for the Defendant that there's a schedule of trust assets
21 that's attached.

22 A Yes.

23 Q Do you see that?

24 A Yes.

1 Q In reviewing the trust that was prepared for the
2 Plaintiff, there is no similar schedule of assets attached.
3 Do you know why?

4 A Probably I didn't have the information on his
5 assets. I ask for them when we have our initial meeting, and
6 if I have information on deeds and bank accounts I put them on
7 the schedule.

8 Q And at the same time that the deeds and the
9 purported assignment of the LLC interest occurred on September
10 13, the Defendant amended her trust; is that right?

11 A Yes.

12 THE COURT: What date were you saying that she
13 admitted it?

14 MR. JONES: September 13th, 2016.

15 BY MR. JONES:

16 Q Now, if you could turn to Bates 691.

17 A Okay. I'm there.

18 Q This appears, and correct me if I'm wrong, to be the
19 application for EIN number for Patience One, LLC; is that
20 right?

21 A Yes.

22 Q Okay. And the care of name there on line 3 is the
23 Defendant, correct?

24 A Correct.

1 Q The name of the responsible party is also the
2 Defendant?

3 A Yes.

4 Q Now, next to either one of those do you see the word
5 trustee of the Mich Mich Trust?

6 A No, but you never put the trustee on the SS4
7 application. One persons's Social Security number has to
8 apply for the EIN number, but it doesn't have --

9 Q I'm just asking if it mentions trustee anywhere.

10 A No, it wouldn't.

11 Q Okay. Now, if you could turn to Bates number
12 000698.

13 A Yes.

14 Q This would be the conflict waiver that you had the
15 parties execute on September 13th, 2016; is that right?

16 A Yes.

17 Q Now -- actually, strike that.

18 Now, why did you feel like you needed a conflict
19 waiver for that -- for those transactions?

20 A I understood that the meeting between the three of
21 us in my office was going to be somewhat stressful to both the
22 parties given the personal issues that had arisen and that it
23 would be necessary to have a conflict waiver for them to both
24 speak with me.

1 Q Okay. Now, if you could turn to Bates Number
2 000699. Actually, you know what? We're going to move to a
3 different exhibit.

4 Let's go to Bates Number -- I don't see a Bates
5 number on this one. Well, go to Bates Number 001157, and then
6 let's go two pages past that to a document without a Bates
7 number in this exhibit.

8 A It's an officer list?

9 Q Yes.

10 A Okay.

11 Q Okay.

12 THE COURT: I'm sorry, which one?

13 MR. JONES: It's not -- it's not Bates numbered,
14 Your Honor. It's two pages after --

15 THE COURT: I'm looking at two pages after. I'm
16 seeing 1059.

17 MR. JONES: 1157.

18 THE COURT: Oh, 1-1. I'm sorry.

19 MR. JONES: So it's two pages --

20 THE COURT: I'm a thousand pages behind -- or a
21 hundred pages behind you. 1-1-9 --

22 MR. JONES: 1157.

23 THE COURT: 1157. I'm sorry.

24 BY MR. JONES:

1 Q Is that a form that you would have filed on behalf
2 of the parties?

3 A Yes.

4 Q And who is listed as the managing member?

5 A Excuse me. It's a manager.

6 Q Manager, yeah --

7 A Usually manager managed LLCs, and it's Mr. Pickens.

8 Q And it's just Mr. Pickens individually, right?

9 A Correct.

10 MR. JONES: Oh, this is going to be tough. There's
11 no Bates on the remainder of these pages, and I'm not sure how
12 to -- I mean, I guess I can count -- actually maybe we should
13 count from the back. Okay.

14 THE COURT: Here's what we need to do. I don't know
15 how many pages there are. But I guess from the 1157 we need
16 to put it in the -- make a mark on there where these pages are
17 A, B, C after that, 1157A or point 1, point 2, point 3,
18 however you want to do it.

19 MR. JONES: Okay.

20 THE COURT: And we'll just number the unnumbered
21 pages as 1157 point 1, 2, 3, 4?

22 Madam Clerk, if you'll do that for me, please.

23 MR. JONES: All right.

24 MS. LOBELLO: So it'll be 1157A, 1157B?

1 THE COURT: No, 1157.1, 2, 3 because you guys are --

2 MS. LOBELLO: Oh, sorry. Sorry.

3 THE COURT: Point 1, point 2. All right?

4 MR. JONES: All right. So then the one we just
5 covered would be point 2 because it's two pages after.

6 THE COURT: Uh-huh (affirmative).

7 MR. JONES: All right.

8 BY MR. JONES:

9 Q All right. 33 pages after --

10 A If you could just describe it, I could probably pop
11 to it since it's my document.

12 Q It's Articles of Organization, Limited Liability
13 Company from 2012.

14 A Okay. Yes.

15 Q This is another document that you would have filed
16 on behalf of Patience One and the parties?

17 A That was the initial filing of the articles to
18 create the LLC.

19 Q Okay. And the name and address of the manager there
20 is Danka Michaels; is that right?

21 A Correct. Correct.

22 Q And you attached to it her address. It says "See
23 attached," and attached is Danka Michaels, 1930 Village
24 Center; is that right?

1 A Correct.

2 Q And on that page it also doesn't say anything about
3 trustee, right?

4 A No, it would not. A trust is not the manager. A
5 human being or a company needs to be.

6 Q Right. I understand.

7 Now, turning back to where we have Bates numbers,
8 which lets start with Bates Number 00699.

9 A Got it.

10 Q What was your understanding were the assets in
11 Patience One, LLC were?

12 A I believed it was going to be two rental properties
13 that each trust was a 50 percent member of.

14 THE COURT: I'm sorry, the Bates number again? Your
15 Bates number again, Counsel?

16 MR. JONES: Oh, I'm sorry. 00699.

17 BY MR. JONES:

18 Q So as of 2016 it was -- September 13th, 2016, it was
19 your understanding that it was two residential parcels of --
20 or pieces of property?

21 A Correct.

22 Q And was it your understanding that those pieces of
23 property were also the pieces of property that were the
24 subject to the deeds that were executed that day?

1 A Yes.

2 Q Okay. So you weren't aware that Patience One owned
3 a commercial building worth at that time \$4 million, three-
4 and-a-half million dollars?

5 A No.

6 Q Okay. Had you known that would you possibly have
7 advised Mr. Pickens he should get counsel of his own before
8 transferring 3 or \$4 million?

9 A I can't second guess. I had no idea about the value
10 of the assets in the LLC at all. I thought there were some
11 rental properties. I can't say.

12 Q You mentioned that the properties that you thought
13 were in Patience One, LLC were 50 percent owned by the
14 Defendant's trust and 50 percent owned by the Plaintiff's
15 trust; is that right?

16 A That was my --

17 Q Is that what your understanding was?

18 A That was my understanding.

19 Q Okay. But the deeds that were signed were all deeds
20 that were signed by them individually, right?

21 A Correct.

22 Q And you don't have a document -- I've scoured this
23 file now multiple times. You don't have a document wherein
24 the Plaintiff, Mr. Pickens, conveyed his interest in Patience

1 One, LLC into his trust, right?

2 A I believe there were unsigned deeds that were sent
3 to them that they never notarized or recorded.

4 Q Okay. But you don't have a document that evidences
5 a transfer --

6 A That was [cross-talk] --

7 Q -- of the interest in the LLC from Mr. Pickens into
8 his trust?

9 A No. That was signed and recorded, no.

10 THE COURT: As of September 13th, is that what
11 you're talking about?

12 MR. JONES: September 13th -- well --

13 THE WITNESS: At any time.

14 MR. JONES: -- anywhere in the file.

15 THE WITNESS: At any time.

16 THE COURT: Right.

17 BY MR. JONES:

18 Q Now, looking at the Bates number I just referenced,
19 the assignment and assumption of membership interest, if you
20 can turn to page 2 of that document.

21 THE COURT: I'm sorry, what's the Bates number?

22 MR. JONES: The Bates number is 000700 is the second
23 page of the document.

24 THE COURT: Okay.

1 BY MR. JONES:

2 Q Do you see that page?

3 A Yes, I do.

4 Q And the signature line for Mr. Pickens is on behalf
5 of the LV Blue Trust, right?

6 A Correct.

7 Q And you agree that -- you would agree that if the LV
8 Blue Trust did not own the interest in the LLC, then that
9 signature line would have required Mr. Pickens's signature as
10 an individual, right, not as the trustee of the trust?

11 A Correct, because it was my understanding that both
12 their trusts were 50/50 partners based on a deed that they had
13 not signed and recorded that I had provided in the past.

14 Q Okay. But you agree with the concept that in order
15 for an individual to transfer his interest it wouldn't -- it
16 would not say LV Blue Trust, it would just say Tom Pickens,
17 right?

18 A Correct. The member should reflect a signed
19 operating agreement at the time.

20 Q Okay. But we don't have that signed operating
21 agreement, right?

22 A Correct.

23 Q Now, as it pertains to the deed transfers on that
24 day, the deeds were drafted such that they were transferred

1 from the parties as husband and wife -- or actually wife and
2 husband -- to the parties as individuals, right, first?

3 A Correct.

4 Q And then they were transferred as parties as
5 individuals as single, unmarried people, to the Defendant,
6 right?

7 A Correct.

8 Q And then the Defendant transferred the deeds into
9 her trust?

10 A Correct.

11 Q Okay. Now, did any part of what you did that day
12 indemnify the Plaintiff from the liability on the mortgage on
13 one of the properties?

14 A (No verbal response)

15 Q Or a mortgage on any of the properties rather?

16 A No, I had no information about mortgages on any of
17 the properties.

18 Q So there was no promise on behalf of the Defendant
19 to hold him harmless from any liability associated with any of
20 the properties?

21 A No. I did not understand that there was any
22 liability on those properties.

23 Q And there was no payment made from the Defendant to
24 the Plaintiff for the transfer of either of the parcels of

1 real property?

2 A Not to my knowledge.

3 Q And was there, in your presence on September 13, any
4 other consideration of any kind provided by the Defendant to
5 the Plaintiff for the transfer of the two residential pieces
6 of property?

7 A Not at that meeting with me, no.

8 Q Are you aware of any consideration any other time?

9 A No.

10 Q Now, as it pertains -- we'll go back to 700 again --
11 actually 000699, page 1 of the purported assignment. In the
12 second recital it says: Assignor desires to assign for good
13 and valuable consideration all its right, title, duties,
14 obligations and interest in and to the 50 percent interest of
15 the LLC to assignee. Do you see that?

16 A Yes, I do.

17 Q Was there any good and valuable consideration
18 conveyed that day in your presence?

19 A To my knowledge it was a gift and not a purchase.

20 Q If it was a gift -- do you understand the legal
21 impact of recitals in a contract?

22 A Yes.

23 Q In the State of Nevada?

24 A Yes.

1 Q It's a unique legal impact. This means that there
2 is a presumption that good and valuable consideration was
3 required for this transaction, by my reading of the law,
4 right?

5 A Yes. Yes.

6 Q Okay. But to your knowledge there was no good and
7 valuable consideration, right?

8 A Correct.

9 Q And there was no other agreement whereby the
10 Defendant would indemnify and hold the Plaintiff harmless from
11 any liability in any mortgage associated with the LLC?

12 MS. ABRAMS: Objection, calls for speculation.

13 THE WITNESS: There was no discussion of
14 mortgages --

15 THE COURT: Excuse me. There's an objection on the
16 floor.

17 MR. JONES: I asked if there was any other agreement
18 assigned that day --

19 MS. ABRAMS: No, you didn't say assigned that day.

20 MR. JONES: Okay.

21 THE COURT: Okay.

22 MS. ABRAMS: You said was there any other agreement,
23 and I said it calls for speculation. She doesn't know.

24 MR. JONES: Okay.

1 BY MR. JONES:

2 Q Is there any other -- is there any other agreement
3 of which you are aware whereby the Defendant would have on
4 September 13th, 2016 agreed to hold the Plaintiff harmless and
5 indemnify him from any liabilities of the LLC?

6 A No. Because there was no discussion of any debt or
7 mortgages on the properties. There was a discussion of there
8 being gift tax returns instead after the transaction the next
9 April.

10 MR. JONES: Move to strike everything after "no,"
11 Your Honor, as nonresponsive.

12 THE COURT: I'll strike it.

13 BY MR. JONES:

14 Q Now, if you can turn to --
15 (COUNSEL CONFER BRIEFLY)

16 MR. JONES: Give me one second, please, Your Honor.
17 I'm sorry.

18 BY MR. JONES:

19 Q If you can turn to Bates Number 001124.
20 THE COURT: 00124?
21 MR. JONES: No, 1124, Your Honor. I'm sorry.
22 THE COURT: Thank you.
23 THE WITNESS: Yes.

24 BY MR. JONES:

1 Q Okay.

2 MS. ABRAMS: Wait. We're not there yet.

3 BY MR. JONES:

4 Q This appears to me, and I'll ask you if I'm right,
5 to be a internal voicemail memo or voice message memo?

6 A A phone log.

7 Q Phone log for your firm?

8 A (Nods head in the affirmative)

9 Q It says: Tom Pickens re meeting with himself and
10 Danka approximately two weeks ago. There is something that we
11 talked about that didn't get done and what can be done about
12 it and why it wasn't done.

13 The word pull documents, is that something you
14 wrote?

15 A No.

16 Q Was it something your staff would have written?

17 A Yes.

18 Q Okay. Did you ever talk to Tom Pickens about what
19 this message was about?

20 A No. To your knowledge my staff would have scheduled
21 a meeting with both of them, and I don't know if they did. I
22 never met with them after that.

23 Q And the instructions about what transpired on
24 September 13th, 2016, those were all instructions given to you

1 by the Defendant, right?

2 A I'm not sure what you're asking.

3 Q Meaning the email that we talked about at the
4 beginning of your examination where you were instructing your
5 staff what to do based upon what the Defendant told you,
6 right?

7 A (No verbal response)

8 Q All of the instructions for the documents signed
9 that day came from the Defendant, right?

10 A No. The documents signed that day were prepared at
11 the time we had the meeting together, after we had talked. I
12 did not pre-prepare them.

13 Q You get a call sometime before September 9, 2016,
14 right?

15 A Correct.

16 Q You instruct your staff on September 9, 2016 to
17 prepare these documents and that to have a meeting on Tuesday
18 the 13th, right?

19 A Correct.

20 Q Okay. What I'm suggesting to you is prior to the
21 13th did you get a call from Mr. Pickens giving you
22 instructions about any of those documents?

23 A No.

24 Q All of your instructions regarding those documents

1 came from the Defendant, right?

2 MS. ABRAMS: Objection. That's not what she said.

3 THE WITNESS: Yeah, I would have (indiscernible) the
4 instructions. I understood there was going to be a splitting
5 up of the assets based on a breakup of the relationship, that
6 we were going to meet together in my conference room, that it
7 would be somewhat stressful, and we would see what the parties
8 agreed to. That was my understanding.

9 BY MR. JONES:

10 Q Okay. But that understanding came only from a phone
11 call with the Defendant, right?

12 A Yes. I did not talk to Mr. Pickens about the
13 breakup of the relationship.

14 Q That's what I was getting at.

15 A Correct.

16 Q Thank you. Were you aware during any of this
17 representation of both parties that the Defendant was the
18 Plaintiff's treating physician?

19 A No.

20 Q And you were aware that the parties held them out to
21 third parties as husband and wife, right?

22 A No. I have no idea how they held them out to third
23 parties. I've never seen them in front of third parties.

24 Q But you prepared deeds that would transfer the

1 properties from them as wife and husband to them as
2 individuals, right?

3 A I know that there were original deeds that I did not
4 prepare as husband and wife, but that had nothing to do with
5 my work.

6 Q Right. But when you read that, did you have any
7 understanding that they ever held themselves out as husband
8 and wife?

9 A No, I wouldn't call it that. We had a tax
10 discussion about --

11 Q Did Danka Michaels ever tell you when you first met
12 with her that she and Tom presented themselves as husband and
13 wife?

14 A No.

15 MR. JONES: Do we have her original transcript?
16 I'll publish the deposition transcript of the witness.

17 BY MR. JONES:

18 Q Do you recall having your deposition taken?

19 A Yes, sir.

20 Q Do you recall specifically being asked: So tell me
21 the entire story about how these deeds came to be?

22 And your answer was: When I met Danka Michaels, she
23 told me that she and Tom presented themselves as husband and
24 wife --

1 MS. ABRAMS: What page are you on?

2 BY MR. JONES:

3 Q -- but really they only had a religious ceremony

4 somewhere in Eastern Europe where she was from and they did

5 not have a legal marriage license.

6 A That's correct.

7 Q Okay. So --

8 A That was my understanding.

9 Q Right. But --

10 A But the deeds themselves were not prepared by me and

11 we had a discussion that they were incorrect tax-wise and they

12 needed to be corrected --

13 Q Right.

14 A -- based on there not being a legal marriage.

15 That's all. That's what I [cross-talk] --

16 Q That was your testimony though, right?

17 A Yeah.

18 Q My question was did Danka Michaels ever tell you

19 that they held each other out as husband and wife? Do you

20 recall that question?

21 A Yes.

22 Q Okay. And so now you remember that she did do that,

23 right?

24 A Yes, but not in relation to those deeds that you

1 were talking about.

2 THE COURT: Pardon me?

3 BY MR. JONES:

4 Q I wasn't -- I -- the question had nothing to do with
5 deeds.

6 THE COURT: Excuse me?

7 THE WITNESS: Okay. I thought it was.

8 THE COURT: Okay.

9 THE WITNESS: I thought we were talking about the
10 deeds.

11 MR. JONES: No.

12 MS. ABRAMS: What page were you reading from in her
13 deposition?

14 MR. JONES: I'm sorry. It was page 14, lines 1 --
15 the answer was lines 1 through 6. I apologize for not giving
16 that.

17 (COUNSEL CONFER BRIEFLY)

18 BY MR. JONES:

19 Q And on September 13th, 2016, Tom seemed a little bit
20 out of sorts; is that right?

21 A Both parties were very upset.

22 Q He was nervous?

23 A Both parties were nervous.

24 Q Okay. If I asked you just about Tom, I'm going to

1 ask you to answer about Tom. Is that okay?

2 A Sure.

3 Q Okay. Did Tom seem nervous?

4 A Yes.

5 Q Did he seem upset?

6 A Yes.

7 Q And it was a very tense situation, right?

8 A Exactly.

9 MR. JONES: Pass the witness, Your Honor.

10 THE COURT: Counsel?

11 MS. ABRAMS: Well, actually, are you resting your

12 case in chief? I'm going to call her in my case in chief. So

13 if they're done then I'll start --

14 MR. JONES: Well, no, because you still haven't

15 crossed your client.

16 MS. ABRAMS: I reserved everything for when they're

17 done with their case in chief.

18 MS. LOBELLO: You're not crossing our client?

19 MS. ABRAMS: Yes. I'm going to reserve everything

20 for when I do my case in chief.

21 MR. JONES: Well, and other than rebuttal, Your

22 Honor, I mean, I -- our case in chief at this point, other

23 than a rebuttal case, is concluded.

24 THE COURT: Okay. So you're resting with a

1 reservation that you can cross in her case in chief?

2 MR. JONES: Oh, yeah. I can -- sure.

3 THE COURT: That's the reservation?

4 MR. JONES: But depending on what -- I don't know

5 what issues she's going to present --

6 THE COURT: You may have rebuttal.

7 MR. JONES: I may have to call my client again to

8 rebut.

9 THE COURT: If you have a rebuttal case, then that's

10 a rebuttal case.

11 MR. JONES: Right.

12 THE COURT: Okay. So you're resting absent a

13 rebuttal case?

14 MR. JONES: Yes, Your Honor.

15 THE COURT: Okay. And you're going to call her now

16 or not?

17 MS. ABRAMS: Yes.

18 THE COURT: Okay.

19 MS. ABRAMS: Yes.

20 THE COURT: So you're calling her in your case in

21 chief.

22 MS. ABRAMS: Yes.

23 THE COURT: All right.

24 SHANNON EVANS

1 called as a witness on behalf of the Defendant and being first
2 duly sworn, testified as follows on:

3 DIRECT EXAMINATION

4 BY MS. ABRAMS:

5 Q Good morning.

6 A Good morning.

7 Q We're going to be looking at the documents that are
8 -- that we were just looking at in Exhibit B. But I'd like to
9 ask you about when you first met -- you testified that you
10 first met Dr. Michaels in 2010. Can you tell me what you
11 recall from that meeting?

12 A It was an initial client meeting to set up trusts
13 and wills and power of attorneys, like I do every day, and we
14 discussed who her assets would pass to if she were deceased,
15 who would be the trustee to handle finances, who would be the
16 medical power of attorney, the standard things you ask for in
17 any kind of estate planning.

18 Q Okay. And there's -- if you would look, please, to
19 Bates stamp Danka Michaels 000545. There's an estate planning
20 questionnaire.

21 MR. JONES: 545?

22 THE WITNESS: I have it.

23 BY MS. ABRAMS:

24 Q Okay. And who would have filled this out?

1 A Me, by my own handwriting.

2 Q Okay. And you would do that with -- in consultation
3 with the client?

4 A During the meeting I'm making notes.

5 THE COURT: 545?

6 MS. ABRAMS: Yes. Well, actually that's just the
7 cover page. If you turn the page --

8 THE COURT: 546. Thank you.

9 MS. ABRAMS: -- I'm talking about the handwriting
10 there. I'm sorry. Okay.

11 BY MS. ABRAMS:

12 Q So that's your handwriting from your meeting with
13 Dr. Michaels?

14 A Yes. During the meeting or immediately thereafter I
15 make those notes.

16 Q And this was in 2010?

17 A Yes.

18 Q Okay. And you have some notes with regards to -- at
19 the very bottom you wrote some handwritten notes. Can you
20 tell us what you wrote and what it meant?

21 A I wrote, Note: Thomas Pickens is not -- they're not
22 married. They own the home together. He is not good with
23 money.

24 Q Okay. And that would have been something that your

1 client told you?

2 A Directly, yes.

3 Q Okay. And so you prepared a trust for Dr. Michaels?

4 A Yes.

5 Q And a will, correct?

6 A Correct.

7 Q Okay. Let's actually turn to Danka Michaels 000554.

8 THE COURT: This previous one was in 2010 alone with

9 Dr. Michaels?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Thank you.

12 MS. ABRAMS: Yes. That was --

13 BY MS. ABRAMS:

14 Q Was that meeting alone with Dr. Michaels?

15 A Yes.

16 Q Okay. So we're looking at Danka Michaels 000554.

17 Are you on that page?

18 A Yes, I am.

19 Q Okay. Is this also your handwriting?

20 A Yes, it is.

21 Q And is this also something that you would have

22 filled out at the initial meeting with Dr. Michaels?

23 A Yes.

24 Q Okay. And so the schedule of assets is completed

1 here and there's only one property that is listed as being
2 owned at that time in 2010, correct?

3 A Correct.

4 Q Okay. And it says: J-T-D-N-T squiggle 800
5 something. Can you tell us what that is?

6 A It meant it's joint, do not transfer. That squiggle
7 means mortgage 800,000.

8 Q I'm sorry, what was that?

9 A That squiggle M is mortgage 800,000.

10 Q Oh, mortgage 800,000. Okay.

11 And so the -- so that means the property was held in
12 joint tenancy?

13 A Correct.

14 Q And do not transfer means leave that the way that it
15 is, correct?

16 A That's exactly what it means.

17 Q Okay. Let's look at what she actually did in the
18 trust -- the will and the trust that were signed. The Bates
19 stamp is right on top of her initials so we can't see what it
20 is, but the page before it is Danka Michaels 000560, so that
21 would be 561.

22 A Yes.

23 Q Does this -- would you call this a pour-over will?

24 A Yes.

1 Q Okay. And what does this will do?

2 A It just cross refers to her trust for the

3 distribution and the trustee terms.

4 Q So in other words, if she had any assets that were

5 not directly in the trust, this would sweep it and pour it

6 into the trust?

7 A Yes.

8 Q Okay.

9 A Via probate if she had died.

10 Q Okay. And who is the executor listed -- who's

11 listed as the executor?

12 A Her son Jakub first and Thomas second.

13 Q Okay. And who is listed as the guardian in case she

14 becomes incapacitated?

15 A Her son Jakub.

16 Q Okay. Let's look at what she did with her trust.

17 That is Danka Michaels 000581.

18 A Okay.

19 Q Let's look at Section 1.4 of the trust. It's on

20 page Danka Michaels 000585.

21 A Okay.

22 Q What is listed as her marital status?

23 A That she is unmarried.

24 Q And did you tell us what the conversation was that

1 you had with her about being unmarried?

2 MR. JONES: Objection, Your Honor. It's hearsay.

3 MS. ABRAMS: What was --

4 THE WITNESS: She and -- she and I had a

5 conversation at the meeting.

6 MR. JONES: Wait.

7 THE COURT: She's allowed to say what she said.

8 MR. JONES: She's not allowed to say what the

9 Defendant said.

10 THE COURT: Correct.

11 BY MS. ABRAMS:

12 Q Okay. What was your understanding of her marital

13 status --

14 MR. JONES: Objection, foundation. If the

15 foundation of her understanding is a conversation with the

16 Defendant, then the foundation is hearsay and she can't

17 testify to that either.

18 MS. ABRAMS: Actually that's --

19 THE COURT: That's not true.

20 MS. ABRAMS: That's not -- that's not true. She's

21 prepared these as single trusts, so we can get into that as

22 well.

23 BY MS. ABRAMS:

24 Q When you prepare trusts, is there a difference

1 between preparing a trust for a married person or an unmarried
2 person?

3 A They're very different.

4 Q Can you explain that to the Court, please.

5 A If a person is married and they're leaving assets to
6 a spouse, there's an unlimited marital deduction that you
7 always have a different clause in the trust for married
8 people. And in a married trust there is always a provision
9 where the trust may break up into surviving half and a
10 deceased spouse's half, which is known as the AB trust. In a
11 single person's trust, you don't have any of those provisions.
12 It's much shorter.

13 Q So it's a different doc -- it's a different type of
14 document?

15 A Absolutely very different.

16 Q So is that of critical importance for you to know at
17 the beginning?

18 A Yes. I draft a completely different document based
19 on that fact.

20 Q Okay. And is the legal marital status of the -- of
21 your client, therefore, of critical importance to you?

22 A Yes.

23 Q So you have those conversations on a regular basis?

24 A Every time.

1 Q Did you have that conversation with Dr. Michaels?

2 A Yes.

3 Q What was your understanding of her marital status
4 after your conversation with Dr. Michaels?

5 MR. JONES: Then that's hearsay.

6 THE COURT: It doesn't matter because the document
7 is, like you said, prepared for a single person. Go ahead.

8 MS. ABRAMS: Right.

9 BY MS. ABRAMS:

10 Q In this trust, this Mich Mich trust that you
11 prepared for Dr. Michaels in 2010, is a trust for a single
12 individual?

13 A Yes.

14 Q Unmarried?

15 A Yes.

16 Q Okay. And so that's -- we were just looking at
17 Danka Michaels 000585, paragraph 1.4, where it says marital
18 status you have there that the settler is unmarried, correct?

19 A Correct. Yes.

20 Q Okay. Who did she name as the beneficiaries of this
21 trust in the event of her death?

22 A It was generation skipping for Jakub and his
23 eventual children.

24 Q So her son?

1 A Yes.

2 Q Was Tom Pickens named as a beneficiary of this

3 trust? And I think we're looking at Danka Michaels 000591.

4 A No, he was not.

5 Q Who did she designate as the trustee? Or as the

6 successor trustee? I guess she was the trustee during the

7 lifetime.

8 A Correct. It would be her son Jakub.

9 Q And who did she name as an -- as an alternate

10 trustee in the event that Jakub wasn't around?

11 A Eugene Altas (ph), Jr.

12 Q Do you know who that is?

13 A No.

14 Q Okay. That's -- do you know if that's her brother?

15 A It might be. It's someone she trusted. I don't

16 know.

