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Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

**THI OF NEVADA AT CHEYENNE, LLC; HEALTHCARE REALTY OF
CHEYENNE, LLC; FUNDAMENTAL ADMINISTRATIVE SERVICES,
LLC**

Respondents.

VOLUME 1

Appeal from the Eighth Judicial District Court for Clark County

District Court Case No. A-16-735550-C

(Honorable Mark Gibbons)

DONALD C. KUDLER, ESQ.

Nevada Bar No.: 5041

CAP & KUDLER

3202 West Charleston Blvd.

Las Vegas, NV 89102

(702) 878-8778

Counsel for Appellants

Jeffrey A. Myers and Andrew James

APPELLANTS' APPENDIX
VOLUME 1
CHRONOLOGICAL ORDER

Document	Index Number	Bates Number
Amended Complaint [Filed 05/06/2016]	1	AA000001 - AA000007
Plaintiffs' Third Motion to Compel Discovery Responses [Filed 02/24/2020]	1	AA000008 - AA000030
Notice of Entry of Order re: Plaintiffs' Third Motion to Compel Discovery Responses [Filed 08/13/2020]	1	AA000031 - AA000037
Jury Instruction No. 21 4.2 Elements of Negligence Claim [05/31/2022 Jury Trial - Day 1]	1	AA000038
Jury Instruction No. 27 8.1 Premises Liability: Essential Factual Elements [05/31/2022 Jury Trial - Day 1]	1	AA000039
Jury Instruction No. 28 8.20 Landowner Liability: Owner Duty to Inspect [05/31/2022 Jury Trial - Day 1]	1	AA000040
Jury Instruction No. 29 8.4 Landowner Liability: Duty [05/31/2022 Jury Trial - Day 1]	1	AA000041

1	Recorder's Transcript of Jury Trial	2	AA000042 -
2	Day 1, Tuesday, 05/31/2022 <i>Pages 1 - 199</i>		AA000240
3	[Filed 08/08/2022]		
4	Recorder's Transcript of Jury Trial	3	AA000241 -
5	Day 1, Tuesday, 05/31/2022 <i>Pages 200 - 257</i>		AA000298
6	[Filed 08/08/2022]		
7	Recorder's Partial Transcript of Jury	4	AA000299 -
8	Trial - Day 2, Wednesday, 06/01/2022		AA000393
9	[Filed 08/08/2022]		
10	Recorder's Partial Transcript of Jury	4	AA000394 -
11	Trial - Day 2, Wednesday, 06/01/2022:		AA000463
12	Testimony of Donald Gifford		
13	[Filed 07/07/2022]		
14	Recorder's Partial Transcript of Jury	5	AA000464 -
15	Trial - Day 3, Thursday, 06/02/2022		AA000559
16	[Filed 08/08/2022]		
17	Recorder's Partial Transcript of Jury	6	AA000560 -
18	Trial - Day 3, Thursday, 06/02/2022:		AA000715
19	Testimony of Jeffrey Myers and Andrew James		
20	[Filed 07/07/2022]		
21	Recorder's Partial Transcript of Jury	7	AA000716 -
22	Trial - Day 4, Friday, 06/03/2022		AA000809
23	[Filed 08/08/2022]		
24	Recorder's Partial Transcript of Jury	7	AA000810 -
25	Trial - Day 4, Friday, 06/03/2022:		AA000854
26	Testimony of Leroy Comstock		
27	[Filed 07/07/2022]		

1	Recorder's Partial Transcript of Jury	8	AA000855 -
2	Trial - Day 5, Monday, 06/06/2022		AA000935
3	[Filed 08/08/2022]		
4	Recorder's Partial Transcript of Jury	8	AA000936 -
5	Trial - Day 5, Monday, 06/06/2022:		AA000942
6	Testimony of Andrew James		
7	[Filed 08/08/2022]		
8	Special Verdict Form	8	AA000943 -
9	[Filed 06/06/2022]		AA000945
10	Motion for New Trial	8	AA000946 -
11	[Filed 07/18/2022]		AA000957
12	Errata to Motion for New Trial	8	AA000958 -
13	[Filed: 7/18/2022]		AA000959
14	Amended Errata to Motion for New Trial	8	AA000960 -
15	[Filed: 7/20/2022]		AA000961
16	Opposition to Plaintiffs' Motion for New Trial by	8	AA000962 -
17	Defendants		AA000976
18	[Filed 8/1/2022]		
19	Plaintiffs' Reply to Defendants' Opposition to	8	AA000977 -
20	Plaintiffs' Motion for a New Trial		AA000984
21	[Filed 8/30/2022]		
22	Order Denying Plaintiffs' Motion for New Trial	8	AA000985 -
23	[Filed: 9/23/2022]		AA000996

