IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL,
Petitioner,
v.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA ex rel. THE COUNTY OF CLARK, AND THE HONORABLE VERONICA BARISICH,
Respondent,
and
KURTISS HINTON,
Real Party In Interest,
and
MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation.

Additional Parties In Interest.

Supreme Court No.:

District Court No.: A-19-800263-C

PETITIONER'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS

VOL. I

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H	Defendant Valley Health Systems, LLC dba Spring Valley Hospital's Motion to Reconsider its Joinder Along with Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.'s Motion to Dismiss Pursuant to NRCP 16.1(e)(1)	4/19/2022	199-246

CERTIFICATE OF MAILING

I hereby certify that on this 1st day of July, 2022, I served the foregoing **PETITIONER'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS VOL. I** upon the following parties by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

The Honorable Veronica Barisich
The Eighth Judicial District Court
Phoenix Building
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Las Vegas, Nevada 89155
Respondent

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and

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Attorneys for Additional Real Parties in Interest, Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

By /s/ *Heidi Brown*
An Employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT A

MDSM
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DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; KHAVKIN CLINIC, PLLC; VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL; NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO.: A-19-800263-C
DEPT: V

DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S MOTION TO DISMISS PURSUANT TO NRCP 16.1(e)(1)

HEARING REQUESTED

COME NOW, Defendants, MICHAEL SCHNEIER, M.D. and MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., by and through their counsel of record, ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ. of the law firm of McBRIDE HALL, and hereby submit this Motion to Dismiss the above-captioned matter without prejudice pursuant to

NRCP 16.1(e)(1) for failure to timely hold an early case conference as required by NRCP 16.1(b).

This Motion is made and based upon the papers and pleadings on file herein, the Memorandum of Points and Authorities submitted and such oral argument as may be heard at the upcoming hearing of this matter, if any.

DATED this 9th day of December, 2021.

McBRIDE HALL

/s/ Heather S. Hall

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Defendants,
Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

DECLARATION OF HEATHER S. HALL, ESQ.

HEATHER S. HALL, ESQ., declares under penalty of perjury under the laws of the State of Nevada as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am a partner with the law firm of McBRIDE HALL, counsel for moving Defendants in the above-entitled case.

2. This Declaration is made and based upon my personal knowledge and I am competent to testify to the matters contained herein.

3. This Declaration is made in support of Defendants' Motion to Dismiss Pursuant to NRCP 16.1(e)(1).

4. Plaintiff's Second Amended Complaint was filed on

5. Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C. filed their Answer to the Second Amended Complaint on December 15, 2020, a true and correct copy of which is attached hereto as **Exhibit "A"**.

6. This matter is not exempt from the initial disclosure requirements set forth in NRCP 16.1(a)(1)(B).

7. The parties are not exempt from the NRCP 16.1 (b) requirement to hold an early case conference as this matter is automatically exempt from arbitration.

8. There has been no order excusing compliance with NRCP 16.1 (b) regarding participation in an early case conference.

9. Defendants' Motion to Strike the Third Amended Complaint was granted on August 5, 2021.

10. I drafted the Order granting the Motion to Strike Third Amended Complaint.

11. Plaintiff's counsel, Mr. Jones, did not respond to my request for approval of the Order.

12. On August 4, 2021, a Notice of Association of Counsel for Plaintiff associating Jared Anderson, David Churchill and David Tanner as counsel was filed.

13. I then sent the draft Order to Mr. Anderson. *See* **Exhibit "B"**. When no response was received, it was submitted on August 24, 2021 without signature for Plaintiff.

14. As of the time of filing this Motion, it has been 359 days since Defendants filed their Answer to Plaintiff's Second Amended Complaint and Plaintiff has not made any attempt to schedule an early case conference.

15. There has been no agreement to hold the early case conference outside the 30 day time period provided for under the Rule, nor was that requested by Plaintiff.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 9th day of December, 2021.

HEATHER S. HALL, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS/INTRODUCTION

This is a medical malpractice case. Plaintiff Kurtiss Hinton filed his original Complaint on October 17, 2019 and an Amended Complaint on January 23, 2020. Plaintiff's Second Amended Complaint was filed in this case on December 1, 2020. *See* Second Amended Complaint. Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C. filed their Answer to the Second Amended Complaint on December 15, 2020. *See* **Exhibit "A"**. As of the time of filing this Motion, it has been 359 days since these Defendants filed their Answer. Since the appearance of these Defendants, Plaintiff has made no attempt to schedule an early case conference. *See* Declaration of Heather S. Hall, para. 14.

The facts are uncontroverted and simple. Plaintiff failed to conduct an early case conference within 180 of these Defendants appearing. The parties did not agree to hold the ECC outside of the 30 day time period. *See* Declaration of Heather S. Hall, para. 15. Plaintiff has also failed to move this Court for an Order allowing him to conduct an early case conference outside the provisions of the Rule. This case has been lingering since 2019 with no discovery occurring.

On June 4, 2021, Plaintiff filed a Third Amended Complaint that far exceeded what was previously permitted by the Court. As a result, Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C. filed a Motion to Strike Plaintiff's Third Amended Complaint. That Motion was heard on August 5, 2021 and granted. *See* **Exhibit "C"**, Notice of Entry of Order. As part of that ruling, the Third Amended Complaint was stricken and Plaintiff was given 30 days from Notice of Entry to seek leave to amend if wanted to do so. *Id.* Plaintiff has not sought leave to amend. Since that time, Plaintiff has also not taken any steps to progress this case or allow formal discovery to occur.

The parties are not exempt from the NRCP 16.1(b) requirement to hold an early case conference. This matter is not exempt from the initial disclosure requirements under Rule 16.1(a)(1)(B), as it is exempt from arbitration. Further, this case is not in the court-annexed arbitration program, has not been through arbitration, and is not in the short trial program. There

has been no order excusing compliance with NRCP 16.1 (b) regarding participation in an early case conference.

As there has been no exemption to the requirement to hold an NRCP 16.1(b) early case conference and it has been over 180 days since Defendants' Answer was filed and no such conference has been scheduled, Defendants request this Court dismiss this action without prejudice pursuant to NRCP 16.1(e) for failure to timely hold an early case conference.

II.

LEGAL ARGUMENT

A. THIS CASE SHOULD BE DISMISSED PURSUANT TO NRCP(e)(1) DUE TO PLAINTIFF'S FAILURE TO CONDUCT THE MANDATORY EARLY CASE CONFERENCE.

Pursuant to NRCP 16.1 (b), "all parties who have filed a pleading in the action must participate in an early case conference." "The early case conference must be held within 30 days after service of an answer by the first answering defendant." NRCP 16.1(b)(2)(A). The responsibility for setting the early case conference falls on the Plaintiff. NRCP 16.1 (b) (4) (A).

The parties are required to participate in an early case conference unless the following exemptions apply:

> (A) the case is exempt from the initial disclosure requirements under Rule 16.1(a)(1)(B);
>
> (B) the case is subject to arbitration under Rule 3(A) of the Nevada Arbitration Rules (NAR) and an exemption from arbitration under NAR 5 has been requested but not decided by the court or the commissioner appointed under NAR 2(c);
>
> (C) the case is in the court-annexed arbitration program;
>
> (D) the case has been through arbitration and the parties have requested a trial de novo under the NAR;
>
> (E) the case is in the short trial program; or
>
> (F) the court has entered an order excusing compliance with this requirement.

NRCP 16.1 (b) (1).

As is the matter at hand, when a plaintiff fails to comply with requirements of NRCP 16.1(b), the Court may dismiss the Complaint, without prejudice, under NRCP 16.1(e)(1) which provides the following:

> If the conference described in Rule 16.1(b) is not held within 180 days after service of an answer by a defendant, the court, on motion or on its own, may dismiss the case as to that defendant, without prejudice, unless there are compelling and extraordinary circumstances for a continuance beyond this period.

NRCP 16.1(e).

The enforcement provisions of NRCP 16.1 "recognize judicial commitment to the proposition that justice delayed is justice denied." *Dougan v. Gustaveson*, 108 Nev. 517, 523, 835 P.2d 795, 799 (1992) [internal quotation marks omitted], abrogated on other grounds by *Arnold v. Kip*, 123 Nev. 410, 415, 168 P.3d 1050, 1053 (2007). To determine whether dismissal under NRCP 16.1(e) is appropriate, the Court should consider (1) the length of the delay; (2) whether Defendants are the reason for the delay; (3) whether the delay has impeded the timely prosecution of the case; (4) general considerations of case management; and (5) whether Plaintiff has good cause for the delay. *Arnold*, 123 Nev. at 415 – 16, 168 P.3d at 1053. All of these factors weigh in favor of dismissal.

The length of the delay is nearly one year – 359 days. This is an egregious amount of time for Plaintiff to be dilatory. Any delays that have occurred in this case are solely attributable to Plaintiff, not these Defendants. The more recent motion practice was necessitated solely because Plaintiff chose to file a Third Amended Complaint that was not authorized by this Court. Plaintiff's delay has greatly impeded the ability of Defendants to develop a defense to the claims. Defendants have lost valuable discovery time due to Plaintiff's delay which is prejudicial. There is not good cause for Plaintiff's delay. Consideration of these factors should lead the Court to dismiss without prejudice.

"Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time [to conduct the conference] to a day more than 180 days after an appearance is served by the defendant in question." NRCP 16.1(b)(1). There is no reason, much less a compelling one, why Plaintiff failed to timely conduct an early case conference in this matter.

This matter is not subject to arbitration, is not in the court-annexed arbitration program and has not been through arbitration. This matter is also not in the short trial program, nor has there been any order excusing compliance with NRCP 16.1 (b). As such, Plaintiff was required to set an early case conference by June 13, 2021. Plaintiff did not do so. It has now been 359 days since Defendants filed their Answer and there has been no attempt to even set an early case conference. As Plaintiff has failed to timely hold an early case conference, the Court should, pursuant to NRCP 16.1(e), dismiss the case as to these Defendants without prejudice.

III.

CONCLUSION

Based upon the foregoing, Defendants request this Court issue an Order dismissing this matter in its entirety without prejudice.

DATED this 9th day of December, 2021.

McBRIDE HALL

/s/ Heather S. Hall

HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Defendants,
Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of December 2021, I served a true and correct copy of the foregoing **DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S MOTION TO DISMISS PURSUANT TO NRCP 16.1(e)(1)** addressed to the following counsel of record at the following address(es):

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

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

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

Kimball Jones, Esq.
BIGHORN LAW
716 S. Jones Blvd.
Las Vegas, Nevada 89107
-and-
Jared B. Anderson, Esq.
David A. Turner, Esq.
David J. Churchill, Esq.
TANNER CHURCHILL ANDERSON
4001 Meadows Lane
Las Vegas, Nevada 89107
Attorneys for Plaintiff

S. Brent Vogel, Esq.
Adam Garth, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
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Las Vegas, Nevada 89118
Attorneys for Defendant,
Valley Health Systems, LLC dba Spring Valley Hospital

/s/ Candace P. Cullina
An Employee of *McBRIDE HALL*

EXHIBIT "A"

EXHIBIT "A"

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Michael Schneier, M.D. & Michael Schneier Neurosurgical Consulting, P.C.

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; KHAVKIN CLINIC, PLLC; VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL; NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO.: A-19-800263-C
DEPT: VIII

DEFENDANTS MICHAEL SCHNEIER, M.D. & MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

COME NOW, Defendants, MICHAEL SCHNEIER, M.D. and MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., by and through their counsel of record, ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ. of the law firm of McBRIDE HALL, and hereby submit their Answer to Plaintiff's Second Amended Complaint as follows:

PARTIES AND JURISDICTION

1. Answering Paragraph 1 of Plaintiff's Second Amended Complaint, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

2. Answering Paragraph 2 of Plaintiff's Second Amended Complaint, these answering Defendants admit each and every allegation contained therein.

3. Answering Paragraph 3 of Plaintiff's Second Amended Complaint, these answering Defendants state that Michael Schneier Neurosurgical Consulting, P.C. is a domestic professional corporation formed in **January 2018**. As to the remainder of the allegations contained therein, denied.

4. Answering Paragraph 4 of Plaintiff's Second Amended Complaint, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

5. Answering Paragraph 5 of Plaintiff's Second Amended Complaint, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

6. Answering Paragraph 6 of Plaintiff's Second Amended Complaint, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

7. Answering Paragraph 7 of Plaintiff's Second Amended Complaint, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

8. Answering Paragraph 8 of Plaintiff's Second Amended Complaint, these answering

Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

9. Answering Paragraph 9 of Plaintiff's Second Amended Complaint, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

10. Answering Paragraph 10 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

11. Answering Paragraph 11 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

12. Answering Paragraph 12 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

13. Answering Paragraph 13 of Plaintiff's Second Amended Complaint, these answering Defendants admit that the care Dr. Schneier provided to Plaintiff occurred in Clark County. As to the remainder, these Defendants are without sufficient knowledge and information

to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

14. Answering Paragraph 14 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

15. Answering Paragraph 15 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

GENERAL ALLEGATIONS

16. Answering Paragraph 16 of Plaintiff's Second Amended Complaint, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

17. Answering Paragraph 17 of Plaintiff's Second Amended Complaint, these answering Defendants admit that Dr. Schneier performed surgery for Mr. Hinton on June 22, 2017 at Spring Valley Hospital. As to the remainder, denied.

18. Answering Paragraph 18 of Plaintiff's Second Amended Complaint, these answering Defendants admit that Dr. Schneier performed a posterior decompression and fixation of L3-L5 with posterior pedicle screw fixation using XLIF approach for Mr. Hinton on June 22, 2017 at Spring Valley Hospital. As to the remainder, denied.

19. Answering Paragraph 19 of Plaintiff's Second Amended Complaint, these answering Defendants admit that Mr. Hinton had left sided weakness requiring a cane for

ambulation before the June 22, 2017 surgery. As to the remainder, denied.

20. Answering Paragraph 20 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

21. Answering Paragraph 21 of Plaintiff's Second Amended Complaint, these answering Defendants admit that Dr. Schneier provided appropriate follow-up care to Mr. Hinton. As to the remainder, denied.

22. Answering Paragraph 22 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein in so far as it pertains to them. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

23. Answering Paragraph 23 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein in so far as it pertains to them. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

24. Answering Paragraph 24 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein in so far as it pertains to them. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

25. Answering Paragraph 25 of Plaintiff's Second Amended Complaint, these

answering Defendants deny each and every allegation contained therein in so far as it pertains to them. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

26. Answering Paragraph 26 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation in so far as it pertains to them. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

27. Answering Paragraph 27 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation in so far as it pertains to them. With the exception of the January 17, 2018 office visit, Dr. Schneier was an employee of Khavkin Clinic at the time of the subject care and treatment. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

28. Answering Paragraph 28 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation in so far as it pertains to them. With the exception of the January 17, 2018 office visit, Dr. Schneier was an employee of Khavkin Clinic at the time of the subject care and treatment. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

29. Answering Paragraph 29 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation in so far as it pertains to them. With the exception of the January 17, 2018 office visit, Dr. Schneier was an employee of Khavkin Clinic at

the time of the subject care and treatment. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

30. Answering Paragraph 30 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

31. Answering Paragraph 31 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

32. Answering Paragraph 32 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

33. Answering Paragraph 33 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

34. Answering Paragraph 34 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

35. Answering Paragraph 35 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

36. Answering Paragraph 36 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

37. Answering Paragraph 37 of Plaintiff's Second Amended Complaint, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

38. Answering Paragraph 38 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

39. Answering Paragraph 39 of Plaintiff's Second Amended Complaint, these answering Defendants admit that there is an affidavit of Aaron G. Filler, M.D. attached to the Complaint but deny each and every allegation of negligence set forth in that affidavit.

///

FIRST CLAIM FOR RELIEF

(Medical Negligence as to Defendants SPRING VALLEY HOSPITAL, SCHNEIER, SCHNEIER NEUROSURGICAL CONSULTING, KHAVKIN CLINIC, DOE NURSE, I through X, DOE HOSPITAL EMPLOYEE, I through X, DOE MEDICAL DOCTOR, I through X, ROE HOSPITAL, XI through XX, ROE COMPANIES, XI through XX, and each of them)

40. Answering Paragraph 40 of Plaintiff's Second Amended Complaint, these answering Defendants repeat each and every response to Paragraphs 1 through 39, inclusive, and incorporate the same by reference as though set forth fully herein.

41. Answering Paragraph 41 (a) through (g) of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

42. Answering Paragraph 42 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

43. Answering Paragraph 43 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

44. Answering Paragraph 44 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge

and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

45. Answering Paragraph 45 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

46. Answering Paragraph 46 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

47. Answering Paragraph 47 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

48. Answering Paragraph 48 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge

and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

49. Answering Paragraph 49 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

50. Answering Paragraph 50 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

SECOND CLAIM FOR RELIEF

(Negligence as to Defendants SPRING VALLEY HOSPITAL, ROE HOSPITAL, XI through XX, ROE COMPANIES, XI through XX, and each of them)

51. Answering Paragraph 51 of Plaintiff's Second Amended Complaint, these answering Defendants repeat each and every response to Paragraphs 1 through 50, inclusive, and incorporate the same by reference as though set forth fully herein.

52. Answering Paragraph 52 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton and deny that Dr. Schneier was an employee of Spring Valley Hospital. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information

and belief, the same are hereby denied.

53. Answering Paragraph 53 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton and deny that Dr. Schneier was an employee of Spring Valley Hospital. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

54. Answering Paragraph 54 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

55. Answering Paragraph 55 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

56. Answering Paragraph 56 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge

and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

57. Answering Paragraph 57 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

58. Answering Paragraph 58 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton and deny that Dr. Schneier was an employee of Spring Valley Hospital. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

59. Answering Paragraph 59 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

60. Answering Paragraph 60 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder

of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

61. Answering Paragraph 61 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

THIRD CLAIM FOR RELIEF

(Breach of Fiduciary Duty as to Defendant SPRING VALLEY HOSPITAL)

62. Answering Paragraph 62 of Plaintiff's Second Amended Complaint, these answering Defendants repeat each and every response to Paragraphs 1 through 61, inclusive, and incorporate the same by reference as though set forth fully herein.

63. Answering Paragraph 63 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

64. Answering Paragraph 64 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

65. Answering Paragraph 65 of Plaintiff's Second Amended Complaint, these

answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

66. Answering Paragraph 66 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

67. Answering Paragraph 67 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

68. Answering Paragraph 68 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

69. Answering Paragraph 69 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby

denied.

FOURTH CAUSE OF ACTION

(Gross Negligence against SCHNEIER)

70. Answering Paragraph 70 of Plaintiff's Complaint, these answering Defendants repeat each and every response to Paragraphs 1 through 69, inclusive, and incorporate the same by reference as though set forth fully herein.

71. Answering Paragraph 71 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

72. Answering Paragraph 72 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

73. Answering Paragraph 73 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

74. Answering Paragraph 74 of Plaintiff's Second Amended Complaint, these answering Defendants deny each and every allegation contained therein.

FIFTH CAUSE OF ACTION

(NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them)

75. Answering Paragraph 75 of Plaintiff's Second Amended Complaint, these answering Defendants repeat each and every response to Paragraphs 1 through 74, inclusive, and incorporate the same by reference as though set forth fully herein.

76. Answering Paragraph 76 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

77. Answering Paragraph 77 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these

answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

78. Answering Paragraph 78 (a) through (p) of Plaintiff's Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

79. Answering Paragraph 79 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

80. Answering Paragraph 80 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

81. Answering Paragraph 81 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

82. Answering Paragraph 82 of Plaintiff's Second Amended Complaint, these

answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

83. Answering Paragraph 83 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

84. Answering Paragraph 84 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

85. Answering Paragraph 85 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

86. Answering Paragraph 86 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby

denied.

87. Answering Paragraph 87 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

88. Answering Paragraph 88 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

89. Answering Paragraph 89 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

90. Answering Paragraph 90 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

91. Answering Paragraph 91 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering

Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

92. Answering Paragraph 92 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

93. Answering Paragraph 93 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

SIXTH CLAIM FOR RELIEF

(Strict Product Liability as to Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them)

94. Answering Paragraph 94 of Plaintiff's Second Amended Complaint, these answering Defendants repeat each and every response to Paragraphs 1 through 93, inclusive, and incorporate the same by reference as though set forth fully herein.

95. Answering Paragraph 95 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

96. Answering Paragraph 96 of Plaintiff's Second Amended Complaint, these

answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

97. Answering Paragraph 97 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

98. Answering Paragraph 98 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

99. Answering Paragraph 99 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

100. Answering Paragraph 100 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby

denied.

101. Answering Paragraph 101 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

102. Answering Paragraph 102 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

103. Answering Paragraph 103 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

104. Answering Paragraph 104 of Plaintiff's Second Amended Complaint, these answering Defendants deny the allegations contained therein, in so far as they pertain to these answering Defendants. These answering Defendants specifically deny committing negligence or failing to meet the standard of care in any of the care provided to Mr. Hinton. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

AFFIRMATIVE DEFENSES

1. Plaintiff's Second Amended Complaint fails to state a claim against these answering Defendants upon which relief can be granted.

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

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

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

5. Defendant Dr. Schneier alleges that he made, consistent with good medical practice, a full and complete disclosure to the Plaintiff of all material facts known to him or reasonably believed by him to be true concerning the Plaintiff's physical condition and the appropriate alternative procedures available for treatment of such condition. Further, each and

every service rendered to Plaintiff by this answering Defendant was expressly and impliedly consented to and authorized by the Plaintiff on the basis of said full and complete disclosure.

6. Defendant Dr. Schneier alleges that he is entitled to a conclusive presumption of informed consent pursuant to NRS 41A.110.

7. Defendants allege that the Plaintiff's Second Amended Complaint is barred by the applicable statute of limitations.

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

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

10. Plaintiff has failed to mitigate his damages.

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

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

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

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

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

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

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

Defendants.

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

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

20. Defendants allege that Plaintiff's damages, if any, are subject to the limitations and protections set forth in NRS 41.035.

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

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

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

24. Defendants allege that they are not guilty of fraud, oppression or malice, express or implied, in connection with the care rendered to Plaintiff at any of the times or places alleged in the Complaint.

25. Defendants allege that at all relevant times they were acting in good faith and not with recklessness, oppression, fraud or malice.

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

27. To the extent Plaintiff has been reimbursed from any source for any special damages claimed to have been sustained as a result of the incidents alleged in Plaintiff's Second Amended Complaint, Defendants may elect to offer those amounts into evidence and, if

Defendants so elect, Plaintiff's special damages shall be reduced by those amounts pursuant to NRS 42.021.

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

WHEREFORE, these answering Defendants pray that Plaintiff take nothing by way of his Second Amended Complaint, that the Second Amended Complaint be dismissed with prejudice and that the Court award fees and expenses as deemed appropriate.

DATED this 15th day of December 2020.

McBRIDE HALL

/s/ Heather S. Hall

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Defendants,
Michael Schneier, M.D. & Michael Schneier Neurosurgical Consulting, P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of December 2020, I served a true and correct copy of the foregoing **DEFENDANTS MICHAEL SCHNEIER, M.D. & MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** addressed to the following counsel of record at the following address(es):

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

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

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

Kimball Jones, Esq.
Siria L. Gutierrez, Esq.
BIGHORN LAW
716 S. Jones Blvd.
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and
Peter Brown, Esq.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 N. Town Center Drive, Suite 250
Las Vegas, NV 89144
Attorneys for Defendants
Nuvasive, Inc. and Nuvasive Specialized Orthopedics, Inc.

/s/ Laura Moreno
An Employee of *McBRIDE HALL*

EXHIBIT “B”

EXHIBIT “B”

From: Heather S. Hall
To: Kimball@bighornlaw.com; janderson@tcafirm.com; brittany@bighornlaw.com; Garth, Adam; Rokni, Roya
Cc: Candace P. Cullina
Subject: RE: Hinton v. Schneier, MD, et. al
Date: Sunday, August 22, 2021 8:22:55 AM
Attachments: Order Granting Motions to Strike Third Amended Complaint.pdf
image001.png

Jared,

Please see below. If I do not hear from Plaintiff's counsel by end of day on 8/24, I will be submitting this Order without signature for Plaintiff.

Thanks,
Heather

From: Heather S. Hall
Sent: Sunday, August 22, 2021 8:21 AM
To: Kimball@bighornlaw.com; Debora Ponce <debora@bighornlaw.com>; brittany@bighornlaw.com; Garth, Adam <Adam.Garth@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>
Cc: Candace P. Cullina <ccullina@mcbridehall.com>
Subject: RE: Hinton v. Schneier, MD, et. al

Kimball,

Adam has approved the attached Order but I have not received a response from you. Please get back to me by 8/24 so I may get this Order submitted to the Department. If I do not hear from you, I will submit the Order without your signature and you can submit your own proposed Order.

Thanks,
Heather

From: Heather S. Hall
Sent: Tuesday, August 10, 2021 10:46 AM
To: Kimball@bighornlaw.com; Debora Ponce <debora@bighornlaw.com>; brittany@bighornlaw.com; Garth, Adam <Adam.Garth@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>
Cc: Candace P. Cullina <ccullina@mcbridehall.com>
Subject: Hinton v. Schneier, MD, et. al

Attached, please find the draft Order granting to Strike Plaintiff's Third Amended

Complaint for your review. If you have proposed changes, please let me know. If you have no changes, please advise whether I may use your e-signature.

Thanks,

Heather S. Hall, Esq.
hshall@mcbridehall.com | www.mcbridehall.com
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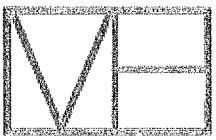

MCBRIDE HALL
ATTORNEYS AT LAW

From: Garth, Adam
To: Heather S. Hall; Kimball@bighornlaw.com; Debora Ponce; brittany@bighornlaw.com; Rokni, Roya
Cc: Candace P. Cullina
Subject: Re: Hinton v. Schneier, MD, et. al
Date: Tuesday, August 10, 2021 11:03:54 AM
Attachments: Image001.png
Logo_e6253148-26a1-47a9-b861-6ac0ff0bc3c4.png

You can use my e-signature.

Adam Garth

Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

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From: Heather S. Hall <hshall@mcbridehall.com>
Sent: Tuesday, August 10, 2021 10:46:28 AM
To: Kimball@bighornlaw.com <kimball@bighornlaw.com>; Debora Ponce <debora@bighornlaw.com>; brittany@bighornlaw.com <brittany@bighornlaw.com>; Garth, Adam <Adam.Garth@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>
Cc: Candace P. Cullina <ccullina@mcbridehall.com>
Subject: [EXT] Hinton v. Schneier, MD, et. al

Attached, please find the draft Order granting to Strike Plaintiff's Third Amended Complaint for your review. If you have proposed changes, please let me know. If you have no changes, please advise whether I may use your e-signature.

Thanks,

Heather S. Hall, Esq.
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MCBRIDE HALL
ATTORNEYS AT LAW

EXHIBIT "C"

EXHIBIT "C"

NEO

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
McBRIDE HALL
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Attorneys for Defendants,
Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; KHAVKIN CLINIC, PLLC; VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL; NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO.: A-19-800263-C
DEPT: V

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTIONS TO STRIKE PLAINTIFF'S THIRD AMENDED COMPLAINT AND DENYING REQUEST FOR FEES

PLEASE TAKE NOTICE that an Order Granting Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.'s Motions to Strike Plaintiff's Third Amended Complaint and Denying Request for Fees was entered and filed on 7th day of

September, 2021, a copy of which is attached hereto.

DATED this 8th day of September, 2021.

McBRIDE HALL

/s/ Heather S. Hall

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Defendants,
Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of September 2021, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTIONS TO STRIKE PLAINTIFF'S THIRD AMENDED COMPLAINT AND DENYING REQUEST FOR FEES** addressed to the following counsel of record at the following address(es):

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

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

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

Kimball Jones, Esq.
BIGHORN LAW
716 S. Jones Blvd.
Las Vegas, Nevada 89107
-and-
Jared B. Anderson, Esq.
David A. Turner, Esq.
David J. Churchill, Esq.
TANNER CHURCHILL ANDERSON
4001 Meadows Lane
Las Vegas, Nevada 89107
Attorneys for Plaintiff

S. Brent Vogel, Esq.
Adam Garth, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant,
Valley Health Systems, LLC dba Spring Valley Hospital

/s/ Natalie Jones
An Employee of *McBRIDE HALL*

ELECTRONICALLY SERVED
9/7/2021 10:38 AM

Electronically Filed
09/07/2021 10:38 AM
CLERK OF THE COURT

ORDR

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
McBRIDE HALL
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E-mail: hshall@mcbridehall.com
Attorneys for Defendants,
Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; KHAVKIN CLINIC, PLLC; VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL; NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO.: A-19-800263-C
DEPT: V

ORDER GRANTING DEFENDANTS' MOTIONS TO STRIKE PLAINTIFF'S THIRD AMENDED COMPLAINT AND DENYING REQUEST FOR FEES

DATE OF HEARING: 8/5/2021

TIME OF HEARING: 9:30 A.M.

Defendant Valley Health Systems, LLC d/b/a Spring Valley Hospital's Motion to Strike Plaintiff's Third Amended Complaint and Request for Fees and Defendants, Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.'s Motion to Strike Plaintiff's Third Amended Complaint and all Joinders came on for hearing on August 5, 2021 at 9:30 a.m., the

Honorable Veronica Barisich presiding. The Court, having reviewed the papers and pleadings on file herein and having heard argument of counsel, hereby finds as follows:

I.

FINDINGS OF FACT

1. At the February 11, 2021 hearing held by this Court, the strict products liability claim contained in Plaintiff's Second Amended Complaint, which was asserted against Nuvasive, Inc. and Nuvasive Specialized Orthopedics, Inc. only, was determined to be incorrectly pled.
2. As a result of that hearing, this Court allowed an Amended Complaint regarding products information. Both the Motion brought by Nuvasive, Inc. and Nuvasive Orthopedics, Inc. and this Court's ruling allowing an amendment were limited to those Defendants – Nuvasive, Inc. and Nuvasive Orthopedics, Inc.
3. On June 4, 2021, Plaintiff filed his Third Amended Complaint.
4. On June 18, 2021, Defendants Spring Valley Hospital and Dr. Schneier/ Michael Schneier Neurosurgical Consulting, P.C. filed their respective Motions to Strike Plaintiff's Third Amended Complaint. Defendant Valley Health Systems, LLC d/b/a Spring Valley Hospital's Motion includes a request for fees related to the Motion.
5. On June 25, 2021, Nuvasive, Inc. and Nuvasive Specialized Orthopedics, Inc. were voluntarily dismissed from this action.

II.

CONCLUSIONS OF LAW

1. Nevada Rule of Civil Procedure 12(f) governs motions to strike and provides that, "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."
2. Pursuant to NRCP 15, Plaintiff was required to seek defense counsel's written consent or the Court's leave in order to amend his Complaint.
3. Plaintiff did not seek leave nor was written consent provided.
4. Thus, Plaintiff's Third Amended Complaint is a fugitive document and should be

stricken from the record.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Valley Health Systems, LLC d/b/a Spring Valley Hospital's Motion to Strike Plaintiff's Third Amended Complaint, Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.'s Motion to Strike Plaintiff's Third Amended Complaint and all Joinders to the Motions to Strike are **GRANTED** and Plaintiff's Third Amended Complaint is stricken from the record.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Valley Health Systems, LLC d/b/ Spring Valley Hospital's Request for Fees is **DENIED**. The Court will not award fees at this time. *** However, Plaintiff is cautioned that future failures to comply with this Court's Orders will result in an award of fees against Plaintiff.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff will have 30 days from the date of entry of this Order to seek appropriate leave of this Court to amend if Plaintiff believes it necessary to do so.

IT IS SO ORDERED.