17 Q But it's not Mr. Pickens.

18 A Correct.

19 Q Okay. Now, by setting this up this way, if Dr.

20 Michaels were to die, what would have happened to her assets?

21 A All her assets would have been held in trust

22 pursuant to 5.5 in a generation-skipping trust for her son and

23 then his children and would avoid state tax until his

24 grandchildren died.

1 Q And what would have happened to the house that was
2 held in joint tenancy?

3 A If she had lived longer than Mr. Pickens, it would
4 have been a hundred percent her house and it would have gone
5 via this trust.

6 Q And if she died first?

7 A Then it would have been a hundred percent Mr.
8 Pickens's house and it would have gone to his trust.

9 Q So he would have a place to live, right?

10 A It would have gone for his trust, yes.

11 Q So -- so he would have a place to live?

12 A I presume. Joint tenancy, whoever survives longer
13 owns the property.

14 Q Okay. All right. Now let's look at what happened
15 in 2012. I'd ask you to please turn to Bates stamp Danka
16 Michaels 001051.

17 A Okay.

18 Q Was this -- can you tell the Court what this is?

19 A This is the same single person questionnaire that I
20 filled out when I was meeting with Mr. Pickens about his
21 estate plan.

22 Q Okay. And there is a note at the bottom of that
23 page. What does that say?

24 A Conflict waiver with Danka Michaels.

1 Q Is that the note you were referring to earlier in
2 your testimony just now?

3 A Yes.

4 Q Okay. Is this -- if we turn the page to -- I'm just
5 going to read 1052 instead going through the whole thing if
6 that's okay. Is this also your handwriting?

7 A Yes, it is.

8 Q Was this from a meeting you had directly with Mr.
9 Pickens?

10 A Yes.

11 Q Okay. Is this a form that you use for a single
12 individual or a married individual?

13 A Single.

14 Q Okay. Do you know whether you spoke with Mr.
15 Pickens at that time about his marital status?

16 A Yes.

17 Q And -- okay. And so you prepared a will and a trust
18 for Mr. Pickens at that time?

19 A Correct.

20 Q Okay.

21 A After this meeting, the second meeting, but yes.

22 Q Okay. Let's look at 1060. Now, you said earlier
23 that you would fill this out, this schedule of assets, you
24 would fill this out during your meeting with the client,

1 correct?

2 A Or shortly thereafter based on my notes.

3 Q Okay. And so when you went -- when you met with Mr.

4 Pickens, he didn't give you information for any assets that he

5 had?

6 A Correct. I didn't fill out the schedule of assets

7 at all, which means I had no information about his assets.

8 Q Okay. So did you -- do you normally ask?

9 A Yeah, we talk about it.

10 Q Okay. Did you ask him?

11 A I'm sure I did.

12 Q Okay. And so he would have said he had no assets?

13 A Or he didn't want to provide them. I don't know.

14 Q Okay. Let's look at the document number 1068.

15 A Okay.

16 Q Can you tell the Court what this is?

17 A It's a testamentary handwritten will by Mr. Pickens.

18 Q Dated when?

19 A May 17th, 2012.

20 Q Okay. And what does it say that he is doing?

21 A Leaving his entire estate to Danka Michaels.

22 Q Is this a valid and binding document?

23 A Yes.

24 Q Okay. On the next page, 1069, there is a Last Will

1 and Testament of Thomas Pickens.

2 A Correct.

3 Q Article 4 --

4 THE COURT: I'm sorry, which -- next page?

5 MS. ABRAMS: Oh, I'm sorry. Yes, 1069.

6 THE COURT: Thank you.

7 BY MS. ABRAMS:

8 Q It says that he is not married and does not have any
9 children?

10 A That's correct.

11 Q Okay. But do you recall if he had any other living
12 family members?

13 A Yes, he had family members as noted on the schedule
14 -- the questionnaire.

15 Q Okay.

16 A But in the will it only lists spouse and children.
17 You don't list brothers and sisters and aunts and uncles.

18 Q Understood. I'm sorry. I jumped. So let's look at
19 1052 for a moment.

20 A Yeah.

21 Q At the time that he came to see you, he had two
22 living parents noted by you?

23 A Yes.

24 Q And he had four living siblings, correct?

1 A Correct.

2 Q Okay. In his Last Will and Testament, is this also

3 what you would call a pour-over will?

4 A Yes, it poured over to his revokable trust.

5 Q Okay. So everything he owned that wasn't already

6 titled in the name of his trust would be swept and poured into

7 the trust upon his death?

8 A Correct.

9 Q Okay. Let's look at his trust. And that's on 1090.

10 A Have it.

11 Q So his trust was called the LV Blue Trust?

12 A Correct.

13 Q Okay. And on page 1094 again it recites that the

14 settler is not married?

15 A Correct.

16 Q Okay. Now, who did he name in this trust as the

17 beneficiary in the event of his death?

18 A Bates stamp 01099, 5.4, left everything to Danka

19 Michaels, otherwise Jakub Michaels, otherwise Lucas Michaels.

20 Q So either Dr. Michaels, her son or her grandson?

21 A Correct.

22 Q Who did she name as the successor trustees?

23 A You mean he?

24 Q I'm sorry. Who did he name as the successor

1 trustees? Thank you.

2 A Bates stamp 01102, he named Danka Michaels,
3 otherwise Jakub, her son.

4 Q Her son. Okay. Did you have any reason to believe
5 that Mr. Pickens did not understand he was signing a will and
6 a trust that indicate he is single, unmarried?

7 A No. We talked about it. We talked about the tax
8 basis and passing things on to a person that's not his spouse.

9 Q So he was well aware that he wasn't legally married
10 to Dr. Michaels, correct?

11 A He was aware. He told me that.

12 Q Okay. Did you prepare a homestead for the Queen
13 Charlotte property?

14 A Yes, I did.

15 Q Do you recall who signed that homestead?

16 A I'd have to look at it, if you could tell me the
17 Bates stamp.

18 Q I honestly wish my tab was on there with the Bates
19 stamp number. I think it's --

20 MS. ABRAMS: Can you find it? We'll find it.

21 BY MS. ABRAMS:

22 Q Do you recall at any time when you were preparing
23 Mr. Pickens's estate planning documents in 2012 if there was a
24 meeting where Dr. Michaels was present as well?

1 A No, I don't think I would.

2 Q You don't recall?

3 A I don't recall. With the estate planning sessions

4 we meet individually and I don't have other people in the

5 room. I don't know if we met together about the LLC, but I

6 don't think so.

7 Q Okay. So I was looking at Danka Michaels 000645.

8 THE COURT: Danka Michaels which?

9 MS. ABRAMS: 645.

10 THE COURT: 11645?

11 MS. ABRAMS: No, just 000645.

12 THE WITNESS: Okay.

13 BY MS. ABRAMS:

14 Q So this is the declaration of homestead.

15 A Correct.

16 Q Can you tell us the significant -- like who signed

17 this and what is the significance of this document the way

18 that it was prepared?

19 A Homestead creditor protects the house of the owner

20 against creditors up to 550,000. And Danka signed it in April

21 of 2010 and we recorded it. Well, I don't have a record

22 stamp, but I assume we recorded it. Oh. There should be a

23 record stamp on it, so I don't have the record stamped one.

24 But it should have been recorded.

1 Q Okay. Does Tom Pickens's signature appear anywhere
2 on this homestead?

3 A No, because it goes with the bargain and sale deed
4 where he signed the deed giving it to her, and the homestead
5 goes with that deed. Bates stamp 0647 and 48 is the deed that
6 goes with this homestead.

7 (COUNSEL CONFER BRIEFLY)

8 THE WITNESS: Ah, no, that doesn't. Retract that.
9 I'm wrong.

10 MR. JONES: Sorry, I -- sorry, I spoke too loudly.

11 THE WITNESS: Yeah. That's wrong. No, the dates
12 are -- there should be a deed that goes with the homestead
13 every time. That's how they go together. But I don't know --
14 I don't see it in this binder.

15 BY MS. ABRAMS:

16 Q Do you recall when you prepared paperwork to form
17 Patience One?

18 A It was around the time we did Mr. Pickens's estate
19 planning, so maybe May of 2012.

20 Q May of 2012, right around the time that Mr. Pickens
21 signed that handwritten holographic will saying everything
22 he's leaving to Danka Michaels?

23 A Yes, about that time.

24 Q Did you have any understanding of why Tom was being

1 named on Patience One?

2 A As the manager or as the member?

3 Q As -- either one, any understanding.

4 A My understanding, which is not based on anything
5 written down, was that he helped with the properties. He did
6 -- some kind of experience in handling the properties and
7 construction, maybe managing rentals, so that's why he is
8 included.

9 Q Okay. Let's talk about what happened in 2016. Both
10 parties came to your office on September 13th, 2016, correct?

11 A Correct. Correct.

12 Q You had the opportunity to personally observe Mr.
13 Pickens, correct?

14 A Yes.

15 Q Okay. So let me just ask you some preliminary
16 questions. How long have you been practicing law?

17 A I think in Nevada since 1991, in California since
18 1990.

19 Q So --

20 A Thirty-some years.

21 Q Almost -- or approximately 30 years?

22 A Correct.

23 Q Okay. Have you been -- how long have you been
24 practicing exclusively in estate planning?

1 A Since September 1997.

2 Q How many estate planning documents or deeds or LLCs,
3 how many of these types of transactions have you done in your
4 career?

5 A Thousands. Three or four a day for 22 years. I
6 don't know.

7 Q And you've taken CLE of what things to look for as
8 an estate planning attorney and those types of things,
9 correct?

10 A Certainly. And I have an LLM in tax, which includes
11 education in those areas.

12 Q Okay. Have you ever had a situation in your career
13 where you questioned whether somebody was competent to sign?

14 A Certainly.

15 Q Okay. And is that something important in your line
16 of work?

17 A Of course.

18 Q Is it your normal practice to pay attention to signs
19 that might cause you concern as to somebody's competency or
20 voluntariness in signing documents?

21 A Certainly.

22 Q All right. When you saw Mr. Pickens in September of
23 2016, did you notice anything about him that caused you
24 concern about his competency to sign the documents?

1 A No, not at all.

2 Q When you saw Tom Pickens in September of 2016, did
3 you notice anything about Tom that caused you concern about
4 whether he was signing documents voluntarily or not?

5 A No.

6 Q You didn't think it was necessary for Mr. Pickens to
7 seek medical advice as to whether or not he was competent to
8 sign deeds, correct?

9 A I'm not a doctor, but both parties were in my room
10 together. I knew it was going to be an emotional meeting,
11 they were both emotional, but we had a discussion about what
12 would be the right thing to do. And I didn't think it was
13 unfair or unexpected about the conversation and what happened.

14 Q He understood what he was doing?

15 A I believe so.

16 Q You explained it?

17 A Yes.

18 Q You explained what -- did you explain what the
19 documents were?

20 A Yes.

21 Q Okay. Was there a discussion about whether there
22 was a need or not a need for these parties to file for
23 divorce?

24 A There was a discussion that since they were not

1 married they could voluntarily gift or change title to assets
2 between them without a divorce. Yes, there was a discussion
3 about that.

4 Q Did Tom during that meeting ask Dr. Michaels for
5 money?

6 A No.

7 Q Did Tom during that meeting ask Dr. Michaels for
8 cash or a check?

9 A No.

10 Q Did he ask Dr. Michaels for anything during that
11 meeting?

12 A No.

13 Q At any point during your conversations with Tom, did
14 you ever get the impression that he was confused about whether
15 or not he and Dr. Michaels were legally married?

16 A No.

17 Q Now, in your notes you indicated that -- in the
18 phone notes -- or I mean in the email from you to your staff
19 that Mr. Jones referenced, you indicated -- there's a note
20 there that says he's agreeable to transferring the properties
21 because she paid for them and because he's guilty. Do you
22 recall that?

23 A Yes.

24 Q Okay. Was there any discussion about -- that the

1 understanding that he was agreeing to transfer these to Dr.
2 Michaels because she paid for them?

3 A At the meeting there was a discussion about him
4 transferring the assets to her because he was going to move to
5 Florida and be with another family, and they were primarily
6 financed by her medical practice and that seemed like the fair
7 thing to do since he was going to start a different life.

8 Q Okay. Now, the -- you indicated that there were
9 deeds on these properties that had these parties listed as
10 husband and wife, and I think you said that you did not create
11 those deeds, correct?

12 A Correct.

13 Q Were those deeds incorrect?

14 A Yes.

15 Q Did you correct those deeds?

16 A I tried to.

17 Q So did you -- tell -- please explain to the Court
18 how that was corrected.

19 A There were a series of deeds transferring them from
20 husband and wife to them as joint tenants, then to their
21 trusts.

22 Q So as joint tenants unmarried?

23 A Correct.

24 Q Like individual and individual as opposed to calling

1 them husband and wife?

2 A Correct.

3 Q So that correction was made first before further

4 transfers were made?

5 A Right.

6 Q Okay.

7 A Correct.

8 Q And I think you indicated that there was a

9 discussion about a gift tax return?

10 A Yes.

11 Q Let's turn, please, to --

12 A But if I may clarify?

13 Q Yes.

14 A I don't prepare the gift tax returns. I believe I

15 told Mr. Pickens that he would need to have his CPA file the

16 gift tax return the next April, which is standard when you

17 make a gift.

18 Q Okay. And there was a conflict -- a waiver of

19 conflict -- conflict waiver signed that day as well, correct?

20 A Correct.

21 Q Did you explain to the parties what that was and why

22 they were signing it?

23 A Yes. We had a -- we had a discussion that we needed

24 a conflict waiver because I prepared estate planning for both

1 of them and we were having a pretty serious discussion about
2 breakup of the relationship and what was going to happen to
3 the assets.

4 Q Did you give both parties the -- or did you tell
5 anybody that day that they could or should seek independent
6 legal advice if they chose to?

7 A Well, the waiver says that. And if they didn't want
8 to meet voluntarily with me to try to work it out, obviously
9 they would have different attorneys. It was an attempt to try
10 to work out the situation without having to go further.

11 Q Okay. On the same day that the deeds were signed
12 and the transfer was signed, did Dr. Michaels sign a -- an
13 amendment to her Mich Mich Trust?

14 A I don't know the day she signed it, but I remember
15 her signing an amendment, yes.

16 Q Okay. Let's look at Danka Michaels 000637.

17 A Okay.

18 Q Okay. And this is the first amendment to the Mich
19 Mich Trust?

20 A Correct.

21 Q This is dated September 13th, 2016?

22 A Yes.

23 Q Is this the same date that the -- that Mr. Pickens
24 signed his transfer documents to Dr. Michaels?

1 A I don't know. I'd have to look. I don't know the
2 date on that, but.

3 Q Okay. Let's take a look at that.

4 A 0665 and 0666 I think.

5 Q 0665. Okay. So does that refresh your recollection
6 that it was on the same day that the deeds were signed?

7 A Yes.

8 Q Okay. And how did this first amendment to Mich Mich
9 Trust modify the Mich Mich Trust that we looked at from 2010?

10 A The original trust that she signed did not leave
11 anything to Mr. Pickens. But this bequest amended it to leave
12 him 50 percent of rent interest in Lowe and Queen Charlotte
13 and Buffalo.

14 Q Okay. If you turn to the next document following
15 the one we just looked at, which is Bates Number 641, there's
16 a second amendment to the Mich Mich Trust, correct?

17 A Yes.

18 Q It's dated the same exact day, correct?

19 A Yeah.

20 Q Is this any different than the document we just
21 looked at?

22 A No. It's the exact same language. And it appears
23 on the first one, which is Bates stamp 0637, it's stamped the
24 date on the top, which is how we typically do it when we are

1 notarizing something. And this 0641 is handwritten. It
2 appears to be my paralegal's handwriting, and she's the notary
3 on both, but I don't know why there were two. They're the
4 same -- it looks like the word -- the numbering second
5 amendment was instead of the first amendment, but I don't
6 know.

7 Q Okay.

8 A I was not present probably at that second one. But
9 they say the same thing.

10 Q Now, you're not aware of when Dr. Michaels may have
11 refinanced mortgages out of Mr. Pickens's name or when she
12 started or when those refinances would have actually taken
13 place, correct?

14 A No. I have no information about any of that on the
15 property.

16 Q Okay. But at some point Dr. Michaels did sign a
17 third amendment to the Mich Mich Trust.

18 A Yes. That's true.

19 Q Do you recall that?

20 A Yes, I do.

21 Q Okay. And do you recall what the third amendment to
22 the Mich Mich Trust --

23 A If I saw it I'd know better, but I really
24 (indiscernible) Mr. Pickens's bequest and left everything to

1 her son and his children.

2 Q Okay. And I don't know the Bates stamp number of
3 that just at this moment but --

4 A I do remember it, so. Oh, here it is. It's 0689.

5 Q Okay. And that was signed by Dr. Michaels when?

6 A On January 11th, 2017.

7 MS. ABRAMS: Okay. I do not have any further
8 questions for this witness.

9 THE COURT: Redirect or --

10 MR. JONES: I just have a few questions.

11 THE COURT: -- however we're looking at this. Go
12 ahead.

13 CROSS-EXAMINATION

14 BY MR. JONES:

15 Q On September 13th, 2016, did you inquire of Mr.
16 Pickens what medications he was on?

17 A No.

18 Q Between the time of your deposition and today, did
19 you do anything that put you in a position to have a better
20 memory regarding conversations on September 13th than you did
21 on the day of your deposition?

22 A No.

23 Q When I examined you earlier you testified that you
24 were unaware of mortgages on the real property that the

1 parties owned together, right?

2 A Correct.

3 Q But your notes from the intake sheet from 2010
4 reflected an \$800,000 mortgage on the Queen Charlotte house,
5 right?

6 A Sure. Sure, at our initial conversation that first
7 meeting in 2010, correct.

8 Q But you -- did you have any understanding of whether
9 Mr. Pickens was an obligor on the mortgage on that property?

10 A No.

11 MR. JONES: I don't have any further questions.

12 MS. ABRAMS: I do not have any.

13 THE COURT: Okay. Can she be excused or will she be
14 called again in rebuttal?

15 MR. JONES: I think she could be excused. If I --
16 if I needed her for some reason, I would either try to get her
17 or get her before the next date with a subpoena.

18 THE COURT: With a subpoena. All right. You're
19 excused then.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you for your testimony.

22 MR. JONES: Thank you for coming.

23 (Witness excused)

24 MS. ABRAMS: I'm going to see if Mr. Simonian is

1 here. Did you see --
2 THE BAILIFF: What's his name?
3 MS. ABRAMS: Robert Simonian.
4 MR. JONES: Is it okay to take a break right now,
5 Your Honor?
6 THE COURT: Sure. It's a good time.
7 MS. LOBELLO: Thank you, Judge.
8 (Off record)
9 THE COURT: All right. You can have a seat. Thank
10 you.
11 MS. ABRAMS: Actually I'm going to call Dr. Michaels
12 to the stand.
13 THE COURT: Dr. Michaels to the stand then.
14 MS. ABRAMS: I am expecting a witness, Mr. Robert
15 Simonian. When he gets here --
16 THE COURT: You'll break?
17 MS. ABRAMS: Is it okay if I put him out of order --
18 THE COURT: Yes.
19 MS. ABRAMS: -- just so that he doesn't have to
20 wait?
21 THE COURT: Certainly.
22 MS. ABRAMS: Okay.
23 THE CLERK: You do solemnly swear the testimony
24 you're about to give in this action shall be the truth, the

1 whole truth, and nothing but the truth so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Please be seated.

4 DANKA K. MICHAELS

5 called as a witness on her own behalf, having been first duly
6 sworn, did testify upon her oath as follows on:

7 DIRECT EXAMINATION

8 BY MS. ABRAMS:

9 Q Dr. Michaels, please explain to the Court how you
10 and Tom first met.

11 A Hmm. Tom was admitted to -- overnight to ICU at
12 Summit Medical Hospital Center with chest pain and the
13 cardiologist on call did angiogram. I was asked in the
14 morning to take over as admitting physician.

15 Q So you were the attending physician there that day?

16 A I was asked to take over the case as an attending
17 physician from the cardiology.

18 Q And is that because Mr. Pickens did not have a
19 primary care physician?

20 A Correct.

21 Q Okay. And when was this?

22 A It was early 2000.

23 Q And when did you and Tom start dating?

24 A In summer 2001.

1 Q Okay. So that's talk about your physician-patient
2 relationship with Tom from the time you first treated him in
3 early 2000 until you started dating in the summer of 2001. So
4 this is the time period before you started dating. When you
5 saw him in the ICU at Summerlin Hospital, what did you treat
6 him for?

7 A So cardiology took care of his heart problems. I
8 was there to give as-needed medications and take care of
9 whatever needed, if there was a fever, if there was nausea, if
10 he needed a sleeping pill, if -- make sure his daily
11 medications were continued.

12 Q And do you -- do you recall what his daily
13 medications were?

14 A At that time? Yeah.

15 Q Okay. Would you -- do you recall if he was on blood
16 pressure medication at that time or cholesterol medication?

17 A On the admission I don't remember if he was.

18 Q Okay.

19 A I'm sure we did later, we started later.

20 Q Okay. But he was seeing specialists at that time
21 for his medical condition?

22 A For cardiology.

23 MR. JONES: Objection, foundation, leading.

24 MS. ABRAMS: I actually said he was seeing a

1 cardiologist. He was there for a heart --

2 THE WITNESS: Cardiologist is --

3 MR. JONES: The question said specialists.

4 THE COURT: I'm going to uphold it. That's fine.

5 MS. ABRAMS: Okay. Okay. That's fine.

6 THE COURT: I approved your objection.

7 BY MS. ABRAMS:

8 Q All right. Was Tom required to follow up with you
9 after his visit in the ICU?

10 A We have to give patients a follow-up. It's up to the
11 patient to follow up with me. He was given follow-up with me
12 in the discharge summary, this is a follow-up in two weeks
13 with your primary care physician. If he follows up with me,
14 it's his choice.

15 Q Okay. And he did in fact follow up with you,
16 correct?

17 A He did follow up, and his wife established with me
18 as a new patient.

19 Q So both Tom and his wife became patients of yours?

20 A Yes.

21 Q And you were working at Summit Medical Center at the
22 time?

23 A Yes.

24 Q Okay. And did you treat him for medical problems at

1 that time?

2 A He had, in addition to his cardiac problems, he had
3 high cholesterol, high blood pressure, gout, and joint pain
4 due to the gout.

5 (BAILIFF AND COUNSEL CONFER BRIEFLY)

6 THE COURT: The witness you're waiting for is here?

7 THE BAILIFF: Yeah.

8 THE COURT: Break when you're ready.

9 MS. ABRAMS: Okay.

10 BY MS. ABRAMS:

11 Q When was Tom's bypass surgery at Cleveland Clinic?

12 A End of September or early October 2001 -- ah, 2000.

13 Q 2000?

14 A 2000, yes.

15 Q So before you started dating?

16 A Before I started what?

17 Q Dating.

18 A Oh, yes. He was married at that time.

19 Q And when did he have the blood clot in his lungs?

20 A I believe he was discharged from Cleveland Clinic
21 with blood clots or a blood clot. I don't know. I wasn't
22 there. I only saw discharge summary from Trumbull Medical
23 Hospital. He was admitted for a PE, pulmonary embolus. He
24 was admitted -- in 2000 the protocol for PE was five to ten

1 days of IV heparin. When stabilized you started Coumadin --

2 Q Okay. I'm sorry.

3 A I'm sorry.

4 Q I don't think the Court needs to know that much
5 detail, but the --

6 A Sorry.

7 Q The question really was the timing of that event was
8 -- would it also have been fall of 2000?

9 A Yes.

10 Q And it also would have been prior to your dating?

11 A Yes.

12 Q Okay. And then you saw him in Summit Medical Group
13 in 2000 after his bypass surgery?

14 A Yeah. I saw him before, after -- not after bypass.
15 After bypass he went to his parents' house. There, that's
16 where he got diagnosed with the PE and he was admitted, and
17 then he went back to Vegas and he had to follow up for
18 Coumadin levels for six months. He had to be on Coumadin for
19 six months.

20 MR. JONES: PE is pulmonary embolism.

21 THE COURT: I heard that earlier. Thank you.

22 MR. JONES: I feel like I'm in an episode of ER.

23 BY MR. ABRAMS:

24 Q And who did he follow up with?

1 A Me. I followed up his Coumadin levels.

2 Q Okay.

3 A After six months we stopped Coumadin.

4 Q Okay. All right. I think this is probably a good
5 breaking point so that we don't keep Mr. Simonian waiting.

6 THE COURT: Okay. You may step down. We'll call
7 the witness out of order and in the middle of another witness,
8 but.

9 (Witness excused)

10 THE COURT: Good morning.

11 THE CLERK: Raise your right hand.

12 You do solemnly swear the testimony you're about to
13 give in this action shall be the truth, the whole truth, and
14 nothing but the truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: You may be seated.

17 ROBERT SIMONIAN

18 called as a witness on behalf of Defendant, having been first
19 duly sworn, did testify upon his oath as follows on:

20 DIRECT EXAMINATION

21 BY MS. ABRAMS:

22 Q Good morning. Can you please state your name for
23 the record?

24 A Robert Scott Simonian.

1 Q Do you know the Plaintiff and the Defendant in this
2 case?

3 A I do.

4 Q How do you know them?

5 A I've been their -- previously I've been Mr.
6 Pickens's accountant for many years, and I'm still currently
7 Dr. Michaels's accountant.

8 Q How long have you been preparing taxes for Mr.
9 Pickens and Dr. Michaels?

10 A I don't remember the year that I started, but I
11 believe it was somewhere 2003, might have been earlier, but
12 somewhere around there.

13 Q Okay. And you produced a number of tax returns in
14 response to subpoenas and authorizations that you received
15 relating to this case, correct?

16 A I have, yes.

17 Q Okay. And you produced over a decade's worth of tax
18 returns for Mr. Pickens and Dr. Michaels?

19 A I did, yes.

20 Q Were any of those tax returns filed by then either
21 as married filing joint or married filing separate?

22 A No. They were all married -- they were all filed as
23 single individuals.

24 Q Okay. So can you explain to me how that came about?

1 A The first year that I began working with them, I had
2 discussions with Mr. Pickens in which he -- over their tax
3 structure. I actually had started to prepare the first tax
4 return as married filing joint, but after discussions with Mr.
5 Pickens I learned that they were -- they had a marriage
6 ceremony in a church, but they did not have a marriage license
7 and that they were not legally married. And as such, we
8 agreed that it would be best to file each individual as single
9 as opposed to being married.

10 Q And you heard that from Mr. Pickens himself
11 directly, correct?

12 A Yes, ma'am.

13 Q Was that the only conversation you ever had with Mr.
14 Pickens about his marital status?

15 A No. We -- we had this discussion almost annually.

16 Q Almost annually for how many years?

17 A For as long as I was doing his tax returns.

18 Q Okay. Do you recall Tom Pickens being on the
19 payroll and Dr. Michaels's medical practice?

20 A For every year that I did their tax returns he
21 received a W2, yes.

22 Q And did he receive a W2 even if he was working a
23 full-time job somewhere else?

24 A Yes.

1 Q Okay. Do you have an idea if you were to add up all
2 the W2s for the papers that you have provided to us, do you --
3 can you -- do you have an idea of what that number would be?

4 A I don't remember what the first year that I provided
5 documents for. He was receiving anywhere from a 20,000 to a
6 35,000 a year salary.

7 Q Okay. Now, if Dr. Michaels was contributing to a
8 401K for Mr. Pickens, would that have showed up on the W2 or
9 would that be in addition to the numbers you just talked about
10 on the W2?