1	Notice of Order Denying Plaintiffs' Motion for	8	AA000997 -
2	New Trial		AA001010
3	[Filed: 9/27/2022]		
4	Notice of Appeal	8	AA001011 -
5	[Filed: 9/28/2022		AA001012
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APPELLANTS' APPENDIX
VOLUME 1

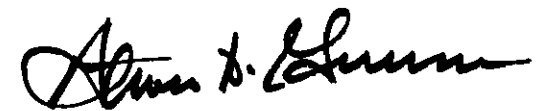
ALPHABETICAL ORDER

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Amended Errata to Motion for New Trial [Filed: 7/20/2022]	8	AA000960 - AA000961
Errata to Motion for New Trial [Filed: 7/18/2022]	8	AA000958 - AA000959
Jury Instruction No. 21 4.2 Elements of Negligence Claim [05/31/2022 Jury Trial - Day 1]	1	AA0000038
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Jury Instruction No. 29 8.4 Landowner Liability: Duty [05/31/2022 Jury Trial - Day 1]	1	AA0000041
Motion for New Trial [Filed 07/18/2022]	8	AA000946 - AA000957

1	Notice of Appeal	8	AA001011 -
2	[Filed: 9/28/2022]		AA001012
3	Notice of Entry of Order re: Plaintiffs' Third	1	AA000031 -
4	Motion to Compel Discovery Responses		AA000037
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6	Notice of Order Denying Plaintiffs' Motion for	8	AA000997 -
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15	Plaintiffs' Motion for a New Trial		AA000984
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17	Plaintiffs' Third Motion to Compel Discovery	1	AA000008 -
18	Responses		AA000030
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CLERK OF THE COURT

1 **ACOM**
2 **CAP & KUDLER**
3 Donald C. Kudler, Esq.
4 Nevada Bar #005041
5 3202 W. Charleston Blvd
6 Las Vegas, NV 89102
7 Tel. (702)878-8778
8 Fax (702)878-9350
9 Attorneys for Plaintiff

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA
8

9 JEFFREY A. MYERS and ANDREW
10 JAMES, individually,

11 Plaintiff,

12 vs.

13 THI OF NEVADA AT CHEYENNE, LLC a
14 Foreign Corporation d/b/a COLLEGE PARK
15 REHABILITATION CENTER;
16 HEALTHCARE REALTY OF CHEYENNE,
17 LLC a Delaware Corporation;
18 FUNDAMENTAL ADMINISTRATIVE
19 SERVICES, LLC a Delaware Corporation;
20 DOES I-XXX; and ROE CORPORATIONS
21 I-XXX, inclusive,

22 Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: VI

23 **AMENDED COMPLAINT**

24 COMES NOW, Plaintiffs , JEFFREY A. MYERS and ANDREW JAMES, by and through
25 their counsel of records, DONALD C. KUDLER, ESQ., of the law firm of CAP & KUDLER, and
26 for their causes of action against the Defendant, and each of them, alleges as follows:

27 **GENERAL ALLEGATIONS**

- 28 1. That at all times herein mentioned, Plaintiffs, JEFFREY A. MYERS was a resident
of Las Vegas, County of Clark, State of Nevada.
2. That at all times herein mentioned, Plaintiff, ANDREW JAMES was a resident of
Pahrump, County of Nye, State of Nevada.

1 3. At all times mentioned herein, Defendant, THI OF NEVADA AT CHEYENNE,
2 LLC d/b/a COLLEGE PARK REHABILITATION CENTER, is a Foreign Corporation, duly
3 authorized and qualified to conduct business in the State of Nevada.

4 4. At all times mentioned herein, Defendant, HEALTHCARE REALTY OF
5 CHEYENNE, LLC, is a Delaware Corporation, duly authorized and qualified to conduct business
6 in the State of Nevada.

7 5. At all times mentioned herein, Defendant, FUNDAMENTAL
8 ADMINISTRATIVE SERVICES, LLC, is a Delaware Corporation, duly authorized and qualified
9 to conduct business in the State of Nevada.