_____.

***There may have been a misunderstanding as to whether Plaintiff may file an amended pleading.

Dated this 7th day of September, 2021

V Barisich

22A 9FD 202B 8232
Veronica M. Barisich
District Court Judge

Respectfully Submitted By:	Approved as to Form and Content:
DATED this 24th day of August, 2021.	DATED this ___ day of August, 2021.
McBRIDE HALL	BIGHORN LAW
/s/ Heather S. Hall	NO RESPONSE
Robert C. McBride, Esq. Nevada Bar No.: 7082 Heather S. Hall, Esq. Nevada Bar No.: 10608 8329 W. Sunset Road, Suite 260 Las Vegas, Nevada 89113 Attorneys for Defendants *Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.*	Kimball L. Jones, Esq. Nevada Bar No.: 716 S. Jones Blvd. Las Vegas, Nevada 89107 *Attorneys for Plaintiff*

Approved as to Form and Content: DATED this 24th day of August, 2021. LEWIS BRISBOIS BISGAARD & SMITH */s/ Adam Garth* Adam Garth, Esq. Nevada Bar No.: 15045 6385 S. Rainbow Boulevard, Suite 600 Las Vegas, Nevada 89118 Attorneys for Defendant, *Valley Health Systems,* *LLC dba Spring Valley Hospital*	

From:	Heather S. Hall
To:	Kimball@bighornlaw.com; janderson@tcafirm.com; brittany@bighornlaw.com; Garth, Adam; Rokni, Roya
Cc:	Candace P. Cullina
Subject:	RE: Hinton v. Schneler, MD, et. al
Date:	Sunday, August 22, 2021 8:22:55 AM
Attachments:	Order Granting Motions to Strike Third Amended Complaint.pdf image001.png

Jared,

Please see below. If I do not hear from Plaintiff's counsel by end of day on 8/24, I will be submitting this Order without signature for Plaintiff.

Thanks,
Heather

From: Heather S. Hall
Sent: Sunday, August 22, 2021 8:21 AM
To: Kimball@bighornlaw.com; Debora Ponce <debora@bighornlaw.com>; brittany@bighornlaw.com; Garth, Adam <Adam.Garth@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>
Cc: Candace P. Cullina <ccullina@mcbridehall.com>
Subject: RE: Hinton v. Schneier, MD, et. al

Kimball,

Adam has approved the attached Order but I have not received a response from you. Please get back to me by 8/24 so I may get this Order submitted to the Department. If I do not hear from you, I will submit the Order without your signature and you can submit your own proposed Order.

Thanks,
Heather

From: Heather S. Hall
Sent: Tuesday, August 10, 2021 10:46 AM
To: Kimball@bighornlaw.com; Debora Ponce <debora@bighornlaw.com>; brittany@bighornlaw.com; Garth, Adam <Adam.Garth@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>
Cc: Candace P. Cullina <ccullina@mcbridehall.com>
Subject: Hinton v. Schneier, MD, et. al

Attached, please find the draft Order granting to Strike Plaintiff's Third Amended

Complaint for your review. If you have proposed changes, please let me know. If you have no changes, please advise whether I may use your e-signature.

Thanks,

Heather S. Hall, Esq.
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8329 West Sunset Road
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Las Vegas, Nevada 89113
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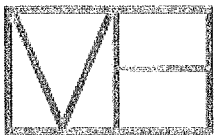

MCBRIDE HALL
ATTORNEYS AT LAW

From: Garth, Adam
To: Heather S. Hall; Kimball@bighornlaw.com; Debora Ponce; brittany@bighornlaw.com; Rokni, Roya
Cc: Candace P. Cullina
Subject: Re: Hinton v. Schneier, MD, et. al
Date: Tuesday, August 10, 2021 11:03:54 AM
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You can use my e-signature.

Adam Garth

Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

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Cc: Candace P. Cullina <ccullina@mcbridehall.com>
Subject: [EXT] Hinton v. Schneier, MD, et. al

Attached, please find the draft Order granting to Strike Plaintiff's Third Amended Complaint for your review. If you have proposed changes, please let me know. If you have no changes, please advise whether I may use your e-signature.

Thanks,

Heather S. Hall, Esq.
hshall@mcbridehall.com | www.mcbridehall.com
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MCBRIDE HALL
ATTORNEYS AT LAW

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Kurtiss Hinton, Plaintiff(s)	CASE NO: A-19-800263-C
vs.	DEPT. NO. Department 5
Michael Schneier, M.D., Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 9/7/2021

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Las Vegas, Nevada 89118
Tel.: 702.893.3383
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Attorneys for Defendant Spring Valley Hospital Medical Center Auxiliary dba Spring Valley Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; KHAVKIN CLINIC, PLLC; VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL; NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

Case No. A-19-800263-C

Dept. No.: 5

DEFENDANT VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL'S JOINDER TO CO-DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S MOTION TO DISMISS PURSUANT T O NRCP 16(E)(1)

HEARING REQUESTED

Defendant VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL ("SVH") by and through its attorneys of record, S. Brent Vogel, Esq., Adam Garth, Esq., and Shady

Sirsy, Esq. of the Law Firm of Lewis Brisbois Bisgaard & Smith, LLP, hereby JOINS Defendant MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'s (collectively "Schneier") Motion to Dismiss Pursuant to NRCP 16.1(e)(1).

The arguments set forth by Schneier apply with equal force to the SVH, and for the reasons stated in the Motion should be GRANTED and applied to SVH as well. This is especially true since the sole remaining theory of liability remaining against SVH, after dismissal of all other causes of action and theories of liability on extensive motion practice, is that of ostensible agency. Ostensible agency is a predicated solely on a theory of vicarious liability. *See, McCrosky v. Carson Tahoe Reg'l Med. Ctr.*, 133 Nev. 930, 934, 408 P.3d 149, 153 (2017). Vicarious liability is derivative of direct liability, which is based on some sort of status relationship between the accused and the primary actor. *See, Batt v. State*, 111 Nev. 1127 (1995).

Dismissal of the underlying negligence action extinguishes a derivative claim for vicarious liability. *Okeke v. Biomat USA, Inc.*, 927 F.Supp.2d 1021, 1028 (D.Nev.2013). *See also Mitschke v. Gosal Trucking, LDS*, 2014 WL 5307950, at *2-3 (D. Nev. Oct. 16, 2014) (vicarious liability is not an independent cause of action and does not survive dismissal of the direct claim). *Fernandez v. Penske Truck Leasing Co., L.P.*, 2012 WL 1832571, at *1 n .1 (D. Nev. May 18, 2012); *Hillcrest Investments, Ltd. v. Robison*, 2015 WL 7573198, at *2 (D. Nev. November 24, 2015); *Long v. Las Vegas Valley Water District*, 2015 WL 5785546, *7 (D. Nev. October 1, 2015); *Phillips v. Tartet Corp.*, 2015 WL 4622673, *5 (D. Nev. July 31, 2015). *See also Wright v. Walkins*, 968 F.Supp.2d 1092 (D.Nev.2013).

In *Allison v. Lott*, 2019 Nev. Dist. LEXIS 860 (Nev. Dist. Ct. August 28, 2019), CASE NO. A-16-747551-C,[1] Plaintiffs' claim against St. Rose Hospital was predicated solely on negligent hiring, training and supervision. Plaintiffs dismissed the case against the two covered medical providers employed by St. Rose. The Court held that by dismissing the two providers, St. Rose could not be held liable for negligent hiring, training and supervision because such a claim is

[1] This case should be familiar to Plaintiff's counsel as Mr. Jones' firm litigated it and was the recipient of the dismissal order as to St. Rose based upon the previously cited case law.

derivative only and predicated solely on a theory of vicarious liability,. Lacking the underlying negligence claim, the derivative claim is automatically extinguished.

Likewise in this case, Plaintiff's sole claim against SVH is based on ostensible agency, a theory of vicarious liability. Upon dismissal of Schneier's claims due to Plaintiff's abject and inexcusable failure to conduct an early case conference within 180 days of the interposition of Schneier's answer, and what amounts to almost a year thereafter, any vicarious liability claims against SVH are automatically extinguished. Thus, upon dismissal of Schneier form this action for the reasons set for in co-defendants' motion, likewise Plaintiff's case against SVH must be dismissed as well.

Accordingly, SVH hereby JOINS Schneier's motion to dismiss and requests that the motion be granted and applied to SVH.

DATED this 10th day of December, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

By */s/ Adam Garth*

S. BRENT VOGEL
Nevada Bar No. 6858
ADAM GARTH
Nevada Bar No. 15045
SHADY SIRSY
Nevada Bar No. 15818
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
Attorneys for Defendant Spring Valley Hospital Medical Center Auxiliary dba Spring Valley Hospital

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December, 2021, a true and correct copy of **DEFENDANT VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL'S JOINDER TO CO-DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S MOTION TO DISMISS PURSUANT T O NRCP 16(E)(1)** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

Kimball Jones, Esq.
BIGHORN LAW
716 S. Jones Blvd.
Las Vegas, NV 89107
Tel: 702.333.1111
kimball@bighornlaw.com
and
Jared B. Anderson, Esq.
David A. Tanner, Esq.
David J. Churchill, Esq.
TANNER CHURCHILL ANDERSON
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janderson@tcafirm.com
Attorneys for Plaintiff

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Heather S. Hall, Esq.
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Tel: 702.792.5855
rcmcbride@mcbridehall.com
hshall@mcbridehall.com
Attorneys for Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

By */s/ Tiffany Dube*
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT C

OPPS
DAVID J. CHURCHILL (SBN: 7308)
JARED B. ANDERSON (SBN: 9747)
INJURY LAWYERS OF NEVADA
4001 Meadows Lane
Las Vegas, Nevada 89107
Telephone: 702-868-8888
Facsimile: 702-868-8889
jared@ injurylawyersnv.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; SPRING VALLEY HOSPITAL MEDICAL CENTER AUXILIARY dba SPRING VALLEY HOSPITAL; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO.: A-19-800263-C
DEPT NO.: 5

OPPOSITION TO DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S MOTION TO DISMISS PURSUANT TO NRCP 16.1(e)(1) AND ALL JOINDERS THERETO

COMES NOW Plaintiff KURTISS HINTON by and through their counsel, DAVID J. CHURCHILL, ESQ. and JARED B. ANDERSON, ESQ. of the law firm of INJURY LAWYERS OF NEVADA and files their opposition to defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.'s motion to dismiss pursuant to NRCP 16.1(e)(1) and all joinders thereto. This opposition is based upon the pleadings and papers on file in this matter, the attached Memorandum

of Points and Authorities, and any oral argument this Court will entertain at the hearing of the Motion.

Dated this 23rd day of December, 2021.

INJURY LAWYERS OF NEVADA

/s/Jared Anderson

JARED B. ANDERSON (SBN: 9747)
4001 Meadows Lane
Las Vegas, Nevada 89107
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The plaintiff's complaint should not be dismissed because the time period for holding the early case conference did not begin running until after the Notice of entry of the Order Granting Defendants' Motions to Strike the Third Amended Complaint was filed on September 8, 2021. Less than 180 days have passed since September 8, 2021, therefore the penalty provisions of NRCP 16.1(e)(1) have not come into effect.

Assuming arguendo that the early case conference should have been held earlier, the case should not be dismissed because dismissal would be an unduly harsh sanction in light of the specific facts and circumstances surrounding this case. *Dougan v. Gustaveson*, 108 Nev. 517, 522-23 (1992). Even where a plaintiff fails to timely hold an early case conference the penalty provision in NRCP 16.1(e)(1) is permissible and not mandatory. *Id.* The plaintiff has always been actively involved in this case and the specific facts and circumstances surrounding this case weigh strongly against dismissal.

II.

STATEMENT OF FACTS

The subject action involves claims of medical malpractice stemming from a lumbar fusion surgery performed on plaintiff Kurtiss Hinton by defendant Dr. Michael Schneier at Spring Valley Hospital on June 22, 2017. Plaintiff Kurtiss Hinton had a consultation with defendant neurosurgeon Dr. Schneier, who recommended that he undergo an extreme lumbar interbody fusion ("Nuvasive XLIF Procedure" or "XLIF") with posterior decompression and fixation lumbar at levels L3-L4 and L4-L5. The type of surgical procedure that was recommended by Dr. Schneier was and is a dangerous procedure with a high risk of serious adverse complications. Dr. Schneier failed to advise Kurtiss of the abnormally dangerous nature of the procedure and the high risk of side effects and he failed to advise him of the existence of safer fusion procedures with substantially lower complication rates.

Relying on the recommendation of Dr. Schneier, Kurtiss agreed to undergo the lumbar surgery and on June 22, 2017 Dr. Schneier performed the lumbar interbody fusion surgery on Kurtiss at Spring Valley Hospital. Unfortunately Dr. Schneier performed the surgery carelessly, negligently and recklessly, resulting in three of the six screws used in the fusion being malpositioned, causing injury to Kurtiss.

Immediately following the surgery, Kurtiss woke up with excruciating pain in his low back and experienced extreme weakness in his left lower extremity. He was then transferred to a rehab facility post-surgery for further care. During follow up consultation with Kurtiss, Dr. Schneier led Kurtiss to believe that partial paralysis of the left lower extremity was a normal event, that the complications were not related to any mistake by Dr. Schneier, and that over time Kurtiss would improve.

Kurtiss eventually sought consultations with other physicians and was informed by them that three of the six screws that Dr. Schneier had used in the fusion were malpositioned. He also learned that the XLIF procedure used by Dr. Schneier had a known complication of risk and injury to the femoral nerve, which could be the cause of the left-side weakness that he was experiencing.

Kurtiss continues to experience severe, constant pain in his low back and left-side weakness in his left lower extremity that prevents him from walking. The negligence of the defendants in this case includes, but is not limited to, failure to fully inform Kurtiss prior to surgery regarding the risks of the XLIF procedure compared to other safer available surgical and non-surgical options. Failure to exercise the degree of care, skill, and judgment of a reasonable orthopedic surgeon to properly protect nerves to avoid nerve damage and to properly place screws. Failure to take appropriate corrective action upon Kurtiss being paralyzed and wheelchair bound after the surgery. Failure to inform Kurtiss that nerves were damaged during surgery and that screws were malpositioned. Failure to inform Kurtiss that a revision surgery could reduce his increased pain symptoms and weakness in his lower left extremity. Failure to frankly inform Kurtiss of his post-surgical condition and the reason for the condition, while leading Kurtiss to believe no error had been made.

III.

LEGAL STANDARD FOR A MOTION TO DISMISS

Defendant has moved to dismiss the plaintiff's action pursuant to NRCP 12(b)(5). In *Cohen v. Mirage Resorts*, 119 Nev. 1, 1 (2003), the Court stated the standard for review of a motion to dismiss pursuant to NRCP 12(b)(5) as:

> When considering a motion to dismiss under NRCP 12(b)(5), a District Court must construe the complaint liberally and draw every fair inference in favor of the plaintiff. A complaint should not be dismissed unless it appears to a certainty that the plaintiff could prove no set of facts that would entitle him or her to relief. Moreover, when a complaint can be amended to state a claim for relief, leave to amend, rather than dismissal, is the preferred remedy (Mortgage Co. Holding v. Hahn, 101 Nev. 314, 315 (1985), Edgar v. Wagner, 101 Nev. 226, 228 (1985), Zulk-Josephs Co. v. Wells Cargo, Inc., 81 Nev. 163, 169-70 (1965) and Weiler v. Ross, 80 Nev. 380, 382 (1986).

Under NRCP 12(b)(5), a complaint cannot be dismissed for failure to state a claim upon which relief can be granted unless "it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief." *Edgar v. Wagner*, 101 Nev. 226, 228 (1985) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In determining whether a motion to dismiss brought pursuant to

NRCP 12(b)(5) should be granted, courts must construe allegations in the complaint in plaintiff's favor. *Edgar* at 227-228 (citing *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 515 (1972)). Trial courts and the Nevada Supreme Court are required to interpret the pleadings liberally when deciding a motion to dismiss for failure to state claim. *Capital Mortgage Holding v. Hahn*, 101 Nev. 314, 315 (1985) (citing *Brown v. Kellar*, 97 Nev. 582 (1981); *Merluzzi v. Larson*, 96 Nev. 409 (1980), overruled on other grounds).

VI.

ARGUMENT

A. Defendants' Motion and Joinders Should Be Denied Because the Time Period for Holding an Early Case Conference Should be Calculated from the Date of Entry of Order Striking the Plaintiff's Third Amended Complaint.

The plaintiff commenced the subject action by filing a Complaint and then later filed an Amended Complaint. On December 1, 2020 the plaintiff filed his Second Amended Complaint. Rather than filing an answer to the plaintiff's Second Amended Complaint the defendants both filed motions to dismiss on December 9, 2020. The defendant's answer to the plaintiff's Amended Complaint was not filed until December 15, 2020, while both of the defendants' motions to dismiss the Second Amended Complaint were pending.

The defendants' motions to dismiss the plaintiff's Second Amended Complaint were heard on February 11, 2021 and were granted by the Court. However, the Court granted the plaintiff leave to file another Amended Complaint. The plaintiff then filed his Third Amended Complaint on June 4, 2021. (See Third Amended Complaint, attached hereto as Exhibit 1). Rather than file answers to the plaintiff's Third Amended Complaint, the defendants filed motions to strike the Third Amended Complaint. The plaintiff also filed a motion for reconsideration of a portion of the Court's prior ruling.

The defendants' motions to strike the plaintiff's Third Amended Complaint and the plaintiff's motion for reconsideration all came on for hearing on August 5, 2021. During that hearing the Court

granted the defendants' motions to strike the plaintiff's Third Amended Complaint and also granted in part the plaintiff's motion for reconsideration. The Notice of Entry of the Order Granting in Part and Denying in Part Plaintiff's Motion for Reconsideration was filed on August 24, 2021 and Notice of Entry of the Order Granting Defendants' Motions to Strike the Third Amended Complaint was filed on September 8, 2021. Subsequently, defendant filed the subject motion to dismiss pursuant to NRCP 16.1(e)(1), although less than 180 days have passed since the Notice of Entry of Order Granting Defendants' Motions to Strike the Third Amended Complaint.

On December 10, 2021 counsel for plaintiff reached out to defense counsel in an effort to coordinate an early case conference pursuant to NRCP 16.1(e)(1). However, defendants have refused to appear for an early case conference. (See E-mail Chain Regarding Efforts to Schedule Early Case Conference, attached hereto as Exhibit 2). Although the plaintiff has undertaken efforts to hold an early case conference, the plaintiff is not able to hold such a conference when counsel for the defendants are refusing to participate.

This scenario is similar to what happened in *Dougan v. Gustaveson*, 108 Nev. 517, 522-23 (1992) where defendants filed a motion to dismiss a complaint for the plaintiff's failure to hold an early case conference where answers to the plaintiff's complaint were still pending. The Court explained that: "It would have been fruitless to hold a case conference before the defendants answered and the case was at issue." *Id.* Similarly, it wouldn't make much sense to hold an early case conference while the latest Complaint was still pending a motion to dismiss or strike and had not yet been answered because the claims and causes of action that would be part of the case would still be in question. The parties would not be able to intelligently and effectively hold a case conference while they were still uncertain about what claims, causes and action and/or parties were actually going to be involved in the case. For this reason it makes sense to hold the case conference after the Court has ruled on the motion to dismiss or strike or after an answer has been filed to the latest filed complaint.

In this case the plaintiff had filed the Third Amended Complaint on June 4, 2021 and no answer had been filed in response to that complaint, meaning that the time in which to hold the early case conference had not yet started running. While that time did begin running upon the filing of the Notice of Entry of the Order Granting Defendants' Motions to Strike the Third Amended Complaint on September 8, 2021, less than 180 days have transpired since that date and therefore the plaintiff has not exceeded his time to hold such a conference and defendant's motion to dismiss is without merit.

While the defendants will likely point out the fact that the plaintiff's Third Amended Complaint was ultimately dismissed and therefore no answers were ever filed in response to that Complaint, the plaintiff could not have known that the Third Amended Complaint would be dismissed at the time it was filed. Therefore the plaintiff was justified in waiting for the Court's ruling on the motions to strike the Third Amended Complaint before holding the early case conference. For this reason, the defendants' motion to dismiss should be denied.

B. Assuming Arguendo that the Plaintiff was Required to Conduct an Early Case Conference Pursuant to NRCP 16.1 at an Earlier Date, Dismissal of the Action would be an Unduly Harsh Remedy and is Not Warranted.

The penalty provision in NRCP 16.1(e)(1) is permissive and not mandatory and the Court should consider the facts and circumstances of the subject case before determining whether dismissal is appropriate. In *Dougan v. Gustaveson*, 108 Nev. 517, 522-23 (1992) the Nevada Supreme Court considered a case in which the plaintiff had failed to timely hold an early case conference and found that the Court should have refrained from dismissing the plaintiff's claim because "the dismissal of Dougan's complaint for failure to timely comply with the discovery provisions of NRCP 16.1 was unduly harsh." *Id.* The Supreme Court went on to caution that "an overly strict application of a rule -- especially when coupled with ultimate sanctions -- will defeat the very ends of justice that the rules are designed to promote." *Id.*

Dismissal of a case is the ultimate sanction, which denies the plaintiff any opportunity for redress. Such a sanction should only be exercised when the gravity of the offense is very severe and where no less drastic measures are available. *Nevada Power v. Fluor Ill.*, 108 Nev. 638, 645 (Nev. 1992). The Nevada Supreme Court has repeatedly cautioned that a court should give thoughtful consideration to the issue before exercising such a remedy. "Sanctions interfering with a litigant's claim or defenses violate due process when imposed merely for punishment of an infraction that did not threaten to interfere with the rightful decision of the case." *Wyle v. R.J. Reynolds Industries, Inc.*, 709 F.2d 585, 591 (9th Cir. 1983), citing *G-K Properties v. Redevelopment Agency*, 577, F.2d 645, 648 (9th Cir.1978). The first standard that limits a district court's use of sanctions is that "any sanction must be 'just...'." *Wyle v. R.J. Reynolds Industries, Inc.*, 709 F.2d 585, 591 (9th Cir. 1983).

The factors set forth in *Dougan v. Gustaveson*, 108 Nev. 517, 522-23 (1992) and in *Arnold v. Kip*, 123 Nev. 410, 415, 168 P.3d 1050, 1053 (2007) weigh against dismissal. First, even if the time is calculated from the date of the defendant's answer to the plaintiff's Amended Complaint, the time period that has passed is not excessive. In the *Arnold* case for example, the plaintiff had failed meet the requirements of NRCP 16.1 and had conducted no discovery up until the time of trial. No such delay has taken place in this case. Further, during the entirety of the past year the parties have been actively engaged in motion practice regarding the claims that are the subject of this action. It was not until recently that a final decision was made regarding which claims will go forward against which parties. Even if the plaintiff was mistaken about the triggering event for the running of time to hold an early case conference that mistake was based upon a reasonable interpretation of the Rules of Civil Procedure.

Regarding the reason for the delay, it is clear that the defendants have done nothing to facilitate holding the early case conference and any delay in holding the case conference has not impeded the timely prosecution of the case. If the defendants believed that an early case conference should have been held earlier, they could have taken some action to signal their belief that an early case conference

should be held. While it is true that the plaintiff has the burden of setting the early case conference, it takes cooperation from all parties to hold this conference. If defense counsel had taken only a minimal effort such as a phone call or an e-mail or a letter to plaintiff's counsel to express their position that it was time for a case conference then the early case conference could have gone forward earlier. No such communication was ever made by defense counsel. The failure of defense counsel to suggest that an early case conference should be held appeared to show that defense counsel also believed that it was not yet time to hold the early case conference.

Defense counsel's failure to communicate their belief that an early case conference should have been held at an earlier date can be the result of only one of two possibilities. Either defense counsel also believed that the parties should wait until after the ruling on the plaintiff's Third Amended Complaint before holding the case conference or defense counsel believed that it was time for the early case conference and instead of communicating that belief to plaintiff's counsel was deliberately lying in wait for the time to run in order to use Rule 16.1 as a procedural weapon to attack the plaintiff's case.

In the *Silvagni* case the Federal Court recently explained its disapproval of defense counsel who use the Rules of Civil Procedure as a procedural weapon through which to gain a tactical litigation advantage rather than working out agreements that will reasonably permit them to respond to the case on the merits. The Court explained that:

> It must be emphasized that the initial disclosure requirements are meant to provide necessary information to create a balanced playing field, and sanctions serve as a deterrent to parties seeking to avoid those obligations. **These Rules should <u>not</u> be viewed as procedural weapons through which parties seek to gain a tactical litigation advantage. The focus of defense counsel should be "work[ing] out agreements that will reasonably permit them to respond to newly disclosed evidence and defend the claims on the merits," rather than automatically resorting to motions for exclusion sanctions.** Jones, 2016 WL 1248707, at *7; see also Docket No. 18 at 2 (highlighting this sentiment in this case to guide the conduct of counsel moving forward).7
>
> **An overly strict application of Rule 37(c)'s exclusion provision would incentivize defendants to shirk these duties and to instead focus their efforts on laying the groundwork for a later motion to exclude.**

Silvagni v. WalMart Stores, Inc., Case No. 2:16-cv-00039-JCM-NJK (D. Nev. March 28, 2017). Although the *Silvagni* case involves a Federal Court Rule, the commentary by the Court is equally applicable in the subject case.

General considerations of case management also weigh against dismissal in this case. As has been discussed above, it wouldn't make much sense to hold an early case conference while the latest Complaint was still pending a motion to dismiss or strike and had not yet been answered because the claims and causes of action that would be part of the case would still be in question. Even if such a case conference had been held, it would not have been very productive. The parties would not be able to intelligently and effectively hold a case conference while they were still uncertain about what claims, causes and action and/or parties were actually going to be involved in the case. For this reason it makes more sense to hold the case conference after the Court has ruled on the motion to dismiss or strike or after an answer has been filed to the latest filed complaint. Thus, any delay in holding the early case conference did not interfere with orderly case management but instead facilitated it.

NRCP 16.1(e)(1) is intended to ensure that the parties are actively involved in moving the case forward. The penalty is intended to sanction those parties who abandon their claims and fail to move the case forward. In this case, while it is true that an early case conference has not yet been held, the plaintiff has been extremely active in filing several amendments to the complaint, filing motions and oppositions to the defendants' motions which required extensive research and briefing and appearing at each of the hearings set by this Court. The plaintiff has attempted to set an early case conference but the defendants have refused to appear for the conference, seeking instead to use the lack of a case conference to support their motions to dismiss. The plaintiff has at all times been actively engaged in the case. Therefore, it would not be just to impose the ultimate sanction of dismissal in this case based on the plaintiff's good faith belief that the early case conference should be held after there had been a

responsive pleading filed to the plaintiff's latest filed complaint, which was the Third Amended Complaint.

In addition to the reasons set forth above, plaintiff's counsel has experienced extreme disruption in the operation of their law firm as a result of the Covid-19 pandemic and other unforeseeable occurrences which constitute compelling and extraordinary circumstances. During the timeline referenced in Defendants' Motion, the Bighorn law firm experienced a significant, unprecedented disruption in their personnel related to the COVID-19 pandemic, including major internal logistical problems associated with the pandemic or resulting from the pandemic. (See Declaration of Kimball Jones, Esq., attached hereto as Exhibit 3). These included the loss of staff, both temporarily through sickness and hospitalization, as well as resignations and layoffs. This also included an unprecedented number of cases being bottled up and not going through to trial in the normal course. Not only did this impact those cases not going to trial and the direct backlog associated, but it created a new paradigm with insurance carriers where the willingness to negotiate and settle cases in general became difficult to impossible without the threat of trial. As a result, in general Bighorn experienced a massive overflow of active cases, all while revenue was dropping and staff was unavailable. (See Declaration of Kimball Jones, Esq., attached hereto as Exhibit 3).

While the problems outlined above impacted the Bighorn law firm generally, it had a direct impact on hundreds of cases, including this case. During the litigation of this matter, the following is a non-exhaustive list of specific, unprecedented challenges the Bighorn law firm went through that disrupted the handling of this case:

a. Closed the office for one month.

b. Implemented new safety policies related to COVID to ensure a safe work environment and to ensure all employees felt they were working in a safe work environment.

c. Lost more than 20 employees permanently.

d. 29 employees contracted COVID, including numerous hospitalizations and as many as 13 employees out with COVID at one time.

e. 61 employees were out at various times due to contact tracing.

f. The initial paralegal on the file was unable to work due to bronchitis and possible COVID-19 (the paralegal tested negative, but her family tested positive). These restrictions caused the then-paralegal to be out of the office.

g. Shortly after her return the then-paralegal left her employment with Bighorn Law.

h. Beginning immediately after the loss of the initial paralegal on this file (and other files), Bighorn was assisted by a second, third and fourth paralegal on the file, sequentially, whose duties shifted due to multiple COVID-related issues within the firm, combined with other abnormalities resultant from litigation cases not moving forward in the normal fashion due to the pandemic.

i. The fourth paralegal on the file and the handling associate attorney on the file both contracted COVID at the same time and were out of the office for approximately one month as a result. Then, both left their employment with Bighorn for unrelated and separate reasons within a few months of their return.

j. Bighorn hired two new associate attorneys to handle this file, sequentially, and both resigned their positions within a few months.

k. The fifth paralegal on this file was qualified and capable. However, she is in the Air Force Reserve and shortly after being assigned to this file, she was called to mandatory active duty for one year.

l. While in a supervisory role on this case Kimball Jones was also out of the office for nearly one month due to (1) quarantine related to his children getting COVID, and then (2) when he also contracted COVID.

m. As such, at the time this case was transferred to Mr. Anderson, Bighorn was on their sixth paralegal since the commencement of this case and Kimball Jones was handling the matter personally without an associate on the file.

(See Declaration of Kimball Jones, Esq., attached hereto as Exhibit 3).

Additionally, Bighorn Law consolidated their offices from five locations through Las Vegas and Henderson to a single location on Flamingo in 2020 and then closed their office on Flamingo and moved to a permanent location on Cheyenne in 2021, which were positive moves, but temporarily disruptive as well. Due to staffing needs and instability of staff availability to work due to the pandemic and the ongoing impact, the normal workflow and systems were simply not capable of keeping up as Bighorn had always been able to do before, which is part of the decision to begin referring cases out to qualified attorneys, including Mr. Anderson. (See Declaration of Kimball Jones, Esq., attached hereto as Exhibit 3).

The facts outlined in the Declaration of Kimball Jones above show that the Bighorn law firm experienced significant difficulties related to the Covid-19 pandemic and other occurrences. Bighorn law firm diligently acted to assign qualified personnel to handle the file but due to a series of unforeseen and unpreventable occurrences, including illness and significant turnover of office staff and personnel, there were difficulties in managing the file. These problems constitute compelling and extraordinary circumstances and provide good cause for a delay in holding the early case conference.

The court has stated that dismissal of a suit with prejudice should only be imposed in extreme situations, where the degree of misconduct of a party is very high. In this case, none of the factors lead to a conclusion that dismissal is warranted. Plaintiff has made a good faith effort to comply with the

rules to the best of his understanding. It was plaintiff's understanding that the NRCP 16.1 Early Case Conference was not required to go forward until after an answer had been filed to the Third Amended Complaint or the Third Amended Complaint was dismissed. The policy favoring adjudication on the merits would only be upheld if plaintiff is permitted to fairly try their claim.

In *Dougan*, the Nevada Supreme Court made it clear that the dismissal of a case for failure to hold a timely conference under NRCP 16.1 is not appropriate where dismissal is a disproportionate sanction to the offense. NRCP 16.1 was never intended to be absolute and inflexible. The rules are designed to promote a full and fair opportunity for each party to prepare and try its case. To dismiss plaintiff's claim would defeat the very ends of justice that the rules are designed to promote. *Dougan v. Gustaveson*, 108 Nev. 517, 522-23 (1992). Instead it would be the result of an overly strict, formalistic application of the rules. Such a result is contrary to the meaning behind the discovery rules and for these reasons, defendant's motion to dismiss should be denied.

VII.

CONCLUSION

For all of the reasons set forth above, the Defendants' motion to dismiss the plaintiff's complaint should be denied and the case should proceed forward on the merits.

DATED this 23rd day of December, 2021.