11 A A little clarification.

12 Q Okay.

13 A So a 401K contribution is made by the employee, so
14 it would have shown up on Mr. Pickens's W2 as a reduction of
15 his salary. That's separate from a contribution that an
16 employer may make on behalf of an employee on top of that. So
17 for many of the years Mr. Pickens did have 401K withheld from
18 his W2, but that was his contribution.

19 Q Okay. And there were additional contributions made
20 by Dr. Michaels?

21 A She has had off and on with her practice an employer
22 contribution. I don't remember the amount or the years.

23 Q Okay. As of two thousand and -- you're familiar
24 with Patience One, correct?

1 A Yes.

2 Q The LLC. And did you prepare the tax returns for
3 Patience One every year as well?

4 A Yes, I have.

5 Q Okay. Who did you primarily deal with when you were
6 preparing tax returns?

7 A During the years -- for most of the years it was
8 with Mr. Pickens, and in the latter years it has been with
9 Jakub, Dr. Michaels's son.

10 Q And since when has it been with Jakub, Dr.
11 Michaels's son?

12 A I think it would be the 2017-'18. I don't recall in
13 2016.

14 Q Okay. But you're not sure about 2016, but for all
15 the years prior to 2016 was Tom your primary contact?

16 A Yes.

17 Q Did you have very much dealings with Dr. Michaels
18 directly at all?

19 A A few. We chatted. We'd have some slight
20 discussions on it, but they were fairly mundane.

21 Q Now, as of 2016, had Patience One -- and this is the
22 entity that holds the office building, correct?

23 A That's correct.

24 Q Okay. Had it ever shown income on its tax return?

1 A Showing income on Mr. Pickens's tax return?

2 Q No, on the Patience One tax return.

3 A It has always shown income, but that's not profits.

4 So I'm not sure exactly --

5 Q Oh, I'm sorry. I meant profits.

6 A Just being -- I don't mean to be too technical there

7 but we do have to make a decision between income and profits.

8 Q Sorry. Had ever shown profits on its tax return?

9 A I don't really recall. I think it's almost always

10 shown a loss. But that's not unusual for buildings.

11 Q Now, in 2014 Tom received a \$1 million bonus,

12 correct?

13 A I believe so, yes.

14 Q Do you know if he was trying to find expenses or

15 deductions to reduce his tax obligation?

16 A We both were. That was my job, yes.

17 Q Okay. Now, is there a -- under Section 175 -- 9 a

18 ability to deduct a -- as a commercial vehicle a vehicle that

19 weighs over 6,000 pounds?

20 A Okay. So, again, as a point of clarification.

21 Section 179 is an escalated depreciation code of Internal

22 Revenue Service -- Internal Revenue Code.

23 Q Okay.

24 A It allows for expensing in lieu of depreciation

1 capital equipment purchased by the company. And a gross
2 vehicle -- a vehicle with a gross vehicle weight over 6,000 is
3 considered a commercial vehicle for most years, not quite
4 currently. The rules have changed recently, but for most of
5 the time it was. And there are thresholds every year for the
6 amount of 179 exclusions, but for the most part, yes, to
7 answer your question.

8 Q Okay. Now, if Tom wanted to write something off as
9 a business expense, would it be proper for that expense to
10 have been paid from his business account?

11 A Yes.

12 Q Now, that's regardless of where the money actually
13 originated from, correct?

14 A (No verbal response)

15 Q Actually, don't even --

16 A Okay.

17 Q It really -- I could tell that that's going to be a
18 very long answer.

19 A Yes, sorry.

20 Q And may be more technical than we need.

21 Tom referenced a conversation that he had with you
22 about having to file a gift tax return. Do you recall having
23 such a conversation with Tom?

24 A I do.

1 Q Do you recall when you -- around what time frame you
2 would have had that conversation with Tom?

3 A It was around the time that he was discussing -- we
4 were having discussions about his separation from the business
5 and assets with Dr. Michaels.

6 Q Now, if he and Dr. Michaels were actually married,
7 would you have a conversation with him about a gift tax
8 return?

9 A No, I would not.

10 Q Okay. And why is that?

11 A Because separation of assets in a divorce are not
12 subject to gift tax.

13 Q So during that conversation, did you -- well,
14 actually, subsequent to that conversation did you have a
15 conference call with Ms. Lobello and myself regarding what Mr.
16 Pickens's gift tax obligation could potentially be?

17 A Yes, I did.

18 Q Okay. And what is your conclusion -- and I'm --
19 we're not going to hold you to this because we know that you
20 need -- you know, you may need some documentation and some
21 other things. But based on that conversation, what was --
22 what did you tell us about what his gift tax obligation would
23 potentially be?

24 A Okay. So I'm not exactly sure of all the details,

1 but in essence what I was probably trying to convey was once
2 you have a gift to an individual of over \$15,000 a gift tax is
3 -- gift tax return is required. That doesn't necessarily
4 trigger a gift tax, but it certainly triggers a requirement
5 for the return.

6 And then depending upon when the gift is actually
7 made determines what gift tax exclusion applies. It has been
8 changing over the years, and so we have higher and higher
9 thresholds. So depending upon the year that the gift is
10 actually made could trigger a gift tax, but it's a gift -- and
11 I think I kind of explained that if the gift tax is currently
12 -- if the gift is made currently then there would probably be
13 no gift tax.

14 Q Okay.

15 A Given under the current threshold.

16 Q Okay.

17 THE COURT: Currently 2020?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 THE WITNESS: Or actually 2019.

21 THE COURT: Okay.

22 MS. ABRAMS: Okay. I do not have any further
23 questions.

24 THE COURT: Okay.

1 MR. JONES: Just briefly, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. JONES:

4 Q During the time that you filed returns for the
5 parties, part of your job was to apportion the deductions for
6 their jointly owned properties between them, right?

7 A That's correct.

8 Q And generally you would figure out what was the --
9 what would be the most tax-avoidance-based allocation before
10 you then would put some on her returns, some on his return,
11 right?

12 A That's correct.

13 Q Talked tax avoidance, not tax evasion, right?

14 A That's correct. No, I got the gist.

15 Q Was there ever a time that Tom received, if you
16 recall, Tom received a W2 when he -- from Patience One or from
17 Dr. Michaels's practice when he was not otherwise employed?

18 A It was my understanding that -- first of all, he
19 never received a W2 from Patience One that I'm aware of, and
20 from Dr. Michaels's practice a W2 is in fact something you
21 give to an employee for wages earned. We're not talking about
22 substantial wages, so.

23 Q And were you aware that he was made the office
24 manager of her practice?

1 A Yes.

2 Q And regardless of the status of the filing of taxes,
3 they did hold themselves out as husband and wife, right?

4 A I believe so socially.

5 Q I'm going to have --

6 (Pause)

7 THE COURT: I'm still unpacking mine.

8 MR. JONES: It'll be Plaintiff's binder number 3.

9 THE COURT: Volume 3?

10 MR. JONES: Volume 3, and then we'll probably be
11 moving on to Volume 11.

12 BY MR. JONES:

13 Q All right. If you -- I've opened the book there in
14 front of you to Exhibit 51. Can you take a look at that
15 document?

16 A Sure.

17 Q Is that a tax return for Patience One that you
18 prepared?

19 MS. ABRAMS: Your Honor, I'm going to object. This
20 exceeds the scope of direct.

21 MR. JONES: Actually, Your Honor --

22 MS. LOBELLO: Does not.

23 MR. JONES: -- what a waste of time that we have to
24 have this discussion. She asked if it ever turned a profit or

1 made any money during their relationship.

2 MS. ABRAMS: I --

3 MR. JONES: I'm going to the tax return that shows a

4 distribution to my client. I'm allowed to talk about that.

5 And the objection is just a waste of time.

6 MS. ABRAMS: Your Honor, the question was whether

7 the tax returns for those years had shown that this entity was

8 showing profits.

9 THE COURT: You asked about it.

10 MS. ABRAMS: Yeah.

11 THE COURT: So I'm going to let him go there.

12 MS. ABRAMS: Okay. Fair enough.

13 MR. JONES: Thank you.

14 BY MR. JONES:

15 Q Is this the 2016 tax return for Patience One?

16 THE COURT: Counsel, can you give me the page, the

17 Bate again?

18 MR. JONES: It's Exhibit 51, and I haven't gone to a

19 page yet. I'm just asking him to identify it as the 2016

20 return.

21 THE COURT: Thank you.

22 THE WITNESS: By all appearances it looks that it

23 is.

24 BY MR. JONES:

1 Q Okay. And is that your -- I'm not going to say
2 signature -- but at the bottom of what's Bates Number 1526, is
3 that a representation that you prepared this return?

4 A It is.

5 Q Now, earlier you asked about profitability of
6 Patience One and you said it's not uncommon for a building.
7 Can you explain that?

8 A Most people take property, depending on the level of
9 debt and how it's handled, usually runs at -- for tax
10 purposes, minor profits, sometimes major losses, we have a
11 non-cash deduction for depreciation, and so that generally
12 will trigger a loss otherwise.

13 Q And let's talk about the non-cash deduction for
14 depreciation. I think depreciation is not something that --
15 it's not a expense line item like utilities, mortgage,
16 interest, things like that, right?

17 A Depreciation?

18 Q Yes.

19 A Yes, it is.

20 Q But I mean it's not a -- it's not something that the
21 LLC has to write a check for.

22 A That's correct. It's a non-cash deduction.

23 Q Okay. Right. So if we turn to what is Bates Number
24 1531 of that exhibit.

1 A You're speaking of the Form 8825?

2 Q The 8825 is exactly what I'm speaking of.

3 A Okay.

4 Q So if we look at Column A there, you have gross
5 rents \$270,911, right?

6 A That's correct.

7 Q And then the first deduction is auto and travel.
8 That would be for the members? I'm assuming the building
9 doesn't travel or need a car, right?

10 A It would be for anybody working on the building that
11 may have had some sort of auto expense at the time.

12 Q Right. And then there's a line item for insurance.
13 I'm assuming that would be the insurance to insure a
14 commercial building, right?

15 A That would be correct.

16 Q Then you have legal and other professional fees
17 \$950. Not worth talking about. Interest \$73,380. That would
18 be the interest component of the mortgage payment, right?

19 A That's correct. Just -- but for clarity that would
20 be just the interest component.

21 Q Correct. Not the principal pay down.

22 A That's correct.

23 Q And then repairs 41,156. Could tenant improvements
24 or improvements to the facility fall under that category?

1 A Want to be very clear here. So there are
2 differentiations between improvements that are required to be
3 capitalized as opposed to significant repairs, some of which
4 have to be capitalized, some of which do not. It depends on
5 the nature. So repairs and maintenance could be replacements,
6 it could be improvements, it could be a whole list of generic
7 -- it's a fairly generic expense item, so it could entail a
8 lot.

9 Q Okay. And then taxes, line 11, that would be real
10 estate taxes?

11 A For the most part, but it could also include any
12 business license or taxes to maintain the LLC.

13 Q Then utilities 33,928, that would be the --
14 basically what it says, power, gas, water --

15 A Yes.

16 Q -- that type of thing.

17 And then line item 14, depreciation \$52,884. That's
18 the non-cash reduction of gross receipts?

19 A That's correct. That's the -- that's the non-cash
20 deduction for the annual depreciation expense on the building,
21 just for clarification.

22 Q Right. And you figure that number based upon the
23 expected life expectancy of the building?

24 A No.

1 Q How do you figure that out?

2 A Internal Revenue Code. This is a tax return --

3 Q They've got a chart?

4 A Thirty-two years, yeah.

5 Q Okay. So it's 32 years is the default?

6 A That's the default, yes.

7 Q Okay, great.

8 A It's a declining balance calculation, but it's over

9 a 32-year period.

10 Q And then line item 15, it says amortization and it's

11 got two numbers there, unless I -- I'm misreading it. It says

12 statement number 8A, which if we turn to -- where is statement

13 8A? Maybe you can find me statement 8A.

14 A Okay. Statement 8A, that is going to be page -- if

15 I have -- 1539.

16 Q Okay. Statement 8A. There it is. So these are all

17 additional expenses that didn't fall into any of the other

18 categories?

19 A That's correct.

20 Q Okay. And those include inspections, janitorial,

21 licenses, management fees, office expenses, and security; is

22 that right?

23 A That's correct.

24 Q Okay. Now, looking back to Bates 1531 you have a

1 loss of \$2,964; is that right?

2 A That's correct.

3 Q Now, if depreciation wasn't an allowable expense,
4 then the LLC would have actually had a profit, right?

5 A If depreciation weren't in there as an expense, yes.

6 Q And then if we turn to Bates Number 1533, regardless
7 of the profitability of the company, the K1 for Dr. Michaels
8 shows a distribution of \$10,868; is that right?

9 A That's correct.

10 Q And the K1 for Tom Pickens is a hundred and twenty-
11 nine thousand -- it's the next page, sorry -- \$129,920?

12 A That's correct.

13 Q And on that K1 you have a beginning capital account
14 of 130,961; is that right, for Tom?

15 A Yes.

16 Q And that number is nearly the same for Dr. Michaels,
17 right?

18 A That's correct.

19 Q Do you know why the K1s were different, as far as
20 distributions were concerned?

21 A I was advised that Mr. Pickens was no longer a
22 partner in Patience One and that he had transferred his
23 ownerships to Dr. Michaels. And in the transfer of ownerships
24 you'll notice there is a distribution showing basically

1 bringing his capital account to zero, and that's really the
2 distribution of ownership. And if you'll look, you'll see
3 that there's a Mich Mich Trust where the capital contribution
4 shows up. So that's just the transfer of his ownership to the
5 Mich Mich Trust.

6 Q Right. And so he didn't actually get a check for
7 \$129,000, right?

8 A He -- I'm not sure what he received in cash off the
9 top of my head.

10 Q Now, I'm going to have you go to the next book.
11 Turn to Exhibit 120.

12 THE COURT: I'm sorry, the next book will be 2011
13 [cross-talk] --

14 MR. JONES: It's -- the book is book number 11 of
15 12. It's Exhibit 120.

16 THE COURT: Thank you.

17 BY MR. JONES:

18 Q Turning to what is Bates Number 002651. Do you see
19 it?

20 A I'm not sure what you're looking at.

21 THE COURT: What number?

22 MR. JONES: Danka Michaels 002651.

23 THE WITNESS: I have a 1584 in front of me.

24 MR. JONES: No, no, I -- yeah.

1 THE COURT: They're all mixed up.
2 MR. JONES: They are mixed up.
3 THE COURT: You'll have to look for it.
4 MR. JONES: I'll find it for you. I apologize.
5 MS. ABRAMS: I have no idea where we are.
6 THE COURT: They're out of order.
7 BY MR. JONES:
8 Q 2651.
9 A Okay.
10 Q And this is going be another one of these --
11 THE COURT: Wait a minute. We all need to find it.
12 I haven't gotten there yet.
13 MR. JONES: It's about eight pages in.
14 THE COURT: (Indiscernible)
15 MR. JONES: Six, seven, yeah, eight pages in on the
16 exhibit.
17 THE COURT: I've got it. 2651?
18 MR. JONES: 2651, Your Honor.
19 THE COURT: Thank you.
20 BY MR. JONES:
21 Q Do you see this page? Because we're going to make
22 it the next in order, take it out of this -- this big exhibit
23 because this exhibit isn't in evidence yet. Do you see this
24 exchange of emails between you and Danka Michaels?

1 A Yes.

2 THE COURT: This page will be next in order so take
3 it out and put it next in order.

4 BY MR. JONES:

5 Q Do you recall having this discussion with her?

6 A Not really.

7 Q Well, let me ask you this. You write to her at the
8 very bottom on the May 10th email to her: I know he was a
9 partner for part of the year, but I need to know how he gave
10 up his interest and the date it was transferred to you. Do
11 you see that?

12 THE COURT: I don't. 26 -- oh, 81. I'm on the
13 wrong page.

14 MR. JONES: 2651.

15 THE COURT: 2651?

16 MR. JONES: Yes. It's the eighth email -- eighth
17 page into the exhibit on 120.

18 THE WITNESS: Yeah, so the full -- that was just
19 part of the sentence. That's why I was having a hard time
20 finding it.

21 MR. JONES: Right, right, right.

22 THE WITNESS: Okay.

23 MR. JONES: Yeah, it was -- it says -- it's the
24 third line-sized paragraph. Do you see that, Your Honor?

1 THE WITNESS: Where it begins with "It is possible
2 to" --

3 MR. JONES: Yeah. It is --

4 THE COURT: I've got it. Yes.

5 BY MR. JONES:

6 Q It says is it possible? Did you ever get an
7 explanation from Dr. Michaels about that transaction?

8 A I believe she gave me a copy of a document showing
9 the transfer or ownerships. I don't remember the document off
10 the top of my head, but I believe I was given a document.

11 Q But other than that she didn't explain to you
12 whether she paid him anything or transferred anything to him
13 for that interest?

14 A I remember we had some discussions. I don't
15 remember the details of them.

16 Q She never -- other than that doc -- there was no
17 other document other than the assignment document, is that
18 right, that she sent you?

19 MS. ABRAMS: Your Honor, objection, exceeds the
20 scope of direct.

21 MR. JONES: Exceeds the scope of direct regarding --
22 well, I think she asked about Patience One; I think she asked
23 about the tax returns. We just went over the 2016 tax return,
24 the operative year.

1 MS. ABRAMS: Talking about agreements? We didn't
2 talk about, you know, any of that stuff.

3 THE COURT: That's true.

4 MR. JONES: Well, let me -- I can bridge -- I can
5 bridge the gap.

6 THE COURT: You better.

7 MR. JONES: Okay.

8 THE COURT: Or I'll sustain her.

9 BY MR. JONES:

10 Q Was there -- was this question to her about the
11 transfer of the interest related to the 2016 tax return that
12 we just went over?

13 A Yes.

14 Q There wouldn't be another reason for you to ask her
15 that, right, if it didn't -- wasn't relevant for the
16 preparation of the return?

17 A That would be correct.

18 MR. JONES: I'm pretty sure that that --

19 THE COURT: Go ahead.

20 BY MR. JONES:

21 Q Other than the assignment document, did you receive
22 any other agreement or other document that you can recall?

23 A I don't recall.

24 Q Now, you were aware that in addition to having their

1 personal relationship that she was also his physician?

2 A Vaguely.

3 Q Based upon your preparation of tax returns on behalf
4 of Patience One over the course of -- at least from 2012 to
5 2016, do you -- did you or do you now believe that as of
6 September 13, 2016 Patience One had a value?

7 MS. ABRAMS: I'm sorry, can you repeat that
8 question? I didn't --

9 MR. JONES: Based upon his preparation of the tax
10 returns from 2012 to 2016 do you believe that Patience One had
11 a value as of 2016?

12 THE WITNESS: Yes.

13 MS. ABRAMS: I -- I -- okay. Have we established if
14 this is a person who has the ability to appraise or put a
15 value on an LLC or a piece of property? I mean, I would
16 object to that.

17 MR. JONES: I didn't -- I didn't ask for a number.

18 THE COURT: He didn't ask for a number.

19 MR. JONES: I didn't ask for a number.

20 THE COURT: He said yes.

21 MR. JONES: As a CPA --

22 MS. ABRAMS: Okay.

23 MR. JONES: -- preparing tax returns -- and he
24 answered. So I don't have any further questions, Your Honor.

1 THE COURT: Redirect.

2 MS. ABRAMS: I just have a couple.

3 MR. JONES: Oh, actually I did want to move in that

4 email.

5 MS. LOBELLO: It would be Plaintiff's Exhibit 154.

6 THE COURT: Is that how you have it labeled, Madam

7 Clerk? Is 154 your next in order?

8 MS. LOBELLO: And again the Bate number on that

9 document?

10 MR. JONES: Was 2651.

11 THE COURT: Hold on. Did you give it a number next

12 in order for the Plaintiff?

13 MS. LOBELLO: What's the date of the email, May --

14 MR. JONES: May 10, 2017.

15 THE COURT: Hold on. She's giving it a number now.

16 MS. LOBELLO: Thank you.

17 THE COURT: What do you think it is?

18 MS. LOBELLO: Exhibit 154.

19 THE COURT: Is 153 the last exhibit and this will be

20 154 to your knowledge? Oh, she doesn't have all of her boxes

21 out either.

22 (Pause)

23 THE CLERK: Yes, Your Honor.

24 THE COURT: Yes, 154.

1 (Plaintiff's counsel confer)

2 THE COURT: It's in. Go ahead.

3 (PLAINTIFF'S EXHIBIT 154 ADMITTED)

4 MR. JONES: I pass the witness.

5 MS. LOBELLO: Thank you, Judge.

6 REDIRECT EXAMINATION

7 BY MS. ABRAMS:

8 Q Mr. Simonian, why does the IRS allow depreciation to
9 be taken as a deduction?

10 A Because the buildings over time they deteriorate,
11 and so you're allowed to essentially take a deduction for the
12 deterioration of the building.

13 Q And is that because there's actual out-of-pocket
14 expense associated with the deterioration of the building?

15 A Yes, but this is a separate issue. This is
16 acknowledgment that buildings do deteriorate over time and you
17 don't always repair everything that happens.

18 Q Okay. And so when we went through the 2016 tax
19 return, there's no principal payments that are deducted in the
20 -- on page 1531, Danka Michaels 1531, that 2016 tax return
21 Form 8825, correct?

22 A That is correct.

23 Q Okay. But principal payments are an actual out-of-
24 pocket expense?

1 A Yes.

2 Q So just because depreciation is not an out-of-pocket
3 expense, doesn't mean that there wasn't negative cash flow
4 necessarily?

5 A That's correct.

6 Q Okay.

7 A Because there is a difference between profits and
8 cash flow.

9 Q Now, when you were apportioning deductions between
10 the tax returns, did that include the Patience One tax return?

11 A No.

12 Q It did not?

13 A No. That was a 50/50 partnership and the K1 --

14 Q Okay.

15 A -- allocated the net taxable income 50/50, I
16 believe.

17 Q Maybe I didn't ask my question clearly enough.

18 A Okay.

19 Q Okay. So there's a line item for repairs, correct?

20 A Yes.

21 Q Okay. Mr. Pickens had a LLC, Bluepoint Development,
22 correct?

23 A That's correct.

24 Q And that was a construction management business.

1 A That's correct.

2 Q Did you ever monitor which deductions for let's say
3 there was a Home Depot expense, right? Do we know if that was
4 for Bluepoint Development or Patience One? How was that
5 managed? Did you rely on Tom for that information?

6 A In the latter years I actually relied upon Sarah,
7 his office manager, to provide me those documents. Tom was at
8 that stage just giving me an overview.

9 Q Okay. All right. I don't -- oh, actually I
10 actually have one other question.

11 In 2014 did Tom deduct an -- this is exceeding the
12 scope of what Mr. Jones asked him, but I forgot to ask him
13 this originally so this part --

14 MR. JONES: I don't have an issue, Judge.

15 THE COURT: Go ahead.

16 MS. ABRAMS: Okay.

17 BY MS. ABRAMS:

18 Q In 2014, do you recall the deductions -- do you
19 recall if Mr. Pickens deducted a vehicle as a business
20 expense, specifically a Porsche?

21 A I'd be surprised if he didn't.

22 Q Okay. Do you --

23 A I don't recall.

24 Q Do you recall if he deducted expenses related to

1 house repairs for the Queen Charlotte property or the rental
2 property?

3 A If he had them included in -- I don't look at every
4 receipt to know the justification.

5 Q Okay.

6 A I'm not auditing books.

7 MS. ABRAMS: Thank you so much. I don't have any
8 further questions.

9 MR. JONES: Just a couple questions --

10 THE COURT: Okay.

11 MR. JONES: -- following up on that.

12 RECROSS-EXAMINATION

13 BY MR. JONES:

14 Q We're going to go back to Exhibit 51 in binder 3,
15 and it's actually (indiscernible). I'll take that away from
16 you.

17 A Sure.

18 Q If you could turn to -- of Exhibit 51, Bates Number
19 1530. Down at -- this is the balance sheet page of the tax
20 return; is that right?

21 A That's correct.

22 Q Down at line item 19B, do you see that? That says
23 mortgages?

24 A That's correct.

1 Q Column B and Column D are beginning of year, end of
2 year, right?

3 A That's correct.

4 Q So beginning of year the balance on the mortgage was
5 one million four fifty-eight four thirty-one; the end of the
6 year was one four two five five one four. So basically the
7 principal pay-down was roughly \$33,000?

8 A That's correct, roughly.

9 Q I didn't do the math, but I might be off by a buck.
10 And now turning to the K1 pages, the K1 -- the first
11 K1 for Danka Michaels, that says Danka Michaels, M.D., right?

12 A That's correct.

13 Q And that referred to the Defendant --

14 THE COURT: Refer to Bates stamp.

15 MR. JONES: Oh, I'm sorry. The Bates stamp, Your
16 Honor, is 1533.

17 THE COURT: Got it.

18 BY MR. JONES:

19 Q And that would be the Defendant as an individual,
20 correct?

21 A That's correct.

22 Q And the second page, the K1 is for Tom Pickens,
23 right?

24 A That's correct.

1 Q And that would be Tom Pickens as an individual,
2 right?

3 A That's correct.

4 Q Now, the third page is after the transaction. You
5 have it listed as the Mich Mich Trust as the member; is that
6 right?

7 A That's correct.

8 MR. JONES: Nothing further.

9 THE COURT: Thank you. I have a burning question.

10 MR. JONES: Yes.

11 THE COURT: Always scary when the judge does this.
12 I've heard a lot about gift tax advice. Did anybody ever take
13 a gift tax? Pay a gift tax to your knowledge?

14 THE WITNESS: I have never filed a gift tax return
15 for either of them, so I'm not --

16 THE COURT: You do not?

17 THE WITNESS: -- aware of any being made.

18 MR. JONES: And actually I just -- I did want --

19 THE COURT: Thank you. I was just curious about
20 that.

21 MR. JONES: I meant to clarify that.

22 BY MR. JONES:

23

24 Q Because you have -- I used -- shows how old I am. I

1 call it the unified credit.

2 A Yes.

3 Q It's not -- probably not called that anymore, right?

4 A We still refer to it as that way because everybody
5 refers -- yeah.

6 Q So if you give a gift that exceeds the amount that
7 you can give to a family member in a year --

8 A Or anybody.

9 Q -- or anybody that you can give in a year under the
10 Internal Revenue Code, while you will not incur a tax for
11 which you have to write a check to the IRS, you are required
12 to file a tax -- a gift tax return, right?

13 A That is correct.

14 THE COURT: But you never prepared one for the
15 parties?

16 THE WITNESS: I did not.

17 MR. JONES: That's all.

18 THE COURT: Any other questions because I asked one?
19 Follow-up? Okay. Thank you, sir.

20 Can he be excused?

21 MS. ABRAMS: Yes.

22 MR. JONES: Yes.

23 THE WITNESS: Okay.

24 THE COURT: Yes. You may go about your business.

1 THE WITNESS: Thank you. Do you want me to leave
2 this here?

3 MR. JONES: Yes, you can leave it there.

4 THE WITNESS: Okay.

5 (Witness excused)

6 THE COURT: Give us a minute for us to organize up
7 here a little bit.

8 (Pause)

9 THE COURT: Are we recalling Dr. Michaels?

10 MS. ABRAMS: Yes.

11 THE COURT: Thank you. Retake the stand, please.
12 You're still under oath.

13 DIRECT EXAMINATION CONTINUED

14 BY MS. ABRAMS:

15 Q Okay. So we were talking about the time period
16 between when you first saw Tom Pickens as a patient and the
17 time that you and Tom Pickens started to date, correct? And
18 that was roughly 15 months or so?

19 A Yeah.

20 Q Okay. During that time period, did you do your
21 workup and treatment plan for Mr. Pickens?

22 A Cardiology was basic. It was his biggest problem,
23 so I didn't deal with his cardiology problems.

24 Q Who dealt with his cardiology problems?

1 A His cardiology group.

2 Q Okay. But anything that you were doing, you would
3 have done within that --

4 A Yeah.

5 Q -- first 12-month period?

6 A Yes.

7 Q Okay. Now let's start talking about the time period
8 when you -- I'm sorry.

9 THE COURT: Can we shut the door, unless it is a
10 problem?

11 BY MS. ABRAMS:

12 Q Now let's talk about the time period when you and
13 Tom started dating in the summer of 2001. Can you please
14 explain to the Court how you and Tom found yourself out to
15 dinner together?