10 6. That at all time mentioned herein, Defendants, ROE CORPORATIONS I through
11 XXX, were corporations fully licensed to do business in the State of Nevada or other
12 Jurisdictions.

13 7. The true names and capacities of the Defendants designated herein as DOE or
14 ROE CORPORATIONS are presently unknown to Plaintiffs at this time who, therefore, sues said
15 Defendants by such fictitious names and when their true names and capacities are ascertained,
16 Plaintiffs will amend their Complaint accordingly to insert same herein.

17 8. The true names and capacities of the Defendants designated herein as ROE
18 CORPORATIONS I through XXX are presently unknown to Plaintiffs at this time who, therefore,
19 sue said Defendants by such fictitious names and when their true names and capacities are
20 ascertained, Plaintiffs will amend their Complaint accordingly to insert same herein.

21 9. At all times mentioned herein, Defendants, DOES I-XXX, ROE
22 CORPORATIONS I-XXX, and each of them, had improperly designed, installed and/or
23 maintained an electrical system located at the real property and premises located at 2856 E.
24 Cheyenne Avenue, in North Las Vegas, Clark County, Nevada, said premises commonly known
25 as College Park Rehabilitation Center.

26 10. At all time mentioned herein, Defendants and DOES I through V and ROE
27 CORPORATIONS I through V, and each of them were in possession, owners occupiers and/or in
28 control of College Park Rehabilitation Center located at 2856 E. Cheyenne Avenue, in North Las

1 Vegas, Clark County, Nevada at the time of the subject accident of June 6, 2014.

2 11. At all time relevant herein, Defendants, DOES VI through X and ROE
3 CORPORATIONS VI through X (hereinafter collectively referred to as "OPERATORS") and
4 each of them were Corporations responsible for operating College Park Rehabilitation Center, at
5 the time of the subject accident.

6 12. At all time relevant herein, Defendants, DOES XI through XV and ROE
7 CORPORATIONS XI through XV (hereinafter collectively referred to as "INSTALLERS") were
8 responsible for the installation of College Park Rehabilitation Center, at the time of the subject
9 accident.

10 13. At all time relevant herein, Defendants, DOES XVI through XX and ROE
11 CORPORATIONS XVI through XX (hereinafter collectively referred to as "DESIGNERS") were
12 the designers of College Park Rehabilitation Center, at the time of the subject accident.

13 14. At all time relevant herein, Defendants DOES XXI through XXV and ROE
14 CORPORATIONS XXI through XXV (hereinafter collectively referred to as
15 "MANUFACTURERS") were the manufacturers of College Park Rehabilitation Center, at the
16 time of the subject accident.

17 15. At all time relevant herein, Defendants DOES XXVI through XXX and ROE
18 CORPORATIONS XXVI through XXX (hereinafter collectively referred to as
19 "MAINTAINERS") were responsible for upkeep, care and maintenance of College Park
20 Rehabilitation Center, at the time of the subject accident.

21 16. At all times mentioned herein, Defendants, and each of them, were in the
22 possession and control of certain real property and premises located at 2856 E. Cheyenne Avenue,
23 North Las Vegas, Clark County, Nevada, said premises commonly known as College Park
24 Rehabilitation Center.

25 17. That on or about the 6th day of June, 2014, the Plaintiffs were upon said real
26 property and premises, as hereinabove referred to perform work at that location including the need
27 to access the electrical/breaker panel when the electrical/breaker panel short circuited causing an
28 arc flash explosion which resulted in Plaintiffs being badly burned.

1 18. At said time and place, the Defendants, and each of them, had negligently
2 designed, installed, maintained and/or controlled said electrical/breaker panel located on the real
3 property and premises and, further, negligently permitted a dangerous condition, not obvious or
4 apparent to the Plaintiffs, to exist thereon and further, did:

5 a. negligently cause a dangerous condition to exist to wit: an improperly designed,
6 installed and/or maintained a electrical/breaker panel including, but not limited to, leaving metal
7 parts unsecured within the panel;

8 b. negligently allow said dangerous condition to remain in existence, as aforesaid, for
9 an unreasonable length of time;

10 c. negligently failed to warn the Plaintiffs of the presence of said dangerous condition
11 and,

12 d. negligently allow the electrical/breaker panel to be in a condition dangerous and
13 unfit in that the Defendants caused and permitted the dangerous condition to exist at the
14 electrical/breaker panel of the said premises, and, further, negligently failed to reasonably warn or
15 guard the Plaintiffs in regard thereto.