INJURY LAWYERS OF NEVADA

/s/Jared Anderson

DAVID J. CHURCHILL (SBN: 7308)
JARED B. ANDERSON (SBN: 9747)
4001 Meadows Lane
Las Vegas, Nevada 89107
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedures, I certify that on the 23rd day of December, 2021, I served a true and correct copy of the above and foregoing **OPPOSITION TO DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S MOTION TO DISMISS PURSUANT TO NRCP 16.1(e)(1) AND ALL JOINDERS THERETO** on the parties addressed as shown below:

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Attorneys for Defendant Spring Valley Hospital Medical Center Auxiliary dba Spring Valley Hospital

Via US Mail by placing said document in a sealed envelope, with postage prepaid (N.R.C.P. 5(b))

__X_ Via Electronic Filing (N.E.F.R. 9(b))

__X_ Via Electronic Service (N.E.F.R. 9)

____ Via Facsimile (E.D.C.R. 7.26(a))

/s/ lsalonga

An employee of Injury Lawyers of Nevada

EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual, MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation, SPRING VALLEY HOSPITAL MEDICAL CENTER AUXILIARY dba SPRING VALLEY HOSPITAL, NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE, I through X, DOE HOSPITAL EMPLOYEE, I through X, DOE MEDICAL DOCTOR, I through X, ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO.: A-19-800263-C
DEPT. NO.: V

THIRD AMENDED COMPLAINT

Arbitration Exemption Claimed: Medical Malpractice

COMES NOW Plaintiff KURTISS HINTON, by and through his counsel of record, KIMBALL JONES, ESQ., with the Law Offices of **BIGHORN LAW**, and for causes of action against the Defendants, and each of them, complains and alleges as follows:

PARTIES AND JURISDICTION:

1. Plaintiff KURTISS HINTON (hereinafter "KURTISS") is, and at all times relevant hereto has been, a resident of Las Vegas, Clark County, Nevada.

2. Defendant MICHAEL SCHNEIER, M.D. (hereinafter "SCHNEIER") is, and at all times relevant hereto has been, a medical doctor and resident of Las Vegas, Clark County, Nevada.

3. Defendant MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C. (hereinafter "SCHNEIER NEUROSURGICAL CONSULTING") is, and at all times relevant hereto was, a Nevada Medical Facility located at 10105 Banburry Cross Drive, Suite 445, Las Vegas, Nevada 89144 and a corporation organized and existing under the laws of the State of Nevada, authorized to conduct, and actually conducting, business in Clark County, Nevada.

4. Defendant VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL (herein after SPRING VALLEY HOSPITAL) is, and at all times relevant hereto was, a Nevada Medical Facility located at 5400 S. Rainbow Blvd., Las Vegas, Nevada 89118 and a foreign limited-liability corporation organized and existing under the laws of the State of Delaware, authorized to conduct, and actually was conducting business in Clark County, Nevada.

5. Upon information and belief, Defendant ROE HOSPITAL, I through X, is, and at all times relevant hereto was, an entity organized and existing under the laws of the State of Nevada, authorized to conduct, and actually conducting, business in Clark County, Nevada.

6. Upon information and belief, Defendant ROE COMPANY, I through X, is, and at all times relevant hereto was, an entity organized and existing under the laws of the State of Nevada, authorized to conduct, and actually conducting, business in Clark County, Nevada.

7. Upon information and belief, Defendant DOE NURSE, I through X, is, and at all times relevant hereto was a resident of Clark County, Nevada, and is a nurse employed by Doe Hospital and was acting within the course and scope of his employment for Doe Hospital.

8. Upon information and belief, Defendant DOE HOSPITAL EMPLOYEE, I through X, is, and at all times relevant hereto was a resident of Clark County, Nevada, and is a nurse employed by Doe Hospital and was acting within the course and scope of his employment for Doe Hospital.

9. Upon information and belief, Defendant DOE MEDICAL DOCTOR, I through X, is, and at all times relevant hereto was a resident of Clark County, Nevada, and is a medical doctor with privileges at Doe Hospital.

10. At all times relevant hereto the conduct and activities hereinafter complaint of occurred within Clark County, Nevada.

11. KURTISS is unaware of the true names and legal capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein as Does I through X and Roes I through X, inclusive, and therefore sues said Defendants by their fictitious names. KURTISS prays leave to insert said Defendants' true names and legal capacities when ascertained. KURTISS is informed and believes and on that basis alleges that each of the Defendants designated herein as a DOE or a ROE is in some way legally responsible for the events referred to herein and proximately caused the damages alleged herein.

12. At all times mentioned herein, Defendants, including the DOE and ROE Defendants,

13. were agents, servants, employees or joint venturers of every other Defendant herein, and were acting within the scope and course of said agency, employment, or joint venture, with knowledge and permission and consent of all other named Defendants.

GENERAL ALLEGATIONS

14. KURTISS incorporates by this reference all of the allegations of paragraphs 1 through 13, hereinabove, and the attached affidavit, as though completely set forth herein.

15. On or about June 22, 2017, KURTISS was admitted to SPRING VALLEY HOSPITAL with complaints of low back pain with radiation to left leg following multiple falls over the two (2) days prior.

16. That KURTISS went to SPRING VALLEY HOSPITAL at the direction of *SCHNEIER* who he had been treating him. *SCHNEIER* directed KURTISS to go to SPRING VALLEY HOSPITAL

for additional treatment, including surgery, under the care of SCHNEIER and/or SCHNEIER NEUROSURGICAL CONSULTING.

17. That KURTISS believed SCHNEIER to an agent of SPRING VALLEY HOSPITAL and that this was the reason SCHNEIER directed KURTISS to SPRING VALLEY HOSPITAL, which is owned and/or operated and/or controlled by VALLEY HEALTH SYSTEMS.

18. On or about June 22, 2017, SCHNEIER performed an extreme lumbar interbody fusion using the XLIF procedure with posterior decompression and fixation lumbar on KURTISS on L3-L4 and L4-L5. Before performing the surgery, SCHNEIER did not inform KURTISS that the XLIF procedure (including its unnecessarily dangerous product line/hardware components) created additional or unnecessary risks, nor did SCHNEIER inform KURTISS that safer fusion procedures with substantially lower complication rates were available.

19. On or before the June 22, 2017 surgery, KURTISS was able to ambulate with the assistance of a cane.

20. Immediately following the surgery, KURTISS woke up with excruciating pain in his low back and experienced extreme weakness on his left lower extremity. KURTISS was then transferred to a rehab facility post-surgery for further care.

21. Upon information and belief, SCHNEIER continued to treat KURTISS post-surgery and led KURTISS to believe that partial paralysis was a normal event, that the complications were not related to any mistake by SCHNEIER, nor due to any defect in the products or procedure, and that over time KURTISS would likely improve with pain management.

22. Upon information and belief, KURTISS' pain management physician eventually encouraged KURTISS to seek a second surgical opinion. KURTISS consulted with Dr. Jason Garber, who recommended a spinal cord stimulator in June 29, 2018.

///

23. On August 14, 2018, KURTISS consulted with Dr. Kevin Debiparshad, MD, who confirmed that three of the six XLIF screws in the fusion were malpositioned and recommended, for the first-time, re-positioning the screws. Dr. Debiparshad also noted that the XLIF procedure (including its product line/hardware components) that was used by SCHNEIER had a known complication of risk and injury to the femoral nerve, which could be the cause of the left-side weakness.

24. That as a result of the August 14, 2018 appointment, KURTISS became concerned that his partial paralysis and severe pain following the surgery was the result of the use of an unreasonably dangerous product, negligence and/or medical negligence, including negligent surgical technique evidenced by malpositioned screws and an unnecessarily dangerous surgery that increased the risk of nerve damage unnecessarily when safer options were available.

25. That the negligence of Defendants includes, but is not limited to, failure to fully inform and warn KURTISS prior to surgery regarding the substantially increased risks of the XLIF procedure (including its product line/hardware components) compared to other safer available surgical and non-surgical options for a two-level lumbar issue at L3-4 and L4-5. Further, Defendants failed to exercise the degree of care, skill, and judgment of a reasonable orthopedic surgeon to properly protect nerves to avoid nerve damage and to properly place screws. Failure to take appropriate corrective action upon KURTISS being paralyzed and wheelchair bound after the surgery. Failure to inform KURTISS that nerves were damaged during surgery and that screws were malpositioned. Failure to inform KURTISS that a revision surgery could improve his increased pain symptoms and weakness on lower left extremity. Failure to frankly inform KURTISS of his post-surgical condition and the reason for the condition, while leading KURTISS to believe no error had been made.

26. Defendants SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and each of them, were acting in the course and scope of their

employment as employees and/or agents of SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and had a duty to carefully and skillfully diagnose, inform, and treat patients that present for care.

27. At all relevant times KURTISS reasonably believed that Defendants SCHNEIER, and/or DOE MEDICAL DOCTOR, I through X, and/or DOE NURSE, I through X, and each of them, were employees and/or agents of Defendant SPRING VALLEY HOSPITAL and/or Defendant ROE HOSPITAL and/or SCHNEIER NEUROSURGICAL CONSULTING.

28. At all relevant times KURTISS reasonably believed that Defendants SCHNEIER, and/or DOE MEDICAL DOCTOR, I through X, were employees and/or agents of Defendant SCHNEIER NEUROSURGICAL CONSULTING.

29. Defendants SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and each of them, were acting in the course and scope of their employment as employees and/or agents of SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX and/or ROE COMPANIES, XI through XX, and each of them, and had a duty to carefully and skillfully provide reasonable warnings and information regarding the unreasonable dangers of using the XLIF product, including hardware and screws in a two-level fusion of the L3-4 and L4-5.

30. As a direct and proximate result of Defendants' failure to inform and choice to use an unreasonably dangerous product and an unreasonably dangerous procedure, KURTISS was caused to be hurt and injured in his health, strength, and well-being, all of which caused KURTISS to suffer damages in excess of $15,000.00.

31. As a direct and proximate result of Defendants' negligence, and each of them, without apportionment, KURTISS was caused to be hurt and injured in his health, strength, and well-being, all of which caused KURTISS to suffer damages in excess of $15,000.00.

32. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS was required to, and did, employ physicians, surgeons, and other health care providers, to examine, treat, and care for his and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at the present time; however, KURTISS alleges that the damages are in excess of $15,000.00.

33. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS suffered physical pain, mental anguish, emotional distress, pain and suffering, loss of enjoyment of life, incidental, consequential, and general and special damages in excess of $15,000.00.

34. That KURTISS has been required to retain the Law Offices of **BIGHORN LAW** to prosecute this action, and is entitled to recover his attorneys' fees, case costs and prejudgment interest.

35. That all of the Defendants, as named herein, are jointly and severally liable to KURTISS for his damages.

36. That these acts, as described above and below, are deviations from, or in breach of the standard of care for medical treatment, and constitute negligence, recklessness, and reckless disregard for the safety of the public, creating an allowance for punitive damages.

37. That Defendants, and each of them, were obligated to exercise the utmost good faith in caring in the treatment of KURTISS and KURTISS placed his confidence and trust in Defendants to care and treat his with competence, diligence and the utmost good faith.

38. KURTISS relied on Defendants to make appropriate and good faith decisions regarding his medical care and treatment, including but not limited to following proper products for the scheduling of surgeries.

39. KURTISS placed his faith and confidence in Defendants to care for and treat his, without allowing their fiduciary duty regarding patient care to be improperly influenced by any other factors, including but not limited to Defendants business' goals, desires and/or profits.

40. Defendants breached their fiduciary duty to KURTISS by failing to exercise the utmost good faith in caring for and treating KURTISS, in that Defendants failed to reasonably schedule and monitor surgical procedures and products and failed to place patient care above their own business goals, desires and profits. As a result of these breaches, the employees, nurses and doctors failed to be proper advocates for KURTISS.

41. That this Court has subject matter jurisdiction over this matter pursuant to N.R.S. 4.370(1), as the matter in controversy exceeds $15,000.00, exclusive of attorneys' fees, interest, and costs.

42. That this Court has personal jurisdiction in this matter, as the incidents and occurrences that comprise the basis of this lawsuit took place in Clark County, Nevada.

43. That KURTISS further asserts the doctrine of res ipsa loquitur pursuant to case law and statutory authority.

44. That the Affidavit of Aaron G. Filler, M.D., is attached hereto and incorporated herein by this reference as though fully set forth herein.

FIRST CLAIM FOR RELIEF

(Medical Negligence)

45. KURTISS incorporates by this reference all of the allegations of paragraphs 1 through 44, hereinabove, and the attached affidavit, as though completely set forth herein.

46. During the course of treatment provided to KURTISS, Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, breached the standard of care when they:

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a) Failing to inform KURTISS regarding the reasonable surgical and nonsurgical options available to treat his symptoms;

b) Failing to inform KURTISS of the special risks associated with the XLIF procedure (including its unnecessarily dangerous product line/hardware components under the circumstances);

c) Improperly placing the intervertebral implants in KURTISS'S spine;

d) Failing to identify and correct the dangerous location of the implants during surgery;

e) Failing to identify and correct the dangerous location of the implants after surgery;

f) Failing to provide appropriate post-operative treatment and care, including failing to timely identify, revise, and remedy the hardware misplacements;

g) Failing to establish and follow patient safety checklists in compliance with NRS 439.877.

47. During the course of treatment provided to KURTISS, Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, had a duty to exercise that degree of care, diligence and skill ordinarily exercised by nurses, hospitals, doctors, specialists and staff in good standing in the community.

48. During the course of treatment provided to KURTISS, Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, failed to exercise that degree of care, diligence, and skill ordinarily exercised by nurses, hospitals, doctors, and staff in good standing in the community by, among other things, failing to properly diagnose KURTISS's symptoms, failing to properly oversee the care provided to KURTISS, failing to have and enforce appropriate policies and protocols requiring proper education

and training of staff, and failing to have and enforce appropriate policies and protocols requiring proper discharging to KURTISS, to prevent KURTISS from further injury while under Defendants SPRING VALLEY HOSPITAL's, and/or SCHNEIER's, and/or SCHNEIER NEUROSURGICAL CONSULTING's, and/or DOE NURSE, I through X's, and/or DOE HOSPITAL EMPLOYEE, I through X's, and/or DOE MEDICAL DOCTOR, I through X's, and/or ROE HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, custody, care and control. *See* the Affidavit of Merit of Aaron G. Filer, MD, PhD, attached hereto.

49. During the course of treatment provided to KURTISS, Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, breached the standard of care when they negligently failed to effectively and safely care for KURTISS. *See* the Affidavit of Merit of Aaron G. Filer, MD, PhD, attached hereto.

50. Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, breached the standard of care by their failure to exercise that degree of care, diligence, and skill ordinarily exercised by nurses, doctors, hospitals, and staff in good standing in the community constitutes negligence, gross negligence, and/or recklessness.

51. At all times relevant hereto, Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them,

knew or should have known that the incidents, conduct, acts, and failures to act as more fully described herein would and did result in physical, emotional, and economic harm and damages to KURTISS.

52. As a direct and proximate result of Defendants SPRING VALLEY HOSPITAL's, and/or SCHNEIER's, and/or SCHNEIER NEUROSURGICAL CONSULTING's, and/or DOE NURSE, I through X's, and/or DOE HOSPITAL EMPLOYEE, I through X's, and/or DOE MEDICAL DOCTOR, I through X's, and/or ROE HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, negligence, without apportionment, KURTISS was caused to be hurt and injured in his health, strength, and well-being, all of which caused KURTISS to suffer damages in excess of $15,000.00.

53. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS was required to, and did, employ physicians, surgeons, and other health care providers, to examine, treat, and care for his and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at the present time; however, KURTISS alleges that the damages are in excess of $15,000.00.

54. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS has suffered and will continue to suffer mental anguish, emotional distress, pain and suffering, loss of enjoyment of life, incidental, consequential, and general and special damages in excess of $15,000.00.

55. That KURTISS has been required to retain the Law Offices of **BIGHORN LAW** to prosecute this action, and is entitled to recover his attorneys' fees, case costs and prejudgment interest.

SECOND CLAIM FOR RELIEF

(General and Corporate Negligence)

56. KURTISS incorporates by this reference all of the allegations of paragraphs 1 through 55, hereinabove, and the attached affidavit, as though completely set forth herein.

57. In providing care to KURTISS, Defendants SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and each of them, were acting as employees of Defendants SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them.

58. As a result of the employment relationship between Defendants SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, and that of Defendants SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and each of them, Defendants SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, is responsible and liable for the actions of Defendants SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and each of them, as they were under Defendants SPRING VALLEY HOSPITAL's and/or ROE HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, control and acting in furtherance of Defendants SPRING VALLEY HOSPITAL's and/or ROE HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, interests at the time Defendants' actions caused injury to KURTISS.

59. Defendants SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, were negligent in the hiring, training, and supervision of their employees, contractors, staff, and independent contractors in caring for patients, to prevent KURTISS from further injury.

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60. Defendants SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, were negligent in permitting the XLIF procedure to be performed on trusting patients when it knew the procedure to be less effective and less safe for patients than other alternative procedures.

61. Defendant SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, were negligent per se for failing to establish and follow patient safety checklists in compliance with N.R.S. 439.877.

62. Defendants SPRING VALLEY HOSPITAL's and/or ROE HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, conduct demonstrated a conscious disregard of known accepted products, protocols, care and treatment, all with the knowledge or utter disregard that such conduct could or would expose KURTISS to risk of further injury.

63. As a direct and proximate result of Defendants SPRING VALLEY HOSPITAL's, and/or SCHNEIER's, and/or SCHNEIER NEUROSURGICAL CONSULTING's, and/or KHAVKIN CLINIC, and/or DOE NURSE, I through X's, and/or DOE HOSPITAL EMPLOYEE, I through X's, and/or DOE MEDICAL DOCTOR, I through X's, and/or ROE HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, negligence, without apportionment, KURTISS was caused to be hurt and injured in his health, strength, and well-being, all of which caused KURTISS to suffer damages in excess of $15,000.00.

64. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS was required to, and did, employ physicians, surgeons, and other health care providers, to examine, treat, and care for his and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at the present time; however, KURTISS alleges that the damages are in excess of $15,000.00.

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65. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS has suffered and will continue to suffer mental anguish, emotional distress, pain and suffering, loss of enjoyment of life, incidental, consequential, and general and special damages in excess of $15,000.00.

66. That KURTISS has been required to retain the Law Offices of **BIGHORN LAW** to prosecute this action, and is entitled to recover his attorneys' fees, case costs and prejudgment interest.

THIRD CLAIM FOR RELIEF

(Gross Negligence)

67. KURTISS incorporates by this reference all of the allegations of paragraphs 1 through 66, hereinabove, and the attached affidavit, as though completely set forth herein.

68. Defendants' conduct was wanton, oppressive, and showed a conscious disregard for KURTISS' health and safety.

69. Defendants knew that the XLIF procedure (including its product line/hardware components) on a two-level fusion of the L3-L4 and L4-L5 was unreasonably dangerous and harmful and had a low success rate and proceeded forward with the product when he had knowledge of probable harmful consequences. Defendants willfully and deliberately failed to act to avoid those consequences.

70. Defendants put their own interests above that of KURTISS when they failed to exercise due care in his treatment of KURTISS.

71. As a result of Defendant's gross negligence, KURTISS has suffered damages to the extent that he has incurred and will yet to incur expenses and attorneys' fees in amount that is presently undetermined. KURTISS is entitled to an award thereof and reserves the right to amend this Complaint when such attorneys' fees and expenses are ascertained.

72. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS was required to, and did, employ physicians, surgeons, and other health care providers,

to examine, treat, and care for his and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at the present time; however, KURTISS alleges that the damages are in excess of $15,000.00.

73. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS has suffered and will continue to suffer mental anguish, emotional distress, pain and suffering, loss of enjoyment of life, incidental, consequential, and general and special damages in excess of $15,000.00.

74. That KURTISS has been required to retain the Law Offices of **BIGHORN LAW** to prosecute this action, and is entitled to recover his attorneys' fees, case costs and prejudgment interest.

FOURTH CAUSE OF ACTION

(Strict Products Liability)

75. KURTISS repeats and realleges those allegations set forth in paragraph 1 through 74 of the above as fully set forth herein.

76. Defendants, and each of them, had a duty to exercise reasonable care in the designing, researching, manufacturing, marketing, supplying, promoting, packaging, selling and distributing the subject XLIF products and procedure (including its unnecessarily dangerous product line/hardware components) into the stream of commerce, including a duty to assure that the product would not cause users to suffer unreasonable, dangerous side effects.

77. Defendants, and each of them, failed to exercise ordinary care in the designing, researching, manufacturing, marketing, supplying, promoting, packaging, selling, testing, quality assurance, quality control, and/or distributing the subject XLIF products into interstate commerce in that Defendants, and each of them, knew or should have known that using the subject XLIF Procedure created a high risk of unreasonable and dangerous side effects and injuries.

78. Defendants, and each of them, failed to reasonably warn KURTISS of the significant

dangers posed by the XLIF products and procedure, particularly in a two level fusion of both the L3-4 and L4-5 vertebrate.

79. The negligence of the Defendants, their agents, servants, and/or employees, included, but was not limited to, the following acts and/or omissions:

a. Manufacturing, producing, promoting, formulating, creating, and/or designing the subject XLIF products and procedure (including its unnecessarily dangerous product line/hardware components), without thoroughly testing the procedure as well as the product line/hardware components;

b. Not conducting sufficient testing programs to determine whether or not the subject XLIF products and procedure (including its unnecessarily dangerous product line/hardware components), was safe for use; in that Defendants, and each of them, herein knew or should have known that the subject XLIF products and procedure (including its unnecessarily dangerous product line/hardware components), was unsafe and unfit for use by reason of the dangers to its expected users;

c. Selling and promoting the subject XLIF products and procedure (including its unnecessarily dangerous product line/hardware components), without making proper and sufficient tests to determine the dangers to its expected users;

d. Negligently failing to adequately and correctly warn the public and patients of the dangers with the subject XLIF products and procedure (including its unnecessarily dangerous product line/hardware components);

e. Negligently failing to adequately and correctly warn the public and patients of the dangers with the subject XLIF products and procedure in the specific context of a two-level lumbar fusion including both the L3-4 and L4-5 levels;

f. Failing to provide adequate instructions regarding safety precautions to be observed

by users, handlers, and persons who would reasonably and foreseeably come into contact with, and more particularly, use, the subject XLIF approach as well as its product line/hardware components;

g. Failing to test the subject XLIF products and procedure (including its unnecessarily dangerous product line/hardware components), and/or failing to adequately, sufficiently and properly test the subject XLIF components and procedure;

h. Negligently advertising and recommending the use of the subject XLIF products and procedure, without sufficient knowledge as to its dangerous propensities;

i. Negligently representing that the subject XLIF products and procedure (including its unnecessarily dangerous product line/hardware components), was safe for use for its intended purpose, when, in fact, it was unsafe;

j. Concealing information from the KURTISS in knowing that the subject XLIF products and procedure was unsafe, dangerous, and/or non-conforming with FDA regulations;

k. Negligently failing to create protocols and safety systems for those purchasing, using or handling the subject XLIF procedure, including doctors, nurses, and other healthcare professionals;

l. Negligently failing to adequately warn those purchasing, using or handling the subject XLIF procedure's product line/hardware components, including doctors, nurses, and other healthcare professionals; and

m. Negligently informing those purchasing, using or handling the subject XLIF products and procedure that the XLIF procedure was approved by the FDA to be used on patients as it was used in this case.

80. Defendants, and each of them, under-reported, underestimated and downplayed the

serious danger of the subject XLIF procedure (including its unnecessarily dangerous product line/hardware components).

81. The XLIF products and procedure was manufactured, designed, distributed and sold by Defendants, and each of them, and were unreasonable and dangerously defective beyond the extent contemplated by ordinary persons with ordinary knowledge regarding said devices.

82. These XLIF procedures (including its unnecessarily dangerous product line/hardware components) were defective due to inadequate warning and/or inadequate trials, *in vivo* and *in vitro* testing and study, and inadequate reporting regarding the results of such studies.

83. These XLIF procedures (including its product line/hardware components) were defective due to inadequate post-marketing warning(s) or instruction(s) because, after Defendants, and each of them, knew or should have known of the risk of injury from these machines, they failed to provide adequate warnings to each and every user, patient and recipient, and more specifically to KURTISS in this case and KURTISS'S community, and continued to promote the products as safe and effective despite the known defects.

84. The product defects alleged above were a substantial contributing cause of the injuries suffered by KURTISS, as alleged herein.

85. Defendants, and each of them, were negligent in the designing, researching, supplying, manufacturing, promoting, packaging, distributing, testing, advertising, warning, marketing and selling of the subject XLIF procedure (including its unnecessarily dangerous product line/hardware components), in that Defendants, and each of them:

a. Failed to accompany their product with proper and/or accurate warnings regarding all possible adverse side effects associated with the use of the subject XLIF procedure (including its unnecessarily dangerous product line/hardware components);

b. Failed to accompany their product with proper warnings regarding all possible adverse

side effects concerning any failure and/or malfunction of the subject XLIF Procedure (including its unnecessarily dangerous product line/hardware components);

c. Failed to accompany their product with accurate warnings regarding the risk of all possible adverse side effects concerning the subject XLIF Procedure (including its unnecessarily dangerous product line/hardware components);

d. Failed to conduct adequate testing, including pre-clinical and clinical testing and post-marketing surveillance to determine safety of the subject XLIF Procedure (including its unnecessarily dangerous product line/hardware components) on patients;

e. Failed to accompany the product with accurate warnings regarding the risk of receiving treatment from the subject XLIF procedure (including its product line/hardware components);

f. Failed to conduct adequate testing, including human factors and in-clinic testing to determine all risks to patient health the subject XLIF procedure (including its product line/hardware components) creates; and

g. Were otherwise careless and/or negligent.

86. Despite the fact that Defendants, and each of them, knew or should have known that the subject XLIF Product caused unreasonably dangerous side effects, Defendants, and each of them, continued to market, manufacture, distribute and/or sell the subject XLIF products and procedure (including its product line/hardware components).

87. As a direct and proximate result of Defendants', and each of their dangerous products, KURTISS was caused to be hurt and injured in health, strength, and well-being, all of which caused KURTISS to suffer damages in excess of $15,000.00.

88. That as a direct and proximate result of these dangerous products, KURTISS was required to, and did, employ physicians, surgeons, and other health care providers, to examine, treat, and care for

him and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at the present time, but KURTISS alleges that the damages are in excess of $15,000.00.

89. That as a direct and proximate result of the dangerous products of the Defendants, and each of them, KURTISS has suffered and will continue to suffer mental anguish, emotional distress, pain and suffering, loss of enjoyment of life, incidental, consequential, and general and special damages in excess of $15,000.00.

90. By reason of the negligent acts and breach of the applicable standard of care by Defendants, and each of them, and as a direct and proximate result thereof, KURTISS has found it necessary to secure the services of an attorney in order to prosecute this action, has sustained damages to the extent of such attorney fees, and KURTISS is entitled to reasonable attorney's fees, case costs and prejudgment interest.

PRAYER FOR RELIEF

Wherefore KURTISS, expressly reserving the right to amend this Complaint prior to or at the time of trial of this action to insert those items of damage not yet fully ascertainable, prays for judgment against all Defendants, and each of them, as follows:

1. General past damages and future damages for KURTISS, each in an amount in excess of $15,000.00;
2. Special damages for said KURTISS's medical and miscellaneous expenses as of this date, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;
3. Compensatory damages in an amount in excess of $15,000.00;
4. Costs of this suit;
5. Attorney's fees; and

///

6. For such other and further relief as to the Court may seem just and proper in the premises.

DATED this 04th day of June, 2021.

BIGHORN LAW

By: */s/ Kimball Jones*
KIMBALL JONES, ESQ.
Nevada Bar No.: 12982
2225 E. Flamingo Road
Building 2, Suite 300
Las Vegas, Nevada 89119
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, N.E.F.C.R. 9 and E.D.C.R. 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 04th day of June, 2021, an electronic copy of the ***THIRD AMENDED COMPLAINT*** as follows:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system; and/or

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below:

S. Brent Vogel, Esq.
Adam Garth, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
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Attorneys for Defendants, NUVASIVE, INC. and NUVASIVE SPECIALIZED ORTHOPEDICS, INC.

/s/ Angelica Lucero
An employee of **BIGHORN LAW**

EXHIBIT 2

Jared Anderson

From:	Lili Salonga
Sent:	Friday, December 10, 2021 9:41 AM
To:	rcmcbride@mcbridehall.com; hshall@mcbridehall.com; kherpin@mcbridehall.com; cculina@mcbridehall.com; brent.vogel@lewisbrisbois.com; ada.garth@lewisbrisbois.com; roya.rokni@lewisbrisbois.com; shady/sorsu@lewisbrisbois.com
Cc:	kurtishintonz9760239@projects.filevine.com; Jared Anderson; Kimball Jones
Subject:	Hinton v Valley Hospital; Michael Schneier, MD/ ECC/JCCR
Attachments:	JCCR.docx

Good morning,
Our office would like to schedule the ECC in this case.
Our case has the ff dates and times available. Please advise what works with your schedule.
December 13th PM from 1PM
December 14th from 11 PM to noon and from 1:30-4PM
December 16th from 2PM
December 17th from 9AM to noon and from 1-4PM
December 20 from 9am -12PM
December 28th – all day.
Also, a draft of the JCCR is attached for your review. Please advise if you have proposed edits.

Thank you.

Lili

Lilibeth Salonga
Legal Assistant
INJURY LAWYERS OF NEVADA
4001 Meadows Lane
Las Vegas, NV 89107
Ph: (702)868-8888
Fax: (702) 868-8889

Thank you.

Lili

Lilibeth Salonga
Legal Assistant
INJURY LAWYERS OF NEVADA
4001 Meadows Lane
Las Vegas, NV 89107
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Fax: (702) 868-8889

Jared Anderson

From:	Heather S. Hall <hshall@mcbridehall.com>
Sent:	Friday, December 10, 2021 1:02 PM
To:	Lili Salonga; Robert McBride; Kristine Herpin; cculina@mcbridehall.com; brent.vogel@lewisbrisbois.com; ada.garth@lewisbrisbois.com; roya.rokni@lewisbrisbois.com; shady/sorsu@lewisbrisbois.com
Cc:	kurtishintonz9760239@projects.filevine.com; Jared Anderson; Kimball Jones
Subject:	RE: Hinton v Valley Hospital; Michael Schneier, MD/ ECC/JCCR

Lili,

The deadline to hold an ECC has long passed, and this is the first time I have been contacted about an ECC. I will not be attending an ECC in light of my pending Motion to Dismiss for failing to hold one within the time period.

Heather S. Hall, Esq.
hshall@mcbridehall.com | www.mcbridehall.com
8329 West Sunset Road
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Las Vegas, Nevada 89113
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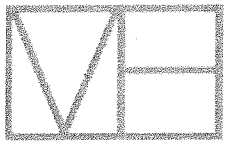

MCBRIDE HALL
ATTORNEYS AT LAW

From: Lili Salonga <lili@injurylawyersnv.com>
Sent: Friday, December 10, 2021 9:41 AM
To: Robert McBride <rcmcbride@mcbridehall.com>; Heather S. Hall <hshall@mcbridehall.com>; Kristine Herpin <kherpin@mcbridehall.com>; cculina@mcbridehall.com; brent.vogel@lewisbrisbois.com; ada.garth@lewisbrisbois.com; roya.rokni@lewisbrisbois.com; shady/sorsu@lewisbrisbois.com
Cc: kurtishintonz9760239@projects.filevine.com; Jared Anderson <jared@injurylawyersnv.com>; Kimball Jones

Jared Anderson

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Monday, December 13, 2021 8:59 AM
To: Heather S. Hall; Lili Salonga; Robert McBride; Kristine Herpin; Vogel, Brent; Sirsy, Shady; San Juan, Maria; DeSario, Kimberly
Cc: kurtishintonz9760239@projects.filevine.com; Jared Anderson; Kimball Jones
Subject: RE: Hinton v Valley Hospital; Michael Schneier, MD/ ECC/JCCR

Given that we have joined Ms. Hall's motion to dismiss as the only remaining claim is one for ostensible agency, and therefore wholly dependent upon Ms. Hall's client's status in this case, we will not be attending any ECC until after the resolution of the pending motion to dismiss. Our legal rationale is contained in the previously filed joinder.

LEWIS BRISBOIS

Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

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Representing clients from coast to coast. View our locations nationwide.