16 A Oh, Tom told me that when he was in Cleveland Clinic
17 after bypass surgery his wife left the hospital. Apparently
18 emotionally she couldn't deal with the fact that he's this
19 sick, he's got such a -- his heart problem. And I think the
20 marriage deteriorated at that point and eventually they got
21 divorced.

22 When they filed for divorce, I saw him in the office
23 and he came with chest pains again, and I told him that he's a
24 heart patient, he has chest pains, he needs to be readmitted.

1 He was fighting with me, No, I'm not going. I'm not going
2 anywhere, and nah, nah, nah, nah, nah.

3 I finally asked him that if he's not going to go he
4 needs to sign the AMA. So he went. He went to the emergency
5 room, got admitted. I ruled him out. Everything was fine.

6 Next morning I came to the hospital and asked him
7 what's happening? Everything is fine. So this is not your
8 heart. This is probably some kind of an anxiety you're
9 dealing with, some kind of a life problem. And he says, Well,
10 I just got divorced. And I told him, Don't worry about it.
11 You're a good guy. You have a good job. You're making decent
12 money. You will be fine. You will find somebody eventually.
13 I've been through that. And so when he came back for a
14 follow-up he asked me out.

15 Q Now, how many times did he ask you out before you
16 agreed to meet him for dinner?

17 A Few times.

18 Q And what did you say those few times?

19 A No. I wasn't interested in dating a patient.

20 Q Okay. And then --

21 A But then he came up with a very good excuse.

22 Q Okay. Why don't you tell us about that.

23 A He asked would you please go out to dinner with me
24 and tell -- teach me how to choose better when I go to the

1 restaurant. What's a healthy food for me as a heart patient?
2 And I thought, hmm, that's a nice way to go about it. And I
3 said no. And I thought, okay, if he's going to ask me again
4 it shows his persistence and I'll -- I will say yes. And he
5 did ask again and I said yes. And then he said, How are we
6 going to get together? And I --

7 Q Okay. So we --

8 A Okay.

9 Q We need to keep our time constraints here. So did
10 you have a conversation with Tom about continuing as -- to be
11 his primary care physician after you started dating?

12 A When we were dating, no. After he moved -- we moved
13 in together I told him that he is fired as a patient because I
14 can't see him anymore as a patient.

15 Q Okay. And what happened after that?

16 A He refused to see anybody else.

17 Q So what kind of ethical problem did that cause for
18 you?

19 A Well, if a patient refuses to go and see somebody
20 else, I could be accused of abandoning the patient if the
21 patient clearly wishes to follow up with me, and so I am stuck
22 as a primary care physician. And he repeated over and over I
23 don't want to see anybody else.

24 So his cardiac problems were followed up with his

1 cardiology. So for his gout and blood pressure, cholesterol I
2 had no problem following up with him.

3 Q Okay. At that point were you just prescribing him
4 refills pretty much?

5 A The medications that cardiology started were
6 refills, the pain medications for his gout, his gout
7 medications, his -- that was it.

8 Q All of it was refills?

9 A That was old, old stuff that was refilled constantly
10 over the years.

11 Q Okay. Now let's talk about what specialists Tom was
12 seeing. How many cardiologists was he seeing during your
13 relationship?

14 A He saw a group, and in that group he saw four
15 cardiologists over the years.

16 Q There was always a cardiologist involved in his
17 treatment?

18 A As far as I know, yes.

19 Q Okay. Did he have a rheumatologist?

20 A He was referred to a rheumatologist.

21 Q What about an orth --

22 MR. JONES: Objection, nonresponsive. Move to
23 strike.

24 THE WITNESS: It's in his chart.

1 THE COURT: Sustained.

2 BY MS. ABRAMS:

3 Q Did he have a rheumatologist who was seeing him?

4 A Yes.

5 Q Who was that?

6 A Dr. Tim Kelley.

7 Q Was he being seen by an orthopedists?

8 A Multiple orthopedists.

9 Q Who?

10 A He was referred to Dr. Tingey, Dr. Bradford, Dr.

11 Ashman, and when he moved to Florida he needed somebody to

12 help with his knee pain so I asked Dr. Tingey if he knows

13 anybody in Naples. And so he gave me a name and I passed on

14 the name to Tom, and Dr. Tingey was supposed to connect with

15 that guy in Naples so he would see Tom fast.

16 Q Do you know if Tom saw the orthopedist in Florida?

17 A Yes.

18 Q And do you know roughly what time frame that was?

19 A 2014?

20 Q Okay. And what -- why was he seeing -- you said he

21 was seeing an orthopedist for what? You mentioned knee pain?

22 A He had knee pains, hip pains, neck pains, and back

23 pain and elbow pains.

24 Q All right. Was this related to gout?

1 A Yes, and progressive arthritis.

2 Q All right. Did he have a dermatologist?

3 A Yes.

4 Q Who was that?

5 A Dr. Handler.

6 Q What about a gastroenterologist?

7 A He saw two GI doctors. He was admitted once to the

8 hospital for chest pains and neck pains and anxiety attack,

9 and he was -- he had MRI of the neck. He was code by Dr.

10 Shiposhnikov (ph) --

11 Q Okay. So he had a gastroenterologist.

12 A (Nods head in the affirmative)

13 Q Did he also have an ENT and a general surgeon who

14 were seeing him?

15 A Yes.

16 Q All right. Now, you were asked last week whether

17 tramadol, Xanax, Ambien, and Percocet were the primary

18 medications that were prescribed by you or by Robert Carillo

19 to Tom Pickens. Do you recall that?

20 A Yes.

21 Q Okay. And I think you said that those were not your

22 primary medications. Can you explain what Tom's primary

23 medications were and what his as-needed medications were?

24 MR. JONES: I'm going to suggest to you that that

1 completely misstates her testimony and that she absolutely
2 confirmed that those were the medicines she was prescribing
3 him. If she wants to ask the question a different way, I'll
4 withdraw my objection.

5 THE WITNESS: May I say something?

6 THE COURT: No. Sorry.

7 My recollection was that she was trying to make a
8 clarification that she wasn't refilling anything, that it was
9 her assistant -- was that the Carillo person you're referring
10 to?

11 THE WITNESS: (Nods head in the affirmative)
12 (Indiscernible).

13 MS. ABRAMS: I guess my -- the quest --

14 THE COURT: But I do recall her saying it's -- those
15 were the primary ones that he was being prescribed. I don't
16 know if she said she prescribed them, but those are the
17 primary ones --

18 MR. JONES: The question I asked was "And you were
19 prescribing him the following med" -- because we have the
20 exhibit that's in evidence.

21 THE COURT: Uh-huh, right.

22 MR. JONES: That reflects all of the medicines that
23 are on -- oh, wait. Here's the thing. It doesn't reflect the
24 medicines for like high blood pressure and stuff --

1 MS. ABRAMS: Right.

2 MR. JONES: -- because that's not tracked by the
3 State of Nevada.

4 MS. ABRAMS: Right.

5 MR. JONES: But the ones that are tracked by the
6 State of Nevada are the ones that I was referring to.

7 THE COURT: Do you want to ask a question about
8 those medications and how they were prescribed or who
9 prescribed them?

10 MS. ABRAMS: Well, okay. So --

11 THE COURT: Because she did say that he was being
12 prescribed through her office those medications.

13 MS. ABRAMS: Right. Right. I'm not -- I'm not -- I
14 have no issue with that. But I think when he asked if those
15 were the primary medications that she said that she didn't
16 know what he meant by primary or something where she was not
17 necessarily agreeing with the word "primary."

18 THE COURT: I recall. Go ahead.

19 MS. ABRAMS: Okay. And so that's what I'm asking
20 about.

21 BY MS. ABRAMS:

22 Q So can you explain to the Court what medications Tom
23 was taking, what would you consider his primary medications
24 and what you would consider his as-needed medications and what

1 that difference is?

2 A Sure. So primary medications are medications that
3 are used for baseline diseases and that you take every day.
4 Lisinopril for blood pressure, carvedilol for heart and blood
5 pressure, cholesterol medication, Allopurinol for gout, and
6 that would be -- that was his four medications he took every
7 day. The rest of it as needed. It's written as needed.
8 You're not supposed to take Xanax every day. You're not
9 supposed to take Ambien every day. If you do, it's your
10 choice. I don't police patients. We prescribe these
11 medications as needed. It's up to you to decide how often you
12 want to take it.

13 Q Okay. And it's as needed for pain?

14 A As needed for pain, as needed for anxiety, as needed
15 for sleep.

16 Q Tell me about heart patients and how they may be
17 affected with anxiety, if there's any correlation there.

18 MR. JONES: Objection. Is she a cardiologist, Your
19 Honor?

20 MS. ABRAMS: No, but she's a primary care physician
21 who's been taking care of patients who have had cardiology
22 issues.

23 THE COURT: Go ahead.

24 THE WITNESS: After bypass surgery cardiac patients

1 have a lot of anxiety. He had open heart surgery. The
2 sternum is wired. It is not -- doesn't grow back. So every
3 time he moves, when you make certain movement, it can move, it
4 creates chest pain. It gives them anxiety with I'm having
5 another heart attack. And so a lot of patients -- the
6 statistics are between 50 to 75 percent of patients after open
7 heart surgery have a depression for couple of years. Tom
8 refused antidepressants even though they were prescribed, but
9 Xanax worked for him. He said it worked. It's a good thing
10 for him, so he can take it as needed. So that's what we did.

11 Q How long was Tom on Xanax?

12 A Since the bypass surgery, since 2001. Maybe 2002,
13 because then he had the PE and we were following more of the
14 -- 2001 or 2002.

15 Q How long was he taking Percocet?

16 A Since I have met him.

17 Q Okay. Now, there was also a prescription you gave
18 him for tramadol. Can you explain to the Court why he was
19 prescribed tramadol?

20 A I was getting unhappy with him living on Percocet,
21 meaning taking it not as needed but more regularly, and
22 tramadol is not an opiate. Tramadol, chemically speaking, is
23 anti-inflammatory but a very good pain control. So that would
24 be a step down to the pain medications, and he didn't like it.

1 He just didn't want to take it.

2 Q And how long, if you recall, was he taking Xanax?

3 A Since two --

4 Q Oh, no, I think I asked you that for Xanax.

5 A Yeah.

6 Q Ambien?

7 A I think we started Ambien when I think he lost his
8 job in Station Casinos. Maybe 2008, 2009?

9 Q Okay. And tell me about the dosages and the
10 amounts. I mean, Counsel tried to make it sound like this was
11 a tremendous amount of medication for you to be prescribing to
12 someone.

13 MR. JONES: Objection. That's not a question. Move
14 to strike.

15 MS. ABRAMS: Well, it's part of a question.

16 MR. JONES: She's testifying.

17 MS. ABRAMS: It's -- part of my question is has
18 there been a recent change in the regulations for the
19 prescription of narcotics?

20 THE WITNESS: Yes, as of January 1st the Nevada --
21 the governor signed a new what we call the (indiscernible)
22 law. The regulations were released in March two -- 2018. It
23 requires us to file all kinds of paperwork. The patient has
24 to have an agreement, consent form, drug testing, and before

1 2018 we didn't have these restrictions. Before 2018 pain was
2 treated as a fifth vital sign. We treated pain aggressively.
3 If we didn't treat aggressively we were sued.

4 BY MS. ABRAMS:

5 Q So at the time that the prescriptions were -- you
6 know, the combination of prescriptions that are there were
7 prescribed to Tom, were they unusual in amount or in
8 combination?

9 A No, they're not unusual, and they are still not
10 unusual. They are still -- even under the current law it is
11 not exceeding the recommendations.

12 Q So can you explain the dosages and the amounts? And
13 why don't we turn to Exhibit 2 so that you have --

14 MR. JONES: I think it's 4, Counsel.

15 MS. ABRAMS: Is it 4? I'm sorry. Yes, Exhibit 4.

16 THE COURT: Volume 1?

17 MS. LOBELLO: Yeah, volume 1.

18 MR. JONES: I'll get it. I'll get it. That's the
19 wrong book. I'll get you the right book.

20 THE COURT: Has 4 been admitted?

21 THE CLERK: Yes, Your Honor.

22 THE COURT: Thank you.

23 MR. JONES: There you go.

24 THE WITNESS: Thank you.

1 MR. JONES: You're welcome.
2 THE WITNESS: Exhibit 4.
3 MS. ABRAMS: Actually I think we said we were going
4 to replace this with the updated one. So why don't we go
5 ahead and do that? I have that here.
6 THE COURT: Counsel?
7 MR. JONES: She has the updated ones?
8 THE COURT: She has the replacements for --
9 MS. ABRAMS: Yeah, that's what you emailed to me.
10 THE COURT: -- for part 4.
11 MS. LOBELLO: Why don't we use both just to be clean
12 and make this the next exhibit? Because this is a different
13 report. We -- on Friday they asked if they could have an
14 updated so we --
15 THE COURT: Next in order.
16 THE CLERK: 155.
17 THE COURT: 155.
18 MS. ABRAMS: Wait. How is this different? I'm
19 sorry.
20 MS. LOBELLO: It's updated. You asked for an
21 updated. That's updated. So it's the additional dates on it.
22 THE COURT: If it was exactly the same you wouldn't
23 need to present this one.
24 MS. ABRAMS: Right. I think that's what I said is

1 that it was updated.

2 MR. JONES: 4 is already in.

3 THE COURT: 4's in.

4 MR. JONES: I'd rather have 4 in because we've
5 already examined her on 4.

6 THE COURT: Right. This is in.

7 MR. JONES: So if she wants to examine her on this,
8 we have no objection to this.

9 THE COURT: Because you already said -- this comes
10 in. Is it one fifty --

11 THE CLERK: Five.

12 THE COURT: -- five.

13 (PLAINTIFF'S EXHIBIT 155 ADMITTED)

14 THE COURT: And I don't know that I have Bates
15 stamps on this one, but we'll go with the page number
16 indications. Go ahead, Counsel.

17 BY MS. ABRAMS:

18 Q Okay. So looking at this exhibit that I just handed
19 to you, can you explain the dosages and the amount that was
20 prescribed and whether -- explain to the Court regarding those
21 dosages and amounts. Are they considered high? Are they
22 considered normal? What are they considered?

23 A I don't know how to explain this. I mean, here is
24 alprazolam written July 21st. It was filled July 21st, 2011.

1 He got 180 pills, and it was -- it says zero out of three,
2 which I don't know what it means because it's either one out
3 of three, two out of three, or three out of three. So either
4 they did not dispense it -- but it looks like they dispensed
5 it.

6 The -- in September, two months later, he got the
7 same prescription and it was one out of three. So the
8 pharmacy would not give him 180 pills. They only gave him a
9 third of the prescription, 60 pills.

10 Then in January, which is four months later, they
11 gave him -- they gave him the second refill, which was 60
12 pills. So to take --

13 Q Okay. Well, let me -- let me ask you this. Looking
14 at this exhibit, you see where it has the --

15 THE COURT: What page are you on? One of --

16 MS. ABRAMS: I'm on page 2 of 5.

17 THE COURT: Thank you. Date?

18 BY MS. ABRAMS:

19 Q So look at the very -- for example, the very bottom
20 one, the 7/15/2015.

21 A 7/11? Oh, the next page?

22 Q Yeah, page 2.

23 A 7/15/2015, yes.

24 Q Okay. So the alprazolam --

1 A It's Xanax. Alprazolam is Xanax. That's a
2 prescription by Mr. Carillo.

3 Q Okay. And that's .5 milligram. Can you --

4 A Correct.

5 Q Can you explain to the Court, is that --

6 A Of the lowest dosage .25 and the highest dosage is 2
7 milligrams. But that's -- it's the strength of the pill.
8 There's psych patients who are on 4 milligrams three times a
9 day.

10 Q Okay. Is that unusual for someone who's had heart
11 surgery and who has complained about anxiety for years?

12 A No. This has nothing to do with heart surgery.
13 This is anxiety medication. It's anxiolytic. It's very
14 popular, it's very common because it has very little side
15 effect and the lowest addictive properties from -- it's less
16 addictive than Valium, less addictive than Ativan. So Xanax
17 is on the low --

18 Q Okay. What about the next one up, tramadol 50
19 milligram tablet. Does that come in more than one dosage?

20 A No, it's just one dose. Tramadol is generic, one
21 dose 50 milligrams.

22 Q Okay. Now, does -- in your experience, does pain
23 vary with the amount of physical activity somebody's involved
24 in?

1 A Of course.

2 Q Okay. So can you explain like in 2015, '14, '15,
3 '16 what was your understanding of Tom's work schedule and his
4 physical --

5 A He was flying around, walking construction sites, he
6 was -- he would drive to Colorado for the construction site,
7 walk it, spend a couple of days, drove back, flew to Florida,
8 walked construction site. He was building his business. He
9 was anxious, he was in pain, he was miserable. He was
10 constantly asking for pain medications, and at that time we
11 were supposed to treat.

12 Q Okay. Now, these were prescriptions written by
13 Roberto Carillo, correct?

14 A Yes.

15 MR. JONES: Objection, foundation. Which is
16 "these"?

17 MS. ABRAMS: The ones we were just talking about.
18 Okay. They have prescriber ROCAR next to them, do you see
19 that?

20 THE WITNESS: Yes.

21 MR. JONES: 2015?

22 MS. ABRAMS: Correct.

23 MR. JONES: Okay.

24 THE WITNESS: 2016, 2015, 2014.

1 BY MS. ABRAMS:

2 Q Now, is Mr. Carillo legally permitted to prescribe
3 without supervision?

4 MR. JONES: Objection, calls for a legal conclusion,
5 Your Honor. It's in the -- it's in the word.

6 THE COURT: Thank you.

7 BY MS. ABRAMS:

8 Q Mr. Carillo works in your office, correct?

9 A Yes. And I was asked this question by the previous
10 -- during my deposition, my testimony. Yes, Mr. Carillo is a
11 nurse practitioner fully licensed in the State of Nevada,
12 fully licensed to prescribe any medications, any controlled
13 substance.

14 Q Within the scope of his practice, correct?

15 A At any -- no. Nurse practitioner can open their own
16 practice. They are completely independent.

17 Q And how many years of experience does Mr. Carillo
18 have at your office?

19 A Twelve years.

20 Q And do you know --

21 THE COURT: Excuse me. Would Mr. Carillo be able to
22 diagnose a symptom?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

1 BY MS. ABRAMS:

2 Q If someone is -- well, let's talk about Tom. Tom
3 was taking the same medications for many years, correct?

4 A Yes.

5 Q How does that affect the way the medication would
6 impact him?

7 A Some people are fine for 20, 30 years with the same
8 dose, some people dosages are escalating. I didn't -- I have
9 never been happy with when people were asking for higher and
10 higher amount and higher and higher dose and eventually we
11 part because I don't like to be the doctor in town that you
12 can get anything you want. So we were very careful. So the
13 report was available in 2015. I think the prescription
14 monitoring program started could be 2014, I'm not sure. But
15 it wasn't available before.

16 Q Okay. When was the last time that you and Mr.
17 Pickens had any form of physical, sexual, or intimate
18 relationship?

19 A Fall 2004.

20 Q 2004.

21 A Yes.

22 Q So 16 years ago?

23 A Correct.

24 Q Twelve years before the deeds were signed.

1 A Yes.

2 Q Okay. So there was a small period of time where you
3 were dating and involved in an intimate relationship with Mr.
4 Pickens. That would have been from summer of 2001 until fall
5 of 2004?

6 A About three years.

7 Q Okay. And after fall of 2004 nothing?

8 A No.

9 Q You became -- how would you describe your
10 relationship as that -- at that point?

11 A Roommates.

12 Q What is the American Medical Association?

13 A It's a political body.

14 Q Are you a member?

15 A No.

16 Q Have you ever been a member?

17 A No.

18 Q Is membership mandatory for physicians?

19 A No.

20 Q You were asked about the American Medical
21 Association's Code of Ethics. Is that authoritative in your
22 field?

23 A No. It's not a governing body.

24 Q Let's talk about your relationship with Tom and the

1 events that led up to the commitment ceremony in Bratislava,
2 Slovakia. When you and Tom were dating, did you have a
3 conversation with him about what each of you were looking for
4 in a relationship?

5 A Yes.

6 Q What did you discuss?

7 A I wanted to make clear that anybody I'm going to be
8 involved with next time, after the first marriage and a
9 horrible divorce I went through, I did not want to get
10 married, I do not want to have a dead relationship. I want to
11 have equality intellectually, financially, in interests, I
12 wanted to have a partner. And he seemed to be agreeing with
13 everything. He says, yeah, he wanted to do, too. <<< He
14 would love to go to concerts, he would love to go to see
15 ballet, he would love to see opera and would love to travel,
16 and he is going to build such a big business that -- and he
17 will make so much money I will not know what to do with it.
18 He was full of enthusiasm and it was -- he was very, very -- a
19 nice guy. I really fell in love with him.

20 Q Did you believe that he had educational degrees?

21 A Yes. He told me he had a master's degree, and he
22 quit a semester before his Ph.D. because he was offered a very
23 good job in construction. I did not have any way to justify
24 his --

1 Q Now, let's talk about your marriage that ended in
2 divorce that you were just talking about a moment ago. Was
3 there domestic violence in that -- in that marriage?

4 A Yes.

5 Q You have limited hearing in one of your ears.

6 A Yes. I have 25 percent loss in my left ear.

7 Q Can you explain to the Court how that happened?

8 MR. JONES: Objection. Your Honor, how is this
9 relevant?

10 MS. ABRAMS: It's relevant --

11 MR. JONES: This is domestic violence from a prior
12 relationship?

13 MS. ABRAMS: Yes. You're going to hear about the
14 relevance.

15 THE COURT: Relevance?

16 MS. ABRAMS: Because she's very sensitive to people
17 who get angry, and you're going to hear about this. But the
18 background I think is very important for the Court to
19 understand where she is coming from.

20 THE COURT: Okay. I'll hear it.

21 THE WITNESS: We talked about this with Tom. My ex-
22 husband beat me up unconscious. I had a concussion, bleeding
23 into the left ear, and broken tympanic membrane.

24 BY MS. ABRAMS:

1 Q Okay. And so that was a very bad experience for you
2 obviously.

3 A Yes.

4 Q Was -- when you say you went through -- because a
5 lot of people will say they went through an ugly divorce.
6 When you say you went through an ugly divorce, this was a
7 traumatic experience for you?

8 A Yes. If it was any worse I would be dead.

9 Q Okay. And so when you had the conversation with
10 Tom, did you have one conversation with him about what your
11 expectations were or more than one conversation?

12 A Oh, multiple. We loved to walk and we loved to talk
13 about what we're going to do and how -- which -- I had all
14 kinds of ideas, which concert to see and which opera to see
15 and what we're going to do and -- it was, you know, what we
16 expect of each other, how we're going to live. He was all in
17 agreement of not getting married, not having -- he said I was
18 married twice. It didn't go well. I am very happy not to be
19 married again.

20 Q Did you have these discussions with Tom before or
21 after he moved into your house?

22 A Before.

23 Q And Tom moved in with you in September of 2001.
24 When he moved in with you, where were you living?

1 A My house. Copparo Place.
2 Q Copparo?
3 A Copparo Place.
4 Q When did you purchase that property?
5 A June 1998.
6 Q Okay. Did it have a mortgage?
7 A Yes. I put money down and the rest was mortgage.
8 Q Okay. Now, Counsel brought up that you had a
9 bankruptcy in 1996.
10 A Yes.
11 Q Did you in fact have a bankruptcy in '96?
12 A Yes.
13 Q Why did you file bankruptcy in 1996?
14 A After this ugly divorce I wanted to have nothing to
15 do with my ex-husband and he wanted the -- two prop -- we had
16 two properties. We -- he insisted on getting the properties,
17 and I wanted to have nothing to do with him so I signed over
18 the property. I Quit Claimed the property. I had a very bad
19 financial advisor. I had a bad paralegal who was taking care
20 of the paperwork and didn't notice that the loans were still
21 in my name. I didn't own the properties, but the loans were
22 still in my name. So I had to file bankruptcy.
23 Q Is that because your ex-husband stopped making
24 payments on those properties?

1 A Yes.

2 Q Okay. Now, in 1998 you were approved for a mortgage
3 even though you had a prior bankruptcy.

4 A Yeah, no problem.

5 Q Let's talk about Tom's contributions to the
6 household expenses when he moved in with you in September of
7 2001. Was he making any contributions?

8 A No.

9 Q Did you travel with Tom in 2001?

10 A We went to visit my family in Slovakia at the end of
11 September because I wanted to make sure that my parents
12 approved of him. This was my second time around and I had all
13 kinds of doubts. I didn't trust myself.

14 Q Who paid for that trip?

15 A I did.

16 Q After that trip, did you and Tom have further
17 discussions about Tom's expectations regarding your
18 relationship and did his expectations create a little bit of
19 conflict for you?

20 A We had -- we started living socially and he got
21 irritated every time I introduced him as a boyfriend. So
22 eventually he started whining about he doesn't want to be
23 called boyfriend. He wants to be called a husband.

24 Q So what came of that conversation?

1 A I talked to my mother one day about it and I talked
2 to him and I said I don't want to get married, never want to
3 get married ever again. Don't want to go through the pain of
4 the lawsuits and whatever. If we don't like each other, let's
5 just split. Everybody's going to go their way.

6 And my mother says, well, you know, you can have a
7 church ceremony in Slovakia and it's not legal here. I'm
8 thinking okay. That's true. The church ceremony in Slovakia
9 has never been legal. You have to register the marriage.

10 So I talked to him about it and he agreed to it. My
11 mother went around the churches and nobody would agree to do
12 it. Then one of the churches the priest says he will do it if
13 we get a letter from a Catholic parish locally that we are in
14 good standing as good Catholics, which I thought how are we
15 going to get it? I am not a Catholic, he's not a Catholic,
16 how are we going to get the letter? But he managed.

17 Q Okay. Was any of Tom's family in attendance at the
18 commitment ceremony?

19 A No.

20 Q In what language did the ceremony take place?

21 A It was Slovakian and Latin.

22 Q Now, on the day of the ceremony did you and Tom meet
23 with the priest?

24 A Yes.

1 Q Did the priest ask you to translate anything for
2 Tom?

3 A He requested that I translate everything in
4 Slovakian to Tom, word for word.

5 Q Okay. And was there anything that he specifically
6 wanted you to translate for Tom?

7 MR. JONES: Objection. I let it go for a long time.
8 It's absolute hearsay. The priest isn't here to say what he
9 said. She certainly can't say it.

10 THE COURT: Certainly.

11 BY MS. ABRAMS:

12 Q What did you translate -- what did you say to him
13 when you were translating words to Tom that day?

14 A The fact that the priest demanded that I make sure
15 Tom understands this is not a legal ceremony --

16 MR. JONES: Objection. Move to strike.

17 THE COURT: Sustained.

18 THE WITNESS: I don't know what the -- what else --

19 THE COURT: Sustained.

20 BY MS. ABRAMS:

21 Q So I need you to --

22 A The -- all of the language of the ceremony.

23 Q So the words that you translated to Tom, that you
24 said to Tom when you were making that translation, what did

1 you tell him?

2 A The ceremony is not legal. Do you understand it?
3 Do you remember the -- the priest asked before, the ceremony
4 is not legal.

5 MR. JONES: Objection as to anything the priest
6 said.

7 THE COURT: Sustained.

8 BY MS. ABRAMS:

9 Q So if I understood you correctly, you -- when you
10 were translating you said to Tom, This is not a legal
11 ceremony. He is telling me he wants to make sure you know
12 it's not legal?