16 19. As a proximate result of the aforesaid negligence of the Defendants, and each of
17 them, Plaintiffs, JEFFREY A. MYERS and ANDREW JAMES, were badly burned by an arc
18 flash explosion and otherwise injured while accessing said electrical/breaker panel on the
19 premises of the Defendants, and each of them, thereby causing the Plaintiffs to be electrocuted
20 and severely burn from the explosion, and thereby sustaining the injuries and damages as
21 hereinafter set forth.

22 20. Prior to the incident, the dangerous condition of said premises was known by
23 Defendants and each of them, or should have been known by the Defendants and each of them, in
24 the exercise of reasonable care.

25 **FIRST CAUSE OF ACTION**

26 21. Plaintiff, JEFFREY A. MYERS, incorporates paragraphs 1 through 20 of General
27 Allegations herein as though said paragraphs were fully set forth at this point herein.

28 22. That by reason of the premises and as a direct and proximate result thereof,

1 Plaintiff, JEFFREY A. MYERS, sustained injuries to his head, neck, back, bodily limbs, organs
2 and systems all or some of which conditions may be permanent and disabling in nature, all to his
3 general damage in a sum in excess of \$10,000.00.

4 23. That by reason of the premises and as a direct and proximate result of the
5 aforementioned negligence of the Defendants, and each of them, Plaintiff, JEFFREY A. MYERS,
6 was required to and did receive medical and other treatment for his injuries received in an expense
7 all to his damage in a sum in excess of \$10,000.00. That said services, care and treatment are
8 continuing and shall continue in the future, all to his damage in a presently unascertainable
9 amount, and Plaintiff will amend his Complaint accordingly when same shall be ascertained.

10 24. That prior to the injuries complained of herein, Plaintiff, JEFFREY A. MYERS,
11 was an able-bodied person readily and gainfully employed and physically capable of engaging in
12 all other activities for which he was otherwise suited.

13 25. That by reason of the premises and as a direct and proximate result thereof,
14 Plaintiff, JEFFREY A. MYERS, has been required to and did lose time from his employment,
15 continues to, and shall continue to be limited in his activities and occupations which has caused
16 and shall continue to cause the Plaintiff a loss of earnings and earning capacity, to his damage in a
17 presently unascertainable amount, in this regard, Plaintiff asks leave of this Court to insert said
18 amount when the same shall be fully ascertained.

19 SECOND CAUSE OF ACTION

20 26. Plaintiff, ANDREW JAMES, incorporates paragraphs 1 through 20 of General
21 Allegations herein and paragraphs 21 through 25 of the First Cause of Action herein as though
22 said paragraphs were fully set forth at this point herein.

23 27. That by reason of the premises and as a direct and proximate result thereof,
24 Plaintiff, ANDREW JAMES, sustained injuries to his head, neck, back, bodily limbs, organs and
25 systems all or some of which conditions may be permanent and disabling in nature, all to his
26 general damage in a sum in excess of \$10,000.00.

27 28. That by reason of the premises and as a direct and proximate result of the
28 aforementioned negligence of the Defendants, and each of them, Plaintiff, ANDREW JAMES,

1 was required to and did receive medical and other treatment for his injuries received in an expense
2 all to his damage in a sum in excess of \$10,000.00. That said services, care and treatment are
3 continuing and shall continue in the future, all to his damage in a presently unascertainable
4 amount, and Plaintiff will amend his Complaint accordingly when same shall be ascertained.

5 29. That prior to the injuries complained of herein, Plaintiff, ANDREW JAMES, was
6 an able-bodied person readily and gainfully employed and physically capable of engaging in all
7 other activities for which he was otherwise suited.

8 30. That by reason of the premises and as a direct and proximate result thereof,
9 Plaintiff, ANDREW JAMES, has been required to and did lose time from his employment,
10 continues to, and shall continue to be limited in his activities and occupations which has caused
11 and shall continue to cause the Plaintiff a loss of earnings and earning capacity, to his damage in a
12 presently unascertainable amount, in this regard, Plaintiff asks leave of this Court to insert said
13 amount when the same shall be fully ascertained.