From: Heather S. Hall <hshall@mcbridehall.com>
Sent: Friday, December 10, 2021 1:06 PM
To: Lili Salonga <lili@injurylawyersnv.com>; Robert McBride <rcmcbride@mcbridehall.com>; Kristine Herpin <kherpin@mcbridehall.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Garth, Adam <Adam.Garth@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; shady/sorsu@lewisbrisbois.com
Cc: kurtishintonz9760239@projects.filevine.com; Jared Anderson <jared@injurylawyersnv.com>; Kimball Jones <kimball@bighornlaw.com>
Subject: RE: Hinton v Valley Hospital; Michael Schneier, MD/ ECC/JCCR

Correcting the email addresses you had listed to: ccullina@mcbridehall.com and Adam.Garth@lewisbrisbois.com

From: Heather S. Hall
Sent: Friday, December 10, 2021 1:02 PM
To: Lili Salonga <lili@injurylawyersnv.com>; Robert McBride <rcmcbride@mcbridehall.com>; Kristine Herpin <kherpin@mcbridehall.com>; cculina@mcbridehall.com; brent.vogel@lewisbrisbois.com; ada.garth@lewisbrisbois.com; roya.rokni@lewisbrisbois.com; shady/sorsu@lewisbrisbois.com
Cc: kurtishintonz9760239@projects.filevine.com; Jared Anderson <jared@injurylawyersnv.com>; Kimball Jones <kimball@bighornlaw.com>
Subject: RE: Hinton v Valley Hospital; Michael Schneier, MD/ ECC/JCCR

EXHIBIT 3

DECLARATION IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

I, KIMBALL JONES, ESQ., being duly sworn, states as follows:

1. I am a prior handling attorney for Plaintiff in the above-entitled action, as well as the supervising partner on the file, and for the firm of Bighorn Law.
2. Within my law firm we have carefully set up systems to ensure no deadlines are missed and to ensure all cases are handled in the appropriate way. These systems include advanced technology to organize, track, and provide reminders on cases. These systems also include several layers of qualified, experienced people to handle each case. These systems are important to make sure cases are handled properly, both strategically and procedurally.
3. From the commencement of Mr. Hinton's case, all appropriate systems were in place to make sure the case was handled appropriately. This included layers of advanced technology that we have successfully used for thousands of other cases over many years. This also included two attorneys, a supervising partner and an associate attorney, handling the matter day to day. This also included an experienced paralegal, as well as a case manager for record collection and appointment setting.
4. In the months before and during the timeline referenced in Defendants' Motion, we experienced a significant, unprecedented disruption in our personnel related to the COVID-19 pandemic, including major internal logistical problems associated with the pandemic or resulting from the pandemic. These included the loss of staff, both temporarily through sickness and hospitalization, as well as resignations and layoffs. This also included an unprecedented number of cases being bottled up and not going through to trial in the normal course. Not only did this impact those cases not going to trial and the direct backlog associated, but it created a new paradigm with insurance carriers where the willingness to

negotiate and settle cases in general became difficult to impossible without the threat of trial. As a result, in general we experienced a massive overflow of active cases, all while revenue was dropping due to lagging settlements and while staff was unavailable.

5. For the first time in Bighorn Law's existence, we began referring cases out to other qualified law firms due to our inability to handle the volume of cases, all of which was caused by the direct and indirect effects of the pandemic. In fact, that is the very reason this specific case was referred to the qualified care of Jared Anderson, Esq., and his partner David Churchill, Esq.
6. While the problems outlined above impacted our law firm generally, there was also a direct impact on many cases, including this case. During the litigation of this matter, the following is a non-exhaustive list of specific, unprecedented challenges our firm went through that disrupted our handling of this case:
    a. Closed our office for one month.
    b. Implemented new safety policies related to COVID to ensure a safe work environment and to ensure all employees felt they were working in a safe work environment.
    c. Lost more than 20 employees permanently.
    d. 29 employees contracted COVID, including numerous hospitalizations and as many as 13 employees out with COVID at one time.
    e. 61 employees out at various times due to contact tracing.
    f. The initial paralegal on the file was unable to work due to bronchitis and possible COVID-19 (the paralegal tested negative, but her family tested positive). These restrictions caused the then-paralegal to be out of the office.

g. Shortly after her return the then-paralegal left her employment with Bighorn Law.

h. Beginning immediately after the loss of the initial paralegal on this file (and other files), we were assisted by a second, third and fourth paralegal on the file, sequentially, whose duties shifted due to multiple COVID-related issues within our firm, combined with other abnormalities resultant from litigation cases not moving forward in the normal fashion due to the pandemic.

i. The fourth paralegal on the file and the handling associate attorney on the file both contracted COVID at the same time and were out of the office for approximately one month as a result. Then, both left their employment with our firm for unrelated and separate reasons within a few months of their return.

j. We hired two associate attorneys, sequentially, as associates on this and other cases, but both resigned their positions for other opportunities within a few months.

k. The fifth paralegal on this file was qualified and capable. However, she is in the Air Force Reserve and shortly after being assigned to this file, she was called to mandatory active duty for one year.

l. While in a supervisory role on this case I was also out of the office for nearly one month due to (1) quarantine related to my children getting COVID, and then (2) when I also contracted COVID.

m. As such, at the time this case was transferred to Mr. Anderson, we were on our sixth paralegal since the commencement of this case, and I was handling the matter personally without an associate on the file.

n. Additionally, Bighorn Law consolidated our offices from five locations through Las Vegas and Henderson to a single, larger location on Flamingo in 2020. We then

closed our office on Flamingo and moved to a permanent location on Cheyenne in 2021. These were ultimately positive moves, but temporarily disruptive as well.

7. Due to staffing needs and instability of staff availability to work due to the pandemic and the ongoing impact, the normal workflow and systems were simply not capable of keeping up as we have always been able to do before, which is part of our decision to begin referring cases out to qualified attorneys, including Mr. Anderson.
8. To my knowledge, at no point did counsel for any Defendant in this matter notify Plaintiff of Defendants' position that Plaintiff should have set the ECC earlier.
9. Despite working long hours and diligently working on this and other files during the relevant timeframe, I did not become aware of any of the allegations outlined in Defendants' Motion until after we transferred the file. Sometime thereafter Mr. Anderson informed me of Defendants' Motion and the allegations therein.
10. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 22nd day of December, 2021.

By: */s/ Kimball Jones*
KIMBALL JONES, ESQ.

EXHIBIT D

RPLY
ROBERT C. McBRIDE, ESQ.
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Attorneys for Defendants,
Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; KHAVKIN CLINIC, PLLC; VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL; NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO.: A-19-800263-C
DEPT: V

DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S REPLY TO MOTION TO DISMISS PURSUANT TO NRCP 16.1(e)(1)

DATE OF HEARING: 1/27/2022

TIME OF HEARING: 9:30 a.m.

COME NOW, Defendants, MICHAEL SCHNEIER, M.D. and MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., by and through their counsel of record, ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ. of the law firm of McBRIDE HALL, and hereby submit this Reply to Motion to Dismiss the above-captioned matter without prejudice

pursuant to NRCP 16.1(e)(1) for failure to timely hold an early case conference as required by NRCP 16.1(b).

This Reply is made and based upon the papers and pleadings on file herein, the Memorandum of Points and Authorities submitted and such oral argument as may be heard at the upcoming hearing of this matter, if any.

DATED this 20th day of January, 2022.

McBRIDE HALL

/s/ Heather S. Hall

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Defendants,
Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS/INTRODUCTION

Plaintiff's Opposition makes a very serious misstatement of the procedural history of this case stating that "On December 1, 2020 the plaintiff filed his Second Amended Complaint. Rather than filing an answer to the plaintiff's Second Amended Complaint the defendants both filed motions to dismiss on December 9, 2020. The defendant's answer to the plaintiff's Amended Complaint was not filed until December 15, 2020, while both of the defendants' motions to dismiss the Second Amended Complaint were pending." *See Plf's Opp.*, 5:13 – 18.

This description of the events leading to this Motion is completely inaccurate. These Defendants engaged in motion practice in **December 2019**, in the form of a Joinder to Spring Valley Hospital's Motion to Dismiss **Plaintiff's original Complaint**. Subsequent to a decision on that in December ***2019***, Plaintiff filed an Amended Complaint on January 23, 2020 and a Second Amended Complaint on December 1, 2020. Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C. never filed any Motion to Dismiss or Joinder to a pending Motion related to the Second Amended Complaint. Instead, Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C. timely filed their Answer to the Second Amended Complaint on **December 15, 2020** and no Motion to Dismiss the Second Amended Complaint on behalf of these Defendants ever existed. *See* Exhibit "A" to Motion.

While these gross factual misstatements may have been inadvertent, they very well could have misled this Court. The procedural history of this case is readily discernable from the Court's docket, as well as documents filed in this matter. Counsel for Plaintiff has an obligation to ensure that representations to this Court are true and correct.

Plaintiff took no steps to conduct the mandatory early case conference prior to Defendants filing this Motion on December 9, 2021. At of the time of filing the Motion, it had been 359 days since these Defendants filed their Answer.

Plaintiff's Opposition does not dispute that the Early Case Conference was never held. Instead, Plaintiff argues that, "assuming arguendo that the early case conference should have

been held earlier, the case should not be dismissed because dismissal would be an unduly harsh sanction in light of the specific facts and circumstances surrounding this case." *See Plf's Opp.,* 2:21 – 22.

Plaintiff also argues that the time to hold an Early Case Conference should run from the Notice of Entry of Order granting Defendants' Motion to Strike the Third Amended Complaint, when that flies in the face of NRCP 16.1 *Id.* at 2:15 – 19. NRCP 16.1(b)(2)(A) requires that: "The early case conference **must** be held within 30 days after service of an answer by the first answering defendant." NRCP 16.1(b)(2)(A) (emphasis added).

The parties are not exempt from the NRCP 16.1 (b) requirement to hold an early case conference as this matter is not exempt from the initial disclosure requirements under Rule 16.1 (a) (1) (B); is exempt from arbitration; is not in the court-annexed arbitration program; has not been through arbitration; is not in the short trial program; and there has been no order excusing compliance with NRCP 16.1 (b) regarding participation in an early case conference.

As there has been no exemption to the requirement to hold an NRCP 16.1(b) early case conference and it has been over 180 days since these Defendants' Answer was filed, dismissal without prejudice is appropriate. Plaintiff has failed to provide the Court with a compelling and extraordinary circumstance to justify an extension beyond the 180 days to conduct the mandatory ECC pursuant to NRCP 16.1(b)(1). Accordingly, Defendants request this Court dismiss Plaintiff's Complaint pursuant to NRCP 16.1(e)(1).

II.

LEGAL ARGUMENT

A. PLAINTIFF HAS FAILED TO SHOW COMPELLING AND EXTRAORDINARY CIRCUMSTANCES AND THE COMPLAINT SHOULD BE DISMISSED.

Plaintiff's reliance on *Dougan v. Gustaveson*, 108 Nev. 517, 835 P.2d 795, 108 Nev. Adv. Rep. 91, 1992 Nev. LEXIS 113 (Nev. 1992), distinguished on other grounds by *Arnold v. Kip*, 123 Nev. 410, 415, 168 P.3d 1050, 1053 (2007), is misplaced, as that case is factually distinguishable from the facts presented here and supports dismissal. In *Dougan*, Plaintiff had granted an open extension of time for Defendants to file their Answers to the Complaint. *Id.*at 796, 518. Defendants later filed their Answers and then moved to dismiss the case for Plaintiff's

failure to hold an Early Case Conference within 120 days of filing the Complaint. *Id.* at 796, 519. The district court granted the Motion and dismissed the case. *Id.* On appeal, the Supreme Court of Nevada held that dismissal of the Complaint for failure to meet the early case conference deadlines was unwarranted where Defendants' Answers were not served until well past the deadline for holding an early case conference because of an open extension of time given at the request of both defendants, and where appellant attempted to comply with requirements of this rule by submitting a unilateral case conference report. *Id.* at 798, 522.

Here, no such agreement was ever sought by or extended to these Defendants. There was no delay in these Defendants filing an Answer to Plaintiff's Complaint. Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C. filed their Answer to the Second Amended Complaint on December 15, 2020. Plaintiff's Opposition also makes a very serious misstatement of the procedural history of this case. These Defendants never sought dismissal of Plaintiff's Second Amended Complaint, never requested an extension to respond to the Second Amended Complaint, and timely filed their Answer to the Second Amended Complaint on December 15, 2020.

The instant Motion to Dismiss was filed on December 9, 2021. The only attempt to comply with NRCP 16.1(e)(1) did not occur until **after** this Motion to Dismiss was filed. Only after that Motion was filed, did the office of Plaintiff's counsel contact defense counsel to schedule an Early Case Conference. *See* **Exhibit "A"**, Objection to Plaintiff's Individual Case Conference Report, attaching December 2021 emails with counsel. Because of the pending Motion, Defendants would not agree to participate in an Early Case Conference until the Court hears this Motion. In response to that information, Plaintiff chose to file an Individual Case Conference Report, wherein Plaintiff misstates the date these Defendants answered the Second Amended Complaint. Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C. filed their Answer to the Second Amended Complaint on December 15, 2020, **not** December 20, 2021.

As recognized in *Dougan*, the enforcement provisions of NRCP 16.1 "recognize judicial commitment to the proposition that justice delayed is justice denied." *Dougan v. Gustaveson*,

108 Nev. 517, 523, 835 P.2d 795, 799 (1992) [internal quotation marks omitted], distinguished on other grounds by *Arnold v. Kip*, 123 Nev. 410, 415, 168 P.3d 1050, 1053 (2007).

Arnold v. Kip, 123 Nev. 410, 168 P.3d 1050 (2007) involved a strikingly similar situation as what the Court is presented with now. *Arnold* involved an appeal of a district court's granting of a doctor's motion to dismiss for failure to comply with NRCP 16.1(e)(2) and timely file a case conference report. *Id.*at 412, 1051. On appeal, Plaintiffs argued that the district court needed to consider whether the doctor had been prejudiced by their delay in filing the case conference report. The Supreme Court found that the district court did not abuse its discretion in dismissing the case. *Id.* at 418, 1055.

In upholding the district court's dismissal, the Supreme Court considered the Plaintiffs' argument that there were unique circumstances under *Dougan* and found that there reliance on that case was "misplaced", stating:

> As an initial matter, the record suggests that Dr. Kip never requested the kind of open time extensions seen in Dougan. More importantly, however, our holding in Dougan was limited to the particular circumstances therein, and it was not intended to require that the defendant show prejudice for the district court to dismiss an action under NRCP 16.1(e)(2). To the extent that Dougan suggests otherwise, we now clarify that, generally, the party moving for dismissal under NRCP 16.1(e)(2) is not required to demonstrate prejudice, and the district court is not required to consider whether the defendant has suffered prejudice because of the delay in the filing of the case conference report. Nothing in the language of NRCP 16.1(e)(2) -- either the earlier version or the current version -- requires the defendant to demonstrate prejudice or the district court to determine whether the defendant has suffered prejudice as a condition to granting a dismissal without prejudice. **To hold otherwise would largely eviscerate the rule because it would allow plaintiffs to exceed the deadline for filing a case conference report as long as the defendant could not demonstrate prejudice**.

*Id.*at 415, 1053 (emphasis added).

While not required to show prejudice, Defendants have been prejudiced by Plaintiff's inaction. The length of the delay is now over one year. Defendants have been in limbo, unable to conduct discovery and defend their care and treatment. Memories fade over time. Over 2 years have elapsed since Plaintiff filed his original Complaint.

Plaintiff's argument that the deadline for holding the ECC should run from the September 8, 2021 Notice of Entry of Order addressing Defendants' Motion to Strike the Second Amended Complaint is without merit. NRCP 16.1(b)(2)(A) provides that the deadline runs from the date

of answer by the first answering defendant, providing that: "The early case conference **must** be held within 30 days after service of an answer by the first answering defendant." NRCP 16.1(b)(2)(A) (emphasis added). Similarly, Plaintiff's argument regarding the rogue Third Amended Complaint that was filed on June 4, 2021 has no bearing on the mandatory requirement that an ECC be conducted within 30 days of these Defendants filing an Answer to the Second Amended Complaint on December 15, 2020.

Pursuant to NRCP 16.1(b)(1), this Court cannot extend the deadline for Plaintiff's counsel to conduct the mandatory ECC beyond the 180 days "absent compelling and extraordinary circumstances". Plaintiff has failed to provide the Court with compelling and extraordinary circumstances to justify extending the mandatory ECC beyond the 180 days. Accordingly, it is respectfully requested that Defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 16.1(e)(1) be granted and the Complaint dismissed without prejudice.

III.

CONCLUSION

Based upon the foregoing, Defendants request this Court issue an Order dismissing this matter in its entirety without prejudice.

DATED this 20th day of January, 2022.

McBRIDE HALL

/s/ Heather S. Hall

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Defendants,
Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of January 2022, I served a true and correct copy of the foregoing **DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S REPLY TO MOTION TO DISMISS PURSUANT TO NRCP 16.1(e)(1)** addressed to the following counsel of record at the following address(es):

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

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

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

Kimball Jones, Esq.
BIGHORN LAW
716 S. Jones Blvd.
Las Vegas, Nevada 89107
-and-
Jared B. Anderson, Esq.
David A. Turner, Esq.
David J. Churchill, Esq.
TANNER CHURCHILL ANDERSON
4001 Meadows Lane
Las Vegas, Nevada 89107
Attorneys for Plaintiff

S. Brent Vogel, Esq.
Adam Garth, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant,
Valley Health Systems,
LLC dba Spring Valley Hospital

/s/ Heather S. Hall
An Employee of *McBRIDE HALL*

EXHIBIT “A”

EXHIBIT “A”

OBJ

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
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Attorneys for Defendants,
Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; KHAVKIN CLINIC, PLLC; VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL; NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO.: A-19-800263-C
DEPT: V

DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S OBJECTION TO PLAINTIFF'S INDIVIDUAL CASE CONFERENCE REPORT

COME NOW, Defendants, MICHAEL SCHNEIER, M.D. and MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., by and through their counsel of record, ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ. of the law firm of McBRIDE HALL, and hereby submits this Objection to Plaintiff's Individual Case Conference Report.

This is a medical malpractice matter. Plaintiff filed his original Complaint on August 14,

2019 and an Amended Complaint on January 23, 2020. Plaintiff's Second Amended Complaint was filed on December 1, 2020. Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C. filed their Answer to the Second Amended Complaint on December 15, 2020.

On December 9, 2021, 359 days had passed since Defendants filed their Answer to the Second Amended Complaint and there were no attempts to hold the mandatory Early Case Conference. Accordingly, on December 9, 2021, these Defendants filed their Motion to Dismiss the above-captioned matter without prejudice pursuant to NRCP 16.1(e)(1) for Plaintiff's failure to timely hold an early case conference as required by NRCP 16.1(b). That Motion is scheduled to be heard on January 27, 2022.

Only after that Motion was filed, did the office of Plaintiff's counsel contact defense counsel to schedule an Early Case Conference. *See* December 2021 emails with counsel, attached hereto as **Exhibit "A"**. Because of the pending Motion, Defendants would not agree to participate in an Early Case Conference until the Court hears the Motion. In response to that information, Plaintiff chose to file an Individual Case Conference Report, wherein Plaintiff misstates the date these Defendants answered the Second Amended Complaint. *See* **Exhibit "B"**, page 2. Defendants Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C. filed their Answer to the Second Amended Complaint on December 15, 2020, **not** December 20, 2021. Further, Plaintiff notes that Defendants did not participate and then includes information as if it was supplied by Defendants. *Id.*at pages 11 – 12.

Plaintiff was required to set an early case conference by **June 13, 2021**. "Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time [to conduct the conference] to a day more than 180 days after an appearance is served by the defendant in question." NRCP 16.1(b)(1). As Plaintiff failed to timely hold an early case conference, the Court should, pursuant to NRCP 16.1(e), dismiss the case as to these Defendants without prejudice.

Defendants object to the untimely Individual Case Conference Report submitted by Plaintiff because it is not permitted by NRCP 16.1 and is beyond the time period provided. If

Plaintiff wishes to proceed with this case, he must seek an extension of the 180 days set forth in NRCP 16.1. Because there are no compelling and extraordinary circumstances justifying the dilatory conduct of Plaintiff, no extension should be given. This case should be dismissed at the January 27, 2022 hearing.

DATED this 14th day of January 2022.

McBRIDE HALL

/s/ Heather S. Hall

ROBERT C. McBRIDE, ESQ.
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Las Vegas, Nevada 89113
Attorneys for Defendants,
Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of January 2022, I served a true and correct copy of the foregoing **DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S OBJECTION TO PLAINTIFF'S INDIVIDUAL CASE CONFERENCE REPORT** addressed to the following counsel of record at the following address(es):

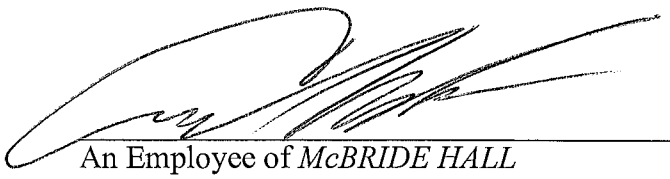
☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or

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

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

Kimball Jones, Esq.
BIGHORN LAW
716 S. Jones Blvd.
Las Vegas, Nevada 89107
-and-
Jared B. Anderson, Esq.
David A. Turner, Esq.
David J. Churchill, Esq.
TANNER CHURCHILL ANDERSON
4001 Meadows Lane
Las Vegas, Nevada 89107
Attorneys for Plaintiff

S. Brent Vogel, Esq.
Adam Garth, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant,
Valley Health Systems,
LLC dba Spring Valley Hospital



An Employee of *McBRIDE HALL*

EXHIBIT "A"

EXHIBIT "A"

Heather S. Hall

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Monday, December 13, 2021 8:59 AM
To: Heather S. Hall; Lili Salonga; Robert McBride; Kristine Herpin; Vogel, Brent; Sirsy, Shady; San Juan, Maria; DeSario, Kimberly
Cc: kurtishintonz9760239@projects.filevine.com; Jared Anderson; Kimball Jones
Subject: RE: Hinton v Valley Hospital; Michael Schneier, MD/ ECC/JCCR

Given that we have joined Ms. Hall's motion to dismiss as the only remaining claim is one for ostensible agency, and therefore wholly dependent upon Ms. Hall's client's status in this case, we will not be attending any ECC until after the resolution of the pending motion to dismiss. Our legal rationale is contained in the previously filed joinder.

LEWIS BRISBOIS

Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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

From: Heather S. Hall <hshall@mcbridehall.com>
Sent: Friday, December 10, 2021 1:06 PM
To: Lili Salonga <lili@injurylawyersnv.com>; Robert McBride <rcmcbride@mcbridehall.com>; Kristine Herpin <kherpin@mcbridehall.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Garth, Adam <Adam.Garth@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; shady/sorsu@lewisbrisbois.com
Cc: kurtishintonz9760239@projects.filevine.com; Jared Anderson <jared@injurylawyersnv.com>; Kimball Jones <kimball@bighornlaw.com>
Subject: RE: Hinton v Valley Hospital; Michael Schneier, MD/ ECC/JCCR

Correcting the email addresses you had listed to: ccullina@mcbridehall.com and Adam.Garth@lewisbrisbois.com

From: Heather S. Hall
Sent: Friday, December 10, 2021 1:02 PM
To: Lili Salonga <lili@injurylawyersnv.com>; Robert McBride <rcmcbride@mcbridehall.com>; Kristine Herpin <kherpin@mcbridehall.com>; cculina@mcbridehall.com; brent.vogel@lewisbrisbois.com; ada.garth@lewisbrisbois.com; roya.rokni@lewisbrisbois.com; shady/sorsu@lewisbrisbois.com
Cc: kurtishintonz9760239@projects.filevine.com; Jared Anderson <jared@injurylawyersnv.com>; Kimball Jones <kimball@bighornlaw.com>
Subject: RE: Hinton v Valley Hospital; Michael Schneier, MD/ ECC/JCCR

Lili,

The deadline to hold an ECC has long passed, and this is the first time I have been contacted about an ECC. I will not be attending an ECC in light of my pending Motion to Dismiss for failing to hold one within the time period.

Heather S. Hall, Esq.
hshall@mcbridehall.com | www.mcbridehall.com
8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
Telephone: (702) 792-5855
Facsimile: (702) 796-5855

MCBRIDE HALL
ATTORNEYS AT LAW

From: Lili Salonga <lili@injurylawyersnv.com>
Sent: Friday, December 10, 2021 9:41 AM
To: Robert McBride <rcmcbride@mcbridehall.com>; Heather S. Hall <hshall@mcbridehall.com>; Kristine Herpin <kherpin@mcbridehall.com>; cculina@mcbridehall.com; brent.vogel@lewisbrisbois.com; ada.garth@lewisbrisbois.com; roya.rokni@lewisbrisbois.com; shady/sorsu@lewisbrisbois.com
Cc: kurtishintonz9760239@projects.filevine.com; Jared Anderson <jared@injurylawyersnv.com>; Kimball Jones <kimball@bighornlaw.com>
Subject: Hinton v Valley Hospital; Michael Schneier, MD/ ECC/JCCR

Good morning,
Our office would like to schedule the ECC in this case.
Our case has the ff dates and times available. Please advise what works with your schedule.
December 13th PM from 1PM
December 14th from 11 PM to noon and from 1:30-4PM
December 16th from 2PM
December 17th from 9AM to noon and from 1-4PM

December 20 from 9am -12PM
December 28th – all day.
Also, a draft of the JCCR is attached for your review. Please advise if you have proposed edits.

Thank you.

Lili

Lilibeth Salonga
Legal Assistant
INJURY LAWYERS OF NEVADA
4001 Meadows Lane
Las Vegas, NV 89107
Ph: (702)868-8888
Fax: (702) 868-8889

ILN
INJURY LAWYERS OF NEVADA

EXHIBIT "B"

EXHIBIT "B"

ICCR
JARED B. ANDERSON, ESQ. (SBN: 9747)
INJURY LAWYERS OF NEVADA
Main Office:
4001 Meadows Lane
Las Vegas, NV 89107
Telephone (702) 868-8888
Facsimile (702) 868-8889
jared@injurylawyersnv.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; SPRING VALLEY HOSPITAL MEDICAL CENTER AUXILIARY dba SPRING VALLEY HOSPITAL; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO: A-19-800263-C
DEPT. NO: 5

INDIVIDUAL CASE CONFERENCE REPORT

DISPUTE RESOLUTION CONFERENCE REQUIRED:

YES _____ NO __X____

SETTLEMENT CONFERENCE REQUESTED:

YES _____ NO ___X___

I. PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT:

A.	**DATE OF FILING OF COMPLAINT:**	08/14/2019
	Amended Complaint	01/23/2020
	Second Amended Complaint	12/01/2020
B.	**DATE OF FILING OF DEFENDANTS ANSWER TO COMPLAINT:**	
	Spring Valley Hospital Medical Center Auxillary dba Spring Valley Hospital	06/25/20
	Michael Schneier, MD & Michael Schneier Neurosurgical Consulting, PC's Answer to Amended Complaint	12/20/21
	Defendant Valley Health Systems, LLC dba Spring Valley Hospital's Answer to Amended Complaint	09/22/2021
C.	**DATE THAT EARLY CASE CONFERENCE WAS HELD AND WHO ATTENDED:**	Defendants Refused to Participate

II. A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH CLAIM FOR RELIEF OR DEFENSE: [16.1(c)(2)(A)]

A. DESCRIPTION OF THE ACTION:

On June 22, 2017, KURTISS was admitted to SPRING VALLEY HOSPITAL with complaints of low back pain with radiation to left leg following multiple falls over the two (2) days prior. Defendant SCHNEIER performed an extreme lumbar interbody fusion using the XLIF procedure with posterior decompression and fixation lumbar on KURTISS on L3-L4 and L4-L5. Plaintiff alleges that Defendants negligently failed to fully inform and warn KURTISS, prior to surgery, regarding the substantially increased risks of the XLIF procedure (including its product line/hardware components) compared to other safer available surgical and non-surgical options

for a two-level lumbar issue at L3-4 and L4-5; failed to exercise the degree of care, skill, and judgment of a reasonable orthopedic surgeon to properly protect nerves to avoid nerve damage and to properly place screws; failed to take appropriate corrective action upon KURTISS being paralyzed and wheelchair bound after the surgery; failed to inform KURTISS that nerves were damaged during surgery and that screws were malpositioned; failed to inform KURTISS that a revision surgery could improve his increased pain symptoms and weakness on lower left extremity; and failed to frankly inform KURTISS of his post-surgical condition and the reason for the condition, while leading KURTISS to believe no error had been made. Defendants deny these allegations.

B. CLAIMS FOR RELIEF:

1. General past damages and future damages for KURTISS, each in an amount in excess of$15,000.00;

2. Special damages for said KURTISS's medical and miscellaneous expenses as of this date, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;

3. Compensatory damages in an amount in excess of $15,000.00;

4. Costs of this suit;

5. Attorney's fees; and

6. For such other and further relief as to the Court may seem just and proper in the premises.

C. AFFIRMATIVE DEFENSES OF DEFENDANT VALLEY HEALTH SYSTEMS, LLC DBASPRING VALLEY HOSPITAL:

1. Plaintiff's Second Amended Complaint fails to state a claim against Answering Defendants upon which relief can be granted.

2. Plaintiff's Second Amended Complaint is barred by the applicable statute of limitations.

3. The injuries, if any, suffered by Plaintiff as set forth in the Second Amended Complaint were caused in whole or in part by the negligence of a third party or third parties over which Answering Defendants had no control.

4. The damages, if any, incurred by Plaintiff are not the result of any acts of omission, commission, or negligence of Answering Defendants, but were the result of a known risk, which was consented to by Plaintiff.

5. Pursuant to NRS 41A.110, Answering Defendants are entitled to a conclusive presumption of informed consent.

6. The damages, if any, incurred by Plaintiff are not attributable to any act, conduct, or omission on the part of Answering Defendants. Answering Defendants deny that he was negligent or otherwise culpable in any matter or in any degree with respect to the matters set forth in Plaintiff's Second Amended Complaint.

7. It has been necessary for Answering Defendants to employ the services of an attorney to defend this action and a reasonable sum should be allowed Answering Defendants for attorneys' fees, together with costs of suit incurred herein.

8. Pursuant NRS 41A.035, Plaintiff's total non-economic damages, if any, may not exceed$350,000.

9. Answering Defendants are not jointly liable with any other entities that may or may not be named in this action, and will only be severally liable for that portion of

Plaintiff's claims that represent the percentage of negligence attributable to Answering Defendants, if any.

10. Plaintiff's damages, if any, were not proximately caused by Answering Defendants.

11. Plaintiff's injuries and damages, if any, are the result of forces of nature over which Answering Defendants had no control or responsibility.

12. Plaintiff is barred from asserting any claims against Answering Defendants because the alleged damages are the result of one or more unforeseeable intervening and superseding causes.

13. Plaintiff failed to mitigate his damages, if any.

14. Plaintiff failed to allege facts in support of an award for pre-judgment interest.

15. The incident alleged in the Second Amended Complaint, and the resulting damages, if any, to Plaintiff were proximately caused or contributed to by Plaintiff's own negligence, and such negligence was greater than the negligence, if any, of Answering Defendants.

16. Plaintiff failed to substantively comply with NRS 41A.071.

17. At all times mentioned herein, Answering Defendants acted reasonably and in good faith with regard to the acts and transactions which are the subject of this lawsuit.

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

19. Answering Defendants hereby incorporates by reference those affirmative defenses enumerated in NRCP 8 as if fully set forth herein. In the event further investigation

or discovery reveals the applicability of such defenses, Answering Defendants reserves the right to seek leave of the court to amend this Answer to assert the same. Such defenses are incorporated herein by reference for the purpose of not waiving the same.

20. Answering Defendants avails himself of all affirmative defenses and limitations of action as set forth in NRS 41.085, 41A.035, 41A.045, 41A.061, 41A.071, 41A.097, 41A.100, 42.005, 42.021, 41.141, and all applicable subparts.

21. Pursuant to NRCP 11, as amended, all applicable Affirmative Defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Answering Defendants' Answer and, therefore, Answering Defendants reserves his right to amend this Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

D. AFFIRMATIVE DEFENSES OF DEFENDANT MICHAEL SCHNEIER, MC & MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, PC:

1. Plaintiff's Second Amended Complaint fails to state a claim against these answering Defendants upon which relief can be granted.