13 A Correct.

14 Q Okay. Please look at Exhibit 2.

15 THE COURT: 2 or 4? 2?

16 MS. ABRAMS: 2.

17 BY MS. ABRAMS:

18 Q Does your signature appear anywhere on Exhibit 2?

19 A No.

20 Q Do you recall signing anything?

21 A No.

22 Q Did you intend to marry Thomas Pickens on April 7th,
23 2002?

24 A No.

1 Q Is there any doubt in your mind that Tom knew the
2 two of you were not engaging in a legal marriage?
3 A No.
4 Q At any time did you believe you and Tom were legally
5 married?
6 A No.
7 Q If you knew that Tom would someday use the
8 commitment ceremony to claim there was a legal marriage, would
9 you have participated in the ceremony?
10 A Of course not.
11 Q Would you have continued a relationship with Tom if
12 you knew he would claim there was a marriage?
13 A No.
14 Q Would you have continued a relationship with Tom if
15 you thought there was any chance you would end up in divorce
16 court?
17 A Of course not.
18 Q Now, you're not denying that you referred to Tom as
19 your husband, right?
20 A No.
21 Q Let's talk about earnings, assets, and contributions
22 during the relationship. What assets did Tom have in 2002?
23 A 2002?
24 Q 2002 he quit working for Peck/Jones the next month

1 after the ceremony. He had debts from his second marriage.

2 He had nothing except an old car.

3 Q Did you provide him with financial assistance around
4 that time?

5 A Yes.

6 Q What form of financial assistance? Did you help him
7 pay off his debt?

8 A I paid off the credit card debt that he took over
9 from his divorce. His car was breaking up constantly, so we
10 went in to trade it in and I gave him \$20,000 on top of the
11 car so he can get a decent car. He bought a Toyota, the big
12 SUV.

13 Q And was there a loan on that car?

14 A Yes.

15 Q Okay. What else did you help with financially at
16 that time?

17 A In 2002 my son skipped -- how do you say it -- get
18 out of college, and I bought a duplex in Reno when he started
19 college. So at the time I sold it, my profit was about
20 \$30,000 and I gave it to Tom to start his own company, because
21 that's what he said he wants to start a construction
22 management -- construction company.

23 Q Did he start a construction company in 2002?

24 A No.

1 Q Did he start a construction company in 2003?
2 A No.
3 Q Did he start a construction company in 2004?
4 A No.
5 Q Was he working during those years?
6 A No. He started working for Stations in 2004.
7 Q Okay. So for that two-year period of time he was
8 not working?
9 A He had no other income except from -- I started
10 paying him salary.
11 Q Okay. Do you know what happened to that \$30,000,
12 what he used it for?
13 A No.
14 Q Who was paying the living expenses?
15 A I did.
16 MR. JONES: Objection, foundation. From when to
17 when?
18 MS. ABRAMS: We're talking about the 2002 to 2004
19 time period.
20 THE COURT: Okay. Is your answer still the same?
21 Is your answer the same with that time frame you were paying
22 for everything?
23 THE WITNESS: Yes.
24 THE COURT: Thank you.

1 BY MS. ABRAMS:

2 Q Who was paying for travel?

3 A I did.

4 Q Who was paying for dining?

5 A I did.

6 MR. JONES: Same, foundation.

7 THE COURT: Same time frame?

8 MS. ABRAMS: Yes, all same time frame. Yes. I'm

9 not -- do you want me to repeat between --

10 THE COURT: No.

11 MR. JONES: No, just let me know when you move to a

12 different time frame.

13 THE COURT: Yeah.

14 THE WITNESS: And I paid the credit cards and I paid

15 for everything.

16 BY MS. ABRAMS:

17 Q Okay. And then 2004 is when he got a job at Station

18 Casinos?

19 A Yes.

20 Q Okay. So there was a bunch of things that happened

21 in 2004. We're going to get to that in just a second. But I

22 want to touch upon during that same time period, 2002 to 2004,

23 who was paying his car payment?

24 A I did.

1 Q You opened your own medical practice sometime in
2 2003, correct?

3 A Yes.

4 Q And how much did you have to invest in starting up
5 your medical practice?

6 A I actually spent all of my savings account, which
7 was about \$180,000.

8 Q Did Tom contribute anything financially to the start
9 of your medical practice?

10 A No. He had no money at that time.

11 Q Did he contribute time and did he help with the
12 management of the tenant improvements?

13 A Oh, yes. That was --

14 Q Okay. Now, the landlord paid for those tenant
15 improvements, correct?

16 A So how it works is you have a tenant improvement and
17 then you pay back the owner through the rent every year. So
18 you pay him back with an interest, right? So it's all me, all
19 of the amount of money that we got. But Tom was able to
20 arrange the -- the amount that we got for tenant improvement,
21 that amount of money was used for the remodeling, and I think
22 it was -- there was some money that I had to pay extra because
23 I needed the sinks, and sinks apparently are very expensive.

24 Q Okay. That was a leased property. You didn't get

1 to take any benefit from that with you when you left that
2 lease [cross-talk] --

3 A No, and it was like 4,500 square feet, so it's not
4 like a huge office.

5 Q Do you know if Tom was using that address as well?

6 A Yes. He was using it as his business address.

7 Q Okay. And who paid the rent?

8 A I did.

9 Q Did Tom ever work in your front office?

10 A No.

11 Q Did Tom ever work in your back office?

12 A No.

13 Q You heard Tom testify that he arranged for a friend
14 of his named Avi Schlesinger (ph) or something along those
15 lines to give you advice on management of your medical
16 practice. Do you remember that testimony?

17 A Yes.

18 Q And he thought that that was very valuable to you.
19 Can you tell me what happened with this person?

20 A We met with Avi at the Nevada Orthopedics, what he
21 was managing at that time, and he referred me to a practice
22 management person whose name was Linda and said she'll take
23 care of me. Linda cost me about \$160,000. She --

24 Q How?

1 A She said that I don't need to do any
2 credentialing --
3 MR. JONES: Objection, hearsay --
4 THE COURT: Sustained.
5 MR. JONES: -- as to everything that Linda allegedly
6 said.
7 BY MS. ABRAMS:
8 Q So you can't -- you can't say what she said, but you
9 can tell us what happened from your own direct personal
10 knowledge.
11 A I was advised that I don't have to do anything --
12 MR. JONES: Objection.
13 THE COURT: Sustained.
14 MS. ABRAMS: No, no, no.
15 THE WITNESS: I don't know how to say it.
16 BY MS. ABRAMS:
17 Q Okay.
18 A So I was under the --
19 THE COURT: As a result of her --
20 MS. ABRAMS: Right.
21 THE WITNESS: Of her advice?
22 THE COURT: Yeah.
23 MS. ABRAMS: Yes.
24 THE WITNESS: I lost the money because no

1 credentialing was done. I was told the insurance companies
2 will send me a letter if they need something from me. So by
3 the time my insurance agent came by, I lost three months of
4 hard work.

5 BY MS. ABRAMS:

6 Q That you never got paid for?

7 A No. We never collected. You can't collect after
8 three months.

9 Q And Tom was not employed in 2003?

10 A No.

11 Q Did you put Tom on payroll of your medical practice?

12 A Yes.

13 Q When did you do that?

14 A Maybe since the beginning, 2002, 2003. I don't
15 really remember.

16 Q Was it shortly after you opened your practice?

17 A It could have been the same year, but I don't really
18 remember.

19 Q There were a number of things that happened in 2004.
20 And I'd like to go through with you --

21 A Okay.

22 Q -- these various things that happened in 2004. Did
23 Tom go back to work in 2004?

24 A Yes. He got a job at Station Casinos --

1 Q Do you remember --
2 A -- as project manager.
3 Q Do you remember roughly when in 2004 that happened?
4 A Early summer.
5 Q Okay. Did you purchase a new home in 2004?
6 A Yes. We purchased a house and moved in in
7 September.
8 Q Is that the Queen Charlotte property?
9 A It's the Queen Charlotte property.
10 Q Is that where you live today?
11 A Yes.
12 Q What was the purchase price?
13 A 999,999.
14 Q How much did you put down?
15 A I put down over \$200,000 because that was the profit
16 I made on selling my Copparo Place house. So all of that went
17 into -- as a down payment.
18 Q Did Tom make any financial contribution to the
19 purchase price of the property?
20 A No.
21 Q What do you estimate the property is worth today?
22 A It's much less due to all of the problems with the
23 Badlands (ph) but it may be eight hundred, eight-fifty.
24 Q Okay. So it's not worth as much today as when you

1 bought it?

2 A Unfortunately.

3 Q Now, Tom's name is on the Queen Charlotte property.

4 A Yes.

5 Q Can you explain to the Court how and why that
6 happened? I mean, did you have conversations about it?

7 A No, we didn't have any conversation about it. I
8 don't even remember why his name is on the property. As I
9 said in my deposition, my house sold overnight, and then we
10 had six weeks to find a house and it was me working 14 hours a
11 day. I didn't really have that much time to look, so this is
12 the house we saw like three times and it was the most suitable
13 house for us so we went for it. We put -- we put in the
14 offer, it was accepted and we bought it. And then the
15 paperwork was done by him, and then he picked me up in the
16 hospital, took me to title company. They told me, Here, you
17 have 500 pages, sign wherever it's -- initial -- wherever it's
18 showing. So I signed, went back to hospital.

19 Q Okay.

20 A There is -- there was -- most likely I agreed with
21 him to being on the property because he had nothing. And if I
22 drop dead, for instance, he would be left on the street. So I
23 -- I think that's probably what I was agreeing to, that if I
24 drop dead, which can happen to anybody, anytime, where is he

1 going to live?

2 Q Okay. And those words, "be left on the street," are
3 those words that you've heard Tom say?

4 A Yes. He repeated a lot --

5 Q What did he say?

6 A -- I don't want to be left on the street. I don't
7 want to be on the street.

8 Q Okay. So we know that Tom got a job in mid-2004,
9 you bought Queen Charlotte in 2004. You mentioned that you
10 and Tom stopped being intimate in 2004, right?

11 A Uh-huh, yes.

12 Q Okay. How did that affect you?

13 A I went into a deep depression. I was -- it was so
14 bad I had to go and seek counseling. I didn't know how to
15 deal with it. I have no family here, I didn't have very many
16 friends here. He was the only person here that was -- like I
17 thought that was my buddy and kind of -- it was difficult. So
18 I went through counseling.

19 Q Okay.

20 A It helped.

21 Q Did you have conversations with Tom about that
22 topic, about that issue, why that was happening?

23 A Yes.

24 Q Did you ever get an answer?

1 A No. He stonewalls. He once told me that, oh,
2 because I can't get an erection. Well you can get intimate
3 without having erection. He can kiss and hug and smooch,
4 right?

5 Q But did he -- did he even want to touch you?

6 A He didn't want to be touched even to that point.

7 Q Okay. How did that impact your relationship with
8 Tom?

9 A I was depressed and I -- for some reason he became
10 very resentful.

11 Q So how did he express his resentment to you over --
12 and this started in 2004?

13 A Yes.

14 Q And how long did it go on for?

15 A Until the end of the relationship. I mean,
16 eventually when he was traveling it was a relief because the
17 coming home was like what else is going to happen? What else
18 he's going to whine about? What else he's going to demand?
19 How much money he wants from me today? What else is he going
20 to, I don't know, talk about? His pillow talk was how was
21 your collection? How is the new office manager working? How
22 is the front desk working? How is the biller working? That's
23 a pillow talk.

24 Q Was there anything else that happened in 2004

1 relating to who was actually paying the bills and control of
2 the checking account?

3 A Oh, we had perpetual fights about finances. Since
4 he started working he took over paying bills. The electronic
5 banking system started so he put everything on the electronic
6 system. So he had it in his computer how the bills are being
7 set up and when is it due, and it was really smart. Was very
8 good. I really liked that.

9 When the things started getting worse I was --
10 several years later I demanded to pay my own bills, and he
11 wouldn't let me. And we had multiple fights about it. We had
12 fights about how the bills are going to get -- how the bills
13 are getting paid, who is paying for what, how am I -- why am I
14 paying for this? Why am I paying for this? How much money
15 more do you need from me? And I remember him once -- several
16 times yelling at me, I have nothing, everything belongs to
17 you. Nothing is mine.

18 Q So Tom works at Station Casinos until 2008?

19 A I think so.

20 Q Okay. And why did he stop working there, if you
21 know?

22 A He told me that they closed the construction
23 department of Station Casino.

24 Q So he was laid off?

1 A I beg your pardon?

2 Q He was laid off?

3 A He never applied for unemployment though.

4 Q Okay. I was just asking that's when he -- okay.

5 What did he do for work after he was laid off from

6 Station Casinos?

7 A He was not working. He was trying to build his

8 business.

9 Q Okay. So is that when he started Bluepoint

10 Development?

11 A Have -- he's opened up -- he filed for Bluepoint

12 Development in 2008.

13 Q Okay. That's when he filed?

14 A Yes.

15 MS. ABRAMS: Do you mind if we take a quick break?

16 MR. JONES: Do you want to go ahead and just break

17 for lunch then?

18 THE COURT: I think we should if we're going to take

19 a break now because ten minutes then come back for ten minutes

20 is crazy.

21 MS. LOBELLO: That's fine.

22 THE COURT: So be back here at 1:00?

23 MS. LOBELLO: Is that okay?

24 MS. ABRAMS: We -- however you want to do it. We

1 can either do a break -- yeah, we can do that.

2 THE COURT: Okay. Back at one.

3 (Off record)

4 THE COURT: Where we left off?

5 MS. ABRAMS: Your Honor, the reason I stopped when I
6 did was I was getting the sense that my client's not operating
7 on all cylinders. She's not. She's not okay. And so I have
8 one witness who traveled here. I'd like to call him, and then
9 I think she needs to not be in this room today. She's -- what
10 you saw on the stand is not the person I've been dealing with
11 for the past two-and-a-half years, and I can tell you she's
12 irritable, she's -- she's just not herself.

13 THE COURT: That's fine.

14 MR. JONES: You know what? I've already --

15 THE COURT: We all understand.

16 MR. JONES: What I've already said, so.

17 THE COURT: So if you want -- you don't even have to
18 call the next witness if you don't want to.

19 MS. ABRAMS: Well, this witness, only because he
20 traveled here to testify, I don't want to have to --

21 THE COURT: From another area of the world?

22 MS. ABRAMS: From Minnesota. From Minnesota.

23 THE COURT: Okay. All right.

24 MS. ABRAMS: And we have like ten minutes.

1 THE COURT: Okay.

2 MS. ABRAMS: Maybe five minutes.

3 THE COURT: All right.

4 MS. ABRAMS: Really not a lot.

5 THE COURT: Is this the one that you may have an
6 objection to?

7 MS. ABRAMS: No, this is a different one.

8 MR. JONES: No, that's someone different.

9 THE COURT: Okay. Let's call him in then.

10 THE BAILIFF: What's his name?

11 MS. ABRAMS: Todd Kilde.

12 THE BAILIFF: Kilde?

13 MS. ABRAMS: Yes.

14 THE BAILIFF: Okay.

15 (Witness summoned)

16 THE CLERK: You do solemnly swear the testimony
17 you're about to give in this action shall be the truth, the
18 whole truth, and nothing but the truth so help you God?

19 THE WITNESS: I do.

20 THE CLERK: You may be seated.

21 THE COURT: Go ahead.

22 TODD KILDE

23 called as a witness on behalf of the Defendant and being first
24 duly sworn, testified as follows on:

DIRECT EXAMINATION

BY MS. ABRAMS:

Q Good afternoon.

A Hi.

Q Can you please state your name for the record?

A Todd Kilde.

Q Do you know the Plaintiff in this matter? He's sitting over there.

A Yes, I do.

Q How do you know Mr. Pickens?

A We worked together. I worked for him. I mean, actually we -- I still consider as friends for about 30 years, 30-plus years.

Q Do you remember how you met?

A Yeah, it was a project here in Las Vegas. We were working for -- both for the same company.

Q Do you -- did you know if Tom was married at the time?

A Yes, he was.

Q Who was he married to?

A That I don't remember.

Q Okay. Was it Dr. Michaels?

A No. No.

Q Okay. Did Tom ever tell you about his relationship

1 with Dr. Michaels?

2 A As far as in what? I mean, we never went into
3 any --

4 Q Did he refer to her as his wife?

5 A Yes.

6 Q Did he ever have a conversation with you about his
7 actual marital status?

8 A Yes.

9 Q When was that?

10 A It was probably a couple times over the last --
11 well, that's the first time I've seen him in over three years.
12 It was probably at lunch or some, you know, summer deal. I
13 mean, we talked a lot on and off on a lot of different topics.

14 Q Around what time frame would it have been the first
15 time that you had this conversation?

16 A Somewhere between three-and-a-half to five, six
17 years ago probably.

18 Q Okay. And what did Tom tell you about his marital
19 status or with referring to Dr. Michaels as his wife?

20 A That they'd gotten married in Slovakia but that it
21 was never -- whatever you call it -- authorize it or approve
22 it and -- in the States, that it was never really a legal,
23 binding marriage here.

24 Q Okay. Did you have the opportun -- you said that

1 you and Tom worked together. What years did you work
2 together?

3 A I think the first time, give or take a year or so,
4 I'm saying right -- probably right around '98, '98, '99 would
5 be my guess.

6 Q And was there a time where you worked for Tom when
7 he was operating Bluepoint Development?

8 A Yes.

9 Q When was that?

10 A That would have been probably '13 through '16, again
11 give or take a couple months in there.

12 Q Did you have an opportunity to observe Tom's
13 spending habits?

14 A Probably to some degree.

15 Q How would you describe his spending?

16 MR. JONES: Objection, foundation as to how he
17 observed.

18 MS. ABRAMS: Okay.

19 THE COURT: Fair.

20 MR. JONES: The answer was to some degree so it
21 seems very spotty.

22 MS. ABRAMS: Okay.

23 BY MS. ABRAMS:

24 Q To what degree did you -- were you able to observe

1 his spending habits?

2 A I mean, he wasn't cheap. I mean, Tom -- Tom's
3 always -- I mean, he's -- he spends money. I mean, he buys
4 things. If he wants it he buys -- at least that I know of, he
5 usually ends up buying it.

6 Q Were there occasions where he bought lunch for
7 everybody in the office?

8 A Oh, he did that frequently.

9 Q How frequently?

10 A Anytime we all went to lunch together. I mean, it
11 could be -- heck, it might be three, four times in a week, it
12 might be one time, depending -- you know, a lot of times he
13 wasn't in the office, so.

14 Q Okay. What about with regards to vehicles or
15 anything that you personally observed?

16 A What do you mean on that? I'm sorry.

17 Q Was there -- were you working on a project in
18 Florida?

19 A Yes.

20 Q What year?

21 A What was that, '15, '16, I think?

22 Q Was there a situation where there was maybe a
23 vehicle that needed to be rented in Florida --

24 A Purchased an Escalade.

1 Q And what was your opinion of that?

2 A I thought it was excessive, but --

3 Q What was it supposed to be used for?

4 A Transportation from the airport to the condo or
5 apartment.

6 MS. ABRAMS: I don't have any further questions.

7 THE COURT: Questions for this witness?

8 CROSS-EXAMINATION

9 BY MR. JONES:

10 Q You sought unemployment benefits from -- let's see.
11 Who was this written to -- from the State of Nevada through
12 Bluepoint Development, right?

13 A I don't think so.

14 Q Did you file a request to appeal denial of
15 unemployment benefits?

16 A Oh, I did, yeah.

17 Q So you were denied benefits --

18 A Right.

19 Q -- and you requested an appeal?

20 A Correct. Yeah, and that was rejected too.

21 Q And that was after your separation from employment
22 from Bluepoint, right?

23 A Correct.

24 Q Okay. So on or about October 10, 2016, you mailed

1 to the Unemployment Security Division Adjudication Center a --
2 MS. ABRAMS: I'm going to object. This really is
3 exceeding the scope.
4 MR. JONES: It's just -- this is bias, Judge. I get
5 to explore his credibility on bias.
6 THE COURT: I'll allow it for a little while.
7 MS. ABRAMS: Credibility [cross-talk] --
8 MR. JONES: I mean, credibility is an issue that
9 isn't -- doesn't have to stay within the scope.
10 MS. ABRAMS: Well, I don't think --
11 MS. LOBELLO: There's also things in this that are
12 directly within the scope.
13 MR. JONES: They -- they produced this document in
14 discovery.
15 MS. ABRAMS: Yeah.
16 THE COURT: Okay.
17 MR. JONES: And I can refresh his recollection with
18 it all day long on issues of credibility.
19 MS. ABRAMS: Well, I don't think that he's
20 established that -- that there's any -- I mean, biased as to
21 what? Biased as to saying that Tom said that we were married,
22 I mean, weren't married or were married or --
23 THE COURT: Which bias are you trying to elicit?
24 MS. ABRAMS: Yeah, bias as to what part of that

1 testimony?

2 MR. JONES: I want to explore with him -- well,
3 actually, Judge, it's within the scope because the questions
4 that I'm going to ask him that are contained in here deal with
5 his spending, since that's exactly what he asked -- she asked
6 about.

7 THE COURT: Okay. That's fair. Go ahead.

8 MR. JONES: And then there's one credibility issue
9 that you can weigh in on but I'll address that.

10 MS. LOBELLO: You should make that an exhibit.

11 MR. JONES: Do you have a problem with this being an
12 exhibit? It's not in our exhibits. You produced it.

13 MS. ABRAMS: Yeah.

14 THE COURT: What's the exhibit number?

15 MS. LOBELLO: It would just be a new one, 156.

16 MR. JONES: It would be a new one. We didn't even
17 know he was going to come and testify.

18 THE COURT: Next in order, 156?

19 MR. JONES: Yeah.

20 MS. ABRAMS: I haven't looked at this.

21 MS. LOBELLO: You produced it.

22 THE COURT: Doesn't mean she wants it in. She
23 produced what she --

24 MS. ABRAMS: This case has been going -- just for

1 the record, this case has been going on for two-and-a-half
2 years.

3 THE COURT: Right. I saw that.

4 MS. ABRAMS: This might be something that was
5 produced like a very significantly long time --

6 THE COURT: And that's why I stepped in last Friday
7 so you wouldn't have to get it further down the road.

8 MS. ABRAMS: And it wasn't in any of the exhibit
9 books so --

10 THE COURT: Okay.

11 MS. ABRAMS: There you go.

12 MR. JONES: Well, I can ask him the question and
13 then he can --

14 THE COURT: Yes.

15 BY MR. JONES:

16 Q So did you make a -- did you make a statement to the
17 Employment Security Division Adjudication Center that he has
18 spent hundreds of thousands of Bluepoint Development's
19 revenues on his wife's business?

20 A I don't -- if I said it in there I probably did.

21 Q Let me show you what's been --

22 MR. JONES: You said it's one fifty --

23 THE CLERK: Six.

24 BY MR. JONES:

1 Q -- what's been marked as 156.

2 THE COURT: Did you get a copy of it yet?

3 THE CLERK: Yes.

4 THE COURT: Okay.

5 BY MR. JONES:

6 Q And if you can take a look at the -- well, let me --
7 let me have you look at the entirety of this document. Is
8 this a document that you sent in to the Employment Security --

9 A Yes.

10 Q -- Division Adjudication Center?

11 A Yes.

12 Q Do you recall writing this document?

13 A Yes.

14 Q And you believe that to be a true and correct copy
15 of the document you sent?

16 A Yeah, I would have thought I would have signed
17 something on it, but -- can I --

18 Q Now, in the second -- in the second paragraph --

19 MR. JONES: Well, I'll move to admit 156.

20 THE COURT: Hearing no objection, it's in.

21 (PLAINTIFF'S EXHIBIT 156 ADMITTED)

22 BY MR. JONES:

23 Q In the second paragraph you write --

24 MS. ABRAMS: Well, I'm going to again --

1 BY MR. JONES:

2 Q -- he has spent --

3 MS. ABRAMS: Go ahead.

4 THE COURT: Do you want to raise an objection?

5 MS. ABRAMS: I really see this as being really
6 outside the scope. He --

7 THE COURT: I understand.

8 MS. ABRAMS: Okay.

9 BY MR. JONES:

10 Q In the second paragraph, second full sentence --

11 A Well, you're still on the first page, right?

12 Q First page.

13 A Yep.

14 Q Second full paragraph. You write: He has spent
15 hundreds of thousands of Bluepoint Development's revenues on
16 his wife's business. Do you see that?

17 MS. ABRAMS: I'm going to object. That's not what
18 it says, so I object to the form of the question.

19 MR. JONES: You're saying it doesn't say those
20 words?

21 MS. ABRAMS: It says --

22 MR. JONES: You can question him --

23 MS. ABRAMS: -- personal use --

24 MR. JONES: -- on the remainder of the sentence all

1 day you want.

2 MS. ABRAMS: Okay.

3 MR. JONES: That's your right under the rules to
4 have completion.

5 BY MR. JONES:

6 Q But I want to know if you made the representation
7 that he spent hundreds of thousands of Bluepoint Development's
8 revenues on his wife's business.

9 MS. ABRAMS: And I'm going to object to the form of
10 the question because it's not what it says.

11 THE COURT: I will sustain that. You need to put in
12 the whole sentence.

13 MS. ABRAMS: Yes.

14 MR. JONES: Okay.

15 BY MR. JONES:

16 Q He spent hundreds of thousands of Bluepoint
17 Development's revenues on his wife's business, personal use,
18 and mistress, yet unwilling to give raises or yearly bonuses
19 as promised. Did you write that?

20 A Yes.

21 Q And did you believe that was a true statement at the
22 time?

23 A Yes.

24 Q If you'd turn to the last page.

1 A Oh, I didn't see the last page.

2 Q The sentence you have is below the -- below is a
3 list of contacts that can confirm the unethical and
4 unacceptable behavior Bluepoint Development employees are
5 subject to. And the contacts include Dara Lesmeister, right?

6 A Correct.

7 MR. JONES: Nothing further.

8 THE COURT: Cross? Or, sorry, redirect?

9 MR. JONES: As to those two questions.

10 MS. ABRAMS: Yes. As to those two questions, yes.

11 REDIRECT EXAMINATION

12 BY MS. ABRAMS:

13 Q When you wrote this, did you have any understanding
14 of how much was spent on what -- the items that you listed
15 here? In other words, was it just like that combination
16 number or did you have any actual knowledge of how much you
17 were saying went to wife's business, personal use, mistress?

18 A No. I have no idea.

19 MS. ABRAMS: Okay. That's it. I don't have any
20 further questions.

21 MR. JONES: He can be excused.

22 THE COURT: Okay. You can be excused, sir. Thank
23 you so much for coming.

24 THE WITNESS: That's it?

1 THE COURT: Yeah, that's it.

2 MR. JONES: Hey, you got a free trip to Vegas. Be
3 excited about that.

4 THE COURT: Yeah. Go leave some money in our
5 casinos for our schools.

6 (Witness excused)

7 THE COURT: All right. Here's the deal. I don't
8 have the understanding of how -- when I can reschedule this
9 for to come back to finish the trial. So I'm going to have to
10 get Chris Tristy (ph), the JEA for Judge Hughes, to either
11 find me a day on her calendar or somewhere where -- I can't
12 just say let's come back on a so-and-so day, because I have to
13 make sure I've got a courtroom and a clerk.

14 MS. ABRAMS: Okay.

15 THE COURT: At a minimum.

16 MS. LOBELLO: We still have Wednesday afternoon, the
17 26th, is that right where we're going to do our closings?

18 MR. JONES: Yeah, but --

19 THE COURT: That's really kind of close to what's
20 going on right now, so.

21 MS. LOBELLO: Oh, okay. I'm sorry.

22 MR. JONES: Right, right. Well, I just -- I think
23 that probably needs to be vacated because --

24 THE COURT: If she's not feeling well today it's

1 going to be vacated.