14 WHEREFORE, Plaintiffs, JEFFREY A. MYERS and ANDREW JAMES, expressly
15 reserving their right to amend their Complaint prior to or at the time of trial of this action to insert
16 those items of damage not yet fully ascertainable, pray judgment as follows:

17 FIRST CAUSE OF ACTION

18 1. For general damages sustained by Plaintiff, JEFFREY A. MYERS, in an amount in
19 excess of \$10,000.00;

20 2. For costs of medical care and treatment and other expenses incurred thereto when
21 same are fully ascertained;

22 3. For lost wages incurred when same have been fully ascertained;

23 4. For costs of suit incurred herein; and

24 5. For such other and further relief as the Court may deem just and proper in the
25 premises.

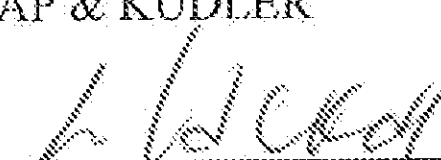
26 SECOND CAUSE OF ACTION

27 1. For general damages sustained by Plaintiff, ANDREW JAMES, in an amount in
28 excess of \$10,000.00;

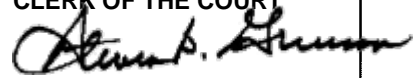
- 1 2. For costs of medical care and treatment and other expenses incurred thereto when
2 same are fully ascertained;
3 3. For lost wages incurred when same have been fully ascertained;
4 4. For costs of suit incurred herein; and
5 5. For such other and further relief as the Court may deem just and proper in the
6 premises.

7 DATED this 6th day of May, 2015.

CAP & KUDLER



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Nevada Bar No. 0005041
3202 W. Charleston Boulevard
Las Vegas, Nevada 89102
(702) 878-8778
Attorney for Plaintiffs



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(702) 878-9350 - Fax
Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,
individually,

Plaintiff,

vs.

THI OF NEVADA AT CHEYENNE, LLC a
Foreign Corporation d/b/a COLLEGE PARK
REHABILITATION CENTER; HEALTHCARE
REALTY OF CHEYENNE, LLC a Delaware
Corporation; FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC a
Delaware Corporation; DOES I-XXX; and ROE
CORPORATIONS I-XXX, inclusive,

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: VI

**PLAINTIFFS' THIRD MOTION TO
COMPEL DISCOVERY RESPONSES**

HEARING REQUESTED

**TO BE HEARD BEFORE THE
DISCOVERY COMMISSIONER**

COME NOW, Plaintiffs JEFFREY A. MYERS and ANDREW JAMES, by and through
their Attorney of Record, DONALD C. KUDLER, ESQ. Of the Law Office of Cap & Kudler
and bring forth this Motion to Compel Discovery Responses. This Motion is made and based on
the papers and Pleadings on file herein, the attached Points and Authorities and the oral argument
of Counsel, if any, at the time this matter is heard before this Court.

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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES TO THIS ACTION; and

TO: THEIR ATTORNEY'S OF RECORD:


YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing **PLAINTIFFS' THIRD MOTION TO COMPEL DISCOVERY**

RESPONSES on for hearing before the Discovery Commission on the ____ day of

_____, 20____, at the hour of _____ o'clock a.m./p.m., or as soon thereafter as counsel can be heard.

DATED this 24th day of February, 2020.

CAP & KUDLER



Donald C. Kudler, Esq.
Nevada Bar No. 5041
3202 W. Charleston Blvd.
Las Vegas, Nevada 89102
Attorney for Plaintiff

POINTS AND AUTHORITIES

STATEMENT OF THE FACTS

This case arises out of an electrical explosion that took place on the Defendants' property on June 6, 2014. At the time of the accident, the Plaintiffs were employed by Industrial Light and Power which had been subcontracted to provide electrical services at the Defendants' property, College Park Rehabilitation Center. As they were doing so, a screw, that had been left on a shelf like surface for enough time for it to have left a "shadow" in the dust that accumulated, rather than having been reinstalled or removed from the scene, fell into the electrical panel causing a short and explosion. See, photograph attached as **EXHIBIT "16"**. As a result, the Plaintiffs were severely burned by the plasma ball that shot out from the equipment.