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

3. Defendants allege that any injuries or damages alleged sustained or suffered by Plaintiff at the times and places referred to in Plaintiff's Second Amended

Complaint were caused in whole or in part or were contributed to by the negligence or fault or want of care of Plaintiff, and the negligence, fault or want of care on the part of Plaintiff was greater than that, if any, of these answering Defendants.

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

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

6. Defendant Dr. Schneier alleges that he is entitled to a conclusive presumption of informed consent pursuant to NRS 41A.110.

7. Defendants allege that the Plaintiff's Second Amended Complaint is barred by the applicable statute of limitations.

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

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

10. Plaintiff has failed to mitigate his damages.

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

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

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

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

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

16. Defendants allege that pursuant to Nevada law they would not be jointly liable and that if liability is imposed, such liability would be several for that portion of the

Plaintiff's damages, if any, that represent the percentage attributed to these answering Defendants.

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

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

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

20. Defendants allege that Plaintiff's damages, if any, are subject to the limitations and protections set forth in NRS 41.035.

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

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

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

24. Defendants allege that they are not guilty of fraud, oppression or malice, express or implied, in connection with the care rendered to Plaintiff at any of the times or places alleged in the Complaint.

25. Defendants allege that at all relevant times they were acting in good faith and not with recklessness, oppression, fraud or malice.

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

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

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

III. A BRIEF STATEMENT OF WHETHER THE PARTIES DID OR DID NOT CONSIDER SETTLEMENT AND WHETHER SETTLEMENT OF THE CASE MAY BE POSSIBLE: [16.1(c)(2)(b)]

Not at this time.

IV. LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A RESULT THEREOF: [16.1(c)(2)(E), (G), (H)]

A. PLAINTIFF:

See attached Exhibit 1.

B. DEFENDANTS:

None at this time

V. LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING IMPEACHMENT OR REBUTTAL WITNESSES MEDICAL PROVIDERS AND EXPERTS: [16.1(a)(1)(A) and 16.1(c)(2)(D), (F), (I)]

A. PLAINTIFF:

See attached Exhibit 1

B. **DEFENDANTS:**

None at this time.

VI. DISCOVERY PLAN: [16.1(b)(4)(C) and 16.1(c)(2)]

A. WHAT CHANGES, IF ANY, SHOULD BE MADE IN THE TIMING, FORM OR REQUIREMENTS FOR DISCLOSURES UNDER 16.1(a):

1. Plaintiffs' view: None.
2. Defendants' view: None.

B. WHEN DISCLOSURES UNDER 16.1(a)(1) WERE MADE OR WILL BE MADE:

1. Plaintiff's disclosures: 01/07/2022

2. Defendants' disclosures: _____

C. SUBJECTS ON WHICH DISCOVERY MAY BE NEEDED:

1. Plaintiff's view: Damages.

2. Defendants' view: Liability and damages.

D. A STATEMENT IDENTIFYING ANY ISSUES ABOUT PRESERVING DISCOVERABLE INFORMATION [16.1(c)(2)(J)]:

1. Plaintiff's view: None

2. Defendants' view: None

E. SHOULD DISCOVERY BE CONDUCTED IN PHASES OR LIMITED TO OR FOCUSED UPON PARTICULAR ISSUES?

1. Plaintiffs' view: No.

2. Defendants' view: No.

F. WHAT CHANGES, IF ANY, SHOULD BE MADE IN LIMITATIONS ON DISCOVERY IMPOSED UNDER THESE RULES AND WHAT, IF ANY, OTHER LIMITATIONS SHOULD BE IMPOSED?

1. Plaintiffs' view: None.

2. Defendants' view: None.

G. A STAMENT IDENTIFYING ANY ISSUES ABOUT TRADE SECRETS OR OTHER CONFIDENTIAL INFORMATION, AND WHETHER THE PARTIES HAVE AGREED UPON A CONFIDENTIALITY ORDER OR WHETHER A RULE 26(c) FOR PROTECTIVE ORDER WILL BE MADE: [16.1(c)(2)(K)]:

1. Plaintiffs' view: None.

2. Defendants' view: None.

H. WHAT, IF ANY, OTHER ORDERS SHOULD BE ENTERED BY COURT UNDER RULE 26(c) OR RULE 16(b) AND (c):

1. Plaintiffs' view: None.

2. Defendants' view: None.

I. ESTIMATED TIME FOR TRIAL:

1. Plaintiffs' view: 5-7 days.

2. Defendants' view: 5-7 days.

VII. DISCOVERY AND MOTION DATES:

A. DATES PROPOSED BY THE PLAINTIFF:

1. Close of discovery: 01/09/23

2. Final date to file motions to amend pleadings or add parties (without a further court order): 10/11/22

3. Final dates for expert disclosures:

   i. Initial disclosures: 10/11/22

   ii. Rebuttal disclosures: 11/10/22

4. Final date to file dispositive motions: 02/08/23

VIII. JURY DEMAND:

No demand for Jury Trial was filed by the parties.

IX. INITIAL DISCLOSURES/OBJECTIONS:

If a party objects during the Early Case Conference that initial disclosures are not appropriate in the circumstances of this case, those objections must be stated herein. The Court shall determine what disclosures, if any, are to be made and shall set the time for such disclosure.

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This report is signed in accordance with rule 26(g)(1) of the Nevada Rules of Civil Procedure. Each signature constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the disclosures made by the signer are complete and correct as of this time.

DATED this 7th day of January 2022.

INJURY LAWYERS OF NEVADA

/s/Jared B. Anderson

JARED B. ANDERSON, ESQ.
Nevada Bar No. 9747
4001 Meadows Lane
Las Vegas, NV 89107
Attorneys for Plaintiff

ECC
JARED B. ANDERSON, ESQ. (SBN: 9747)
INJURY LAWYERS OF NEVADA
Main Office:
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Las Vegas, NV 89107
Telephone (702) 868-8888
Facsimile (702) 868-8889
jared@injurylawyersnv.com

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; SPRING VALLEY HOSPITAL MEDICAL CENTER AUXILIARY dba SPRING VALLEY HOSPITAL; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO.: A-19-800263-C
DEPT NO.: 5

PLAINTIFF' INITIAL EARLY CASE CONFERENCE LIST OF WITNESSES AND EXHIBITS

COME NOW, Plaintiff Kurtiss Hinton by and through his counsel of record Jared B. Anderson, Esq. of INJURY LAWYERS OF NEVADA and hereby produce their list of witnesses and exhibits pursuant to NRCP Rule 16.1:

I. WITNESSES

Witnesses Pursuant to NRCP(a)(1)(A):

1. KURTISS HINTON
c/o Jared B. Anderson, Esq.
INJURY LAWYERS OF NEVADA
4001 Meadows Lane
Las Vegas, Nevada 89107

Telephone: 702-868-8888

Plaintiff is expected to testify regarding his knowledge of the facts and circumstances surrounding the incident which is the subject of this action as well as his damages, including, but not limited to, the nature and extent of his injuries, medical care and treatment, any wage loss and/or loss of earning capacity he will have or will have relating to the subject incident.

II. HEALTH CARE PROVIDERS

Non-retained Expert Witnesses Pursuant to NRCP 16.1(a)(2)(A)

Plaintiff's treating physicians are expected to testify consistently with the opinions and observations expressed in their medical records. These treating physicians are expected to give expert opinions regarding the treatment of the Plaintiff, the necessity of the treatment rendered, the necessity of future treatment to be rendered, the causation of the necessity for past and future treatment, their expert opinion as to past and future restrictions of activities, including work activities, caused by the incident. Their opinions shall include the cost of past medical care, future medical care, and whether those medical costs fall within ordinary and customary charges in the community for similar medical care and treatment. Their testimony will include expert opinions regarding the effect of the incident-related injuries on Plaintiff's ability to engage in activities of daily living. Their testimony may also include expert opinions as to whether the Plaintiff has a diminished work life expectancy, work capacity, and/or life expectancy as a result of the accident.

In rendering their opinions, Plaintiff's treating physicians will rely upon the records of all physicians, health care providers, and experts who have rendered medical care and treatment to the Plaintiff and their respective expert opinions regarding the nature, extent and cause of Plaintiff's injuries, the reasonableness and necessity of Plaintiff's past medical treatment, the reasonable future medical care that has been necessitated by the accident, the amount, reasonableness and necessity of charges for medical treatment rendered to the Plaintiff, the amount, reasonableness and necessity of future medical treatment caused by Plaintiff's accident related injuries, including lifetime medical, surgical,

rehabilitative and associated medical expenses, the charges for Plaintiff's past and future medical care as being customary for physicians and/or health care providers in the medical community; the nature, extent and manner in which the Plaintiff's accident-related injuries have affected his/her ability to continue to perform current occupations and activities of daily living, and the nature and extent and manner in which Plaintiff's incident-related injuries have diminished Plaintiff's work life expectancy and restricted Plaintiff's future daily living activities. They will also defend their opinions by explaining why any contrary opinions offered by opposing expert witnesses are incorrect.

1. Chris O'Neal
American Medical Response
7201 W Post Rd,
Las Vegas, NV 89113
Telephone: (702) 650-9900

In addition to the description of expected testimony set forth above, Dr. O'Neal is expected to testify regarding their opinions as to the cause of the Plaintiff's injuries, the extent of his injuries, the need for and the reasonableness and necessity of the treatment that was provided to Plaintiff's following the subject crash, by him and by other physicians. He will also testify regarding the reasonableness and necessity of the costs associated with Plaintiff's treatment and the treatment provided by the other medical providers who treated the Plaintiff.

His testimony will be based upon their specialized training, education and experience. His testimony will also be based upon his medical history, examination of the Plaintiff's view of his medical records and review of the radiographic films.

2. Bashir Q. Rashid M.D
3. Ira Michael Schneier, M.D
4. Christopher Gerst
Spring Valley Hospital
5400 South Rainbow Boulevard
Las Vegas, NV 89118
Telephone: (702) 853-3000

In addition to the description of expected testimony set forth above, Dr. Rashid, Dr. Gerst and

Dr. Schneier are expected to testify regarding their opinions as to the cause of the Plaintiff's injuries, the extent of his injuries, the need for and the reasonableness and necessity of the treatment that was provided to Plaintiff Plaintiff's following the subject crash, by him and by other physicians. They will also testify regarding the reasonableness and necessity of the costs associated with Plaintiff's treatment and the treatment provided by the other medical providers who treated the Plaintiff.

Their testimonies will be based upon their specialized training, education and experience. Their testimonies will also be based upon their medical history, examination of the Plaintiff's view of their medical records and review of the radiographic films.

5. Chin Hubert M.D
6. Dina Gabaeff M.D
7. Stephen Hoye M.D
   Desert Radiology at Spring Valley Hospital
   5400 South Rainbow Boulevard
   Las Vegas, NV 89118
   Telephone: (702) 853-3000

In addition to the description of expected testimony set forth above, Dr. Hubert, Dr. Gabaeff and Dr. Hoye are expected to testify regarding their opinions as to the cause of the Plaintiff's injuries, the extent of his injuries, the need for and the reasonableness and necessity of the treatment that was provided to Plaintiff Plaintiff's following the subject crash, by him and by other physicians. They will also testify regarding the reasonableness and necessity of the costs associated with Plaintiff's treatment and the treatment provided by the other medical providers who treated the Plaintiff.

Their testimonies will be based upon their specialized training, education and experience. Their testimonies will also be based upon their medical history, examination of the Plaintiff's view of their medical records and review of the radiographic films.

8. Khalid Kernal M.D,
9. Safdar Qureshi, M.D,
10. Karman Khan, M.D,
11. Munawar Qurashi, M.D,
12. Jason Liu, M.D,

13. Lawrence P. Bogle, M.D,
14. Constantina Lampropoulos, M.D
Health South Desert Canyon Rehabilitation Hospital
9175 W. Oquendo Rd
Las Vegas, NV 89148
Telephone (702) 252-7342

In addition to the description of expected testimony set forth above, Dr. Kernal, Safdar Qureshi, Dr. Khan, Dr.Qurashi, Dr.Liu, Dr. Bogle, Dr.Lampropoulos, are expected to testify regarding their opinions as to the cause of the Plaintiff' injuries, the extent of Plaintiff' injuries, the need for and the reasonableness and necessity of the treatment that was provided to Plaintiff following the subject crash, by them and by other physicians. They will also testify regarding the reasonableness and necessity of the costs associated with Plaintiff' treatment and the treatment provided by the other medical providers who treated the Plaintiff.

Dr. Kernal, Safdar Qureshi, Dr. Khan, Dr.Qurashi, Dr.Liu, Dr. Bogle, Dr.Lampropoulos testimonies will be based upon his specialized training, education and experience as a doctors of rehabilitation. Their testimonies will also be based upon their medical history, their examination of the Plaintiff, their review of their medical records, the injections that they performed and their review of the radiographic films.

15. Yevgenity Khavin, MD,
16. Tomas Kucero, M.D
17. Khavkin Clinic
653 N. Town Center Dr. Ste 602
Las Vegas, NV 89144
Ph: (702) 242.3223

In addition to the description of expected testimony set forth above, Dr. Khavin, DR. Kucero, are expected to testify regarding their opinions as to the cause of Plaintiff's injuries, the extent of his injuries, the need for and the reasonableness and necessity of the treatment that was provided to him following the subject crash, by them and by other physicians. They will also testify regarding the reasonableness and necessity of the costs associated with Plaintiff's treatment and the treatment

provided by the other medical providers who treated him.

18. Micah Nielsen, MD
Pueblo Medical Imaging
5495 S. Rainbow Blvd., Ste. 101
Las Vegas, NV 89118
Ph: (702) 228-0031

In addition to the description of expected testimony set forth above, Dr. Nielsen is expected to testify regarding his opinion as to the cause of Plaintiff's injuries, the extent of his' injuries, the need for and the reasonableness and necessity of the treatment that was provided to him following the accident, by him and by other physicians. He will also testify regarding the reasonableness and necessity of the costs associated with Plaintiff's treatment and the treatment provided by the other medical providers who treated him.

III. DOCUMENTS AND OTHER EVIDENCE
Documents and Tangible Things Pursuant to NRCP 16.1(a)(1)(B)

Ex No.	Description	Bates Number
1.	American Medical Response	KH 1.0001-KH 1.0003
2.	Shadow Emergency Physicians	KH 2.0001-KH 2.0059
3.	Spring Valley Hospital	KH 3.0001-KH 3.1184
4.	Desert Radiology	KH 4.0001-KH 4.0008
5.	Health South Desert Canyon Rehabilitation Hospital	KH 5.0001-KH 5.0037
6.	Diagnostic Laboratories & Radiology	KH 6.0001-KH 6.0070
7.	Quest Diagnostic	KH 7.0001-KH 7.0002
8.	Khavkin Clinic	KH 8.0001-KH 8.0008
9.	Pueblo Medical Imaging	KH 9.0001-KH 9.0002
10.	Kindred Healthcare Spring Valley	KH 10.0001-KH 10.0950
11.	Centennial Medical Group	KH 11.0001-KH 11.0053

12.	SimonMed Imaging	KH 12.0001-KH 12.0009
13.	Steinberg Diagnostic	KH 13.0001-KH 13.0003
14.	Western Regional Center for Brain & Spine Surgery	KH 14.0001-KH 14.0005
15.	Synergy spine & Orthopedics	KH 15.0001-KH 15.0016
https://www.dropbox.com/sh/gs10984fsbeh2pz/AADzd-TOLVwiZJTocVSQqVOJa?dl=0		

IV. COMPUTATION OF DAMAGES
Pursuant to NRCP 16.1(a)(1)(C)

1. General Damages: To be determined

2. Special Damages:

   a. Medical Expenses: to be determined

      ii. Future medical expenses: to be determined

   b. Lost Income: To be determined

3. Punitive Damages: To be determined

4. Attorney Fees: To be determined

5. Cost of Litigation: To be determined

6. Interest: Statutory rate

V. Expert Witnesses Pursuant to NRCP 16.1(a)(2)(B):

To be disclosed pursuant to discovery order.

Plaintiff reserves the right to supplement and/or amend this Computation of Damages as discovery is continuing.

DATED this 7th day of January 2021..

TANNER CHURCHILL ANDERSON

/s/Jared B. Anderson

JARED B. ANDERSON, ESQ.
4001 Meadows Lane
Las Vegas, NV 89107
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedures, I certify that on the 7th day of January 2022, I served a true and correct copy of the above and foregoing **PLAINTIFF' EARLY CASE CONFERENCE DISCLOSURE OF WITNESSES AND EXHIBITS** on the parties addressed as shown below:

S. Brent Vogel, Esq. Adam Garth, Esq. LEWIS BRISBOIS BISGAARD & SMITH, LLP 6385 S. Rainbow Blvd., Suite 600, Las Vegas, Nevada 89118 *Attorneys for Defendant Spring Valley Hospital Medical Center Auxiliary dba Spring Valley Hospital*	JACOB G. LEAVITT, ESQ. KIMBALL JONES, ESQ. BIGHORN LAW 2225 E. Flamingo Road, Bldg. 2, Suite 300 Las Vegas, Nevada 89119 Phone: (702) 333-1111 Email: Jacob@BighornLaw.com Kimball@Bighornlaw.com *Co-Counsel for Plaintiff*
Robert C. Mcbride, Esq. Heather S. Hall, Esq. MCBRIDE HALL 8329 W. Sunset Road, Suite 260, Las Vegas, Nevada 89113 *Attorneys for Defendant Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.*	

Via US Mail by placing said document in a sealed envelope, with postage prepaid (N.R.C.P. 5(b))

____ Via Electronic Filing (N.E.F.R. 9(b))

__X_ Via Electronic Service (N.E.F.R. 9)

____ Via Facsimile (E.D.C.R. 7.26(a))

/s/Lili Salonga

An employee of TANNER CHURCHILL ANDERSON

EXHIBIT E

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

KURTISS HINTON,	)	
	)	CASE NO. A-19-800263-C
Plaintiff,	)	
	)	DEPT. NO. V
v.	)	
	)	
MICHAEL SCHNEIER, M.D., et al.	)	
	)	
Defendants.	)	
	)	

BEFORE THE HONORABLE VERONICA M. BARISICH
DISTRICT COURT JUDGE

THURSDAY, JANUARY 27, 2022

RECORDER'S TRANSCRIPT OF PROCEEDINGS:
ALL PENDING MOTIONS

APPEARANCES VIA VIDEOCONFERENCING:

FOR THE PLAINTIFF:	JARED B. ANDERSON, ESQ.
FOR VALLEY HEALTH SYSTEMS DEFENDANTS:	ADAM GARTH, ESQ.S
FOR SCHNEIER DEFENDANTS:	ROBERT C. McBRIDE, ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC
(Hearing recorded via BlueJeans Video Conference/Audio.)

LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 27, 2022

(Case called at 9:36 a.m.)

THE CLERK: Good morning. Welcome to Department 5. Judge Veronica Barisich presiding. If you're calling in, please do not use speaker phone. Keep your microphones on mute until the Judge is ready to hear from you, and remember to state your name when you speak.

The first case we'll be calling is on page 4, Kurtiss Hinton versus Michael Schneier, M.D., Case Number A-800263.

Starting with Plaintiff's counsel, can you please make your appearances?

THE COURT: I think we're muted.

THE CLERK: What?

THE COURT: I think we're still muted.

(Pause in the proceedings.)

THE COURT: Sorry. We were muted.

THE CLERK: All right. Good morning. Welcome to Department 5. Judge Veronica Barisich presiding. If you're calling in, please do not use speaker phone. Keep your microphones on mute until the Judge is ready to hear from you, and remember to state your name when you speak.

First case we'll be calling is on page 4, Kurtiss Hinton versus Michael Schneier, Case Number A-800263.

Starting with the Plaintiff's counsel, can you

please make your appearances?

MR. ANDERSON: Yes, thank you. Jared Anderson, Bar Number 9747, for the Plaintiff, Kurtiss Hinton.

THE COURT: Good morning.

MR. McBRIDE:: Good morning, Your Honor. Robert McBride on behalf of Defendants, Dr. Michael Schneier and Michael Schneier Neurosurgical Consulting, P.C.

THE COURT: Good morning.

MR. McBRIDE: Good morning.

MR. GARTH: Good morning, Your Honor. Adam Garth representing Valley Health Systems.

THE COURT: Good morning.

MR. GARTH: Good morning.

THE COURT: All right, Counsels. We are here today for Defendant Schneier's Motion to Dismiss, Defendant Valley Health Systems' Joinder to that motion, and a Status Check.

So let's jump into that first motion. And the Court has reviewed the pleadings, so I am up to speed. And since this is Mr. McBride's motion, is there anything, sir, that you would like to add or place on the record?

MR. McBRIDE: Your Honor, simply just to point out the -- I think the procedural misstatements indicated in Plaintiff's Opposition that -- that shed a different light and are completely inaccurate in terms of the Defendant, this Defendants' Answer to the Complaint and the fact that it was

actually in December of 2020, not December of 2021. It has been 369 days since we filed our Answer to the Second Amended Complaint, Your Honor.

And for the reasons set forth, I think it's -- it's pretty -- it's pretty clear based on the case law especially, as well as, as we pointed out, that procedurally what we have done in this case, the fact that the Arnold v. Kip case that we cited to in our reply papers as well, the 2007 case, which is almost exactly on point, basically that the party moving for dismissal in a situation like this, there's no need to show any prejudice. And it's -- it is a -- in other words, as the Court said in that case, it would eviscerate the rule entirely if that was a requirement.

So on the pleadings, I think it's pretty straightforward and laid out from this Defendants' position that the motion should be granted and Defendants dismissed with prejudice.

THE COURT: Okay, thank you.

Mr. Garth, do you want to add anything regarding your Joinder now?

MR. GARTH: Yes, Your Honor.

I think it's important for the Court to have the full context of what has really gone on here because this case preceded Your Honor's ascendence into the bench, and a number of things occurred prior to Your Honor ascending to the bench

and then subsequent thereto.

And I'm not sure exactly how Mr. Anderson is playing into the -- into this particular case. I know that he associated as counsel, but now he seems to have completely taken over the matter. And I'm not exactly sure where it fits, but basically, all of this stuff occurred long before he ever even entered the case, and this was with either co-Plaintiff's counsel or predecessor Plaintiff's counsel, Mr. Jones.

So just as a reminder, this case was filed on August 14th of 2019, so we are two and a half years almost into the commencement of this lawsuit. Not one shred of discovery, nothing has happened, and all of it is as a result of the deficiencies of these Plaintiffs and nonsense that's gone on here in their failure to conduct the appropriate ECC, which is now more than a year ago, with respect to the co-Defendant, Dr. Schneier.

We -- my predecessor counsel on this case made a Motion to Dismiss back in November of 2019. That motion -- there was a separate motion by a co-Defendant, Nuvasive, also to dismiss. Dr. Schneier joined that motion back in December.

A hearing was held with your predecessor on the bench, and it was denied as to my client, granted as to Nuvasive, with an opportunity for the Plaintiff to amend their Complaint to properly allege a cause of action in products

liability.

They never alleged a products liability case against a product, it was only against a procedure, which was pointed out by the then co-Defendant Nuvasive, was wholly improper. They were given an opportunity to amend, limited to that issue alone. They didn't do it properly, once again, repeating the same refrain against a procedure. The Plaintiff did zero.

We took over the case in June of 2020, and I pointed out to Plaintiff's counsel at that time, they sued the wrong entity. They did nothing.

We had a telephone conference, at which time, I informed Mr. Jones, you sued the wrong entity; you have to go back and sue the right one. He then took umbrage at the fact that I did not want to conduct his investigation and fulfill his obligation to sue the right Plaintiff. It's -- Valley Health Systems has been a Defendant in -- I'm sorry, to sue the right Defendant.

Valley Health Systems has been a Defendant in countless lawsuits. It's not a mystery who the right party is to sue. They took months, months to come up with a proper Defendant. When they did that, we moved to dismiss now on additional grounds. Thereafter, the motion was transferred over to you.

So you granted the motion, letting Spring Valley Hospital completely out of the case. All the while, Dr.

Schneier interposed his answer in December of 2020, as Mr. McBride pointed out. He did nothing, Dr. Schneier, with respect to any other Motion to Dismiss, save a Motion to Strike, which I'll get to, to make sure that you've got a proper chronology here, of the Third Amended Complaint.

So there were multiple amendments, and what happened each time was that the Plaintiff's lawyer became a bigger wise guy. He then files another --

MR. ANDERSON: Your Honor, I'm terribly sorry. I just -- I have to object. I think this is getting beyond argument. It's certainly beyond the scope of the Joinder. These sorts of just derogatory comments about prior counsel are inappropriate, and I have to object.

THE COURT: All right. Thank you, Mr. Anderson.

Mr. Garth, I know the chronology of the case. So if we could get pointed to the Joinder on this issue, I would appreciate it, sir.

MR. GARTH: Okay. The joinder is rather simple. The sole claim against Spring Valley Hospital at this point, based upon multiple motions trying to adjust what was going on, is an ostensible agency argument. It is a vicarious liability argument.

In other words, Spring Valley Hospital can only be held liable if Dr. Schneier is found to be liable. There is no independent allegations currently pending or causes of

action pending against Spring Valley Hospital independent of Dr. Schneier's -- the allegations against Dr. Schneier. So if Dr. Schneier is no longer in the case, Spring Valley Hospital isn't in the case, because you cannot have a vicarious liability case standing on its own.

Mr. McBride has pointed out in papers, abundantly clear, that there is no wiggle room here. The Plaintiffs have been granted multiple considerations, which was going to the very point of this chronology.

They have been defying court orders, defying statutes, defying court rules in terms of when to conduct discovery, when to file appropriate orders when directed to do so. And now they're asking for another pass and saying, hey, because our predecessor counsel filed a rogue document, the time within which we had to move for -- to request an ECC doesn't run until that -- the Motion to Dismiss that rogue document was decided.

That's not what the statute says. The statute specifically holds they had 30 days within which to conduct an ECC from the time Dr. Schneier answered the only -- the only viable Complaint that was here.

The only leave that was granted to amend was to amend solely as against the Nuvasive Defendants. The Third Amended Complaint, which you struck and cautioned the Plaintiff's lawyer to not defy court orders again, was to

strike now new causes of action in products liability against Defendants, including Spring Valley Hospital and Dr. Schneier, against whom there had never been a products liability cause of action. You never allowed that. They never got a stipulation.

You then gave them another opportunity, even after striking the Third Amended Complaint, to file within 30 days another Amended Complaint if they saw fit to do so. Since they voluntarily discontinued their action against Nuvasive, there was never any opportunity to amend their Complaint.

So they shouldn't get credit for filing some rogue document and then saying, hey, now the time starts from the point we messed up again. They had an obligation to do so within 30 days of December 15th, 2020. It is now January 27th, 2022.

They did nothing until Mr. Anderson's firm found the oops after Mr. McBride's firm filed this motion nearly a year after the conference should have been scheduled. We should not be held in, as Dr. Schneier should not be held in, because they did not do what they were supposed to do with the litany of passes they have been given in this case.

And that's why the chronology of this case is so critical to this motion, because they shouldn't be given yet the umpteenth chance. The -- things have been delayed and delayed. Memories have faded. They have done zero.

If they didn't take an interest in conducting discovery -- and to me, it's a shock because you would assume they would want to have conducted an ECC with Dr. Schneier to start getting discovery here.

They haven't seen an interest in pursuing their case. So if they're not interested in pursuing their case, why should the Court be permitting them to continue to pursue it? Thank you.

THE COURT: All right. Thank you, sir.

Mr. Anderson?

MR. ANDERSON: Thank you, Your Honor. And I think I can be fairly succinct, knowing that you've -- you've read the briefing. I think we set forth our position as clearly as I could in the briefing.

First, I need to correct a statement. I'm not sure where defense counsel got the idea that I was saying that the Answer was not filed until December 15th of 2021. On page 5 of my motion -- I double-checked to make sure I didn't make a mistake. I did say, correctly, that the Defendant's answer was filed on December 15th, 2020.

But I -- as Your Honor's aware, I wasn't -- I wasn't on the case during the early stages of the case. And if some of the procedural history in the case is incorrect, I apologize. I went through the docket to try and reconstruct it.

But none of -- I don't think any of that really matters, because the key, at least to our position, is the fact that the Plaintiff filed a Third Amended Complaint, and the -- any Amended Complaint replaces the one before it.

Now, I understand that the Third Amended Complaint was ultimately dismissed and the Notice of Entry of Order was filed, and that started the clock running, but it resets when an amendment to the Complaint is filed.

That's the only reading of the statute that makes any sense to me, and it seems to be consistent with what the Court said in Dougan when it said -- and this is a quote, and I have it on page 6 of the Opposition. Quote, "It would have been fruitless to hold a case conference before the Defendants answered and the case was at issue."

And I have never believed in my practice that if an Amended Complaint was filed which changed the pleadings, the causes of action, the allegations, the nature of the case, that it would be beneficial to hold an Early Case Conference before an answer or some sort of responsive pleading to that latest Amended Complaint.

So, very simply, the Plaintiff's position is that the -- the clock starts over when there's an Amended Complaint that's filed, and we're well within that window. The time period for the imposition of sanctions has not run since the Notice of Entry of Order of the Third Amended Complaint.

And then, the second prong of the Plaintiff's position, I know Your Honor reviewed that as well. Even if the Defendant were correct in their assessment of the statute, even if they were correct, the statute is permissive and not mandatory.

Very clearly, the Plaintiff has never abandoned these proceedings, has vigorously participated, and has shown no intent to abandon the proceedings. And that's the purpose of the statute, to make sure that cases are being prosecuted, that counsel's involved, and that certainly has happened in this case.

And as a final point, we've provided the *affidavit of Mr. Jones, and not just in -- we haven't just made a cursory reference to, you know, COVID has interrupted a lot of things. We provided great specificity in terms of precisely how COVID affected Bighorn Law during the time period when this case was moving forward.

And there's -- it certainly constitutes compelling and extraordinary circumstances, which would provide good cause for a delay if the Court accepts the Defendant's initial argument that the Early Case Conference should have been held earlier.

So I'll submit on that unless Your Honor has any additional questions.

THE COURT: Okay. Thank you, Mr. Anderson.

Mr. McBride?

MR. McBRIDE: Your Honor, very, very briefly. First of all, let me point out the -- the -- as far as the procedural misstatements made by the Plaintiff's attorney as to the filing of this Defendants' Complaint, it was also specifically mentioned in the Individual Case Conference Report that is filed with the Court that they tried to submit it as an end-around to -- to prove that they were submitting or participating in the 16.1 in good faith, and that was only filed after we filed the instant motion at the end of last year.

So they did make that misstatement, and I'm not saying it was an intentional misstatement. I'm saying it very easily could have been corrected by a close review of the court docket.

Secondly, with regard to the last matter, the reference to COVID, I can represent to you, Your Honor, that the Bighorn Law Firm as well as Mr. Anderson's firm have had no problem in filing --

(Pause in the proceedings.)

THE COURT: Excuse me. If you're not speaking, could you please mute yourself?

Hold on, please, sir. We'll mute everyone on our end.

THE COURT RECORDER: I'm trying.

THE COURT: I know. Thank you. Hold on a second, Mr. McBride.

(Pause in the proceedings.)

THE COURT: All right. Mr. McBride. Go ahead, sir.

MR. McBRIDE: I think it's (indiscernible) my time is almost up anyway.

So I just wanted to make the point, Your Honor, that in this case, that the Bighorn Law Firm, despite whatever issues they had early on with COVID in 2020, and even to the extent they had beyond in 2021, like many of us had, all of us have had those issues.

And the very fact that the Bighorn Law Firm and Mr. Anderson's firm have been able to file numerous lawsuits against physicians and hospitals in this -- in this city ever since, during the height of the pandemic and since, does not -- does not provide an excuse from them in participating in the 16.1, especially against this Defendant.

I think our chronology, as we laid out there, as well as the case law -- the reference to the Dougan case, I think, is entirely misplaced. As we pointed out, that was a case in which the Defendant was granted open extension of time to respond to the Complaint. That never occurred here. There is no exemption from -- you know, from this case from the 16.1 requirement.

So I would submit that, Your Honor, under these

circumstances, after a period of 369 days, there is simply no excuse for not participating in the 16.1.