2 MR. JONES: Because three to five is not going to be
3 enough time to finish her testimony anyways.

4 THE COURT: No. No. So --

5 MS. LOBELLO: We're vacating the 26th?

6 THE COURT: Let's give her some time to take a deep
7 breath. So we'll vacate that date and we will contact you
8 guys or network with you guys to find another day where I'll
9 come back and finish up the trial with you.

10 MS. ABRAMS: Okay.

11 MR. JONES: Okay.

12 THE COURT: Judge Hughes's next available full day
13 is when? It's a long time from now.

14 MR. JONES: I'm sure you could probably scout around
15 for another courtroom.

16 THE COURT: Well, that's what we'll do, but I don't
17 -- I can't do it right now.

18 MR. JONES: Right. No, I understand.

19 MS. ABRAMS: And my client has hip surgery on March
20 5th. Correct, March 5th?

21 THE DEFENDANT: Yes.

22 MS. ABRAMS: Yes. So that's --

23 THE COURT: Factor in two months there.

24 MS. ABRAMS: I don't think two months.

1 THE COURT: Are you having a replacement or
2 arthroscopic?

3 THE DEFENDANT: It's a whole total knee replacement.
4 I'm only going to take ten days off.

5 MS. ABRAMS: Hip or knee?

6 THE DEFENDANT: Hip replacement.

7 MS. ABRAMS: Oh, hip.

8 THE COURT: I've had two of them. If you can get it
9 done in ten days, bless you.

10 THE DEFENDANT: I did my other one last year --

11 THE COURT: Huh?

12 MS. ABRAMS: Well, I mean for purposes --

13 THE DEFENDANT: I did my left last year and I went
14 back after two weeks full time.

15 THE COURT: August 24th is the next day I know that
16 Judge Hughes has a day that's open as far as her courtroom is
17 concerned, but I'd like to do --

18 MR. JONES: I'm sorry, what day?

19 THE COURT: August 24th. But this is February.

20 MR. JONES: Right.

21 THE COURT: So I'm going to call -- I'm going to
22 network with Eileen, see if I can find a date --

23 MR. JONES: Right.

24 THE COURT: -- and we'll network with you guys and

1 find a comfortable time to come back.

2 MR. JONES: Oh, did we -- did 155, the updated
3 prescription log, get moved into evidence?

4 THE COURT: Yeah.

5 THE CLERK: Got it.

6 MR. JONES: Do you have 155 in?

7 MS. ABRAMS: I thought so.

8 THE CLERK: Yes.

9 MR. JONES: Okay.

10 MS. LOBELLO: Thank you.

11 MR. JONES: Just wanted to make sure before I left.

12 (COURT AND CLERK CONFER)

13 THE COURT: Oh, we just got a message. We've got
14 March 2nd.

15 MR. JONES: Another case I have with Ms. Abrams goes
16 to trial on March 4, and I probably have to spend virtually
17 every minute of every hour or every day because I just came on
18 the case after three years.

19 MS. ABRAMS: I'm in trial on March 2nd on another
20 case anyway.

21 THE COURT: Okay.

22 MS. ABRAMS: In front of Judge Pomerantz.

23 THE COURT: That's it? We will -- I'll call Eileen,
24 who is the senior judge settlement -- or senior judge --

1 MR. JONES: JEA.

2 THE COURT: -- coordinator and I'll tell her I need
3 to continue this trial, the circumstances, and that we will
4 need a courtroom and -- it may be downtown. Who knows? We'll
5 find one.

6 MS. ABRAMS: Okay.

7 THE COURT: Okay. As soon as possible. How much
8 time do you think for us to -- because are you going to need
9 to go to Slovakia for any reason?

10 MS. ABRAMS: I don't --

11 THE DEFENDANT: I don't know yet.

12 THE COURT: You don't know yet. And then the hip
13 surgery in March. So sometime after March? We're looking at
14 April?

15 MS. ABRAMS: Right. Maybe after March -- you said
16 -- two weeks after March 5th is going to be, what?

17 MR. JONES: The 19th.

18 MS. ABRAMS: Yeah. So somewhere towards the end of
19 March maybe.

20 THE COURT: I'm booked for the last two weeks in
21 March for two different venues already, so maybe the first
22 part of April? I'll do what I can do.

23 MS. ABRAMS: Yeah. Okay.

24 THE COURT: All right.

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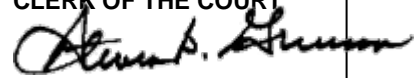
MS. ABRAMS: That sounds good.

(PROCEEDINGS CONCLUDED AT 01:31:41)

* * * * *

ATTEST: I do hereby certify that I have truly and
correctly transcribed the digital proceedings in the
above-entitled case to the best of my ability.

/s/ Lee Ann Nussbaum
LEE ANN NUSSBAUM, CET
Certified Electronic Transcriber



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Co-counsel for Defendant,
DANKA K. MICHAELS

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

THOMAS A. PICKENS, individually,
And as trustee of the LV Blue Trust,

Plaintiff,

CASE NO.: D-17-560737-D

DEPT. NO.: J

vs.

DANKA K. MICHAELS, individually,
and as trustee of the Mich-Mich Trust,

Defendant.

NOTICE OF APPEARANCE OF CO-COUNSEL FOR DEFENDANT

TO: THOMAS A. PICKENS individually, and as trustee of the LV Blue Trust, Plaintiff;

TO: JONES and LOBELLO, attorneys for Plaintiff;

TO: THE ABRAMS & MAYO LAW FIRM, attorneys for Defendant.

///

1 COMES NOW, Shawn M. Goldstein, Esq. of GOLDSTEIN LAW LTD. and hereby
2 enters his appearance as co-counsel in the above-referenced matter for and on behalf of
3 Defendant, DANKA K. MICHAELS, individually, and as trustee of the Mich-Mich
4 Trust.

5 Dated: October 15, 2020

6 GOLDSTEIN LAW LTD.

7 By: Shawn M. Goldstein
8 Shawn M. Goldstein, Esq.
9 Nevada Bar No. 009814
10 10161 Park Run Dr., STE 150
11 Las Vegas, Nevada 89145
12 Attorney for Defendant,
13 DANKA K. MICHAELS
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21

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of GOLDSTEIN LAW LTD., and that on October 16, 2020, I served a true and correct copy of the documents described herein by the method indicated below, and addressed to the following:

Documents served:

Notice of Appearance of Co-Counsel for Defendant

Persons Served:

Jennifer V. Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Boulevard, STE 100
Las Vegas, NV 89118

John D. Jones, Esq.
Jones & LoBello
10777 West Twain Ave., Ste. 300
Las Vegas, NV 89135

Manner of Service:

Via Electronic Service through the Court's electronic filing system.

Dated: October 16, 2020.

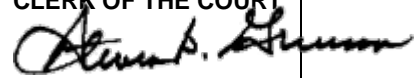
GOLDSTEIN LAW LTD.



Jeanette Lackner

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
10/26/2020 3:23 PM
Steven D. Grierson
CLERK OF THE COURT



Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

Case No.: D-17-560737-D
Department J

NOTICE OF HEARING

Please be advised that the Day 3 to be heard by Judge Steel (In Person and BJ) in the above-entitled matter is set for hearing as follows:

Date: November 18, 2020
Time: 9:00 AM
Location: Courtroom 02
Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kimberly Estala
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Kimberly Estala
Deputy Clerk of the Court

AA07686

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

Case No.: D-17-560737-D
Department J

NOTICE OF HEARING

Please be advised that the Day 3 to be heard by Judge Steel (In Person and BJ) in the above-entitled matter is set for hearing as follows:

Date: November 18, 2020

Time: 9:00 AM

Location: Courtroom 02
Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kimberly Estala
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

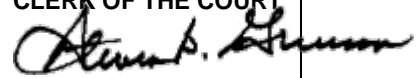
I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Kimberly Estala
Deputy Clerk of the Court

AA07687

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
11/17/2020 9:13 AM
Steven D. Grierson
CLERK OF THE COURT



Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

Case No.: D-17-560737-D
Department J

NOTICE OF HEARING

Please be advised that the Day 4 to be heard by Judge Steele in the above-entitled matter is set for hearing as follows:

Date: December 03, 2020

Time: 1:00 PM

Location:

Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kimberly Estala
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Kimberly Estala
Deputy Clerk of the Court

AA07688

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

Case No.: D-17-560737-D
Department J

NOTICE OF HEARING

Please be advised that the Day 4 to be heard by Judge Steele in the above-entitled matter is set for hearing as follows:

Date: December 03, 2020

Time: 1:00 PM

Location:

Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kimberly Estala
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

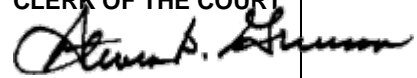
I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Kimberly Estala
Deputy Clerk of the Court

AA07689

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
11/25/2020 4:49 PM
Steven D. Grierson
CLERK OF THE COURT



Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

Case No.: D-17-560737-D
Department J

NOTICE OF HEARING

Please be advised that the Day 4 to be heard by Judge Steele in the above-entitled matter is set for hearing as follows:

Date: January 22, 2021

Time: 9:00 AM

Location:

Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kimberly Estala
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Kimberly Estala
Deputy Clerk of the Court

AA07690

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

Case No.: D-17-560737-D
Department J

NOTICE OF HEARING

Please be advised that the Day 4 to be heard by Judge Steele in the above-entitled matter is set for hearing as follows:

Date: January 22, 2021

Time: 9:00 AM

Location:

Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kimberly Estala
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Kimberly Estala
Deputy Clerk of the Court

AA07691

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

January 22, 2021

D-17-560737-D Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

January 22, 2021 9:00 AM Non-Jury Trial

HEARD BY: Senior Judge Steele**COURTROOM:** Phoenix Building**COURT CLERK:** Nicole Hutcherson**PARTIES:**

Danka Michaels, Defendant, Counter Jennifer Abrams, Attorney, present
Claimant, not present
Thomas Pickens, Plaintiff, Counter Defendant, John Jones, Attorney, present
not present

JOURNAL ENTRIES

- In the interest of public safety due to the Coronavirus pandemic, Mr. Jones, Ms. Lobello, Ms. Abrams, and Mr. Goldstein were present via VIDEO CONFERENCE through the BlueJeans application.

Mr. Goldstein stated Defendant had to have emergency surgery and is unable to proceed with trial today.

Discussion regarding Defendant's medical condition and resetting Day 4 of the trial and how it related to the Parties civil action.

COURT NOTED the exhibits from Day 3 of the hearing held in February 2020 will need to be located and be available at the next date set.

COURT ORDERED the following:

PRINT DATE:	01/22/2021	Page 1 of 2	Minutes Date:	January 22, 2021
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

AA07692

1. Court RESETS Day 4 of TRIAL for March 5, 2021 at 9:00 a.m. If needed, March 12, 2021 at 9:00 a.m. has been scheduled for Day 5 of Trial.

INTERIM CONDITIONS:

FUTURE HEARINGS:

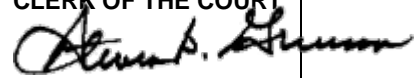
PRINT DATE:	01/22/2021	Page 2 of 2	Minutes Date:	January 22, 2021
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

AA07693

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
1/22/2021 11:58 AM
Steven D. Grierson
CLERK OF THE COURT



Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

Case No.: D-17-560737-D
Department J

NOTICE OF HEARING

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

Date: March 05 and March 12, 2021

Time: 9:00 AM

Location:

Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kimberly Estala
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Kimberly Estala
Deputy Clerk of the Court

AA07694

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

Case No.: D-17-560737-D
Department J

NOTICE OF HEARING

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

Date: March 05 and March 12, 2021

Time: 9:00 AM

Location:

Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

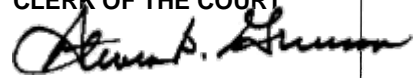
By: /s/ Kimberly Estala
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Kimberly Estala
Deputy Clerk of the Court

AA07695



NCOA
JONES & LOBELLO
Michele LoBello
Nevada Bar No. 5527
John D. Jones, Esq.
Nevada Bar No. 6699
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Telephone Number: 702-318-5060
Email Address: lobello@joneslobello.com
jones@joneslobello.com
Attorneys for Plaintiff,
THOMAS A. PICKENS

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

THOMAS A. PICKENS, individually,
and as trustee of the LV Blue Trust

CASE NO.: D-17-560737-D
DEPT. NO.: J

Plaintiff,

vs.

DANKA K. MICHAELS, individually,
and as trustee of the Mich-Mich Trust,

Defendant.

NOTICE OF CHANGE OF FIRM ADDRESS

PLEASE TAKE NOTICE that, effective February 1, 2021, JONES &
LOBELLO, attorneys for Plaintiff, has a new office address as follows:

JONES & LOBELLO
9900 Covington Cross, Suite 210A
Las Vegas, Nevada 89144

Please note our new email addresses:

John D. Jones: jones@joneslobello.com

Michele LoBello: lobello@joneslobello.com

1 Delwyn Webber: webber@joneslobello.com

2 Shannon M. Wilson: wilson@joneslobello.com

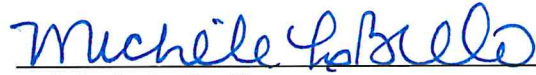
3 Heather Ritchie: heather@joneslobello.com

4 Mariella Dumbrique: mariella@joneslobello.com

5 Please direct all future pleadings, papers, correspondence, etc. to the above-
6 referenced address. The firm's telephone number and facsimile number remain
7 unchanged.
8

9 DATED this 27TH day of January, 2021.

10 JONES & LOBELLO

11 

12 Michele LoBello

13 Nevada Bar No. 5527

14 John D. Jones, Esq.

15 Nevada Bar No. 6699

16 10777 West Twain Avenue, Suite 300

17 Las Vegas, Nevada 89135

18 Attorneys for Plaintiff,

19 THOMAS A. PICKENS
20
21
22
23
24
25
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27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of JONES & LOBELLO and that on the 27 day of January 2021, I caused the above and foregoing document entitled NOTICE OF CHANGE OF FIRM ADDRESS to be served as follows:

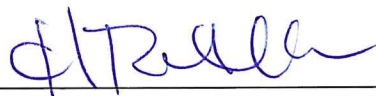
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☐ by email to

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Jennifer V. Abrams, Esq.
Abrams & Mayo
6252 S. Rainbow Blvd., Suite 100
Las Vegas, NV 89118
Email: jvagroup@theabramslawfirm.com
Attorney for Defendant,
Danka K. Michaels

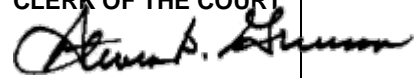
Shawn M. Goldstein, Esq.
Goldstein Law Ltd.
10161 West Park Run Drive, Suite 150
Las Vegas, NV 89145
Email: shawn@goldsteinlawltd.com
Co-Counsel for Defendant,
Danka K. Michaels

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.


An Employee of Jones & LoBello

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
2/23/2021 8:14 AM
Steven D. Grierson
CLERK OF THE COURT



Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

Case No.: D-17-560737-D
Department J

NOTICE OF HEARING

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

Date: March 05, 2021 and March 12, 2021

Time: 9:00 AM

Location: Phoenix Building 11th Floor 110
Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kimberly Estala
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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By: /s/ Kimberly Estala
Deputy Clerk of the Court

AA07699

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Thomas A. Pickens, Plaintiff

vs.

Danka K. Michaels, Defendant.

Case No.: D-17-560737-D

Department J

NOTICE OF HEARING

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

Date: March 05, 2021

Time: 9:00 AM

Location: Phoenix Building 11th Floor 110
Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kimberly Estala
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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By: /s/ Kimberly Estala
Deputy Clerk of the Court

AA07700

Divorce - Complaint

COURT MINUTES

March 05, 2021

D-17-560737-D Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

March 05, 2021 09:00 AM Non-Jury Trial

HEARD BY: Steel, Dianne **COURTROOM:** Phoenix Building 11th Floor 110

COURT CLERK: Cunningham, Michelle; Varona, Leo

PARTIES PRESENT:

Thomas A. Pickens, Counter Defendant, Plaintiff, Present John D. Jones, Attorney, Present
Michele Touby Lobello, Attorney, Present

Danka K. Michaels, Counter Claimant, Defendant, Present Jennifer V. Abrams, Attorney, Present
Shawn M. Goldstein, Attorney, Present

JOURNAL ENTRIES

NON-JURY TRIAL (DAY 3)

COURT CLERKS: Leo Varona, Michelle Cunningham (mlc)

Attorney Abrams appeared via BLUEJEANS. All other parties appeared IN PERSON.

Paralegal, Stephanie Stolz, also present with Defendant.

Housekeeping issues regarding the last day of trial were dealt with. Attorney Goldstein addressed a discussion that was had whether not Plaintiff was still pursuing a marriage claim or not and whether or not Defendant waived their counterclaims. Further discussion.

Witnesses and Testimony presented. (See Worksheets)

Argument regarding presenting and admitting Defendant's Exhibit O. Court allowed the exhibit to be introduced.

Argument regarding Plaintiff's Exhibit 93 which was previously admitted into evidence. Court set aside it's previous ruling and Bates stamps 6233- 6235 and 6237 within the exhibit shall be SET ASIDE.

Attorney Goldstein offered 2 pages of Defendant's Exhibit E, Attorney Jones objected, Court denied admitting the exhibit so Attorney Goldstein withdrew his offering of the exhibit.

Discussion regarding how many more witnesses, how much more time counsel thinks they will need and closing arguments.

COURT ORDERED the matter shall be CONTINUED to 3/12/2021 at 9:00 a.m. for Day 4 and 4/2/2021 at 9:00 a.m. for Day 5.

INTERIM CONDITIONS:**FUTURE HEARINGS:**

Mar 12, 2021 9:00AM Non-Jury Trial
Phoenix Building 11th Floor 110 Steel, Dianne

Divorce - Complaint

COURT MINUTES

March 05, 2021

D-17-560737-D Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

March 05, 2021 09:00 AM Non-Jury Trial

HEARD BY: Steel, Dianne **COURTROOM:** Phoenix Building 11th Floor 110

COURT CLERK: Cunningham, Michelle; Varona, Leo

PARTIES PRESENT:

Thomas A. Pickens, Counter Defendant, Plaintiff, Present	John D. Jones, Attorney, Present
	Michele Touby Lobello, Attorney, Present
Danka K. Michaels, Counter Claimant, Defendant, Present	Jennifer V. Abrams, Attorney, Present
	Shawn M. Goldstein, Attorney, Present

JOURNAL ENTRIES

NON-JURY TRIAL (DAY 3)

COURT CLERKS: Leo Varona, Michelle Cunningham (mlc)

Attorney Abrams appeared via BLUEJEANS. All other parties appeared IN PERSON.

Paralegal, Stephanie Stolz, also present with Defendant.

Housekeeping issues regarding the last day of trial were dealt with. Attorney Goldstein addressed a discussion that was had whether not Plaintiff was still pursuing a marriage claim or not and whether or not Defendant waived their counterclaims. Further discussion.

Witnesses and Testimony presented. (See Worksheets)

Argument regarding presenting and admitting Defendant's Exhibit O. Court allowed the exhibit to be introduced.

Argument regarding Plaintiff's Exhibit 93 which was previously admitted into evidence. Court set aside it's previous ruling and Bates stamps 6233- 6235 and 6237 within the exhibit shall be SET ASIDE.

Attorney Goldstein offered 2 pages of Defendant's Exhibit E, Attorney Jones objected, Court denied admitting the exhibit so Attorney Goldstein withdrew his offering of the exhibit.

Discussion regarding how many more witnesses, how much more time counsel thinks they will need and closing arguments.

COURT ORDERED the matter shall be CONTINUED to 3/12/2021 at 9:00 a.m. for Day 4 and 4/2/2021 at 9:00 a.m. for Day 5.

INTERIM CONDITIONS:**FUTURE HEARINGS:**

Printed Date: 3/6/2021

Page 1 of 2

Minutes Date:

March 05, 2021

Notice: Journal Entries are prepared by the courtroom clerk and are not the official record of the Court.

AA07703

Mar 12, 2021 9:00AM Non-Jury Trial
Phoenix Building 11th Floor 110 Steel, Dianne

Divorce - Complaint

COURT MINUTES

March 12, 2021

D-17-560737-D Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

March 12, 2021 09:00 AM Non-Jury Trial

HEARD BY: Steel, Dianne **COURTROOM:** Phoenix Building 11th Floor 110

COURT CLERK: Cunningham, Michelle; Varona, Leo

PARTIES PRESENT:

Thomas A. Pickens, Counter Defendant, Plaintiff, Present John D. Jones, Attorney, Present
Michele Touby Lobello, Attorney, Present

Danka K. Michaels, Counter Claimant, Defendant, Present Jennifer V. Abrams, Attorney, Present
Shawn M. Goldstein, Attorney, Present

JOURNAL ENTRIES

NON-JURY TRIAL (DAY 4)

COURT CLERKS: Leo Varona, Michelle Cunningham (mlc)

Attorney Abrams and Attorney Shannon Wilson appeared via BLUEJEANS. All other parties appeared IN PERSON.

Attorney Shannon Wilson, Bar #13988, also present with Plaintiff.

Paralegal, Stephanie Stolz, also present with Defendant.

Discussion regarding the Briefing schedule.

Witnesses and Testimony presented. (See Worksheets)

Attorney Goldstein PUBLISHED Thomas Pickens Deposition IN OPEN COURT.

Matter trailed for morning break.

Matter recalled.

Matter trailed for lunch.

Matter recalled.

Argument regarding the transcript that was filed into the case on 2/13/2020.

Matter trailed for Attorney Goldstein to consult with co-counsel.

Matter recalled.

COURT ORDERED the matter shall be CONTINUED to 4/2/2021 at 9:00 a.m.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Apr 02, 2021 9:00AM Non-Jury Trial
Phoenix Building 11th Floor 110 Steel, Dianne

Divorce - Complaint

COURT MINUTES

April 02, 2021

D-17-560737-D Thomas A. Pickens, Plaintiff
vs.
Danka K. Michaels, Defendant.

April 02, 2021 09:00 AM Non-Jury Trial

HEARD BY: Steel, Dianne COURTROOM: Phoenix Building 11th Floor 116

COURT CLERK: Cunningham, Michelle; Varona, Leo

PARTIES PRESENT:

Thomas A. Pickens, Counter Defendant, Plaintiff, Present John D. Jones, Attorney, Present
Michele Touby Lobello, Attorney, Present

Danka K. Michaels, Counter Claimant, Defendant, Present Jennifer V. Abrams, Attorney, Present
Shawn M. Goldstein, Attorney, Present

JOURNAL ENTRIES

NON-JURY TRIAL (DAY 5)

COURT CLERKS: Leo Varona, Michelle Cunningham

Attorney Abrams appeared via BLUEJEANS. All other parties appeared IN PERSON.

Paralegal, Stephanie Stolz, also present with Defendant.

Exhibits and Testimony presented. (See worksheets)

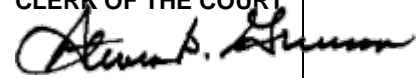
Attorney Jones called Defendant for a rebuttal witness, however, Attorney Goldstein objected. Further argument. Court granted the rebuttal witness.

Discussion regarding presentation of closing arguments. Court stated if it needs further instruction from the parties, the Court will have the parties come in to make limited presentation on any questions the Court may have. Written closing arguments shall be submitted. If the Court is unclear on a particular issue from the closing arguments, The Court may ask for a limited oral argument to obtain any necessary information. The closing arguments shall have no page limitation but the rebuttal to opposing party's closing arguments will be limited to fifteen (15) pages.

COURT ORDERED Attorney Jones' CLOSING BRIEF shall be due by 04/16/2021. Attorney Goldstein shall submit Defendant's CLOSING BRIEF by 04/30/2021 and Attorney Jones shall have his final REBUTTAL submitted by 05/07/2021. Court will issue a written decision

INTERIM CONDITIONS:

FUTURE HEARINGS:



BREF

Jennifer V. Abrams, Esq.
Nevada State Bar Number: 7575
THE ABRAMS & MAYO LAW FIRM
6252 South Rainbow Blvd., Suite 100
Las Vegas, Nevada 89118
T: (702) 222-4021; F: (702) 248-9750
Email: JVAGroup@TAMLF.com
Attorney for Defendant

Shawn M. Goldstein, Esq.
Nevada State Bar Number: 9814
GOLDSTEIN LAW LTD.
10161 W. Park Run Dr., Suite 150
Las Vegas, Nevada 89145
T: (702) 919.1919; F: (702) 637.4357
Email: shawn@goldsteinlawltd.com
Co-counsel for Defendant

Eighth Judicial District Court - Family Division
Clark County, Nevada

THOMAS A. PICKENS, individually, and as trustee of the LV Blue Trust,)	Case No.: D-17-560737-D
)	Department: J
Plaintiff,)	
vs.)	Dates of Trial: February 14, 2020
)	February 21, 2020
DANKA K. MICHAELS,)	March 5, 2021
individually, and as trustee of the)	March 12, 2021
Mich-Mich Trust,)	April 2, 2021
)	
Defendant.)	Time of Trial: 9:00 a.m.

DEFENDANT'S EDCR 7.27 BRIEF

I. Relevant Facts

The following undisputed facts are crucial to evaluating Tom's
claims:

1 -Tom has been married and divorced twice. Danka was married
2 and divorced once. After her divorce, Danka decided never to get
3 married again.

4 -Tom and Danka met in or around 2000 when Tom was
5 experiencing cardiac issues and still married to his second wife. Tom
6 pursued Danka heavily and they eventually established a relationship.

7 -Tom had no assets. He had debt. Danka paid off Tom's debt
8 during the early years of their relationship.

9 -There were periods of time when Tom was not employed at all.
10 During such times, Danka provided for all of Tom's financial support.
11 When he was employed, Danka still contributed to Tom's financial
12 support. Danka gave Tom \$30,000 to purchase a truck after his vehicle
13 broke down.

14 -Tom and Danka participated in a commitment ceremony in April
15 2002 but they were never legally married.

16 -In 2002, Tom and Danka founded Bluepoint Development &
17 Construction, Inc. Danka provided all of the seed money and other
18 tangible things necessary for the entity to get off the ground. She was a
19 50% owner of the company formed on July 1, 2002. Tom was the
20 resident agent. Tom failed to file the annual report with the Nevada
21 Secretary of State when it came due on July 31, 2005, the entity fell into

1 default status, and ultimately the entity was permanently revoked. Tom
2 formed a new entity, Bluepoint Development, Inc. in his name alone. He
3 transferred all of the assets from the jointly owned entity into the entity
4 solely in his name, without any payment to Danka.

5 -Tom and Danka's intimate relationship ended in 2004.

6 -By 2004, Tom's critical medical issues had resolved. His chronic
7 medical issues were being handled by his various specialists. Danka was
8 merely providing refills and occasionally treating a cold or flu.

9 -Danka did not wish to be Tom's Primary Care Provider. Tom
10 refused to go elsewhere. When Roberto Carillo, A.P.R.N., F.N.P. joined
11 Blue Point Medical in 2008, Carillo became Tom's Primary Care
12 Provider specifically to relieve Danka from that role. As a licensed
13 A.P.R.N., Mr. Carillo had the authority to treat patients and to prescribe
14 medication (including narcotics) completely independent of any doctor
15 (including Danka).

16 -For the entire duration of the relationship, the parties each filed
17 their taxes as single, unmarried individuals each and every year. Every
18 year Tom signed his tax return and Form 8879 acknowledging under
19 oath each time that he was a single man.

20 / / /

21 / / /

1 -For the vast majority of the relationship, Danka paid a “salary” to
2 Tom through her medical practice, even though Tom wasn’t working in
3 her office.

4 -For the majority of the relationship, Danka funded a 401K for
5 Tom through her medical practice, even though Tom wasn’t working in
6 her office.

7 -The Queen Charlotte residential property was purchased with
8 Danka’s separate property funds during a time when Tom had been
9 unemployed.

10 -The Lowe residential rental property was purchased with Danka’s
11 separate property funds during a time when Tom had been unemployed.