The initial Complaint in this lawsuit was filed on April 25, 2016. An Amended Complaint was served on May 6, 2016 and Answers were filed on July 26, 2016. The

Arbitration Commissioner exempted the case from Arbitration on August 23, 2016. A Scheduling Order was issued on February 2, 2017 and an Order Setting Jury Trial was issued on February 15, 2017. Dates set by those documents are:

Motions to Amend Pleadings	January 19, 2018
Initial Expert Disclosures	January 19, 2018
Rebuttal Expert Disclosures	February 20, 2018
Close of Discovery	April 20, 2018
Dispositive Motions	May 21, 2018
Trial Stack	July 21, 2018

A Stipulation and Order to Extend Discovery Deadlines (First Request) was filed on January 31, 2018. Dates set by this documents are:

Motions to Amend Pleadings	February 20, 2018
Initial Expert Disclosures	February 20, 2018
Rebuttal Expert Disclosures	March 22, 2018
Close of Discovery	May 21, 2018
Dispositive Motions	May 30, 2018

At the May 15, 2018 Status Check Court reset trial to January 2, 2019.

A Stipulation and Order to Extend Discovery Deadlines (Second Request) was filed on July 11, 2018. Dates set by this documents are:

Motions to Amend Pleadings	August 5, 2018
Initial Expert Disclosures	August 5, 2018
Rebuttal Expert Disclosures	September 5, 2018
Close of Discovery	October 5, 2018
Dispositive Motions	November 5, 2018

At the December 11, 2018 Status Check Court stated the trial will be moved to July. On January 17, 2019 an Amended Order Setting Jury Trial was filed with July 23, 2019 as the new trial date.

A Stipulation and Order to Extend Discovery Deadlines (Third Request) was filed on

January 15, 2019. Dates set by this documents are:

Motions to Amend Pleadings	February 12, 2019
Initial Expert Disclosures	February 12, 2019
Rebuttal Expert Disclosures	March 14, 2019
Close of Discovery	April 15, 2019
Dispositive Motions	May 14, 2019

At the May 14, 2019 Status Check Court stated trial will be moved to March 16, 2020.

A Stipulation and Order to Extend Discovery Deadlines (Forth Request) has been sent to Defense Counsel but has not yet been signed. The new requested dates are:

Motions to Amend Pleadings	October 18, 2019
Initial Expert Disclosures	October 18, 2019
Rebuttal Expert Disclosures	November 18, 2019
Close of Discovery	January 16, 2020
Dispositive Motions	February 18, 2020

Trial Date of March 20, 2020 to remain.

The Plaintiffs served Discovery on the Defendants on April 3, 2017. See, Affidavit of Donald C. Kudler, Esq. Attached as **EXHIBIT "1"** and attachments A - I thereto. The Defendant requested, and was granted, several extensions to respond for personal as well as logistical reasons. See, **EXHIBIT "1"**. One of the reasons was to avoid excess time being put into the case since the Parties agreed to submit the matter to a Mediator. Id. The Parties agreed to mediate the case in front of Judge Charles M. McGhee on August 30, 2017. Id. Plaintiffs' Counsel prepared a Brief and met with his clients ro prepare them for the Mediation. Id. However, on the date of the Mediation, the Defense and Mediator advised the Plaintiffs and their Counsel that Defendants were not going to make any offer at that time. Id.

At the aborted Mediation, the Parties discussed the possibilities of needing to bring new Parties into the case leading to granting more extensions to the Defendants allowing them more time to prepare their Discovery Responses. See, **EXHIBIT "1"**. Neither the information regarding possible Parties or the Discovery Responses were provided to the Plaintiffs prompting

1 their Counsel to write a letter on Wednesday, October 18, 2017 demanding responses by the end
2 of the week. See, **EXHIBIT "J"** attached to **EXHIBIT "1"**. Counsel for Plaintiffs spoke to
3 Counsel for Defendants who sought additional time to respond by October 27, 2017. Id. On
4 behalf of his clients, Counsel for Plaintiffs declined to wait any longer, but advised that, should
5 the Responses be made by October 27, 2017 the previously filed Motion would be vacated and
6 advised that Plaintiffs would wait until October 25, 2017 to file the Motion to Compel. Id.