And those -- Your Honor, they can -- if it's not against one Defendant, or there's a question about a subsequent Defendant that might be added later on, it is common practice, as Your Honor is well aware, that if another Defendant is brought in later, that that Defendant -- you have either a separate ECC with that Defendant, or you have another ECC involving that Defendant. So all of that is a -- it's nonsensical under the circumstances of the facts that we're dealing with here.

So I would submit that -- Your Honor, that we are entitled to a dismissal with prejudice in this matter based on the failure of Plaintiff to participate in NRCP 16.1.

THE COURT: Okay, thank you.

Thank you, Mr. McBride.

MR. McBRIDE: Thank you.

THE COURT: Mr. Garth, anything to add in closing?

MR. GARTH: Just -- yes, just briefly, Your Honor. There's a couple of corrections.

Mr. Anderson represented that the Third Amended Complaint was dismissed. It was not dismissed, it was stricken. That's a very different standard. In other words, it was a rogue document that should never have been filed in the first place.

So to now be utilizing that as a means of counting forward is completely inappropriate, and he has no basis upon which to rest on that.

Number two, is that there has been no explanation as to the Amended -- the Third Amended Complaint, I believe, was filed in -- somewhere in June of 2021.

THE COURT: September.

MR. GARTH: There should have been an ECC conducted within 30 days of December 15th, 2020. There has never been any argument or any proof as to why it wasn't conducted in the six months between the filing of the supposed restarting Third Amended Complaint, from the time Mr. McBride filed his Answer. Again, six months went by there. He got an extra pass after we were doing all of this motion practice, but still, he never requested an ECC.

So this is a red herring. The Third Amended Complaint, they're utilizing an improper procedural device that was stricken due to its procedural impropriety, not substantively but because it never should have been filed in the first place, as a mechanism to try to get themselves out of yet another mess they've created, and that is strictly unfair.

The statute doesn't [audio drops/distorted] a permissive [audio drops/distorted] of this case, and all of the legal nonsense that has preceded it, has demonstrated that

dismissal is appropriate. They have not demonstrated extraordinary circumstances.

There is nothing here to justify their failure to do their jobs. And they did abandon their case. They've abandoned it on multiple occasions, and this Court noted it.

So they shouldn't be given yet another opportunity to clean up another mess now two and a half years after they started their lawsuit and multiple -- and at least a year beyond that. So we're now like three and a half years almost from the happening of this incident, and we still yet do not have any discovery.

And while discovery, it's -- and while prejudice is not an element, Mr. McBride appropriately pointed out in his Reply that there has definitely been prejudice here to not only Dr. Schneier but through the vicarious liability of the hospital, as well, and we would urge this Court to dismiss this case.

THE COURT: All right. Thank you, gentlemen.

MR. GARTH: Thank you.

THE COURT: So I understand all three parties' positions and frustration. And the case has been looming, and there have been multiple amendments and motions that have occurred.

So at this time, the Court shall deny the motion without prejudice. NRCP 16.1 allows an Early Case Conference

to be continued up to 180 days, and that the JCCR or Independent Case Conference Report is to be filed within 30 days after. Failure to do so constitutes a discretionary basis to dismiss the case.

The Court finds that the NRCP 16.1(b)(2) Early Case Conference requirement began on December 15th, 2020, against Defendant Schneier, when the Answer to the Second Amended Complaint was filed.

The Third Amended Complaint was stricken and is not applicable.

So the delay was substantial at approximately six months, and that was calculated by, being lenient, giving the 180 days after the December 15th, 2020 filing of the Answer.

Plaintiff provided compelling and extraordinary circumstances of the COVID pandemic, the Administrative Order 21-04, and lengthy motion practice for the delay.

Under Arnold v. Kip, the Court considered the factors, and overall, there were compelling circumstances present that support the policy of the courts to hear a case on its merits, and a dismissal would be a severe -- a severe sanction. Excuse me.

The Court accepts the reasons for the delay at this time, and therefore, the motion is denied without prejudice.

The parties must hold an Early Case Conference within two weeks from today, to be arranged by Plaintiff, and

file a Joint Case Conference Report or an Individual Case Conference Report no later than 14 days after that Early Case Conference.

Should there be a delay in scheduling and holding that Early Case Conference and filing of the report, the Motion to Dismiss may be revived, and the Court will not be so permissive. Let's move this case forward.

And Plaintiff's Independent Case Conference Report filed January 7th, 2022, shall be stricken.

So, Mr. Anderson, I would ask that you please draft the order and circulate it to other counsels as to form and content.

MR. ANDERSON: I will do that, Your Honor. Thank you.

THE COURT: All right. Thank you, gentlemen. I appreciate your time. I hope you all have a nice day.

MR. ANDERSON: You, too.

MR. McBRIDE: Thank you, Your Honor.

THE COURT: Thank you.

MR. McBRIDE: I'm here on -- I'm here on another matter at 11:00, so I'll stick around.

THE COURT: Okay. All right. Thank you, sir.

MR. ANDERSON: We still have our Status Check, or have we -- have we --

THE COURT: Oh, I'm sorry. You're right. You're

right.

MR. ANDERSON: Yeah.

THE COURT: I had that circled at the very top, and I'm sorry. All right. We are here on our Status Check, too. Let's not move on yet.

All right, Counsels. Is there anything besides what we have talked about and what we know to be the update? Is there any other updates to the case?

MR. ANDERSON: Not to my knowledge, Your Honor.

THE COURT: Okay. Oh, okay. There are two things. It looks as if, on the May 20th, 2021 hearing for Defendant Spring Valley seeking a Motion for Sanctions, that order has not been submitted to date. So I just want to talk about that housekeeping issue, and that was the May 20, 2021 hearing where Defendant Spring Valley sought Motion for Sanctions, and that was denied. So I ask that you please get that in at your convenience.

And then we have a -- we have the firm date?

THE CLERK: Yeah, they set it in front of Judge Wiese.

THE COURT: Oh, perfect. Okay. We have our firm Jury Trial date set for May 30th of 2023. And how many days was that set for?

THE CLERK: I can't tell, unfortunately.

THE COURT: Counsels, do you know how many days you

had initially requested for trial? We're looking to see on our end.

MR. ANDERSON: It's early, but I would say 5 to 7.

MR. McBRIDE: I would say -- I would say 10 days, Your Honor, with two Defendants. And so I think that we -- I don't think (indiscernible) didn't have the Early Case Conference, there was no request for the number of days.

THE COURT: Right. All right, Mr. McBride. It shows on our end that we have nine days allocated.

Do we have any additional time, or are we --

THE CLERK: We're not sure yet. Okay.

THE COURT: Okay. So we have nine days right now. How many days are we thinking for jury selection?

MR. McBRIDE: I think two, Your Honor.

THE COURT: Two? Okay. Mr. Anderson?

MR. ANDERSON: Oh, I would -- in my experience, it's usually one. Occasionally, it goes on to two, so I would -- I would agree. To be safe, two days is --

THE COURT: Two?

MR. ANDERSON: -- is a good assessment.

THE COURT: And about nine or 10 days total?

MR. ANDERSON: Sure.

THE COURT: Okay. Mr. Garth, are we around there? About two for jury selection, 9, 10 days total? Did he already leave? Oh, he may have left.

MR. McBRIDE: He may have left. I think he would -- knowing Adam, I would -- I'll represent that he'll -- he'll take the same position.

THE COURT: Okay. All right. And as you know, we've started the jury -- I mean, this is in 2023, so we have some time here, but we started jury selections back how it used to be, on the Mondays, and then we can just flow right into trial.

Let's see. Is there anything else, Counsels, that we need to discuss at this time?

MR. ANDERSON: No, Your Honor.

MR. McBRIDE: (Indiscernible), Your Honor.

THE COURT: Okay. And I know -- Mr. Anderson, I know that you're relatively, you know, new to taking over the full case and you've probably gone through the procedural history, and there's a lot here.

MR. ANDERSON: Yes.

THE COURT: So --

MR. ANDERSON: Yes.

THE COURT: I think we want to try to be as smooth forward --

MR. ANDERSON: Yes.

THE COURT: -- as possible because there is a bit of a history with -- with this case. So I just -- I would just request that you take the time to look to see what's going on,

and we can move forward.

All right, Counsels.

MR. ANDERSON: I can assure you that I will do that.

THE COURT: All right. Thank you, gentlemen.

I appreciate your time, and I hope you all have a wonderful day.

MR. McBRIDE: You, too, Your Honor.

MR. ANDERSON: You, as well. Thank you.

THE COURT: Thank you.

(Proceedings concluded at 10:07 a.m.)

* * * * *

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case.

VERBATIM DIGITAL REPORTING, LLC

EXHIBIT F

LEWIS BRISBOIS BISGAARD & SMITH LLP

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March 14, 2022

File No. 28094.189

VIA ELECTRONIC MAIL ONLY

Hon. Veronica Barisich
Eighth Judicial District Court
Dept. 5
Phoenix Building
300 S. Third Street
Las Vegas, NV 89155

Re: **Hinton v. Schneier, M.D., et al., Case No. A-19-800263-C**

Dear Judge Barisich:

We represent defendant VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL in the above-entitled matter. At the hearing held on January 27, 2022, on co-defendant's motion to dismiss due to plaintiff's failure to conduct a timely early case conference and our joinder thereto, the Court ordered Plaintiff's counsel to prepare an order reflecting the Court's decision denying said motion.

In accordance with EDCR 7.21, Plaintiff's counsel had 14 days within which to submit the order to the Court, i.e., by February 10, 2022. As has been the pattern in this case, Plaintiff's counsel failed to circulate any order. Therefore, we undertook the responsibility of preparing an order reflective of the Court's decision and the history of the litigation leading up to the motion, circulating it among all counsel. Co-defense counsel approved our order. Instead of addressing the order we prepared, Plaintiff's counsel, for the first time, having recognized their failure to again comply with a Court order, circulated a different order to which we cannot agree to accept.

Therefore, we submitted our order to the Department's inbox for review by the Court. We anticipate Plaintiff's counsel will be submitting their own order, albeit more than one month late.

Very truly yours,

/s/ Adam Garth

Adam Garth of
LEWIS BRISBOIS BISGAARD & SMITH LLP

AG:hb

cc: Heather S. Hall, Esq.
Jared Anderson, Esq.

ORDD

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Attorneys for Defendant Spring Valley Hospital Medical Center Auxiliary dba Spring Valley Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON, Plaintiff, vs. MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; KHAVKIN CLINIC, PLLC; VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL; NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive, Defendants.	Case No. A-19-800263-C Dept. No.: 5 **ORDER DENYING DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S MOTION TO DISMISS PURSUANT TO NRCP 16(E)(1) AND DEFENDANT VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL'S JOINDER THERETO**

This matter having come on for hearing on the 27th day of January, 2022 at 9:30 a.m., in Department 5 of the Eighth Judicial District Court in and for the County of Clark, on Defendants

MICHAEL SCHNEIER, M.D., an individual and MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'s (collectively "Schneier") Motion to Dismiss Pursuant to NRCP 16.1(e)(1) and Defendant Valley Health Systems, LLC d/b/a Spring Valley Hospital's ("SVH") Joinder thereto. Plaintiff appeared by and through his counsel of record, Jared B. Andersen, Esq. of TANNER CHURCHILL ANDERSON, Schneier Defendants appeared by and through their counsel of record, Robert C. McBride, Esq. of MCBRIDE HALL, and Defendant SVH appearing by and through its counsel of record Adam Garth, Esq., of the Law Firm LEWIS BRISBOIS BISGAARD & SMITH, LLP;

The Court having considered Schneier's Motion to Dismiss Pursuant to NRCP 16.1(e)(1) and SVH's Joinder thereto and related pleadings, papers, and Plaintiff's opposition thereto, and arguments of counsel, finds and concludes as follows:

Plaintiff alleges that on or about June 22, 2017, he was admitted to SVH with complaints of low back pain radiating to his left leg which followed multiple falls in the days preceding his admission. He further alleges he was specifically directed to SVH by Defendant Schneier, who saw Plaintiff in his personal office outside of SVH for purposes of undergoing surgery by Schneier. Plaintiff further alleges that on June 22, 2017, Dr. Schneier performed a lumbar interbody fusion with posterior decompression and lumbar fixation on Plaintiff at L3-L4 and L4-L5 at SVH, but claims that Schneier failed to advise him of the risks associated with the surgery he was to perform and that alternative procedures were available which allegedly had lower rates of complication. Plaintiff alleges that after surgery, he experienced extreme lower left extremity weakness. Moreover, Plaintiff alleges that it was only on August 14, 2018, after meeting with another orthopedic surgeon, that he first suspected alleged medical negligence by Schneier. Plaintiff also alleged professional negligence as against SVH.

This action has an extensive history. Plaintiff commenced his action by filing his Compliant on August 14, 2019. SVH filed a motion to dismiss Plaintiff's Complaint on November 1, 2019, followed by successive motions of defendants Nuvasive, Inc. ("Nuvasive") on November 13, 2019. Defendant Schneier joined SVH's motion to dismiss on November 19, 2019. All motions and joinders were heard on December 17, 2019. SVH's Motion and Schneier's joinder thereto were

denied on December 26, 2019 without prejudice. Nuvasive's motion to dismiss was granted, but permitted Plaintiff to amend his Complaint as to Nuvasive to address claims made against it with more specificity.

Plaintiff filed a Second Amended Complaint by stipulation of the parties on December 1, 2020. On December 9, 2020, SVH filed a Motion to Dismiss and Strike Plaintiff's Second Amended Complaint and Prayer for Punitive Damages. Defendant Nuvasive filed another motion to dismiss Plaintiff's Second Amended Complaint on December 9, 2020 as well.

While the respective motions to dismiss Plaintiff's Second Amended Complaint were pending, Schneier Defendants interposed their answer to Plaintiff's Second Amended Complaint on December 15, 2020.

In Plaintiff's Second Amended Complaint, Plaintiff named a new defendant, Khavkin Clinic PPLC, which filed a motion to dismiss on February 4, 2021, which motion was granted on March 11, 2021.

A hearing was held on SVH's and Nuvasive's respective motions to dismiss on February 11, 2021. Thereafter, this Court issued an order granting dismissal on March 2, 2021 granting SVH's motion to dismiss all claims against it and to strike Plaintiff's prayer for punitive damages in its entirety, thus initially terminating Plaintiff's case as against SVH.

Plaintiff moved this Court to reconsider its decision granting SVH's motion to dismiss on March 15, 2021, which motion partially granted said relief to the extent that Plaintiff's claim against SVH was limited only to ostensible agency as it pertained to Schneier Defendants, but denied Plaintiff's motion with respect to all remaining claims against SVH. Therefore, Plaintiff has no direct claims of negligence as against SVH.

SVH moved on April 16, 2021 for sanctions pursuant to NRCP Rule 11 pertaining to Plaintiff's interposition of materials SVH alleges were in Plaintiff's possession at the time of the original motion to dismiss which were being interposed on a motion for reconsideration and which were not limited to the face of the pleadings. After not having interposed timely opposition to SVH's motion, and over SVH's objection, this Court permitted the late filing of opposition thereto, and thereafter denied SVH's motion for sanctions.

Nuvasive again moved for dismissal of Plaintiff's claims against it, which motion was granted and costs imposed upon Plaintiff stemming therefrom.

Plaintiff thereafter filed a Third Amended Complaint without having obtained a stipulation to do so or having moved this Court for leave to amend his Complaint. On June 18, 2021, SVH and Schneier independently moved this Court to strike Plaintiff's Third Amended Complaint. In addition to striking the Third Amended Complaint, SVH also requested costs and fees in its motion.

A hearing was held on the respective motions to strike Plaintiff's Third Amended Complaint on August 5, 2021 as well as SVH's request for costs and fees. This Court granted the respective defendants' motions to strike Plaintiff's Third Amended Complaint, but denied SVH's request for costs and fees and cautioned Plaintiff that future failures to comply with this Court's Orders will result in an award of fees against Plaintiff.

On September 22, 2021, SVH interposed its answer to Plaintiff's Second Amended Complaint.

On December 9, 2021, Schneier Defendants moved this Court to dismiss for Plaintiff's failure to conduct an Early Case Conference ("ECC") within the time permitted by NRCP 16.1(e)(1). SVH joined the motion as the only remaining claim against SVH was based upon ostensible agency.

Ostensible agency is a predicated solely on a theory of vicarious liability. *See, McCrosky v. Carson Tahoe Reg'l Med. Ctr.*, 133 Nev. 930, 934, 408 P.3d 149, 153 (2017). Vicarious liability is derivative of direct liability, which is based on some sort of status relationship between the accused and the primary actor. *See, Batt v. State*, 111 Nev. 1127 (1995). Dismissal of the underlying negligence action extinguishes a derivative claim for vicarious liability. *Okeke v. Biomat USA, Inc.*, 927 F.Supp.2d 1021, 1028 (D.Nev.2013). *See also Mitschke v. Gosal Trucking, LDS*, 2014 WL 5307950, at *2-3 (D. Nev. Oct. 16, 2014) (vicarious liability is not an independent cause of action and does not survive dismissal of the direct claim). *Fernandez v. Penske Truck Leasing Co., L.P.*, 2012 WL 1832571, at *1 n .1 (D. Nev. May 18, 2012); *Hillcrest Investments, Ltd. v. Robison*, 2015 WL 7573198, at *2 (D. Nev. November 24, 2015); *Long v. Las Vegas Valley Water District*, 2015 WL 5785546, *7 (D. Nev. October 1, 2015); *Phillips v. Tartet Corp.*, 2015 WL 4622673, *5 (D.

Nev. July 31, 2015). *See also Wright v. Walkins*, 968 F.Supp.2d 1092 (D.Nev.2013).

NRCP 16.1 allows an ECC to be continued up to 180 days and that the Joint Case Conference Report ("JCCR") and/or Independent Case Conference Report ("ICCR") is to be filed within 30 days after the ECC. The failure to timely conduct an ECC or timely file a JCCR or ICCR constitutes a discretionary basis to dismiss the case.

The Court finds that the NRCP 16.1(b)(2) ECC requirement began to run on December 15, 2020 against Schneier Defendants when the Answer to the Second Amended Complaint was filed. Plaintiff's Third Amended Complaint was stricken and is not applicable to any timing factors associated with NRCP 16.1(e)(1).

Given Schneier Defendants' December 15, 2020 Answer date, Plaintiff was to have conducted an ECC within 180 days thereafter, or June 14, 2021. Plaintiff failed to conduct an ECC for approximately 6 months after the latest deadline for doing so had expired.

The parties provided a history of extensive motion practice before this Court dating from the initiation of the case.

In opposition to Schneier Defendants' motion and SVH's joinder, Plaintiff provided compelling and extraordinary circumstances of the COVID pandemic, Administrative Order 21-04 and lengthy Motion practice for the delay.

Under *Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007), the Court considered the factors and overall, there were compelling circumstances present to support the policy of the Court to hear a case on its merits and a dismissal would be a severe sanction.

The Court accepts the reasons for the delay at this time. The parties are ordered to hold an ECC by February 10, 2022 to be arranged by the Plaintiff and file a JCCR or ICCR within 14 days after the ECC. Should there be a delay in scheduling and holding the ECC and filing of the Report, the Motion to Dismiss may be revived and the Court will not be so permissive.

IT IS ORDERED that Schneier Defendants' motion to dismiss and SVH's joinder thereto are DENIED without prejudice, and

IT IS FURTHER ORDERED that Plaintiff's ICCR filed on January 7, 2022 shall be STRICKEN, and

IT IS FURTHER ORDERED that an ECC by conducted on or before February 10, 2022 to be initiated by Plaintiff, and

IT IS FURTHER ORDERED that a JCCR or ICCR be filed within 14 days of the ECC.

Dated March __14_, 2022. LEWIS BRISBOIS BISGAARD & SMITH LLP By: : */s/ Adam Garth*_____ S. Brent Vogel, Esq. Nevada Bar No. 6858 Adam Garth, Esq. Nevada Bar No. 15045 6385 S. Rainbow Blvd., Suite 600 Las Vegas, NV 89118 Tel: 702.893.3383 *Attorneys for Defendant Valley Health Systems LLC dba Spring Valley Hospital* McBRIDE HALL By: */s/ Robert McBride* Robert C. McBride, Esq. Nevada Bar No. 7082 Heather S. Hall, Esq. Nevada Bar No. 10608 8329 W. Sunset Road, Suite 260 Las Vegas, NV 89113 Tel: 702.792.5855 rcmcbride@mcbridehall.com hshall@mcbridehall.com *Attorneys for Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.*	Dated March _____, 2022. TANNER CHURCHILL ANDERSON By:_____refused to sign_____ Jared B. Anderson, Esq. David A. Tanner, Esq. David J. Churchill, Esq. 4001 Meadows Lane Las Vegas, NV 89107 Tel: 702.868.8888 janderson@tcafirm.com *Attorneys for Plaintiff*

IT IS SO ORDERED.

DATED this ____ day of _____, 2022

_____

DISTRICT COURT JUDGE

Respectfully Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Adam Garth

S. Brent Vogel, Esq.
Nevada Bar No. 6858
Adam Garth, Esq.
Nevada Bar No. 15045
6835 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118

From:	Robert McBride
To:	Garth, Adam; Heather S. Hall; Jared Anderson
Cc:	Vogel, Brent; Sirsy, Shady; Brown, Heidi; San Juan, Maria; DeSario, Kimberly
Subject:	[EXT] Re: Hinton v. Spring Valley - Order Denying Motion to Dismiss for Failure to Conduct ECC (rev) 4856-4691-3812 v.1.docx
Date:	Friday, March 11, 2022 9:37:32 AM
Attachments:	Logo_e6253148-26a1-47a9-b861-6ac0ff0bc3c4.png image001[65].png

Thanks, Adam. You can use my Esignature.

Robert C. McBride, Esq.
rcmcbride@mcbridehall.com | mcbridehall.com
8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
Telephone: (702) 792-5855
Facsimile: (702) 796-5855

MCBRIDE HALL
ATTORNEYS AT LAW

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Date: Friday, March 11, 2022 at 9:32 AM
To: Robert McBride <rcmcbride@mcbridehall.com>, Heather S. Hall <hshall@mcbridehall.com>, Jared Anderson <jared@injurylawyersnv.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>, Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>, Brown, Heidi <Heidi.Brown@lewisbrisbois.com>, San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>, DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: Hinton v. Spring Valley - Order Denying Motion to Dismiss for Failure to Conduct ECC (rev) 4856-4691-3812 v.1.docx

Counsel,

The court issued an order at the hearing that plaintiff's counsel was to prepare an order attendant to the denial of Dr. Schneir's motion to dismiss due to the failure of plaintiff to conduct a timely ECC and Spring Valley Hospital's joinder thereto. The EDCR gives the party ordered to produce the order and circulate same 14 days from the date to do so. Plaintiff's counsel failed to circulate an order at all, let alone one within that 14 day period, which itself has long elapsed.

To that end, we have undertaken the preparation of the order. Kindly review same and indicate whether we have your permission to affix your e-signatures to the order for submission to the court. We would like to submit this today, but

otherwise, we will submit by Monday. Many thanks in advance for your attention.

Adam Garth

Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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EXHIBIT G

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jared@injurylawyersnv.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; SPRING VALLEY HOSPITAL MEDICAL CENTER AUXILIARY dba SPRING VALLEY HOSPITAL; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

Case No.: A-19-800263-C
Dept. No.: 5

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Denying Defendants Motion to Dismiss and the Joinder Thereto in the above captioned matter was entered on April 5, 2022, a copy of which is attached hereto for reference.

DATED this 5th day of April, 2022

INJURY LAWYERS OF NEVADA

/s/ Jared B. Anderson

JARED B. ANDERSON, ESQ.
4001 Meadows Lane
Las Vegas, NV 89107
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of INJURY LAWYERS OF NEVADA and that on the 5th day of April, 2022, I served the above and foregoing **NOTICE OF ENTRY OF ORDER** by Electronic Service to the following:

ROBERT C. McBRIDE, ESQ
HEATHERS. HALL, ESQ.
McBRIDE HALL
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Attorneys for Defendants

LEWIS BRISBOIS BISGAARD & SMITH, LLP S. BRENT VOGEL, ESQ. ADAM GARTH, ESQ. 6385 S. Rainbow Blvd., Suite 600, Las Vegas, Nevada 89118
Attorneys for Defendant Spring Valley Hospital Medical Center Auxiliary dba Spring Valley Hospital

____ Via US Mail by placing said document in a sealed envelope, with postage prepaid (N.R.C.P. 5(b))

_X_ Via Electronic Filing (N.E.F.R. 9(b))

_X_ Via Electronic Service (N.E.F.R. 9)

____ Via Facsimile (E.D.C.R. 7.26(a))

/s/Maresa Zarillo
_____
An employee of INJURY LAWYERS OF NEVADA

ELECTRONICALLY SERVED
4/5/2022 8:45 AM

Electronically Filed
04/05/2022 8:45 AM
CLERK OF THE COURT

ORD

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; SPRING VALLEY HOSPITAL MEDICAL CENTER AUXILIARY dba SPRING VALLEY HOSPITAL; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

CASE NO.: A-19-800263-C
DEPT NO.: 5

ORDER DENYING DEFENDANTS' MOTION TO DISMISS AND THE JOINDER THERETO

Defendant Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.'s motion to dismiss pursuant to NRCP 16.1(e)(1) and Defendant Valley Health Systems, LLC dba Spring Valley Hospital's joinder having come on for hearing on January 27, 2022, a written opposition and reply having been filed, the Court being fully advised in the premises and good cause appearing, the Court hereby rules as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to NRCP 16.1, an Early Case Conference ("ECC") should be held within 180 days of the filing of an answer and the Joint Case Conference Report ("JCCR") and/or Independent Case Conference Report ("ICCR") should be filed within 30 days thereafter. Failure to do so constitutes a discretionary basis for the Court to dismiss the case. The Court finds that the NRCP 16.1(b)(2) ECC requirement began on December 15, 2020 against Defendant Schneier when the answer to the Second Amended Complaint was filed. The Third Amended Complaint was stricken and is not applicable. There was a delay of approximately 6 months in holding the early case conference which was calculated by adding the time that passed after the 180 days from the Answer filed on December 15, 2020.

In this case, while there was a delay in holding an early case conference, the plaintiff has been extremely active in filing several amendments to the complaint and filing motions and oppositions to the defendants' motions which required extensive research and briefing and appearing at each of the hearings set by this Court. The plaintiff also attempted to hold an early case conference after the defendants filed their motion to dismiss and joinder thereto. The Court therefore FINDS that this is not a situation where the plaintiff has abandoned the litigation or has taken no action in the case.

In addition to the reasons set forth above, plaintiff's counsel has experienced extreme disruption in the operation of their law firm as a result of the Covid-19 pandemic and other unforeseeable occurrences which constitute compelling and extraordinary circumstances. During the timeline referenced in Defendants' Motion, the Bighorn law firm experienced a significant, unprecedented disruption in their personnel related to the COVID-19 pandemic, including major internal logistical problems associated with the pandemic or resulting from the pandemic. In response to the motion to dismiss the plaintiff provided a detailed description of specific ways in which plaintiff's counsel's law firm has been adversely affected by the pandemic, which contributed to the delay in holding an early case conference.

The Court FINDS that the plaintiff has provided compelling and extraordinary circumstances resulting from the COVID pandemic for the delay, taking into consideration Administrative Order 21-04 and the lengthy and extensive motion practice that has taken place in this case. The Court considered the factors set forth in *Arnold v. Kip*, and FINDS that overall there were compelling circumstances present which support the policy of the Court to hear a case on its merits and concludes that dismissal would be too severe a sanction. Therefore the Court accepts the reasons for the delay at this time.

The Court further FINDS that to dismiss plaintiff's claims would defeat the very ends of justice that the rules are designed to promote and would be the result of an overly strict, formalistic application of the rules. *Dougan v. Gustaveson*, 108 Nev. 517, 522-23 (1992). Such a result is contrary to the meaning behind the discovery rules and for these reasons, defendant's motion to dismiss should be denied.

For the reasons set forth above, it is hereby ORDERED, ADJUDGED and DECREED that the Defendant's Motion to Dismiss and the Joinder thereto are DENIED WITHOUT PREJUDICE.

It is further ORDERED, ADJUDGED and DECREED that the parties must hold an ECC within two weeks from today to be arranged by the Plaintiff and file a JCCR or ICCR within 14 days after the ECC. Should there be a delay in scheduling and holding the ECC and filing of the Report, the Motion to Dismiss may be revived and the Court will not be so permissive.

///

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///

It is further ORDERED, ADJUDGED and DECREED that the ICCR filed by the plaintiff on January 7, 2022 shall be STRICKEN.

DATED this _____ day of _____, 2022.

Dated this 5th day of April, 2022

_____
DISTRICT COURT JUDGE

0AB 603 3365 024E
Veronica M. Barisich
District Court Judge

Submitted by:

INJURY LAWYERS OF NEVADA

/s/Jared B. Anderson
_____
JARED B. ANDERSON (SBN: 9747)
4001 Meadows Lane
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PH: 702-868-8888
Attorneys for Plaintiff

Approved as to Form and Content:

LEWIS BRISBOIS BISGAARD & SMITH, LLP

/s/ Refused to sign
_____
S. BRENT VOGEL, ESQ.
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Attorneys for Defendant Spring Valley Hospital Medical Center Auxiliary dba Spring Valley Hospital

MCBRIDE HALL

/s/ Refused to sign
_____
HEATHER S. HALL, ESQ.
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Attorneys for Defendant Michael Schneier, M.D. and Michael Schneier Neurosurgical Consulting, P.C.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Kurtiss Hinton, Plaintiff(s) vs. Michael Schneier, M.D., Defendant(s)	CASE NO: A-19-800263-C DEPT. NO. Department 5

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/5/2022

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EXHIBIT H

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Fax: 702.893.3789
Attorneys for Defendant Valley Health Systems, LLC, d/b/a Spring Valley Hospital

DISTRICT COURT

CLARK COUNTY, NEVADA

KURTISS HINTON,

Plaintiff,

vs.

MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; KHAVKIN CLINIC, PLLC; VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL; NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive,

Defendants.

Case No. A-19-800263-C

Dept. No.: 5

DEFENDANT VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL'S MOTION TO RECONSIDER ITS JOINDER ALONG WITH CO-DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S MOTION TO DISMISS PURSUANT TO NRCP 16(E)(1)

HEARING REQUESTED

Defendant VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL ("SVH") by and through its attorneys of record, S. Brent Vogel, Esq., Adam Garth, Esq., and Shady Sirsy, Esq. of the Law Firm of Lewis Brisbois Bisgaard & Smith, LLP, hereby makes this MOTION TO RECONSIDER SVH'S JOINDER AND CO-DEFENDANTS MICHAEL SCHNEIER, M.D.,

AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'s (collectively "Schneier") MOTION TO DISMISS PURSUANT TO NRCP 16.1(E)(1).

MEMORANDUM OF LAW

I. INTRODUCTION

The Court is well aware of the extensive history and the vast amount of motion practice, precipitated largely by Plaintiff's predecessor counsel in this matter, which conduct is being perpetuated by Plaintiff's current counsel. The Schneier Defendants sought dismissal of the instant case by way of motion predicated on Plaintiff's abject failure to conduct a timely Early Case Conference ("ECC") in accordance with NRCP 16.1(e)(1), **and failed to do so for nearly one year** after the Schneier Defendants interposed their answer to Plaintiff's Second Amended Complaint. SVH joined the Schneier Defendants' motion to dismiss because the only remaining claim against SVH is predicated on an ostensible agency theory that exists solely on the basis of vicarious liability, which is not an independent theory of recovery for Plaintiff. Therefore, dismissal of Plaintiff's case against the Schneier Defendants automatically implicates the dismissal of Plaintiff's remaining claim against SVH.