12 -The Patience One commercial property was purchased with
13 Danka’s separate property funds.

14 -Tom took charge of the paperwork associated with the closings on
15 the purchases of property because Danka was working long hours. The
16 two residential properties were titled jointly with rights of survivorship;
17 the commercial property was held in the name of Patience One, LLC.
18 Both parties’ trusts were members of Patience One.

19 -Danka’s estate planning documents all indicate that she is a
20 single, unmarried woman. All of her assets were left to her son and
21 grandson.

1 -Tom's estate planning documents all indicate he is a single,
2 unmarried man. All assets titled in his name (funded by Danka) were left
3 to Danka's son and grandson, even though Tom has other family
4 members and other people in his life that he could have named as
5 beneficiaries of his estate.

6 -Roberto Carillo, A.P.R.N., F.N.P. substantially took over primary
7 care and prescribing refills for Tom beginning in or about 2008 or 2009.

8 -Tom began a relationship with Stacey Mittelstadt and began living
9 with her in Florida in a home that he rented from her father no later
10 than 2015.

11 -The final separation of Tom and Danka occurred more than one
12 year later, in September 2016. The parties had been living separate and
13 apart for over a year. The parties had already begun closing jointly titled
14 accounts. Tom was expecting a child with his live-in girlfriend, Stacey.
15 Tom voluntarily flew from Florida to Las Vegas and stayed at a hotel. He
16 chose not to retain independent counsel despite being advised to do so
17 and executing a waiver of counsel informing him of his right to do so. He
18 paid Shannon Evans, Esq., to prepare and record the transfer documents
19 wherein Tom signed over title to the two residential properties and the
20 commercial property to Danka. Tom was coherent, lucid, and executed
21 the documents voluntarily.

1 -Tom left the relationship with several vehicles, a multi-million-
2 dollar business, a 401K worth over \$200,000, various accounts with
3 hundreds of thousands of dollars, personal property and furniture,
4 furnishings, and jewelry, vastly more than what he brought to the
5 relationship.

6 -From January 2016 to December 2016, there was only one 30-
7 day prescription prescribed by Danka to Tom in May, when she was
8 cross-covering for Mr. Carillo. Undisputedly, there was no treatment by
9 Danka of Tom in the four months leading up to the signing of the
10 documents or when the documents were executed. The last prescription
11 refill Tom obtained from Danka was in January 2017 to give him three
12 months to establish a relationship with a Primary Care Provider other
13 than Mr. Carillo. The three-month supply would have been exhausted by
14 April 2017.

15 -In May 2017, Tom purchased a home on Blue Mesa as a “single,
16 unmarried man.” He executed multiple documents wherein he made the
17 representation that he was a single man, including, vesting instructions,
18 the loan application he executed in accordance with 18 U.S.C. Section
19 1001 (the general federal false statements statute),¹ and the deed.

20 ¹ Directly above Tom’s signature the loan application states, “I/we fully
21 understand that it is a Federal crime punishable by fine or imprisonment, or both, to
knowingly make any false statements concerning any of the above facts as applicable
under the provisions of Title 18, United States Code, Section 1001, et seq.”

1 -Between September 2016 and October 2017, both parties followed
2 through with the terms of the parties' agreements. Tom vacated the
3 Queen Charlotte property, transferred the leases and control of Patience
4 One to Danka, and paid rent each month for the space he occupied in the
5 Patience One commercial building.

6 -Danka caused the Patience Once commercial building to be
7 refinanced, removing Tom's name from the obligations thereon. Danka
8 invested funds to repair and improve the property and to pay down the
9 debt on the property. Danka also found renters to occupy the property.

10 -On October 24, 2017 (14 months after the transfers and final
11 separation), Tom filed a *Complaint for Divorce and for Set Aside of*
12 *Deeds of Real Property and Assignment of LLC Interest*. His claims for
13 relief were (1) Divorce; (2) Set Aside of Deeds of Real Property and
14 Assignment of LLC Interest. Tom attached the Church Certificate from
15 the commitment ceremony to his Complaint for Divorce.

16 -On March 22, 2018, Tom filed a *First Amended Complaint for*
17 *Divorce, for Set Aside of Deeds of Real Property and Assignment of LLC*
18 *Interest, and for Alternative Equitable Relief Under the Putative Spouse*
19 *Doctrine*. His claims for relief were (1) Divorce; (2) Set Aside of Deeds of
20 Real Property and Assignment of LLC Interest; (3) Equitable Relief
21 Under the Putative Spouse Doctrine.

1 -On October 15, 2018, Tom filed a *Second Amended Complaint for*
2 *Equitable Relief Under (1) The Putative Spouse Doctrine and (2)*
3 *Pursuant to Express and/or Implied Agreement to Hold Property as if*
4 *the Parties Were Married under Michoff; and to Set Aside Deeds of*
5 *Real Property and Assignment of LLC Interest.* Tom's claims for relief
6 were (1) Equitable Relief Under the Putative Spouse Doctrine; (2)
7 Equitable Relief Under Express and/or Implied Contract to Acquire and
8 Hold Property as if Married; (3) Set Aside of Deeds of Real Property and
9 Assignment of LLC Interest. Tom dropped his cause of action for
10 "divorce."

11 -In each of his three Complaints, Tom consistently alleged that he
12 executed the deeds and transfer documents "with the sole intention of
13 ameliorating Michaels' rage and restoring marital peace."

14 **II. Law and Argument**

15 **1. There can be no finding of a "marriage" in this case.**

16 We already know that there is no legal marriage on record or
17 recognized between these parties in Slovakia. As a matter of comity,²
18 Nevada's recognition or non-recognition of a purported foreign marriage
19 depends on its legality in the foreign country; if Slovakia does not

20 ² "This doctrine is a principle of courtesy by which 'the courts of one
21 jurisdiction may give effect to the laws and judicial decisions of another jurisdiction
out of deference and respect.'" *Gonzales-Alpizar v. Griffith*, 130 Nev. 10, 317 P. 3d
820 (2014), quoting *Mianecki v. Second Judicial Dist. Court*, 99 Nev. 93, 98, 658
P.2d 422, 424-25 (1983).

1 recognize a valid marriage between the parties, Nevada should not do so
2 either.³

3 Internal Nevada law is not directly relevant, but there could be no
4 finding of a valid marriage between Tom and Danka under Nevada law
5 or Slovakian law because there was no intent to form a legal marriage. In
6 both jurisdictions, the mutual intent of the parties is of critical
7 importance.⁴ As succinctly put by various courts, “It is not legally
8 possible to get legally married by accident.”⁵

9 Since before Nevada became a State, the ***intention*** of the parties
10 has been the most important single consideration to whether they did, in
11 fact, “get married” no matter what documents exist (or not). The
12 Territorial Legislature declared as public policy: “That marriage, so far
13 as its validity in law is concerned, is a civil contract, to which the consent

14 ³ This doctrine is nearly universal, as recognized in each iteration of the
15 RESTATEMENT OF CONFLICT OF LAWS since 1934, recognized as authoritative by the
16 Nevada Supreme Court in its adoption of the RESTATEMENT (THIRD) OF FOREIGN
17 RELATIONS LAW OF THE UNITED STATES in *Gonzales-Alpizar v. Griffith*, 130 Nev. 10,
18 317 P. 3d 820 (2014); *see also* 1978 HAGUE CONVENTION ON CELEBRATION AND
19 RECOGNITION OF THE VALIDITY OF MARRIAGES; Ann Estin, *Marriage and Divorce*
20 *Conflicts in International Perspective*, 27 DUKE JOURNAL OF COMPARATIVE &
21 INTERNATIONAL LAW 485 (2017), reprinted in 16 I.L.M. 18-21 (1977), 25 AM. J. COMP.
L. 399 (1977). It is for this reason that Nevada recognizes common-law marriages
entered into in other states, despite having banned them by statute here in 1943. *See*
NRS 122.010.

⁴ *See e.g., In re Marriage of Keig*, 59 Cal. App. 2d 812, 140 P.2d 163) (Dist. Ct.
App. 1943) (applying Nevada law in holding that “mutual consent” is an absolute
requirement).

⁵ *See, e.g., Jennings v. Hurt*, 160 A.D.2d 576, 554 N.Y.S.2d 220, 220 (1990)
 (“One cannot be married unwittingly or accidentally.”)

1 of the parties capable in law of contracting, is essential.”⁶ That
2 expression of public policy has remained the guiding principle in matters
3 of marriage from then until now.⁷

4 In other words, the “essential element” is ***intent*** – an overriding
5 critical requirement such that, if present, it can overcome virtually any
6 defect in form or procedure, including the lack of witnesses,⁸ an
7 ineligible officiant,⁹ or even the absence of a license.¹⁰ If there is ***not*** an
8 intention or capacity to be married, however, *no* rite, act, or piece of
9 paper can make a party involuntarily married,¹¹ as the court in *Callen*

10 ⁶ Laws of the Territory of Nevada, Ch. 33, § 1 (1861).

11 ⁷ See NRS 122.010.

12 ⁸ *Barnett v. Hudspeth*, 211 Cal. App. 2d 310, 27 Cal. Rptr. 140 (1962).

13 ⁹ NRS 122.090. Intent is paramount; the marriage is valid so long as the
14 parties seeking to be married both believed in good faith that they were lawfully
15 married.

16 ¹⁰ See, e.g., *Fryar v. Roberts*, 57 S.W.3d 727 (Ark. 2001); *Rivera v. Rivera*, ____
17 P.3d ____ (N.M. Ct. App., No. 29511, Aug. 13, 2010); *Carabetta v. Carabetta*, 438 A.
18 2d 109 (Conn. 1980); *DePotty v. DePotty*, 295 S.W.2d 330 (Ark. 1956); *Haderaski v.*
19 *Haderaski*, 112 N.E.2d 714 (Ill. 1953); *Feehley v. Feehley*, 99 A. 663 (Md. 1916);
20 *Johnson v. Johnson*, 112 S.E.2d 647 (S.C. 1960). See also *State v. Zichfeld*, 23 Nev.
21 304, 313-14, 46 P. 802, 805 (1896) (“Our statute does not expressly, nor by
necessary implication, as we view it, render a marriage had in disregard of its
prescribed formalities void.”)

18 ¹¹ See, e.g., **Error! Main Document Only.** *In re JKNA*, 454 P.3d 642, 650
19 (Mont. 2019) (discussing how the status of being married requires a deliberate
20 agreement to be legally bound at a particular time, “because ‘marriage cannot be said
21 to steal upon them unawares.’ In other words, one ‘cannot become married
unwittingly or accidentally’ and the ‘consent required must be seriously given with
the deliberate intention that marriage result....’”); *Callen v. Callen*, 620 S.E.2d 59
(SC 2005); *Renshaw v. Heckler*, 787 F.2d 50 (2nd Cir. 1986); *McNee v. McNee*, 49
Nev. 90, 237 P. 534 (1925) (regardless of having pulled a license and gone through a
ceremony, where the evidence showed that one participant was intoxicated and did

1 explained:

2 A party need not understand every nuance of marriage or
3 divorce law, but he must at least know that his actions will
4 render him married as that word is commonly understood.
5 If a party does not comprehend that his “intentions and
6 actions” will bind him in a “legally binding marital
7 relationship,” then he lacks intent to be married. A lack of
8 intent to be married overrides the presumption of
9 marriage....

10 In fact, it was not until 1943 that the Legislature added the
11 requirement of some form of solemnization in **addition** to proof of
12 certain consent/intent to create a lawful marriage: “Consent alone will
13 not constitute marriage; it must be followed by solemnization as
14 authorized and provided by this chapter.”¹²

15 The grounds for annulment of an apparent marriage when there
16 was not an actual intention to marry is mistake, either mutual or
17 unilateral, either of which is “grounds for declaring a contract void in
18 equity.”¹³

19 According to the Nevada Supreme Court in *Vaile I*,¹⁴ a trial court
20 ruling on a party’s intent is to look for **behavior** that is compatible or

21 not therefore have the requisite intent to marry, the marriage would be annulled
upon request).

¹² NRS 122.010(1).

¹³ NRS 125.350. *See also McNee v. McNee*, 49 Nev. 90, 237 P.534 (1925); *Smith v. Smith*, 68 Nev. 10, 226 P.2d 279 (1951).

¹⁴ *Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002).

1 incompatible with a specific intention. Here, Danka made clear to Tom
2 that she had no intention of ever getting married again; the reason her
3 relationship with Tom continued beyond Tom's initial courtship was
4 Tom's representation to her that he *shared* the same intention not to
5 ever be legally married again.

6 The mutual intention ***not*** to be legally married – only to pretend a
7 marriage existed for social purposes – is evident from the parties'
8 conduct over the past 18 years, starting when they intentionally skirted
9 the legal requirements for a valid marriage when they arranged the
10 ceremony in Slovakia. While they referred to each other as “husband”
11 and “wife” in social settings, in areas where the truth about their legal
12 marital status was important, they both acknowledged, represented, and
13 swore under oath that they were single, unmarried persons.

14 What they did at the conclusion of their relationship in 2016 is
15 further evidence that they ***knew*** they were not legally married – deeds
16 were corrected to reflect that they were single, unmarried individuals,
17 they each took assets and debts as they deemed equitable, and they
18 parted ways without filing for divorce as they both recognized that no
19 “divorce” is necessary for unmarried persons. Tom then “started his new
20 life” with the purchase of the Blue Mesa home, solely in his name,
21 correctly identifying himself on title as a “single, unmarried man.”

1 Tom and his business, Bluepoint Development, paid rent to
2 Patience One (Danka) for occupying space in the building. It wasn't until
3 14 months after the break-up that Tom stopped paying rent, Danka
4 initiated eviction proceedings, and Tom filed for "divorce."

5 There is overwhelming evidence that there was never an intention
6 by the parties to legally marry. Therefore, no marriage can be found
7 under NRS 122.010 because "the consent of the parties capable in law of
8 contracting is essential" and there was no such consent.¹⁵

9 And if Tom decides at this late date to protest that *he* had some
10 secret intent to "be married" it would not make any difference; the
11 courts that have reviewed such situation have made it clear that "[I]f one
12 party to a purported common law marriage believes she is married, but
13 the other party does not, a marriage cannot be established."¹⁶

14 Tom should be judicially estopped from alleging there was a valid
15 marriage because he withdrew his action for "divorce" in his Second
16 Amended Complaint acknowledging that there was no legal marriage.¹⁷
17 In reliance upon Tom's Second Amended Complaint, Danka did not

18 ¹⁵ Intent to marry of both parties is likewise a requirement for a valid marriage
19 under Slovakian law.

20 ¹⁶ *Gill v. Van Nostrand*, 206 A.3d 869, 881 (D.C. App. 2019), quoting *Hogsett v.*
Neale, No. 17CA1484, 2018 Colo. App. LEXIS 1820, at *20, 2018 COA 176 (Colo.
21 App. 2018).

¹⁷ *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262 (2002).

1 prepare to call her expert witness, Daniela Jezova, LL.M., PhD. to testify
2 that there was no legal marriage.

3 **2. Tom cannot be a “putative spouse” under Nevada law,**
4 **either for purposes of alimony or for purposes of**
5 **property division.**

6 A litigant claiming to be a “putative spouse” must have
7 participated in a marriage ceremony in “good faith,” believing at all
8 times that they were validly, legally married.¹⁸ That did not happen here.

9 In *Williams*, both parties believed they were legally married and,
10 had Wife’s divorce decree from her prior spouse been entered, their
11 marriage *would* have been valid. It wasn’t until the time of divorce that
12 the parties learned Wife was not legally divorced from her prior spouse
13 at the time of marriage.

14 On those facts, the Nevada Supreme Court adopted the putative
15 spouse doctrine for division of assets and debts but rejected it as a basis
16 for alimony. While the Nevada Supreme Court did leave open the
17 question of whether the putative spouse doctrine could serve as the basis
18 of an equitable alimony claim when there is a showing of bad faith or
19 fraud, Tom **cannot** be found to be a “putative spouse” under Nevada
20 law for multiple reasons.

21 First the *Williams* court adopted the putative spouse doctrine “in

¹⁸ *Williams v. Williams*, 120 Nev. 559, 97 P.3d 1124 (2004).

1 annulment proceedings for purposes of property division” when a
2 “marriage is void due to a **prior** legal impediment.” [Emphasis added].
3 This is not an annulment case, and this is **not** a case where the parties
4 tried to be lawfully married but had some kind of technical “prior legal
5 impediment.” Here, there was *no* intent to be legally married which is
6 the reason the parties intentionally skirted the requirements for legal
7 marriage in Bratislava, Slovakia. Thus, this is not a case where the
8 marriage is void due to a prior legal impediment. It was not a valid or
9 legal marriage because it was never intended to be such and the
10 requirements for a legal marriage were deliberately omitted by these
11 parties.

12 Tom acknowledged in writing, under oath, year after year, that the
13 parties were not legally married by preparing and signing U.S. Federal
14 Income Tax Returns as a “single, unmarried” individual. Furthermore,
15 he prepared and signed off on his estate planning documents as a single
16 – not a married – man. His actions after the parties parted ways is
17 further evidence that he knew there was no marriage.

18 Tom understood in 2016 that a divorce would not be necessary to
19 divide assets, so he paid Attorney Shannon Evans to prepare the transfer
20 documents. He knowingly and voluntarily signed off on the deeds and
21 related documents to effectuate the transfer of assets and then he and

1 Danka went their separate ways. Months later, Tom purchased real
2 property as a single, unmarried man.

3 More than a year after the final breakup, Tom falsely alleged that
4 he and Danka were married in a purported “*Complaint for Divorce*.”
5 The contents of that *Complaint for Divorce* are very telling as to what
6 Tom “knew” at the time he falsely alleged there was a marriage. In the
7 thousands of divorce filings, it is rare for a Marriage Certificate to be
8 attached to a Complaint for Divorce and for allegations that the marriage
9 was “valid” to be included in the averments.

10 And according to Tom himself, it was only after Tom allegedly
11 learned of possible *tax* consequences from the transfer of assets between
12 ***unmarried people*** that he decided to pursue his bogus claim against
13 Danka – because transfers of assets between ***married*** people do not
14 create taxable events.

15 As the evidence clearly establishes that Tom was well aware at all
16 times that the parties were not legally married, Tom’s cause of action for
17 equitable relief under the putative spouse doctrine cannot stand and
18 must be dismissed.

19 Under Nevada law, Tom cannot be found to be a “putative spouse”
20 as the facts of this case fall squarely ***outside*** the scope of the putative
21 spouse doctrine. Accordingly, Tom’s claim for spousal support, as well as

1 his claim for property division under the putative spouse doctrine,
2 should be denied.

3 Even if this Court does find that there was a marriage (there was
4 no marriage) or that Tom was a putative spouse (he was not), NRS
5 123.080 permits the spouses to alter their legal relations as to property.
6 Nevada and neighboring jurisdictions have held that disputes regarding
7 the construction and enforcement of settlement agreements are
8 governed by state contract law.¹⁹ The Nevada Supreme Court has
9 unequivocally held that, “the evidence that the parties had intended
10 presently to be bound should in our view, be convincing and subject to
11 no other reasonable interpretation.”²⁰ The Court further upheld an
12 **unwritten** mediation agreement and was upheld on appeal.²¹

13 Here, the parties’ agreement had been fully performed before Tom
14 filed his *Complaint for Divorce* – he took his assets, Danka took her
15 assets, Tom liquidated the 401K and purchased a home solely in his
16 name, Danka paid down mortgages and refinanced property, etc.

17 / / /

18
19 ¹⁹ *Resnick v. Valente*, 97 Nev. 615, 637 P.2d 1205 (1982); *Jeff D. v. Andrus*, 899
F.2d 753, 759 (9th Cir. 1989); *United Commercial Ins. v. Paymaster Corp.*, 962 F.2d
853, 857 (9th Cir.1992)

20 ²⁰ *Dolge v. Masek*, 70 Nev. 314, 319, 268 P.2d 919, 921 (1954)

21 ²¹ *Phung v. Doan*, Nevada Supreme Court docket no. 69030, Order Affirming in
Part, Dismissing in Part, Reversing in Part, and Remanding (Unpublished
Disposition May 10, 2018)

1 **3. Tom has not set forth evidence sufficient to warrant a set**
2 **aside of the deeds and assignment of interest in this case.**

3 It is undisputed that Tom transferred the Queensridge and Lowe
4 properties to Danka as an “unmarried woman” and the office building
5 into Danka’s individual trust. In each of his three *Complaints*, Tom
6 consistently alleged that he executed the deeds and transfer documents
7 “with the sole intention of ameliorating Michaels’ rage and restoring
8 marital peace.” At his deposition, Tom alleged that the reason he is
9 seeking to set aside the deeds and transfer documents had to do with the
10 possibility he would owe gift tax associated with the transfers of property
11 between unmarried people. It wasn’t until just before the
12 commencement of *trial*, that Tom alleged (as an afterthought) that he
13 was “unduly influenced” to sign the deeds and transfer documents
14 during a time when there was an alleged doctor-patient fiduciary
15 relationship and Tom purportedly “lacked mental vigor.” Each of those
16 newly concocted false assertions will be addressed in turn:

17 **a. The facts of this case do not fall within the “fiduciary**
18 **physician-patient relationship” cases.**

19 Case law across the country is clear: Tom must prove the existence
20 of a physician-patient relationship before a fiduciary duty can be
established.²² Here, the evidence shows that in 2008, Mr. Carillo became

21 ²² See *Jennings v. Badgett*, 2010 OK 7, 230 P.3d 861, 865-66 (Okla. 2010);
Mead v. Legacy Health System, 352 Ore. 267, 283 P.3d 904, 909-10 (Ore. 2010);
Seeber v. Ebeling, 36 Kan. App. 2d 501, 141 P.3d 1180 (Kan. Ct. App. 2006); *St. John*

1 Tom's primary care provider for the specific purpose of relieving Danka
2 from that role. Danka was only seeing Tom as necessary for cross-
3 coverage purposes. For the entirety of 2016, Danka only prescribed **one**
4 prescription in May (which was only a 30-day supply) and did not
5 otherwise treat him between May 2016 through January 2017.

6 The initial work-up and treatment plan of Tom was done within
7 the first 12 months after Danka first saw Tom in early 2000. By mid-
8 2001 when the parties started dating, Danka was primarily prescribing
9 *refills* of medications Tom was already taking, several of which had been
10 recommended by his specialists. Tom was also being seen by multiple
11 specialists.

12 Next, it is incumbent upon a patient to prove, by a preponderance
13 of the evidence, that a doctor "violated his fiduciary responsibilities." To
14 do so, the patient must show that the doctor held a superior
15 authoritative position in the professional relationship and that, as a
16 result of patient's illness, the patient was **vulnerable**. Additionally, the
17 patient must show that doctor **exploited that vulnerability**. In
18 *Hoopes v. Hammargren*,²³ the Nevada Supreme Court explained the

20 *v. Pope*, 901 S.W.2d 420, 423 (Tex. 2005)(establishing a physician-patient
relationship is pre-requisite for a malpractice claim); *Gross v. Burt*, 149 S.W.3d 213
(Tex. Ct. App. 2004); *Millard v. Corrado*, 14 S.W.3d 42 (Mo. Ct. App. 1999); *Roberts*
21 *v. Hunter*, 310 S.C. 364, 426 S.E.2d 797 (S.C. 1993).

²³ 102 Nev. 425 (1986).

1 standard applicable to all physicians' fiduciary relationship with their
2 patients:

3 A patient generally seeks the assistance of a physician in
4 order to resolve a medical problem. The patient expects that
5 the physician can achieve such resolution. Occasionally (due
6 to illness), the patient is emotionally unstable and often
7 vulnerable. There is hope that the physician possesses
unlimited powers. ***It is at this point in the professional
relationship that there is the potential and
opportunity for the physician to take advantage of
the patient's vulnerabilities.*** [Emphasis added].

8 In *Richelle L. v. Roman Catholic Archbishop*,²⁴ the court emphasized
9 that "vulnerability" is an "absolutely essential" and "necessary predicate"
10 of a confidential relationship. Such vulnerability "usually arises from
11 advanced age, youth, lack of education, weakness of mind, grief,
12 sickness, or some other incapacity.

13 Tom never made a claim that he was emotionally unstable or
14 vulnerable due to his illness. His claim is that his emotional instability
15 was the result of his parents dying, his dog dying and his girlfriend
16 having an abortion. However, these matters had nothing to do with his
17 health/illness. *Hoopes v. Hammargren* makes it clear that the
18 vulnerability or emotional distress must be directly related to the illness
19 which did not occur in this case according to Tom's own testimony.

20 Tom had at least 4 cardiologists who treated him for his heart
21

²⁴ 106 Cal. App. 4th 257, 270-72, 130 Cal. Rptr. 2d 601 (Cal. Ct. App. 2003).

1 condition; he had a rheumatologist and at least 3 orthopedists to treat
2 him for gout, he had a gastroenterologist, a dermatologist, and a general
3 surgeon. Tom also had orthopedists treating him for the arthritic pain in
4 his knees and hips exacerbated by frequent gouty flare ups. He saw each
5 of these specialists “in order to resolve a medical problem.” Danka did
6 not operate on Tom to save his life – that was done by heart surgeons at
7 the Cleveland Clinic.

8 Tom did not see Danka in order to resolve his heart problems or
9 his gout. Occasionally, she prescribed antibiotics for an upper
10 respiratory infection or some such minor need. And by 2004, their
11 physical, intimate and sexual relationship had completely ended.

12 More than a decade later -- by 2015 and 2016 when the deeds and
13 transfer documents were executed by Tom -- Danka wasn't even refilling
14 Tom's prescriptions. Tom was under the care of Roberto Carillo,
15 Licensed Nurse Practitioner, who had complete prescribing privileges
16 under NRS 632.237.

17 In order to show “exploitation of the physician-patient
18 relationship,” Tom would have to prove that Danka held a superior
19 authoritative position in the professional relationship and that, as a
20 result of his illness, he was vulnerable *at the time of signing* the deeds
21 and assignment of interest in 2016. Additionally, he would have to prove

1 that Danka exploited the vulnerability, and that the exploitation was the
2 proximate cause of any claimed harm.

3 Tom has not, and cannot, make any such showings. From the
4 beginning of the relationship until 2014 (approximately 13 years), Danka
5 supported Tom. It can hardly be said that she took advantage of or
6 exploited *him*. The facts show that Tom exploited Danka. Their intimate
7 relationship ended in 2004, **12 years before** the signing of the deeds
8 and the assignment of interest. And Danka had not been seeing Tom as a
9 patient in 2016, although he was seen by another *independent*
10 professional in her practice. Tom was seeing doctors in Florida in 2016
11 for his medical problems at that time.

12 The fact of the prior relationship between Tom and Danka alone is
13 insufficient to make such a claim. In *Odegard v. Finne*,²⁵ the court held
14 that nonmental health physician liability would be restricted to
15 situations in which the sexual relationship was commenced under the
16 “guise of treatment.” Finding no facts to support a claim that the
17 relationship was anything other than “consensual,” the court reasoned
18 that “essentially appellant complains that she had an unhappy affair
19 with a man who happened to be her doctor. This [complaint] is plainly
20 insufficient to make out a cause of action for professional negligence.”

21 _____
²⁵ 500 N.W.2d 140 (Minn. Ct. App. 1993).

1 In this case, Danka is not a mental health physician. Here the Court says
2 that the appellant having an unhappy affair with a man that happens to
3 be her doctor does not equate to a breach of fiduciary duty, nor can such
4 be found in this case.