7 Counsel for Defendants called Counsel for Plaintiffs on October 25, 2017 seeking an
8 additional two weeks to respond to the Discovery. See, **EXHIBIT "1"**. That request was
9 denied, as were requests for shorter extensions, and Defendants were advised should the
10 Discovery come in before a Response to an the previously filed Motion was due (or even before
11 this Motion was heard) the Motion would be vacated. Id. The Defendants were advised, through
12 Counsel, that the Previously filed Motion would be withheld until October 30, 2017. Id. A copy
13 of the previously filed Motion to Compel is attached as **EXHIBIT "2"**.

14 The Plaintiff withdrew the previously filed Motion to Compel (**EXHIBIT "3"**) based on
15 the Defendants finally serving Discovery Responses. See, **EXHIBITS "4 - 12."** However,
16 having reviewed those responses, Plaintiff's Counsel has sent several letters detailing the
17 shortcomings of the responses. See, **EXHIBIT "13"**. In addition, Plaintiff's Counsel has made
18 several phone calls and discussed the issues with the Defendants' Counsel on several occasions.
19 The latest being in August 2019.

20 A hearing the Plaintiffs' prior Motion to Compel was heard on November 6, 2019. Said
21 Motion was granted. Defense Counsel was order to supplement by November 20, 2019. All
22 documents in Defendant's possession, custody or control must be provided to Plaintiff; if
23 Defendant doesn't have any documents they must indicate what efforts were taken to locate
24 documents, or state if the documents never existed; they were to also identify if documents are in
25 the possession, custody or control of a Third Party. See, **EXHIBIT "14"** Discovery
26 Commissioners Report and Recommendations and **EXHIBIT "1"** Affidavit of Donald C.
27 Kudler, Esq.

28 On February 13, 2020 Plaintiffs' Counsel held a 2.34 meeting with Defense Counsel.

Counsels discussed the supplements to the discovery responses. Defense counsel stated there is nothing new and that they have produced everything within their possession. Defense counsel stated that they have subpoenaed everything however, Plaintiffs' counsel has not received any copies of the subpoena's. In response to the Plaintiffs' Counsel's request for what actions have been taken to identify the location of documents pursuant to the Court's Order Defense Counsel said he would go back to Defendant Fundamental. No other actions appear to have been taken to comply with the Court's Order in that respect.

Although there have been several promises, no new Answers or Responses have been supplied other than documents pertaining to work done after the incident at issue from Helix Electrical that had been noted in an earlier Document Production but not in the Plaintiffs' possession. Clearly, the Plaintiffs, through their Counsel have given the Defendant sufficient time (nearly two years) to provide the relevant information. The following are the listing of the Discovery Requests and Responses at issue as well as the reason the Plaintiff feels they are inappropriate.

REQUESTS FOR PRODUCTION

REQUEST NO. 1: Please produce a copy of the entire file containing, but not limited to, all repair requests, invoices, billings, etc., for any and all work performed on the electrical/breaker panel by employee and/or employees of Defendant Fundamental Administrative Services, LLC at College Park Rehabilitation Center two (2) years prior to and one (1) year after of the incident of June 6, 2014.

Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Response:
FAS objects to this request on the ground it is overbroad as to "entire file" and "etc.," which is also vague and ambiguous. FAS further objects to this request on the ground it seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, none. No employees for FAS performed work on the electrical/breaker panel.

Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Response:

HEALTHCARE REALTY objects to this request on the ground it is overbroad as to "entire file" and "etc.," which is also vague and ambiguous. HEALTHCARE REALTY further objects to this request on the ground it seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, HEALTHCARE REALTY does not have any such documents in its possession, custody and control.

Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER'S Responses:

Defendant stands on its initial response to this request which reads as follows:

COLLEGE PARK objects to this request on the ground it is overbroad as to "entire file" and "etc.," which is also vague and ambiguous. COLLEGE PARK further objects to this request on the ground it seeks documents not

1 reasonably calculated to lead to the discovery of admissible evidence. Subject
2 to and without waiving these objections, none. No employee of COLLEGE
3 PARK performed work on the electrical/breaker panel.

4 In regards to Response to Request for Production No. 1, your client's
5 Objections are noted. However, the information sought seeks to determine who had
6 left the screws in the panel when it had been worked on prior to the incident at issue
7 in this case. Clearly, work had been done prior as evidence by the condition of the
8 panel and its parts at the time of the incident and subsequent inspection. As you will
9 recall, your client's employee, Roy Comstock, claimed to have worked on the box
10 and to know its inner workings prior to the incident at issue in this case. He, or
11 someone else, also appears to have been familiar enough with the panel to know what
12 parts needed to be ordered.