In this Court's determination of the aforesaid motion and joinder, said decision was clearly erroneous in light of the factors it needed to consider which relate to the purpose of the rule requiring a timely ECC. A non-exhaustive list of such factors includes the length of the delay, whether the defendant induced or caused the delay, whether the delay has otherwise impeded the timely prosecution of the case, general considerations of case management such as compliance with any case scheduling order or the existence or postponement of any trial date, or whether the plaintiff has provided good cause for the delay. A considered examination of the aforesaid factors can lead to no other conclusion (1) that Plaintiff's counsel's actions in this case, either predecessor or current counsel, lead to the delay itself, (2) that the delay exceeded the maximum time to conduct the conference by nearly six months, (3) that discovery was not permitted to proceed due to the failure to timely conduct the conference, (4) that none of the defendants were responsible for the delay in scheduling the early case conference, (5) that the timely prosecution of this case was severely hampered by Plaintiff's own failures (case delayed 2 ½ years from its filing), and (6) that Plaintiff's

excuse was a falsely contrived attempt to utilize COVID-19 as leverage when Plaintiff's predecessor counsel not only participated in multiple motions attendant to this case alone, but during which time they filed a considerable number of unrelated lawsuits, dispelling any notion that they lacked the five or ten minutes to participate in an ECC which would have allowed discovery to timely proceed.[1] Thus, the delays in this case have been precipitated by Plaintiff 's counsel. The allegations stem from medical treatment which occurred **five years ago**. Affording Plaintiff another "pass" when his counsel's actions improperly delayed this case making discovery even more stale was clearly erroneous, as defendants in this matter have been severely prejudiced by Plaintiff's own actions. Thus, this Court's reconsideration in light of the case history is entirely proper.

II. STATEMENT OF FACTS

Plaintiff alleges that on or about June 22, 2017, he was admitted to SVH with complaints of low back pain radiating to his left leg which followed multiple falls in the days preceding his admission. He further alleges he was specifically directed to SVH by Defendant Schneier, who saw Plaintiff in his personal office outside of SVH for purposes of undergoing surgery by Schneier. Plaintiff further alleges that on June 22, 2017, Dr. Schneier performed a lumbar interbody fusion with posterior decompression and lumbar fixation on Plaintiff at L3-L4 and L4-L5 at SVH, but claims that Schneier failed to advise him of the risks associated with the surgery he was to perform and that alternative procedures were available which allegedly had lower rates of complication. Plaintiff alleges that after surgery, he experienced extreme lower left extremity weakness. Moreover, Plaintiff alleges that it was only on August 14, 2018, after meeting with another orthopedic surgeon, that he first suspected alleged medical negligence by Schneier. Plaintiff also

[1] During the one year time within which the ECC was not conducted, on this case alone: (1) All parties attended hearing on February 11, 2021 on motions to dismiss Plaintiff's Second Amended Complaint, (2) Plaintiff moved to reconsider said motions to dismiss on March 15, 2021, (3) Plaintiff opposed a motion by newly named Khavkin Clinic to dismiss which motion was heard and granted on March 11, 2021, (4) Plaintiff opposed SVH's Rule 11 motion which was filed on April 16, 20121, (5) Plaintiff improperly filed a Third Amended Complaint, (6) Plaintiff interposed opposition to multiple motions to strike Third Amended Complaint on June 18, 2021, and (7) all parties attended hearing on August 5, 2021 on the respective motions to strike Plaintiff's Third Amended Complaint. Moreover, Plaintiff failed to timely draft multiple orders his counsel was directed to prepare and circulate in accordance with EDCR 7.21.

alleged professional negligence as against SVH.[2]

This action has an extensive history. Plaintiff commenced his action by filing his Compliant on August 14, 2019. SVH filed a motion to dismiss Plaintiff's Complaint on November 1, 2019, followed by defendant Nuvasive, Inc.'s ("Nuvasive") motion to dismiss on November 13, 2019. Defendant Schneier joined SVH's motion to dismiss on November 19, 2019. All motions and joinders were heard on December 17, 2019. SVH's Motion and Schneier's joinder thereto were denied on December 26, 2019 without prejudice. Nuvasive's motion to dismiss was granted, but permitted Plaintiff to amend his Complaint as to Nuvasive to address claims made against it with more specificity.

Plaintiff filed a Second Amended Complaint by stipulation of the parties on December 1, 2020. On December 9, 2020, SVH filed a Motion to Dismiss and Strike Plaintiff's Second Amended Complaint and Prayer for Punitive Damages. Defendant Nuvasive filed another motion to dismiss Plaintiff's Second Amended Complaint on December 9, 2020 as well.

While the respective motions to dismiss Plaintiff's Second Amended Complaint were pending, the Schneier Defendants interposed their answer to Plaintiff's Second Amended Complaint on December 15, 2020.

In Plaintiff's Second Amended Complaint, Plaintiff named a new defendant, Khavkin Clinic PPLC, which filed a motion to dismiss on February 4, 2021, which motion was granted on March 11, 2021.

A hearing was held on SVH's and Nuvasive's respective motions to dismiss on February 11, 2021. Thereafter, this Court issued an order of dismissal on March 2, 2021, granting SVH's motion to dismiss all claims against it and to strike Plaintiff's prayer for punitive damages in its entirety, thus initially terminating Plaintiff's case against SVH.

Plaintiff moved this Court to reconsider its decision granting SVH's motion to dismiss on March 15, 2021, which motion partially granted said relief to the extent that Plaintiff's claim against

[2] All allegations leveled by Plaintiff are contained in Plaintiff's Second Amended Complaint annexed hereto as Exhibit "A".

SVH was limited only to ostensible agency as it pertained to Schneier Defendants, but denied Plaintiff's motion with respect to all remaining claims against SVH. Therefore, Plaintiff has no direct claims of negligence as against SVH and is limited solely to an ostensible agency claim.

SVH moved on April 16, 2021 for sanctions pursuant to NRCP Rule 11 pertaining to Plaintiff's interposition of materials SVH alleges were in Plaintiff's possession at the time of the original motion to dismiss which were being interposed on a motion for reconsideration and which were not limited to the face of the pleadings. After not having interposed timely opposition to SVH's motion, and over SVH's objection, this Court permitted the late filing of opposition thereto, and thereafter denied SVH's motion for sanctions.

Nuvasive again moved for dismissal of Plaintiff's claims against it, which motion was granted and costs imposed upon Plaintiff stemming therefrom.

Plaintiff thereafter filed a Third Amended Complaint without having obtained a stipulation to do so or having moved this Court for leave to amend his Complaint. On June 18, 2021, SVH and Schneier independently moved this Court to strike Plaintiff's Third Amended Complaint. In addition to striking the Third Amended Complaint, SVH also requested costs and fees in its motion.

A hearing was held on the respective motions to strike Plaintiff's Third Amended Complaint on August 5, 2021 as well as SVH's request for costs and fees. This Court granted the respective defendants' motions to strike Plaintiff's Third Amended Complaint, but denied SVH's request for costs and fees and cautioned Plaintiff that future failures to comply with this Court's Orders will result in an award of fees against Plaintiff. As demonstrated below, despite this Court's warning as to costs and fees being imposed against Plaintiff for any future failure to comply with Court orders, no such sanction has been imposed despite the continued failure by Plaintiff to comply with rules or orders. In fact, not only has Plaintiff not been sanctioned in any way, but Plaintiff and his counsel continue to receive this Court's deference in the wake of continued violations of the Court's rules and orders.

On September 22, 2021, SVH interposed its answer to Plaintiff's Second Amended Complaint.

On December 9, 2021, Schneier Defendants moved this Court to dismiss for Plaintiff's

failure to conduct an ECC within the time permitted by NRCP 16.1(e)(1).[3] SVH joined the motion as the only remaining claim against SVH was based upon ostensible agency.[4] Plaintiff interposed his opposition to the motion and joinder.[5] The Schneier Defendants thereafter interposed their reply in further support of the motion to dismiss.[6]

A hearing was conducted on January 27, 2022,[7] during which time SVH's counsel was cut off from making a record of the Plaintiff's repeated failures to comply with statutes, orders and rules, the multiple improperly interposed pleadings in this case, the extensive motion practice ensuing from the Plaintiff's improper conduct, and the repeated deference accorded to Plaintiff and his counsel in defiance of proper practice, all while exponentially increasing the costs of litigation for the defense of this case.[8]

What is more, in opposition to the Schneier Defendants' Motion to Dismiss in this case, Plaintiff interposed the declaration of Kimball Jones, Esq.[9] In that declaration, Mr. Jones made multiple representations that due to staffing issues relating to COVID-19, he was unable to schedule an ECC in accordance with NRCP 16.1 for a year.[10] Despite Mr. Jones' assertion being completely incredible on its face, co-defense counsel pointed out that Mr. Jones' firm filed a bevy of lawsuits in that intervening year's time, with no COVID-19 issues associated therewith,[11] but when it came time to putting aside 5 minutes to schedule and conduct a required ECC, he was somehow prevented from doing so.

After the hearing on January 27, 2022, this Court issued an oral decision denying the

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[3] Exhibit "B" hereto, Schneier Defendants' Motion to Dismiss for Failure to Timely Conduct ECC
[4] Exhibit "C" hereto, SVH's Joinder to Schneier Defendants' Motion to Dismiss
[5] Exhibit "D" hereto, Plaintiff's Opposition to Motion to Dismiss
[6] Exhibit "E" hereto, Schneier Defendants' Reply in Further Support of Motion to Dismiss
[7] Exhibit "F" hereto, Hearing Transcript of January 27, 2022
[8] Exhibit "F" hereto, pp. 4:22 – 7:17
[9] Jared Anderson, Esq., Plaintiff's current counsel, represented that Mr. Jones is no longer Plaintiff's counsel and that he has been substituted as counsel and is no longer merely associated Plaintiff's counsel. Despite repeated requests for months to obtain evidence of this arrangement, as late as March 29, 2022, during a telephone call with Plaintiff's counsel regarding EDCR 2.34 issues of discovery, Mr. Anderson represented that he was still awaiting Mr. Jones' signature on the stipulation of substitution of counsel. Again, months have elapsed and Plaintiff's counsel cannot even get as much as a stipulation together as to who is piloting the ship for this Plaintiff.
[10] Exhibit "3" to "D" hereto, ¶¶ 4-7
[11] Exhibit "F", pp. 13:16 – 14:17

Schneier Defendants' Motion to Dismiss and with it, SVH's Joinder thereto, struck the Plaintiff's ICC and ordered that an ECC be conducted within 14 days of the hearing to be arranged by Plaintiff and a JCCR be filed within 14 days thereof.[12] Moreover, this Court further stated that Plaintiff's failure to comply with the Court's new order will be met with a less permissive Court.[13]

The Court directed Plaintiff to prepare an order reflective of the Court's decision.[14] In accordance with EDCR 7.21, Plaintiff's counsel had 14 days within which to submit the order to the Court, i.e., by February 10, 2022. As has been the pattern in this case, Plaintiff's counsel failed to circulate any order, again in defiance of the Court's rules and counsel's obligations. Therefore, SVH's counsel undertook the responsibility of preparing an order reflective of the Court's decision and the history of the litigation leading up to the motion, circulating it among all counsel. Co-defense counsel approved our order. Instead of addressing the order we prepared, Plaintiff's counsel, for the first time, having recognized their failure to again comply with a Court order, circulated a different order to which the defendants could not agree to accept. Therefore, on March 14, 2022, SVH provided this Court with its order and a letter of explanation reflecting the rationale for having to interpose same.[15] Plaintiff's counsel thereafter submitted his own order for the Court's consideration. Despite the numerous warnings by this Court to Plaintiff's counsel that further defiance of court orders and rules will not be tolerated, this Court instead chose to reward Plaintiff's counsel once again, signing the order he failed to timely prepare and circulate.[16]

What is most concerning, and what precipitates the instant motion, is the level of deference Plaintiff's counsel and his predecessor have been accorded by this Court, irrespective of their repeated defiance of procedures, orders and rules. Plaintiff's failure to timely conduct an ECC is not an isolated incident in this case. It represents a repeated pattern of disregard for the law by Plaintiff which makes the Court's decision to deny the Schneier Defendants' Motion to Dismiss and SVH's joinder thereto all the more egregious. It is that decision, in light of the mountain of

[12] Exhibit "F", pp. 18:24 – 19:9
[13] *Id.*
[14] *Id.* at p. 19:10-14
[15] Exhibit "G"
[16] Exhibit "H", Court Order dated April 5, 2022

procedural improprieties precipitated by Plaintiff's counsel in this case alone, which rises to the level of an abuse of discretion warranting this Court's reconsideration of its decision to deny the motion to dismiss and joinder thereto, and a complete reversal thereof.

Rest assured, there was no COVID-19 reason for delay here. The sole reason for not conducting the ECC for a year was Plaintiff's counsel's sheer incompetence or disregard for the law. In fact, Plaintiff's counsel was required to attend multiple hearings on multiple motions in this matter alone, precipitated by his own improprieties. Somewhere in that time he could have and should have conducted the ECC but failed to do so. Thus, the finding that "plaintiff's counsel has experienced extreme disruption in the operation of their law firm as a result of the Covid-19 pandemic and other unforeseeable occurrences which constitute compelling and extraordinary circumstances"[17] was clearly erroneous, crying out for a remedy.

III. LEGAL ARGUMENT

EDCR 2.24 states in pertinent part:

> (a) No motion once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.
>
> (b) A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order.

The implicated order was served with notice of entry on April 5, 2022 making this motion timely.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Given the extensive history of delays precipitated exclusively by Plaintiff's counsel, whether predecessor or current, the Court's decision to excuse the extensive delay in conducting an ECC by a year resulted in the further

[17] *Id.* at 2:18-20

delay of discovery in this case, now five years from the alleged actions giving rise to the case itself. Such actions by Plaintiff make the defense of the case all the more problematic given how stale the evidence is due to the Plaintiff's delays. Thus, the Court's decision to excuse Plaintiff's actions and not dismiss the case was clearly erroneous under the analysis required for determination of dismissal under the statute.

NRCP 16.1 (b) states that , "all parties who have filed a pleading in the action must participate in an early case conference." "The early case conference must be held within 30 days after service of an answer by the first answering defendant." NRCP 16.1(b)(2)(A). The responsibility for setting the early case conference falls on the Plaintiff. NRCP 16.1 (b) (4) (A).

The parties are required to participate in an early case conference unless the following exemptions apply:

> (A) the case is exempt from the initial disclosure requirements under Rule 16.1(a)(l)(B);
>
> (B) the case is subject to arbitration under Rule 3(A) of the Nevada Arbitration Rules (NAR) and an exemption from arbitration under NAR 5 has been requested but not decided by the court or the commissioner appointed under NAR 2(c);
>
> (C) the case is in the court-annexed arbitration program;
>
> (D) the case has been through arbitration and the parties have requested a trial de novo under the NAR;
>
> (E) the case is in the short trial program; or
>
> (F) the court has entered an order excusing compliance with this requirement.

NRCP 16.1 (b) (1).

When a plaintiff fails to comply with requirements of NRCP 16.l(b), the Court may dismiss the Complaint, without prejudice, under NRCP 16.l(e)(l) which provides the following:

> If the conference described in Rule 16.1(b) is not held within 180 days after service of an answer by a defendant, the court, on motion or on its own, may dismiss the case as to that defendant, without prejudice, unless there are compelling and extraordinary circumstances for a continuance beyond this period.

NRCP 16.l(e).

As the Nevada Supreme Court noted in *Dougan v. Gustaveson*, 108 Nev. 517, 523, 835 P.2d 795, 799 (1992) [internal quotation marks omitted], abrogated on other grounds by *Arnold v. Kip*, 123 Nev. 410, 415, 168 P.3d 1050, 1053 (2007), the enforcement provisions of NRCP 16.1 "recognize judicial commitment to the proposition that justice delayed is justice denied." That is the purpose of the Rule which the *Arnold* Court required the district court to analyze in determining whether to dismiss a case for failure to comply with the Rule's time constraints.

Under *Arnold, supra*, the Nevada Supreme Court stated:

> This court has not explicitly articulated the standard under which we will review orders granting motions to dismiss under NRCP 16.1(e)(2). However, in evaluating sanctions imposed under NRCP 16(f) for pretrial conference noncompliance, we have indicated that those sanctions are within the district court's discretion. 6 NRCP 16.1(e)(2), like NRCP 16(f), provides that the district court "may" sanction noncompliance with the rule and therefore leaves the matter to the district court's discretion. Accordingly, we review the district court's order granting a motion to dismiss under NRCP 16.1(e)(2) for an abuse of discretion.

Id. at 414, 168 P.3d at 1052. In light of the history of Plaintiff's non-compliance with statutes, rules, procedures and court orders in this case, only a fraction of which was articulated in the aforenoted introduction and statement of facts (Sections I and II above), it was clearly erroneous for this Court to find that Plaintiff had good cause for not timely conducting an ECC **for six months beyond the outside deadline for doing so**, and continuing the pattern of extending a lifeline to Plaintiff and his counsel when they clearly have no respect for proper practice and this Court's orders and requirements. Even more problematic is that Plaintiff precipitated the very delays in this case, prejudicing the respective defendants due to extraordinary delays in commencing discovery, now **five years after** the alleged acts giving rise to this matter..

Moreover, the *Arnold* Court provided a roadmap which a district court should follow in determining the propriety of dismissal of a case for a party's failure to conduct a timely ECC, in which it stated:

> The decision to dismiss an action without prejudice for a plaintiff's failure to comply with the timing requirements of NRCP 16.1(e)(2) remains within the district court's discretion. NRCP 16.1(e)(2) was adopted to promote the prosecution of litigation within adequate timelines, and it permits sanctions to ensure compliance with specific

> deadlines. Therefore, **the factors to be considered by the district court in dismissing an action under NRCP 16.1(e)(2) should be those that relate to the purpose of the rule. A nonexhaustive list of such factors includes the length of the delay, whether the defendant induced or caused the delay, whether the delay has otherwise impeded the timely prosecution of the case, general considerations of case management such as compliance with any case scheduling order or the existence or postponement of any trial date, or whether the plaintiff has provided good cause for the delay. Going further, just as the defendant is not required to demonstrate prejudice resulting from the delay, neither is the district court required to consider the plaintiff's inability to pursue his claim after an NRCP 16.1(e)(2) dismissal because the statute of limitations may expire.** The district court's consideration of a motion to dismiss without prejudice should address factors that promote the purpose of the rule, rather than factors that focus on the consequences to the plaintiff resulting from his or her failure to comply with the rule.

Id. at 415-16, 168 P.3d at 1053-54 (emphasis supplied).

"Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time [to conduct the conference] to a day more than 180 days after an appearance is served by the defendant in question." NRCP 16.l(b)(l). Thus, it was incumbent upon Plaintiff to demonstrate "compelling and extraordinary circumstances" for not conducting the ECC within 180 days from the Schneier Defendants' interposition of their answer on December 15, 2020. Essentially, all which was required of the defendants in this case was to present evidence that more than 180 days elapsed from the time to conduct the ECC. Defendants demonstrated just that fact and this Court properly determined that the time to conduct same did commence on December 15, 2020. There was no reason, much less a compelling one, why Plaintiff failed to timely conduct an early case conference in this matter, despite the declaration of Kimball Jones, Esq. for the manufactured excuse of COVID-19. Given the uncontestable history of the litigation in this matter coupled with the undeniable truth that Mr. Jones' firm initiated a bevy of lawsuits during the very timeframe within which he was to have conducted an ECC in this case, dispelled any notion that he was understaffed or prevented in any way by the COVID-19 pandemic from initiating and participating in a very short, perfunctory obligation required to commence discovery in this matter. If Plaintiff's counsel was not concerned about maintaining the case and fulfilling his obligations to pursue it, why should the Court jump to his rescue when he destroyed his own case? That placed

this Court in the position of advocate, not arbiter, which was clearly erroneous. Basically, everything which inured to Plaintiff's detriment during the timeframe of COVID-19 pandemic due was in no way due to the pandemic itself or the problems associated therewith, but rather to his counsel's own refusal to follow the rules and move this matter forward. Plaintiff should not have been rewarded and Defendants should not have been permitted to be prejudiced by the excessive delay of Plaintiff's own making.

What was uncontested on the original motion was that this matter is not subject to arbitration, was not in the court-annexed arbitration program and had not been through arbitration. This matter was also not in the short trial program, nor had there been any order excusing compliance with NRCP 16.1 (b). As such, Plaintiff was required to set an early case conference by June 13, 2021. Plaintiff failed to do so for almost one year after he was supposed to. Up to the point the Schneier Defendants moved to dismiss and SVH joined said motion, Plaintiff made no attempt to even set an ECC. As Plaintiff has failed to timely hold an ECC, the Court should have dismissed this case as to the Schneier Defendants, and due to principles of ostensible agency, dismissed as against SVH, pursuant to NRCP 16.1(e).

One point that the *Arnold* Court emphasized was that a defendant **is not required to demonstrate prejudice when seeking dismissal for a Plaintiff's violation of NRCP 16.1(e)**. Specifically the Court held:

> **the party moving for dismissal under NRCP 16.1(e)(2) is not required to demonstrate prejudice**, and the district court is not required to consider whether the defendant has suffered prejudice because of the delay in the filing of the case conference report. Nothing in the language of NRCP 16.1(e)(2) -- either the earlier version or the current version -- requires the defendant to demonstrate prejudice or the district court to determine whether the defendant has suffered prejudice as a condition to granting a dismissal without prejudice. **To hold otherwise would largely eviscerate the rule because it would allow plaintiffs to exceed the deadline for filing a case conference report as long as the defendant could not demonstrate prejudice**.

Arnold, supra. at 415, 168 P.3d 1053 (emphasis added). While not required to demonstrate prejudice, the prejudice was obvious. All parties were precluded from initiating any discovery pursuant to NRCP 16.1, 33 and 34 due to the Plaintiff's abject failure to fulfill his obligations to

initiate and conduct the ECC. The delay was not minimal. The motion to dismiss was not made until nearly one year after the Schneier Defendants' answer was interposed and exceeded the outside deadline for conducting an ECC by 6 months. That was in addition to the multiple delays precipitated by Plaintiff's counsel's improper pleadings which required multiple motions to dismiss and/or strike **over the course of several years**. Even then, Plaintiff's predecessor counsel, Mr. Jones, engaged in his usual "Eddie Haskell" like behavior, claiming that he "misunderstood" Court orders, "overlooked" his failures to circulate and file orders he was directed to prepare, etc. Again, the failure to conduct the ECC in this case was not an isolated incident. It is illustrative and comprises a pattern of purposeful or incompetent neglect by Plaintiff's counsel to prosecute this case, all with the generous indulgences of this Court at the Defendants' expense. Thus, the Court's decision in this case on this issue, when viewed in conjunction with the parade of nonsense created and conducted by Plaintiff, was clearly erroneous.

Plaintiff provided no compelling and extraordinary circumstances in this case warranting the denial of the Schneier Defendants' motion and SVH's joinder thereto. The COVID-19 excuse proffered by Mr. Jones' declaration in opposition to the motion was a manufactured misstatement of fact interposed to attempt to create an excuse where none existed. He failed to provide an explanation why he was able to spend hours in hearings on motions in this case, why he was able to improperly interpose a Third Amended Complaint, only to have it stricken, why he was able to initiate a host of other unrelated lawsuits during the 180 days he had to conduct the ECC, but the few minutes to actually conduct the ECC was prevented by COVID and his staffing issues. That is utter nonsense, and for the Court to have accepted the proffered excuse or given it any credence in light of the case history, let alone sound and prudent judgment based on a simple perception of the situation or facts of this case, was an abuse of discretion which must be rectified by reconsideration and reversal of the Court's order denying the motion to dismiss and joinder thereto.

SVH's joinder to the Schneier Defendants' underlying motion to dismiss required dismissal of the case against SVH, as it does upon reconsideration of the Court's decision denying said motion, since the sole remaining theory of liability remaining against SVH, after dismissal of all other causes of action and theories of liability on extensive motion practice, is that of ostensible agency.

Ostensible agency is a predicated solely on a theory of vicarious liability. *See, McCrosky v. Carson Tahoe Reg'l Med. Ctr.*, 133 Nev. 930, 934, 408 P.3d 149, 153 (2017). Vicarious liability is derivative of direct liability, which is based on some sort of status relationship between the accused and the primary actor. *See, Batt v. State*, 111 Nev. 1127 (1995).

Dismissal of the underlying negligence action extinguishes a derivative claim for vicarious liability. *Okeke v. Biomat USA, Inc.*, 927 F.Supp.2d 1021, 1028 (D.Nev.2013). *See also Mitschke v. Gosal Trucking, LDS*, 2014 WL 5307950, at *2-3 (D. Nev. Oct. 16, 2014) (vicarious liability is not an independent cause of action and does not survive dismissal of the direct claim). *Fernandez v. Penske Truck Leasing Co., L.P.*, 2012 WL 1832571, at *1 n .1 (D. Nev. May 18, 2012); *Hillcrest Investments, Ltd. v. Robison*, 2015 WL 7573198, at *2 (D. Nev. November 24, 2015); *Long v. Las Vegas Valley Water District*, 2015 WL 5785546, *7 (D. Nev. October 1, 2015); *Phillips v. Tartet Corp.*, 2015 WL 4622673, *5 (D. Nev. July 31, 2015). *See also Wright v. Walkins*, 968 F.Supp.2d 1092 (D.Nev.2013).

In *Allison v. Lott*, 2019 Nev. Dist. LEXIS 860 (Nev. Dist. Ct. August 28, 2019), CASE NO. A-16-747551-C,[18] Plaintiffs' claim against St. Rose Hospital was predicated solely on negligent hiring, training and supervision. Plaintiffs dismissed the case against the two covered medical providers employed by St. Rose. The Court held that by dismissing the two providers, St. Rose could not be held liable for negligent hiring, training and supervision because such a claim is derivative only and predicated solely on a theory of vicarious liability,. Lacking the underlying negligence claim, the derivative claim is automatically extinguished.

Likewise in this case, Plaintiff's sole claim against SVH is based on ostensible agency, a theory of vicarious liability. Upon dismissal of Schneier's claims due to Plaintiff's abject and inexcusable failure to conduct an early case conference within 180 days of the interposition of Schneier's answer, and what amounts to almost a year thereafter, any vicarious liability claims against SVH are automatically extinguished. Thus, upon reconsideration of this Court's decision, the Schneier Defendants' motion to dismiss should be dismissed, implicating the automatic

[18] This case should be familiar to Plaintiff's counsel as Mr. Jones' firm litigated it and was the recipient of the dismissal order as to St. Rose based upon the previously cited case law.

dismissal of the Plaintiff's case against SVH based upon SVH's joinder to the aforesaid motion.

IV. CONCLUSION

For the foregoing reasons, this Court should reconsider its decision which denied the Schneier Defendants' motion to dismiss and SVH's joinder thereto, and issue a new order granting said motions in their entirety.

DATED this 19th day of April, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2022, a true and correct copy of **DEFENDANT VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL'S MOTION TO RECONSIDER ITS JOINDER ALONG WITH CO-DEFENDANTS MICHAEL SCHNEIER, M.D. AND MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C.'S MOTION TO DISMISS PURSUANT TO NRCP 16(E)(1)** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

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EXHIBIT A

ACOMP
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DISTRICT COURT
CLARK COUNTY, NEVADA

KURTISS HINTON, Plaintiff, vs. MICHAEL SCHNEIER, M.D., an individual; MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C., a Nevada Corporation; KHAVKIN CLINIC, PLLC; VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL; NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; DOE NURSE; I through X; DOE HOSPITAL EMPLOYEE; I through X; DOE MEDICAL DOCTOR; I through X; ROE HOSPITAL, XI through XX; ROE COMPANIES, XI through XX; and ROES, XI, through XX, inclusive, Defendants.	CASE NO: A-19-800263-C DEPT. NO: VIII **Arbitration Exemption Claimed: Medical Malpractice** **SECOND AMENDED COMPLAINT**

COMES NOW Plaintiff, KURTISS HINTON, by and through counsel, KIMBALL JONES, ESQ. and SIRIA L. GUTIERREZ, ESQ. of BIGHORN LAW, and for causes of action against the Defendants, and each of them, complains and alleges as follows:

PARTIES AND JURISDICTION:

1. Plaintiff KURTISS HINTON (.. *reinafter "KURTISS"*) is, and at all times relevant hereto has been, a resident of Las Vegas, Clark County, Nevada.

2. Defendant MICHAEL SCHNEIER, M.D. (*hereinafter "SCHNEIER"*) is, and at all times relevant hereto has been, a medical doctor and resident of Las Vegas, Clark County, Nevada.

3. Defendant MICHAEL SCHNEIER NEUROSURGICAL CONSULTING, P.C. (*hereinafter "SCHNEIER NEUROSURGICAL CONSULTING"*) is, and at all times relevant hereto was, a Nevada Medical Facility located at 10105 Banburry Cross Drive, 445, Las Vegas, NV 89144 and a corporation organized and existing under the laws of the State of Nevada, authorized to conduct, and actually conducting, business in Clark County, Nevada.

4. Defendant KHAVKIN CLINIC, PLLC (*hereinafter "KHAVKIN CLINIC"*) is, and at all times relevant hereto was, a Nevada Medical Facility located at 653 N. Town Center Dr. #602, Las Vegas, Nevada 89144 and a corporation organized and existing under the laws of the State of Nevada, authorized to conduct, and actually conducting, business in Clark County, Nevada.

5. Defendant VALLEY HEALTH SYSTEMS, LLC dba SPRING VALLEY HOSPITAL (*herein after SPRING VALLEY HOSPITAL*) is, and at all times relevant hereto was, a Nevada Medical Facility located at 5400 S Rainbow Blvd, Las Vegas, NV 89118 and a foreign limited-liability corporation organized and existing under the laws of the State of Delaware, authorized to conduct, and actually was conducting business in Clark County, Nevada.

6. Upon information and belief, Defendant NUVASIVE, INC., is, and at all times relevant hereto was, a Foreign Profit Corporation organized and existing under the laws of the State of Delaware, authorized to conduct, and actually was conducting business in Clark County, Nevada.

7. Upon information and belief, Defendant NUVASIVE SPECIALIZED ORTHOPEDICS, INC., is, and at all times relevant hereto was, a Foreign Profit Corporation

organized and existing under the laws of the State of Delaware, authorized to conduct, and actually was conducting business in Clark County, Nevada.

8. Upon information and belief, Defendant ROE HOSPITAL, I through X, is, and at all times relevant hereto was, an entity organized and existing under the laws of the State of Nevada, authorized to conduct, and actually conducting, business in Clark County, Nevada.

9. Upon information and belief, Defendant ROE COMPANY, I through X, is, and at all times relevant hereto was, an entity organized and existing under the laws of the State of Nevada, authorized to conduct, and actually conducting, business in Clark County, Nevada.

10. Upon information and belief, Defendant DOE NURSE, I through X, is, and at all times relevant hereto was a resident of Clark County, Nevada, and is a nurse employed by Doe Hospital and was acting within the course and scope of his employment for Doe Hospital.

11. Upon information and belief, Defendant DOE HOSPITAL EMPLOYEE, I through X, is, and at all times relevant hereto was a resident of Clark County, Nevada, and is a nurse employed by Doe Hospital and was acting within the course and scope of his employment for Doe Hospital.

12. Upon information and belief, Defendant DOE MEDICAL DOCTOR, I through X, is, and at all times relevant hereto was a resident of Clark County, Nevada, and is a medical doctor with privileges at Doe Hospital.

13. At all times relevant hereto the conduct and activities hereinafter complaint of occurred within Clark County, Nevada.

14. KURTISS is unaware of the true names and legal capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein as Does I through X and Roes I through X, inclusive, and therefore sues said Defendants by their fictitious names. KURTISS prays .eave to insert said Defendants' true names and legal capacities when ascertained. KURTISS is

informed and believes and on that basis alleges that each of the Defendants designated herein as a DOE or a ROE is in some way legally responsible for the events referred to herein and proximately caused the damages alleged herein.

15. At all times mentioned herein, Defendants, including the DOE and ROE Defendants, were agents, servants, employees or joint venturers of every other Defendant herein, and were acting within the scope and course of said agency, employment, or joint venture, with knowledge and permission and consent of all other named Defendants.

GENERAL ALLEGATIONS

16. On or about June 22, 2017, KURTISS was admitted to SPRING VALLEY HOSPITAL with complaints of low back pain with radiation to left leg following multiple falls over the two days prior.

17. That KURTISS went to SPRING VALLEY HOSPITAL at the direction of *SCHNEIER* who he had been treating him. *SCHNEIER* directed KURTISS to go to SPRING VALLEY HOSPITAL for additional treatment, including surgery, under the care of SCHNEIER and/or SCHNEIER NEUROSURGICAL CONSULTING.