5 In *Iwanski v. Gomes*,²⁶ the plaintiff first saw the defendant, a
6 general practitioner, "for treatment regarding a constant lack of energy."
7 A sexual relationship between the two developed shortly thereafter that
8 lasted for roughly five years; after it ended unhappily, the plaintiff
9 suffered severe emotional distress, became suicidal, and was unable to
10 work. The plaintiff filed suit, and the trial court granted the defendant
11 doctor's motion for summary judgment, holding that the defendant's
12 conduct did not amount to malpractice. The Supreme Court of Nebraska
13 affirmed. Other states have reached similar conclusions. See, e.g.,
14 *Gunter v. Huddle*,²⁷ where the court held "[T]he great weight of
15 authority holds that a sexual relationship between a nonpsychiatric
16 physician and a patient is outside the scope of the physician's treatment,
17 and is not actionable as malpractice" citing cases from California,
18 Minnesota, and Oregon; *Atienza v. Taub*,²⁸ holding that malpractice
19 claims against a physician who treated plaintiff for phlebitis and then

20 ²⁶ 259 Neb. 632, 611 N.W.2d 607 (Neb. 2000).

21 ²⁷ 724 So.2d 544, 546 (Ala. Civ. App. 1998).

²⁸ 194 Cal. App. 3d 388, 239 Cal. Rptr. 454, 456-58 (Cal. Ct. App. 1987).

engaged in an affair with plaintiff did not state cause of action; *Collins v. Covenant Mut. Ins. Co.*,²⁹; *Korper v. Weinstein*,³⁰ holding that "It is settled that consensual sexual conduct between a medical practitioner and a patient does not constitute medical malpractice"); *Darnaby v. Davis*,³¹ holding that "sexual activity between a doctor and a patient, notwithstanding the existence of a doctor-patient relationship, without more, does not give rise to a cause of action."

In *Persson v. Smart Inventions, Inc.*, 125 Cal. App. 4th 1141, 23 Cal. Rptr. 3d 335 (2005), the Court held that "the existence of a confidential relationship generating a fiduciary duty is a question of fact. Nonetheless, because of '[t]he vagueness of the common law definition of the confidential relation that gives rise to a fiduciary duty, and the range of the relationships that can potentially be characterized as fiduciary,' the 'essential elements' have been distilled as follows: " '1) The vulnerability of one party to the other which 2) results in the empowerment of the stronger party by the weaker which 3) empowerment has been solicited or accepted by the stronger party and 4) prevents the weaker party from effectively protecting itself.' "

In short, vulnerability "is the necessary predicate of a confidential

²⁹ 604 N.E.2d 1190, 1196-97 (Ind. App. 1992).

³⁰ 57 Mass. App. Ct. 433, 783 N.E.2d 877, 879 (Mass. App. Ct. 2003).

³¹ 2002 OK CIV APP 103, 57 P.3d 100, 104 (Okla. Civ. App. 2002).

1 relation,” and “the law treats [it] as ‘absolutely essential’” Tom and
2 Danka had not had a physical relationship in over a decade, they were no
3 longer living in the same home, or even in the same State, Tom had
4 already established a years-long relationship with a new sweetheart, and
5 he and that sweetheart were expecting a baby at the time Tom
6 voluntarily flew to Las Vegas to finalize his agreement with Danka by
7 signing the transfer documents to her. He was not “vulnerable” and his
8 transfer had nothing to do with their long-past physician-patient
9 relationship.

10 **b. Tom has not shown “undue influence” to set aside**
11 **the deeds and assignment of interest.**

12 In *Ross v. Giacomo*,³² undue influence was found where a
13 neurologist who examined the donor 12 days before the alleged “gift,”
14 testified that the donor “did not know the day, month, or year, could not
15 repeat a test phrase three minutes after it was given him, and could not
16 think properly because his brain was being destroyed by lack of oxygen.”
17 The neurologist further testified that he diagnosed the donor as
18 “incompetent” within the meaning of NRS 159.019.³³

19 Tom has not alleged any facts or circumstances, any physician

20 ³² 97 Nev. 550 (1981).

21 ³³ NRS 159.019 provides: “‘Incompetent’ includes any person who, by reason of
mental illness, mental deficiency, advanced age, disease, weakness of mind or any
other cause, is unable, without assistance, properly to manage and take care of
himself or his property.”

1 testimony, or any expert opinion, that he was incompetent or incapable
2 of consenting or executing deeds in September 2016.

3 Tom cites to *In re Estate of Bethurem*, 129 Nev. 869 (2013), for the
4 proposition that there is a presumption of undue influence when a
5 fiduciary relationship exists and the fiduciary benefits from the
6 questioned transaction. In that case, Husband disinherited his step-
7 daughters and left assets to his sister-in-law after the death of Wife
8 because Wife's daughters (i.e., his step-daughters) did not help or care
9 for Wife when she fell ill but Wife's sister (i.e., his sister-in-law) traveled
10 from Texas to help care for Wife before her death. Step-daughters
11 challenged the will, alleging that sister-in-law unduly influenced
12 Husband. The Nevada Supreme Court held that:

13 In order to establish undue influence under Nevada law, 'it
14 must appear, either directly or by justifiable inference from
15 the facts proved, that the influence . . . destroyed the free
16 agency of the testator.' The influence that may arise from a
17 family relationship is only unlawful if it overbears the will of
18 the testator. Moreover, the fact a beneficiary merely
19 possesses or is motivated to exercise influence is insufficient
20 to establish undue influence. [Internal citations omitted].

21 The High Court went on to explain that while the sister-in-law
"may have influenced [Husband] through frequent telephone
conversations, influence resulting merely from [their] family
relationship is not by itself unlawful, and there is no indication in the

1 record that any influence [Sister-in-law] may have exercised prevented
2 [Husband] from making his own decisions regarding his will. Moreover,
3 the fact that [Sister-in-law] may have possessed influence does not
4 amount to undue influence unless her influence destroyed [Husband's]
5 free agency."

6 Tom does not allege any facts sufficient to support a conclusion
7 that Danka's influence "destroyed Tom's free agency" – he does *not*
8 allege that he was threatened or harmed, or that he was misled, or that
9 he didn't possess sufficient business acumen to understand the
10 consequences of his actions, or that he did not understand the financial
11 situation or the potential rights being forfeited.

12 In fact, Tom avers in paragraph 23 of his Second Amended
13 Complaint that he chose to execute the deeds and transfer documents
14 allegedly "with the sole intention of ameliorating Michaels' rage and
15 restoring marital peace." During his testimony at trial, he claimed that
16 he was distraught over the death of his elderly and ailing parents in 2015
17 and 2016, the death of his dog, and what "really threw him for a loop"
18 was his secret lover's decision to abort her pregnancy.

19 ***None*** of those allegations amount to "undue influence" ***by***
20 ***Danka***. In other words, Tom did not allege that Danka had anything to
21 do with the death of his parents, the death of his dog, his impregnation

1 of the woman he was living with in Florida, or that woman's decision to
2 have an abortion. Tom further does not allege that Danka coerced him to
3 sign the deeds and transfer documents. Instead, Tom alleged that it was
4 **his** intention to "ameliorate Michaels' rage and restore marital peace."³⁴
5 Even if we assume that allegation is true, it has been longstanding law in
6 Nevada that "[a] party's undisclosed, subjective intent is immaterial
7 when determining the existence of a contract."³⁵ Verbal agreements of
8 parties, especially when acted upon, are generally held to be binding.³⁶

9 **c. Tom doesn't make a showing of duress or coercion**
10 **sufficient to set aside the transfers.**

11 Duress is defined as the threat of confinement or detention, or
12 other threat of harm, used to compel a person to do something against
13 his or her will or judgment.³⁷ Coercion is defined as "compulsion by
14 physical force or threat of physical force."³⁸ Tom did not allege any
15 violence or threats of any kind by Danka, and there were none. She was
16 fed up with Tom's nonsense, and rightfully so. That does not amount to

17 ³⁴ The parties were never married.

18 ³⁵ *James Hardie Gypsum (Nevada) Inc. v. Inquipco*, 112 Nev. 1397, 1402, 929
19 P.2d 903, 906 (1996), overruled on other grounds by *Sandy Valley Assocs. v. Sky
Ranch Estates Owners Ass'n*, 117 Nev. 948, 955 n.6, 35 P.3d 964, 968-69 n.6 (2001).

20 ³⁶ See *Grisham v. Grisham*, 128 Nev. 679; 289 P.3d 230 (2012); *Phung v. Doan*,
420 P.3d 1029 (2018) unpub.

21 ³⁷ Black's Law Dictionary (7th ed. 1999) at 520.

³⁸ Black's Law Dictionary (7th ed. 1999) at 252.

1 “duress.”

2 The contrast between these facts and those in which some kind of
3 “duress” or “coercion” *are* in play are stark. For example, the Nevada
4 Court of Appeals set held unenforceable a provision in a prenuptial
5 agreement awarding husband lifetime alimony where wife was found not
6 to have signed the agreement freely or voluntarily.³⁹ The district court
7 held Katie credibly testified that she signed the agreement only because
8 “Stephan had previously committed acts of domestic violence against
9 her, threatened to take the couple’s son away from her, and was holding
10 a pending criminal investigation over her head with threats to file
11 charges against her if she did not sign the agreement.” Accordingly, the
12 Court of Appeals held that the district court did not abuse its discretion
13 by invalidating a provision in the prenuptial agreement on the basis of
14 duress.

15 The Courts of California have set up a framework for evaluating
16 claims of duress. In *In re Marriage of Stevenot*,⁴⁰ the California Court of
17 Appeal held that duress consists of “more than mere threats or puffing; a
18 party must be shown to have intentionally used threats or pressure to
19 induce action or nonaction to the other party’s detriment.” In *In re*

20 ³⁹ *Stephan Newell v. Katie Newell, Order Affirming in Part, Reversing in Part,*
21 *and Remanding* (Unpublished Disposition June 9, 2017).

⁴⁰ 154 Cal. App. 3d 1051 (Ct. App. 1984).

1 *Marriage of Baltins*,⁴¹ a two-prong analysis is used: The first looks to the
2 actions of the person accused – whether Danka intentionally “threatened
3 or pressured” Tom into signing the transfer documents. The second
4 prong looks to the effect of the alleged wrongful behavior on Tom.

5 Here, the analysis ends at the first prong - there have been no
6 allegations of threats, violence, or any other conduct by Danka that could
7 have “threatened or pressured” Tom to sign the transfer documents.
8 Tom alleged in his Second Amended Complaint for Divorce that he
9 signed the transfer documents “with the sole intention of ameliorating
10 Michaels’ rage and restoring marital peace.”

11 In his testimony at trial, Tom alleged that Danka “demanded that I
12 come home.” He further testified that “she wanted me to sign over the all
13 of the properties.” Tom admitted that he scheduled his own travel to Las
14 Vegas from Florida, he arranged his own transportation to a hotel, and
15 he met Danka days later at Attorney Shannon Evans’ office. Most
16 importantly, he testified that he was advised by Attorney Evans to retain
17 his own independent counsel. He chose not to do so. Tom then paid
18 Attorney Evans for preparing the transfer documents. He offered no
19 testimony whatsoever that there was any threatened consequence had he
20 not signed the transfer documents. He chose to sign them.

21 _____
⁴¹ 212 Cal. App. 3d 66, 260 Cal. Rptr. 403 (1989).

1 In sum, while Tom was purportedly stressed about the situation *he*
2 *created* by impregnating the woman he was living with in Florida while
3 hiding that information from Danka, he has not alleged facts of duress or
4 undue influence by Danka sufficient under the law to warrant a set aside
5 of the deeds or the transfer of membership interest at issue.

6 Here, even if Tom was able to establish that he was under some
7 form of “duress” or “undue influence” when he voluntarily signed the
8 transfer documents at Attorney Evans’ office in September 2016 (which
9 he hasn’t established), his subsequent conduct reinforces the conclusion
10 that he ratified the terms of the agreement by performing his obligation
11 under the agreement and reaping the benefits of the agreement for
12 approximately fourteen (14) months thereafter.

13 **d. Tom’s assertion of lack of capacity fail**

14 As a part of his attempts to have the Assignment undone, Tom has
15 argued that the Assignment should be set aside on the basis that Dr.
16 Michaels had “plied him” with sufficient medication so as to render him
17 unable to enter into a contract. Like his rescission argument, this
18 argument fails because he fails to meet the legal standard for asserting a
19 lack of capacity defense.

1 The legal standard for a lack of capacity defense has been recently
2 clarified by the Nevada Supreme Court. In order to assert a lack of
3 capacity defense to a breach of contract, the court held:

4 [a] person incurs only voidable contractual duties by
5 entering into a transaction if the other party has reason to
6 know that by reason of intoxication

7 (a) he is unable to understand in a reasonable manner the
8 nature and consequences of the transaction, or

9 (b) he is unable to act in a reasonable manner in relation to
10 the transaction.⁴²

11 The Court further recognized the responsibilities of the party asserting
12 lack of capacity as a defense:

13 In an action on a contract, a party must present convincing
14 proof of claims that due to intoxication at the time of making
15 a contract, the party was bereft of mental faculties. When a
16 party to a contract was lacking in mental capacity at the time
17 of execution by reason of drunkenness, proof of a subsequent
18 ratification must be **clear and convincing**.⁴³ (Emphasis
19 added).

20 In addition to a higher burden of proof, the court adopted a Restatement
21 (Second) of Contracts provision in stating:

A duty on the part of an intoxicated person to promptly
disaffirm the contract.⁴⁴

And finally, for a party asserting a lack of capacity defense:

⁴² *LaBarbera v. Wynn Las Vegas, LLC*, 134 Nev. 393, 396–97, 422 P.3d 138, 141 (2018).

⁴³ *Id.*

⁴⁴ *Id.* at 396, 141.

1 The power of avoidance also terminates if the incapacitated
2 party, upon regaining capacity, affirms or ratifies the
contract.”⁴⁵

3 Under the *LaBarbera* standard Tom completely failed to
4 demonstrate that he lacked the capacity to enter into contractual
5 arrangements. First, the incapable party has an elevated burden of
6 proof. They must be able to assert by clear and convincing evidence that
7 they lacked capacity to enter into a contract in the first place at the
8 specific time the contract was made. The evidence presented thus far in
9 the current proceedings shows Tom knew that he was transferring his
10 interest in the three properties to Danka and he intended to do so “with
11 the sole intention of ameliorating Michaels’ rage and restoring marital
12 peace.”

13 Further, Tom showed at least sufficient capacity to continue
14 performing his work duties in Florida for BPD.⁴⁶ It can be assumed that
15 Tom executed contracts as a part of those duties and Tom has never put
16 forward any evidence that he at any time asserted a lack of capacity to
17 enter into agreements on behalf of his company.

18 Additionally, there is absolutely no evidence that Tom at *any* time
19 sought to disaffirm the Assignment or the real property transfers, much

20 ⁴⁵ *Id.* at 398, 142.

21 ⁴⁶ See 2016 U.S. Corporation Income Tax Return, form 1120, for Blue Point
Development, Inc. showing Tom’s business had gross receipts of over \$1.4 Million.

1 less did so “promptly” as required under the *LaBarbera* standard. Four
2 years have passed since execution of the Assignment and the lack of
3 capacity allegations made as a part of this trial reflect the first time such
4 an attempted disaffirmation has ever been made. The real property
5 transfers for 9517 Queen Charlotte Drive and 7608 Lowe Avenue were
6 likewise conducted in September 2016 prior to any allegations of
7 incapacity being brought. The passage of several years hardly qualifies
8 as “prompt”. To assert a lack of capacity defense, Tom was under an
9 affirmative obligation to promptly disaffirm any agreements he lacked
10 the capacity to enter into. He didn’t. As several years passed before he
11 made any attempt at disaffirmance, his attempt to undo the contracts
12 through assertion of a lack of capacity fail.

13 What is more, Tom’s power to avoid any of the transfers
14 terminated because he effectively affirmed every one of the agreements.
15 Regarding the Assignment, long after transferring his trust’s interest to
16 the Mich-Mich trust, Tom abrogated his role as manager of Patience One
17 by transferring the leases in his possession over to Jakub Michalecko,
18 the new manager of the company. Tom further ceased collecting rents
19 on behalf of Patience One, and he affirmatively paid rent to Patience One
20 by check for ten months, whereas during the time he controlled Patience
21 One he had always previously paid the rent for BPD by electronic funds

1 transfer. All these actions were effective affirmations of the validity of
2 the Assignment and the transfer of his control over Patience One to the
3 Mich-Mich Trust.

4 Tom similarly affirmed the transfer of his interest in the two
5 residential properties. Far from disaffirming the transfers, Tom, after
6 transferring his interest in the properties, moved all of his possessions
7 out of the Queen Charlotte property, changed his mailing address, closed
8 joint accounts, terminated Danka's use of his American Express credit
9 card, stopped speaking to one another, and ceased all involvement with
10 management and finance of the properties. Each of these acts effectively
11 affirmed the transfers in question, which terminated any ability to avoid
12 the transfers under *LaBarbera* due to an asserted lack of capacity to
13 contract.

14 **4. Under *Hay*,⁴⁷ *Michoff*,⁴⁸ and *Howard*,⁴⁹ the transfers**
15 **should be confirmed.**

16 *Hay* and *Michoff* both stand for the proposition that unmarried
17 persons who are living together have the same rights to lawfully contract
18 with each other regarding their property as do other unmarried
19

20 ⁴⁷ *Hay v. Hay*, 100 Nev. 196 (1984).

21 ⁴⁸ *Western States Constr. v. Michoff*, 108 Nev. 931 (1992).

⁴⁹ *Howard v. Hughes*, 427 P.3d 1045 (2018).

1 individuals.⁵⁰ Their agreement may be express or implied from the
2 conduct of the parties. Although they may not contract for meretricious
3 sexual services, they may expect that courts will protect their reasonable
4 expectations with respect to transactions concerning property rights.
5 Each case should be assessed on its own merits with consideration given
6 to the purpose, duration and stability of the relationship and the
7 expectations of the parties.

8 It is readily apparent from the testimony of both parties that they
9 did not consider their money or assets to be “pooled,” “joint,” or
10 “community” in any way. Tom’s testimony as to \$30,000 given to him by
11 Danka for a truck and money she gave him to start a business, repairs or
12 mortgage payments that “he” paid for, his identification of a jointly titled
13 Bank of America account as “his” account, and the business as “his”
14 business, all prove this point. Likewise, Danka testified as to down
15 payments made from “her” money, and money that she contributed to
16 Tom for the purchase of a truck and for the start-up of a business. There
17 can be no doubt from the manner in which both parties testified that
18 they each considered their assets and property to be separate from one
19 another. Thus, the agreement and expectations of the parties were to
20 keep their assets separate and this Court should protect those reasonable

21 ⁵⁰ *See also Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009) (“Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy.”)

1 expectations with respect to their September 2016 transfer of property.

2 Here, both parties were well aware that the source of the funds
3 used to acquire the real properties came from Danka, not Tom, she
4 supported both parties, paid for vacations and entertainment, and she
5 provided Tom with funds in the form of payroll as well as retirement
6 benefits. She also helped Tom pay off his debt, purchase a new vehicle,
7 finance a business, and she paid for Tom's health insurance premiums
8 for over a decade. The parties always recognized the properties as
9 belonging to Danka: Danka did not name Tom as the beneficiary of her
10 Last Will and Testament or her Mich-Mich Trust (except for 3 to 4
11 months between September 2016 and January 2017) but Tom, who had
12 other family members he could have named beneficiaries of his estate
13 planning, ***did*** name Danka, her son, and her grandson as the
14 beneficiaries of his Last Will and Testament and his LV Blue Trust.

15 For years, Tom acknowledged to Danka that the properties
16 belonged to her. And beginning in January 2016, when Tom first broke
17 up with Danka, the disposition of jointly titled assets was at issue and a
18 discussion of the very transfers at issue in this case was had between the
19 parties. In April 2016, Danka removed Tom from her payroll and in the
20 summer of 2016, the parties began separating their accounts. As
21 reflected in Attorney Evans' file and by her testimony, Tom agreed to

1 transfer the properties to Danka because “she paid for them and he was
2 guilty” – i.e., equity dictated that they were hers and there was no longer
3 any reason for Danka to allow Tom to remain on title to her properties.

4 As expressed in *Hay* and *Michoff*, this Court should uphold the
5 parties’ implied and express agreements and protect their reasonable
6 expectations with respect to transactions concerning property rights.

7 The Nevada Supreme Court cases of *Sack v. Tomlin*⁵¹ and
8 *Langevin v. Langevin*⁵² stand for the proposition that when unmarried
9 cohabiting couples purchase property titled in both parties’ names, with
10 or without the right of survivorship, they own the property in proportion
11 to the amounts they each contributed to the purchase price.

12 Here, it is undisputed that the properties in question were
13 purchased with Danka’s money. While Tom claims he made some
14 contributions to “remodeling” which consisted of maintenance and
15 repairs of “wear and tear” (which he has not proven), any such
16 contributions paled in comparison to the hundreds of thousands of
17 dollars Tom received from Danka over the years, her funding of his
18 retirement account and the money she gave Tom towards his business,
19 Bluepoint Development. Additionally, Tom had many undisclosed

20
21 ⁵¹ 110 Nev. 204, 871 P.2d 298 (1994)

⁵² 111 Nev. 1481, 907 P.2d 981 (1995)

1 accounts with undisclosed tens or hundreds of thousands of dollars
2 which remained solely under his control.

3 Under Nevada law which looks to contributions towards the
4 purchase, the equity in the three properties belonged to Danka even
5 **before** Tom signed the transfer documents. What Tom actually
6 transferred to Danka in September 2016 was formal *title*, not any equity
7 that he contributed.

8 Even if Tom *had* made contributions to the properties, it would
9 not alter the result. The transferring party in *Howard v. Hughes* also
10 made contributions of labor and funding to the property in question, and
11 the Nevada Supreme Court held that “In Nevada, a valid donative
12 transfer requires a donor’s intent to voluntarily make a present transfer
13 of property to a donee without consideration, the donor’s actual or
14 constructive delivery of the gift to the donee, and the donee’s acceptance
15 of the gift.”

16 Tom’s voluntary execution of the transfer documents at Attorney
17 Evans’ office, his delivery of those transfer documents to Attorney Evans
18 for recording on behalf of Danka, and Danka’s acceptance of the transfer
19 documents constitute a valid donative transfer under Nevada law.⁵³ His

20 ⁵³ Even if this Court were to (incorrectly) apply principles of community
21 property law to the facts of this case (which it should not do), the Nevada Supreme
Court has consistently held that a spouse-to-spouse conveyance of title to real
property creates a presumption of gift that can only be overcome by clear and

1 change of mind long after the fact does not entitle him to change
2 ownership of the property.

3 It is worth emphasizing that Tom has *acknowledged* that the funds
4 used to purchase the properties came from Danka. He confirmed that he
5 took the retirement account valued at over \$200,000 and that he took
6 the business, Bluepoint Development. He also testified during his
7 deposition that he is not seeking an interest in Danka's medical practice,
8 even though he made such a claim in this Second Amended Complaint.

9 In sum, there is no basis to set aside the fully executed agreement
10 of the parties or the transfer documents for the three properties in
11 question. This would be true even in the context of a marriage; in
12 *Anderson v. Anderson*,⁵⁴ the parties divided a sum of cash into two
13 accounts. The trial court described this division as a "final division of
14 these funds." The wife received \$56,000 more than the husband
15 received. Husband appealed. The Nevada Supreme Court affirmed,
16 finding the unequal division was supported by husband getting a more
17 valuable car, receiving twice as much in Social Security, and having

18
19 convincing evidence. *Kerley v. Kerley*, 112 Nev. 36 (1996); *Graham v. Graham*, 104
20 Nev. 473 (1988); *Todkill v. Todkill*, 88 Nev. 231 (1972); *Peardon v. Peardon*, 65 Nev.
21 717 (1948). Moreover, property acquired by gift during marriage is separate property
pursuant to NRS 123.130, and therefore is not community property pursuant to NRS
123.220. Tom could not claim any interest in the three properties at issue, even if
principles of community property law *were* applied here.

⁵⁴ 107 Nev. 570, 816 P.2d 463 (1991).

1 moved in with his girlfriend so he had no rental expense. The Court
2 made no decision as to whether a written agreement was necessary
3 because the same result could be obtained by estoppel.⁵⁵ Here, Danka
4 relied on the fully executed 2016 agreement. Since then and in reliance
5 upon their fully executed agreement, she invested additional money into
6 the properties, refinanced the mortgages, and paid down the debt. In
7 fact, there is litigation currently pending as to Tom's misappropriation of
8 hundreds of thousands of dollars from Patience One, LLC, including
9 security deposits. Accordingly, the fully executed agreement from 2016
10 should not now be disrupted to the detriment of Danka.

11 **5. Tom ratified the division of assets and debts each and**
12 **every month for approximately thirteen (13) months**
after his voluntary execution of the transfer documents.

13 It is well established in Nevada law that a contract entered during
14 incapacity, insanity, or even as a result of fraud can be ratified by
15 subsequent conduct. For example, in Nevada's annulment statutes, NRS
16 125.320 provides that when a minor marries without the consent of a
17 parent or guardian (i.e., the minor lacks capacity) the marriage is
18 voidable "unless such person after reaching the age of 18 years freely
19 cohabits for any time with the other party to the marriage as a married
20 couple."

21 ⁵⁵ See also *Cartan v. David*, 18 Nev. 310 (1884) (once an agreement is fully
executed, the rights of the parties become fixed).

1 In the event of insanity, NRS 125.330 provides that the marriage of
2 any insane person shall not be adjudged void if after his or her
3 restoration to reason, the parties freely cohabited together as a married
4 couple. Again, ratification after the removal of the impediment validates
5 the act. Ratification even applies to fraud under NRS 125.340 which
6 states: “No marriage may be annulled for fraud if the parties to the
7 marriage voluntarily cohabit as a married couple having received
8 knowledge of such fraud.”

9 The doctrine of ratification also applies as to contractual
10 agreements. For example, in *Shelton v. Shelton*,⁵⁶ the Nevada Supreme
11 Court held “Moreover, the parties’ subsequent conduct reinforces this
12 conclusion, in that Roland ratified the terms of the agreement by
13 performing his obligations under the decree for a period of two years.”
14 In *Whiston v. McDonald*,⁵⁷ the Nevada Supreme Court held:
15 “Furthermore, by her conduct, Nan ratified the agreement of May 15th
16 which was executed by Al Anders. For more than a year, without protest,
17 she performed under that agreement, she allowed her equipment to be
18 used and she accepted checks from one or more of Art Wood's
19 corporations in the exact amount provided for in the May 15th

20
21 ⁵⁶ 119 Nev. 492, 78 P.3d 507 (2003).

⁵⁷ 85 Nev. 508, 510, 458 P.2d 107, 108 (1969).

1 agreement.”

2 Other jurisdictions have also acknowledged the doctrine of
3 ratification. For example, in *Hoskins v. Skojec*,⁵⁸ the court held:

4 Here, the record reveals that the parties freely entered into
5 the separation agreement, each with the benefit of counsel,
6 and its terms were complied with by both parties for more
7 than four years. Furthermore, by accepting the benefits of
8 the agreement and performing his obligations for years,
9 defendant is deemed to have ratified the terms of the
10 agreement (*see, Beutel v Beutel*, 55 NY2d 957, 958; *Lavelle v*
11 *Lavelle*, 187 AD2d 912, 913; *Bonem v Garriott*, 159 AD2d
12 206,207).

13 From January 2016 to December 2016, there was only one 30-day
14 prescription prescribed by Danka to Tom in May which was a result of
15 cross-covering. Tom admitted in his trial testimony that there was no
16 treatment by Danka of Tom between May 2016 and January 2017,
17 specifically no treatment in months leading up to the signing of the
18 documents or when the documents were executed. The last prescription
19 refill Tom obtained from Danka was in January 2017. That three-month
20 supply would have been exhausted by April 2017.

21 Thereafter, Tom relinquished control of the operating account for
the building to Danka and began sending her rent payments for his
occupancy in her building. He cashed out the retirement account that
she funded and purchased a home in his sole name as an unmarried

⁵⁸ 265 A.D.2d 706, 707, 696 N.Y.S.2d 303, 304 (App. Div. 1999).