18. On or about June 22, 2017, SCHNEIER performed an extreme lumbar interbody fusion ("Nuvasive XLIF Product" or "XLIF") with posterior decompression and fixation lumbar on KURTISS on L3-L4 and L4-L5. Before performing the surgery, SCHNEIER did not inform KURTISS that the XLIF procedure (including its unnecessarily dangerous product line/hardware components) created additional or unnecessary risks, nor did SCHNEIER inform KURTISS that safer fusion procedures with substantially lower complication rates were available.

19. On or before the June 22, 2017 surgery, KURTISS was able to ambulate with the assistance of a cane.

20. Immediately following the surgery, KURTISS woke up with excruciating pain in his low back and experienced extreme weakness on his left lower extremity. KURTISS was then transferred to a rehab facility post-surgery for further care.

21. Upon information and belief, SCHNEIER continued to treat KURTISS post-surgery and led KURTISS to believe that partial paralysis was a normal event, that the complications were not related to any mistake by SCHNEIER, nor due to any defect in the products or procedure, and that over time KURTISS would likely improve with pain management.

22. Upon information and belief, KURTISS' pain management physician eventually encouraged KURTISS to seek a second surgical opinion. KURTISS consulted with Dr. Jason Garber, who recommended a spinal cord stimulator in June 29, 2018.

23. On August 14, 2018, KURTISS consulted with Dr. Kevin Debiparshad, MD, who confirmed that three of the six XLIF screws in the fusion were malpositioned and recommended, for the first-time, re-positioning the screws. Dr. Debiparshad also noted that the XLIF procedure (including its product line/hardware components) that was used by SCHNEIER had a known complication of risk and injury to the femoral nerve, which could be the cause of the left-side weakness.

24. That as a result of the August 14, 2018 appointment, KURTISS became concerned that his partial paralysis and severe pain following the surgery was the result of medical negligence, including negligent surgical technique evidenced by malpositioned screws and an unnecessarily dangerous surgery that increased the risk of nerve damage unnecessarily when safer options were available.

25. That the negligence of Defendants includes, but is not limited to, failure to fully inform KURTISS prior to surgery regarding the risks of the XLIF procedure (including its product line/hardware components) compared to other safer available surgical and non-surgical options.

Failure to exercise the degree of care, skill, and judgment of a reasonable orthopedic surgeon to properly protect nerves to avoid nerve damage and to properly place screws. Failure to take appropriate corrective action upon KURTISS being paralyzed and wheelchair bound after the surgery. Failure to inform KURTISS that nerves were damaged during surgery and that screws were malpositioned. Failure to inform KURTISS that a revision surgery could improve his increased pain symptoms and weakness on lower left extremity. Failure to frankly inform KURTISS of his post-surgical condition and the reason for the condition, while leading KURTISS to believe no error had been made.

26. Defendants SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or KHAVKIN CLINIC, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and each of them, were acting in the course and scope of their employment as employees and/or agents of SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and had a duty to carefully and skillfully diagnose patients that present for emergent care.

27. At all relevant times KURTISS reasonably believed that Defendants SCHNEIER, and/or DOE MEDICAL DOCTOR, I through X, and/or DOE NURSE, I through X, and each of them, were employees and/or agents of Defendant and/or KHAVKIN CLINIC, SPRING VALLEY HOSPITAL and/or Defendant ROE HOSPITAL. SCHNEIER NEUROSURGICAL CONSULTING.

28. At all relevant times KURTISS reasonably believed that Defendants SCHNEIER, and/or DOE MEDICAL DOCTOR, I through X, were employees and/or agents of Defendant SCHNEIER NEUROSURGICAL CONSULTING and/or KHAVKIN CLINIC.

29. Defendants SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and each of them, were acting in the course and scope of their employment as employees and/or agents of SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX and/or ROE COMPANIES, XI through XX, and each of them, and had a duty to carefully and skillfully perform the XLIF product.

30. As a direct and proximate result of Defendants' negligence, and each of them, without apportionment, KURTISS was caused to be hurt and injured in his health, strength, and well-being, all of which caused KURTISS to suffer damages in excess of $15,000.00.

31. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS was required to, and did, employ physicians, surgeons, and other health care providers, to examine, treat, and care for his and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at the present time; however, KURTISS alleges that the damages are in excess of $15,000.00.

32. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS suffered physical pain, mental anguish, emotional distress, pain and suffering, loss of enjoyment of life, incidental, consequential, and general and special damages in excess of $15,000.00.

33. That KURTISS has been required to retain the Law Offices of **BIGHORN LAW** to prosecute this action, and is entitled to recover his attorneys' fees, case costs and prejudgment interest.

34. That all of the Defendants, as named herein, are jointly and severally liable to KURTISS for his damages.

35. That these acts, as described above and below, are deviations from, or in breach of the standard of care for medical treatment, and constitute negligence, recklessness, and reckless disregard for the safety of the public, creating an allowance for punitive damages.

36. That this Court has subject matter jurisdiction over this matter pursuant to NRS 4.370(1), as the matter in controversy exceeds $15,000.00, exclusive of attorneys' fees, interest, and costs.

37. That this Court has personal jurisdiction in this matter, as the incidents and occurrences that comprise the basis of this lawsuit took place in Clark County, Nevada.

38. That KURTISS further asserts the doctrine of res ipsa loquitur pursuant to case law and statutory authority.

39. That the Affidavit of Aaron G. Filler, M.D., is attached hereto and incorporated herein by this reference as though fully set forth herein.

FIRST CLAIM FOR RELIEF

(Medical Negligence as to Defendants SPRING VALLEY HOSPITAL, SCHNEIER, SCHNEIER NEUROSURGICAL CONSULTING, KHAVKIN CLINIC, DOE NURSE, I through X, DOE HOSPITAL EMPLOYEE, I through X, DOE MEDICAL DOCTOR, I through X, ROE HOSPITAL, XI through XX, ROE COMPANIES, XI through XX, and each of them)

40. KURTISS incorporates by this reference all of the allegations of paragraphs 1 through 39, hereinabove, and the attached affidavit, as though completely set forth herein.

41. During the course of treatment provided to KURTISS, Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and or KHAVKIN CLINIC, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, breached the standard of care when they:

a) Failing to inform KURTISS regarding the reasonable surgical and nonsurgical options available to treat his symptoms;

b) Failing to inform KURTISS of the special risks associated with the XLIF procedure (including its unnecessarily dangerous product line/hardware components);

c) Improperly placing the intervertebral implants in KURTISS'S spine;

d) Failing to identify and correct the dangerous location of the implants during surgery;

e) Failing to identify and correct the dangerous location of the implants after surgery;

f) Failing to provide appropriate post-operative treatment and care, including failing to timely identify, revise, and remedy the hardware misplacements;

g) Failing to establish and follow patient safety checklists in compliance with NRS 439.877.

42. During the course of treatment provided to KURTISS, Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or KHAVKIN CLINIC, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, had a duty to exercise that degree of care, diligence and skill ordinarily exercised by nurses, hospitals, doctors, specialists and staff in good standing in the community.

43. During the course of treatment provided to KURTISS, Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or KHAVKIN CLINIC, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, failed to exercise that degree of care, diligence, and skill ordinarily exercised by nurses, hospitals,

doctors, and staff in good standing in the community by, among other things, failing to properly diagnose KURTISS's symptoms, failing to properly oversee the care provided to KURTISS, failing to have and enforce appropriate policies and protocols requiring proper education and training of staff, and failing to have and enforce appropriate policies and protocols requiring proper discharging to KURTISS, to prevent KURTISS from further injury while under Defendants SPRING VALLEY HOSPITAL's, and/or SCHNEIER's, and/or SCHNEIER NEUROSURGICAL CONSULTING's, and/or KHAVKIN CLINIC, and/or DOE NURSE, I through X's, and/or DOE HOSPITAL EMPLOYEE, I through X's, and/or DOE MEDICAL DOCTOR, I through X's, and/or ROE HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, custody, care and control. *See* the Affidavit of Merit of Aaron G. Filer, MD, PhD, attached hereto.

44. During the course of treatment provided to KURTISS, Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or KHAVKIN CLINIC, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, breached the standard of care when they negligently failed to effectively and safely care for KURTISS. *See* the Affidavit of Merit of Aaron G. Filer, MD, PhD, attached hereto.

45. Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or KHAVKIN CLINIC, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, breached the standard of care by their failure to exercise that degree

of care, diligence, and skill ordinarily exercised by nurses, doctors, hospitals, and staff in good standing in the community constitutes negligence, gross negligence, and/or recklessness.

46. At all times relevant hereto, Defendants SPRING VALLEY HOSPITAL, and/or SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or KHAVKIN CLINIC, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, knew or should have known that the incidents, conduct, acts, and failures to act as more fully described herein would and did result in physical, emotional, and economic harm and damages to KURTISS.

47. As a direct and proximate result of Defendants SPRING VALLEY HOSPITAL's, and/or SCHNEIER's, and/or SCHNEIER NEUROSURGICAL CONSULTING's, and/or KHAVKIN CLINIC, and/or DOE NURSE, I through X's, and/or DOE HOSPITAL EMPLOYEE, I through X's, and/or DOE MEDICAL DOCTOR, I through X's, and/or ROE HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, negligence, without apportionment, KURTISS was caused to be hurt and injured in his health, strength, and well-being, all of which caused KURTISS to suffer damages in excess of $15,000.00.

48. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS was required to, and did, employ physicians, surgeons, and other health care providers, to examine, treat, and care for his and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at the present time; however, KURTISS alleges that the damages are in excess of $15,000.00.

49. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS has suffered and will continue to suffer mental anguish, emotional distress, pain

and suffering, loss of enjoyment of life, incidental, consequential, and general and special damages in excess of $15,000.00.

50. That KURTISS has been required to retain the Law Offices of **BIGHORN LAW** to prosecute this action, and is entitled to recover his attorneys' fees, case costs and prejudgment interest.

SECOND CLAIM FOR RELIEF

(Negligence as to Defendants SPRING VALLEY HOSPITAL, ROE HOSPITAL, XI through XX, ROE COMPANIES, XI through XX, and each of them)

51. KURTISS incorporates by this reference all of the allegations of paragraphs 1 through 50, hereinabove, and the attached affidavit, as though completely set forth herein.

52. In providing care to KURTISS, Defendants SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and each of them, were acting as employees of Defendants SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them.

53. As a result of the employment relationship between Defendants SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, and that of Defendants SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and each of them, Defendants SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, is responsible and liable for the actions of Defendants SCHNEIER, and/or SCHNEIER NEUROSURGICAL CONSULTING, and/or DOE NURSE, I through X, and/or DOE HOSPITAL EMPLOYEE, I through X, and/or DOE MEDICAL DOCTOR, I through X, and each of them, as they were under Defendants SPRING VALLEY HOSPITAL's and/or ROE

HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, control and acting in furtherance of Defendants SPRING VALLEY HOSPITAL's and/or ROE HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, interests at the time Defendants' actions caused injury to KURTISS.

54. Defendants SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, were negligent in the hiring, training, and supervision of their employees, contractors, staff, and independent contractors in caring for patients, to prevent KURTISS from further injury.

55. Defendants SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, were negligent in permitting the XLIF procedure to be performed on trusting patients when it knew the procedure to be less effective and less safe for patients than other alternative procedures.

56. Defendant SPRING VALLEY HOSPITAL and/or ROE HOSPITAL, XI through XX, and/or ROE COMPANIES, XI through XX, and each of them, were negligent per se for failing to establish and follow patient safety checklists in compliance with NRS 439.877.

57. Defendants SPRING VALLEY HOSPITAL's and/or ROE HOSPITAL, XI through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, conduct demonstrated a conscious disregard of known accepted products, protocols, care and treatment, all with the knowledge or utter disregard that such conduct could or would expose KURTISS to risk of further injury.

58. As a direct and proximate result of Defendants SPRING VALLEY HOSPITAL's, and/or SCHNEIER's, and/or SCHNEIER NEUROSURGICAL CONSULTING's, and/or KHAVKIN CLINIC, and/or DOE NURSE, I through X's, and/or DOE HOSPITAL EMPLOYEE, I through X's, and/or DOE MEDICAL DOCTOR, I through X's, and/or ROE HOSPITAL, XI

through XX's, and/or ROE COMPANIES, XI through XX's, and each of their, negligence, without apportionment, KURTISS was caused to be hurt and injured in his health, strength, and well-being, all of which caused KURTISS to suffer damages in excess of $15,000.00.

59. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS was required to, and did, employ physicians, surgeons, and other health care providers, to examine, treat, and care for his and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at the present time; however, KURTISS alleges that the damages are in excess of $15,000.00.

60. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS has suffered and will continue to suffer mental anguish, emotional distress, pain and suffering, loss of enjoyment of life, incidental, consequential, and general and special damages in excess of $15,000.00.

61. That KURTISS has been required to retain the Law Offices of **BIGHORN LAW** to prosecute this action, and is entitled to recover his attorneys' fees, case costs and prejudgment interest.

THIRD CLAIM FOR RELIEF

(Breach of Fiduciary Claim as to Defendant SPRING VALLEY HOSPITAL)

62. KURTISS incorporates by this reference all of the allegations of paragraphs 1 through 61, hereinabove, and the attached affidavit, as though completely set forth herein.

63. As a hospital providing care and treatment to KURTISS, Defendant SPRING VALLEY HOSPITAL owed a fiduciary duty to KURTISS and was obligated to exercise the utmost good faith in caring for and treating his. Defendant SPRING VALLEY HOSPITAL held a superior authoritative position in the relationship with KURTISS and KURTISS placed his confidence and

trust in Defendant SPRING VALLEY HOSPITAL to care and treat his with competence, diligence and the utmost good faith.

64. KURTISS relied on Defendant SPRING VALLEY HOSPITAL to make appropriate and good faith decisions regarding his medical care and treatment, including but not limited to following proper products for the scheduling of surgeries.

65. KURTISS placed his faith and confidence in Defendant SPRING VALLEY HOSPITAL to care for and treat his, without allowing its fiduciary duty regarding patient care to be improperly influenced by any other factors, including but not limited to Defendants business' goals, desires and/or profits.

66. Defendant SPRING VALLEY HOSPITAL breached its fiduciary duty to KURTISS by failing to exercise the utmost good faith in caring for and treating KURTISS, in that Defendant SPRING VALLEY HOSPITAL failed to reasonably schedule and monitor surgical procedures and products and failed to place patient care above its own business goals, desires and profits. As a result of these breaches, the employees, nurses and doctors failed to be proper advocates for KURTISS.

67. As a direct and proximate result of Defendant SPRING VALLEY HOSPITAL's breach of fiduciary duties, KURTISS suffered the damages outlined above, in an amount in excess of $15,000.00.

68. Defendant SPRING VALLEY HOSPITAL's breach was tortuous and was done with headless and reckless disregard for KURTISS's rights, safety and welfare, and the same was done intentionally, maliciously and with wanton disregard for KURTISS's rights, in an attempt to oppress, defraud, or be malicious to KURTISS. Accordingly, pursuant to NRS 42.005, KURTISS is entitled to punitive and/or exemplary damages against Defendant SPRING VALLEY

HOSPITAL in order to punish Defendant SPRING VALLEY HOSPITAL and to serve as an example to others engaged in such conduct will not be tolerated.

69. As a result of Defendant SPRING VALLEY HOSPITAL's breach of fiduciary duties and tortuous breach of fiduciary duties, KURTISS has suffered damages to the extent that she has incurred and will yet to incur expenses and attorneys' fees in amount that is presently undetermined. KURTISS is entitled to an award thereof and reserves the right to amend this Complaint when such attorneys' fees and expenses are ascertained.

FOURTH CAUSE OF ACTION
(Gross Negligence against SCHNEIER)

70. KURTISS incorporates by this reference all of the allegations of paragraphs 1 through 69, hereinabove, and the attached affidavit, as though completely set forth herein.

71. SCHNEIER's conduct was wanton, oppressive, and showed a conscious disregard for KURTISS' health and safety meriting an award of punitive damages.

72. SCHNEIER knew that the XLIF procedure (including its product line/hardware components) on L3-L4 and L4-L5 was harmful and had a low success rate and proceeded forward

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with the product when he had knowledge of probable harmful consequences. He willfully and deliberately failed to act to avoid those consequences.

73. SCHNEIER put his own interests above that of KURTISS when he failed to exercise due care in his treatment of KURTISS.

74. As a result of Defendant SCHNEIER's gross negligence, KURTISS has suffered damages to the extent that she has incurred and will yet to incur expenses and attorneys' fees in amount that is presently undetermined. KURTISS is entitled to an award thereof and reserves the right to amend this Complaint when such attorneys' fees and expenses are ascertained.

FIFTH CAUSE OF ACTION
(NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them)

75. KURTISS repeats and realleges those allegations set forth in paragraph 1 through 74 of the above as fully set forth herein.

76. Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC., a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, had a duty to exercise reasonable care in the designing, researching, manufacturing, marketing, supplying, promoting, packaging, selling and/or distributing the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components) into the stream of commerce, including a duty to assure that the product would not cause users to suffer unreasonable, dangerous side effects.

77. Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, failed to exercise ordinary care in the designing, researching, manufacturing, marketing, supplying, promoting, packaging, selling, testing, quality assurance, quality control, and/or distributing the subject NUVASIVE XLIF Procedure (including its unnecessarily dangerous product line/hardware components), into interstate commerce in that Defendants, and each of them, knew or should have known that using the subject NUVASIVE XLIF Procedure (including its unnecessarily dangerous product line/hardware components), created a high risk of unreasonable and dangerous side effects.

78. The negligence of the Defendants, their agents, servants, and/or employees, included, but was not limited to, the following acts and/or omissions:

a) Manufacturing, producing, promoting, formulating, creating, and/or designing the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware

components), without thoroughly testing the procedure as well as the product line/hardware components;

b) Not conducting sufficient testing programs to determine whether or not the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components), was safe for use; in that Defendants, and each of them, herein knew or should have known that the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components), was unsafe and unfit for use by reason of the dangers to its expected users;

c) Selling and promoting the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components), without making proper and sufficient tests to determine the dangers to its expected users;

d) Negligently failing to adequately and correctly warn the public, the medical and healthcare profession, and the FDA of the dangers with the subject NUVASIVE XLIF Procedure (including its unnecessarily dangerous product line/hardware components);

e) Failing to provide adequate instructions regarding safety precautions to be observed by users, handlers, and persons who would reasonably and foreseeably come into contact with, and more particularly, use, the subject NUVASIVE XLIF approach as well as its product line/hardware components;

f) Failing to test the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components), and/or failing to adequately, sufficiently and properly test the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components);

g) Negligently advertising and recommending the use of the subject NUVASIVE XLIF Procedure (including its unnecessarily dangerous product line/hardware components),

without sufficient knowledge as to its dangerous propensities;

h) Negligently representing that the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components), was safe for use for its intended purpose, when, in fact, it was unsafe;

i) Negligently designing the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components), in a manner which was dangerous to its users;

j) Negligently manufacturing the subject NUVASIVE XLIF procedure's product line/hardware components, in a manner which was dangerous to its users;

k) Negligently producing the subject NUVASIVE XLIF procedure's product line/hardware components, in a manner which was dangerous to its users;

l) Negligently assembling the subject NUVASIVE XLIF procedure's product line/hardware components, in a manner which was dangerous to its users;

m) Concealing information from the KURTISS in knowing that the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components), was unsafe, dangerous, and/or non-conforming with FDA regulations;

n) Negligently failing to create protocols and safety systems for those purchasing, using or handling the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components), including doctors, nurses, and other healthcare professionals; and

o) Negligently failing to adequately warn those purchasing, using or handling the subject NUVASIVE XLIF procedure's product line/hardware components, including doctors, nurses, and other healthcare professionals.

p) Negligently informing those purchasing, using or handling the subject NUVASIVE XLIF

procedure (including its unnecessarily dangerous product line/hardware components) that the NUVASIVE XLIF procedure (including its product line/hardware components) was approved by the FDA to be used on patients as it was used in this case.

79. Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, under-reported, underestimated and downplayed the serious danger of the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components).

80. Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, were negligent in the designing, researching, supplying, manufacturing, promoting, packaging, distributing, testing, advertising, warning, marketing and selling of the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components), in that Defendants, and each of them:

81. Failed to accompany their product with proper and/or accurate warnings regarding all possible adverse side effects associated with the use of the subject NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components);

82. Failed to accompany their product with proper warnings regarding all possible adverse side effects concerning any failure and/or malfunction of the subject NUVASIVE XLIF Procedure (including its unnecessarily dangerous product line/hardware components);

83. Failed to accompany their product with accurate warnings regarding the risk of all possible adverse side effects concerning the subject NUVASIVE XLIF Procedure (including its unnecessarily dangerous product line/hardware components);

84. Failed to conduct adequate testing, including pre-clinical and clinical testing and

post-marketing surveillance to determine safety of the subject NUVASIVE XLIF Procedure (including its unnecessarily dangerous product line/hardware components) on patients;

85. Failed to accompany the product with accurate warnings regarding the risk of receiving treatment from the subject NUVASIVE XLIF procedure (including its product line/hardware components);

86. Failed to conduct adequate testing, including human factors and in-clinic testing to determine all risks to patient health the subject NUVASIVE XLIF procedure (including its product line/hardware components) creates; and

87. Were otherwise careless and/or negligent.

88. Despite the fact that Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, knew or should have known that the subject NUVASIVE XLIF Product caused unreasonably dangerous side effects, Defendants, and each of them, continued to market, manufacture, distribute and/or sell the subject NUVASIVE XLIF procedure (including its product line/hardware components).

89. Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, negligently sold, distributed, and/or manufactured the subject NUVASIVE XLIF procedure (including its product line/hardware components), as to allow the subject NUVASIVE XLIF procedure (including its product line/hardware components) to be used by physicians like SCHNEIER, which is known to cause permanent nerve damage

90. As a direct and proximate result of Defendants', and each of their, negligence, without apportionment, KURTISS was caused to be hurt and injured in health, strength, and well-being, all of which caused KURTISS to suffer damages in excess of $15,000.00.

91. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS was required to, and did, employ physicians, surgeons, and other health care providers, to examine, treat, and care for her and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at the present time, but KURTISS alleges that the damages are in excess of $15,000.00.

92. That as a direct and proximate result of the negligence of the Defendants, and each of them, KURTISS has suffered and will continue to suffer mental anguish, emotional distress, pain and suffering, loss of enjoyment of life, incidental, consequential, and general and special damages in excess of $15,000.00.

93. By reason of the negligent acts and breach of the applicable standard of care by Defendants, and each of them, and as a direct and proximate result thereof, KURTISS has found it necessary to secure the services of an attorney in order to prosecute this action, has sustained damages to the extent of such attorney fees, and KURTISS is entitled to reasonable attorney's fees, case costs and prejudgment interest.

SIXTH CLAIM FOR RELIEF

(Strict Product Liability as to Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them)

94. KURTISS repeats and realleges those allegations set forth in paragraph 1 through 93 of the above as fully set forth herein.

95. KURTISS is in the class of persons that Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, should reasonably have foreseen as being subject to the harm caused by the defects in designing, manufacturing, marketing, supplying, promoting, packaging, selling and/or distributing the subject NUVASIVE XLIF

procedure (including its product line/hardware components).

96. Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, which are engaged in the business of designing, manufacturing, distributing and selling the subject NUVASIVE XLIF procedure (including its product line/hardware components), placed said machines into the stream of commerce, in a defective and unreasonably dangerous condition, even though the foreseeable risks exceeded the benefits associated with the design and/or formulation of said machines.

97. These NUVASIVE XLIF procedures (including their product line/hardware components) were defective in design and formulation and unreasonably dangerous when said machines left the hands of Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, and when said machines reached the users and consumers, without substantial alteration in the condition in which they were sold.

98. These NUVASIVE XLIF procedure (including its product line/hardware components) manufactured were designed, distributed and sold by Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, and were unreasonable and dangerously defective beyond the extent contemplated by ordinary persons with ordinary knowledge regarding said devices.

99. These NUVASIVE XLIF procedure (including its unnecessarily dangerous product line/hardware components) were defective due to inadequate warning and/or inadequate trials, *in vivo* and *in vitro* testing and study, and inadequate reporting regarding the results of such studies.

100. These NUVASIVE XLIF procedure (including its product line/hardware

components) were defective due to inadequate post-marketing warning(s) or instruction(s) because, after Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, knew or should have known of the risk of injury from these machines, they failed to provide adequate warnings to each and every user, patient and recipient, and more specifically to KURTISS in this case and KURTISS'S community, and continued to promote the products as safe and effective despite the known defects.

101. The product defects alleged above were a substantial contributing cause of the injuries suffered by KURTISS, as alleged herein.

102. WHEREFORE, KURTISS prays for judgment against Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, and each of them, jointly and severally, for an amount in excess of $15,000.00 in compensatory damages, plus interest, costs and attorneys' fees.

103. That as a direct and proximate result of the negligence of the Defendants NUVASIVE, INC., a Foreign Profit Corporation; NUVASIVE SPECIALIZED ORTHOPEDICS, INC. a Foreign Profit Corporation; and/or ROE COMPANIES, XI through XX, each of them, KURTISS has suffered non-economic damages for an amount in excess of $15,000.00.

104. By reason of the negligent acts and breach of the applicable standard of care by Defendants, and each of them, and as a direct and proximate result thereof, KURTISS has found it necessary to secure the services of an attorney in order to prosecute this action, has sustained damages to the extent of such attorney fees, and KURTISS is entitled to reasonable attorney's fees, case costs and prejudgment interest.

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PRAYER FOR RELIEF

Wherefore KURTISS, expressly reserving the right to amend this Complaint prior to or at the time of trial of this action to insert those items of damage not yet fully ascertainable, prays for judgment against all Defendants, and each of them, as follows:

1. General past damages and future damages for KURTISS, each in an amount in excess of $15,000.00;
2. Special damages for said KURTISS's medical and miscellaneous expenses as of this date, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;
3. Compensatory damages in an amount in excess of $15,000.00;
4. Punitive and exemplary damages, pursuant to but not limited to those described in NRS 42.005, NRS 42.007 and NRS 42.021, in an amount in excess of $15,000.00;
5. Costs of this suit;
6. Attorney's fees; and
7. For such other and further relief as to the Court may seem just and proper in the premises.

DATED this ___1st___ day of __December__, 2020.

BIGHORN LAW

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August 14, 2019

AFFIDAVIT OF

AARON G. FILLER, MD, PhD

IN SUPPORT OF MERIT OF A COMPLAINT ALLEGING MEDICAL MALPRACTICE

IN THE MATTER OF
Kurtis Hinton- Patient
v.
Michael Schneier, MD - Physician

For the Attention of the Eighth Judicial District Court,
County of Clark, State of Nevada

I, Aaron G. Filler, MD, PhD, FRCS, JD do hereby swear and affirm that:

1. I am over the age of 18, suffer no legal disabilities, and am a resident of the State of California.

2. I have knowledge of the facts herein which knowledge was obtained by review of the patient's medical records and images on a medico-legal basis.

3. If called as a witness could testify completely and competently thereto.

I. QUALIFICATIONS

4. I am a board certified neurosurgeon with an MD from the University of Chicago, a PhD from Harvard University and am a Fellow of the Royal College of Surgeons of England. My board certifications are with the American Board of

Neurological Surgery and as a Fellow in Surgical Neurology of the Intercollegiate Specialty Assessment Board of Edinburgh, Glasgow, Ireland and England. I also hold a JD degree.

5. I completed an eight year neurosurgical residency at the University of Washington and additionally completed a one year fellowship in complex spinal surgery as a ninth year of training at the University of California, Los Angeles (UCLA). Subsequently I served as Co-Director of the Comprehensive Spine Program at UCLA and as a Medical Director at Cedars Sinai Medical Center in Los Angeles, California. In that capacity I have trained numerous Spine Fellows in neurosurgery and orthopedic surgery who are fully trained surgeons wanting to learn advanced methods in spinal decompression and fusion. I have written or participated in peer reviewed publications in a variety of surgical topic areas including the subject of spinal surgery. I am a section editor for Youman's Neurological Surgery. I currently serve as a member of the Joint Guidelines Committee of the American Association of Neurological Surgeons and the Congress of Neurological Surgeons and in that capacity participated in the review and approval of the Neurosurgery Guidelines for Spinal Fusion. I maintain an active clinical surgical practice and have performed spinal surgery during the past 12 months and currently have future spine surgeries scheduled. I am also the author of "Do You Really Need Back Surgery" from Oxford University Press which has been published in a series of editions over the past eleven years. I hold a medical license in the State of California, in several other states including Massachusetts, New York and. I maintain a clinical office in Santa Monica, California. Since the commencement of my residency training I have participated in several thousand spinal surgeries over a period of 29 years and in the

vast majority of which I have been the primary surgeon, and including among these more than 500 lumbar spinal fusion surgeries.

II. FACTUAL BASIS OF OPINIONS

6. I have personally reviewed a set of medical records regarding the care and treatment of Kurtis Hinton under the supervision of Michael Schneier, MD - a Las Vegas neurosurgeon. This includes the review of a series of medical images including X-rays, CT scans and MRI scans demonstrating the lumbar spinal region of Kurtis Hinton, including: Lumbar spine MRI, and CT scans as well as a number of lumbar spine X-rays and associated reports in addition to hospital reports and diagnostic tests.

7. The X-rays, MRIs and CT scans were provided in electronic DICOM format and I personally examined each and every image panel of each and every image and have applied my personal knowledge, experience and judgment to the interpretation and understanding of each of these images. I have additionally reviewed the professional radiology reports for each image and have considered the radiologist's written opinions - which I am allowed as an expert to consider because they are routinely used by specialists in the field of neurosurgery - alongside my own neurosurgical opinion.

III. OPINIONS HELD WITH A REASONABLE DEGREE OF MEDICAL CERTAINTY

8. After review my evaluation of the patient as well as of these records, I have developed several opinions about Dr. Schneier's care of Mr. Hinton. These opinions summarized below are definite and supported by facts I have personally reviewed and that I have carefully and thoughtfully deliberated upon and which I have considered carefully in the full context of my knowledge and experience in clinical practice. Each of the opinions stated in this affidavit is an opinion which I hold with a reasonable degree of medical certainty by which I mean more probable than not. I am fully prepared to testify to these opinions under oath in the Eighth Judicial District Court of Nevada. I may develop additional opinions as I evaluate further information in this matter and will make these opinions known if and as they are developed.

IV. OPINIONS ON ACTIONS AND OMISSIONS OF MICHAEL SCHNEIER, MD WHICH FELL BELOW THE STANDARD OF CARE AND THEREBY PROXIMATELY CAUSED HARM TO KURTIS HINTON

General issues

9. It is my opinion to a reasonable degree of medical certainty that Dr. Schneier's actions fell below the standard of care in several aspects of his treatment of Mr. Hinton and it is my belief that Mr. Hinton has suffered significant harm in relation to pain and disability and the requirement for additional complex surgery exposing him to significant additional surgical risks directly as a result of the negligent failure of Dr. Michael Schneier to meet the standard of care for a neurosurgeon. Specifically, as defined in Nevada Revised Statute Chapter 41A (NRS 41A.009 and NRS 41A.015), these represent failures of Dr. Schneier in rendering services, to use reasonable care, skill or knowledge ordinarily used under similar circumstances. These failures in rendering professional medical neurosurgical services proximately caused personal injury to Dr. Schneier's patient, Kurtis Hinton. These opinions concern an operative surgery on June 22, 2017.

Surgical Care During the May 2018 Surgery

10. Mr. Hinton had a subsequent lumbar revision surgery 11/9/2018 under Dr. Kevin Debiparshad, but had only minimal improvement. The initial screw placements and the use of XLIF technology – given the result – show that a negligent injury of Mr. Hinton's nerves took place during the surgery

11. For these reasons, it is my opinion that Dr. Schneier fell below the standard of care by allowing the procedure to cause permanent nerve injuries.

I declare that, to the best of my knowledge and belief, the information herein above is true, correct, and complete.

Executed this 14th day of August, 2019 in Santa Monica, California under penalty of perjury of the laws of the State of Nevada

Aaron Filler, MD, PhD, FRCS, JD

BRIDGET HILE
COMM. # 2138232
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
MY COMM. EXP. JAN. 2, 2020

8/14/2019

Bridget Hile, notary Public.