13 **REQUEST NO. 2:** Please produce a copy of the entire file containing, but
14 not limited to, all repair requests, invoices, billings, etc., for any and all
15 subcontractors, contractors, engineers, designers, developers, etc., hired by Defendant
16 Fundamental Administrative Services, LLC to perform work on the electrical/breaker
17 panel at College Park Rehabilitation Center two (2) years prior to and one (1) year
18 after of the incident of June 6, 2014.

19 **Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Response:**

20 FAS objects to this request on the ground it is overbroad as to "entire file"
21 and "etc.," which is also vague and ambiguous. FAS further objects to this
22 request on the grounds it seeks documents not reasonably calculated to lead
23 to the discovery of admissible evidence, and seeks documents Plaintiffs can
24 independently obtain the requested documents from the subcontractors,
25 contractors, engineers, designers, developers who performed work for
26 COLLEGE PARK. Subject to and without waiving these objections, FAS
27 provides administrative support services to Defendant COLLEGE PARK and
28 did not hire any companies or individuals to perform any work at Defenadnts
COLLEGE Park. As part of its administrative services to COLLEGE PARK,
FAS simply coordinates with vendors, upon request, while COLLEGE PARK
retains its own subcontractors, contractors, engineers, designers, and
developers. Please refer to the proposals by SCI Construction, LLP, to Mr.
Bronz Peterson of FAS dated August 21, 2013 and to Mr. Kenneth Kennedy
dated April 8, 2014 attached hereto. FAS did not hire SCI Construction, LLP.
FAS reserves its right to supplement this response.

29 **Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Response:**

30 HEALTHCARE REALTY objects to this request on the ground it is
31 overbroad as to "entire file" and "etc.," which is also vague and ambiguous.
32 HEALTHCARE REALTY further objects to this request on the ground it
33 seeks documents not reasonably calculated to lead to the discovery of
34 admissible evidence. Subject to and without waiving these objections, there
35 are no such documents in HEALTHCARE REALTY's possession, custody
36 and control.

37 **Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
38 REHABILITATION CENTER'S Responses:**

39 **Defendant stands on its initial response to this request which reads as
40 follows:**

41 COLLEGE PARK objects to this request on the ground it is overbroad as to
42 "entire file" and "etc.," which is also vague and ambiguous. COLLEGE
43 PARK further objects to this request on the grounds it seeks documents not
44 reasonably calculated to lead to the discovery of admissible evidence, and
45 Plaintiffs can independently obtain the requested documents from the
46 subcontractors, contractors, engineers, designers, developers hired by
47 COLLEGE PARK by the issuance of a subpoena duces tecum. Subject to and
48 without waiving these objections, please refer to the invoices from SCI

1 Construction, Ltd. to Mr. Bill War at COLLEGE PARK dated December 9,
2 2013, April 5, 6 2014 and June 26, 2014 attached hereto as Exhibit A. Please
3 also refer to the Change Order Requests attached hereto as Exhibit B.
4 COLLEGE PARK is investigating which invoices and Change Order
5 Requests relate to the electrical/breaker panel. As such, COLLEGE PARK
6 is endeavoring to determine if there are any additional invoices or repair
7 requests responsive to this request and therefore reserves its right to provide
8 a supplemental response to Plaintiffs' request. COLLEGE PARK further
9 states that it hired All Services, Inc. to perform service and repair work on the
10 electrical systems at the facility. Please see Exhibit C attached hereto which
11 contains All Services, Inc. invoices numbered 430240, 430233, 430234,
12 30267, 30268, 30355, and 30415.

13 In regards to Response to Request for Production No. 2, your client's
14 Objections are noted. Again, this information is pivotal to determining who was in
15 this panel prior to the event at issue and left screws inside which fell and caused the
16 explosion that injured my clients. Your client did not provide any information
17 regarding any work done on the panel in the two years prior to the incident at issue
18 in this case. The documents provided by your client for work performed after the
19 incident have nothing to do with this panel. Your client has had months to find the
20 appropriate information and, in addition to failing to do so, have provided
21 information NOT sought by the Request.

22 **REQUEST NO. 3:** Please produce a copy of all inspection reports in the
23 possession of Defendant Fundamental Administrative Services, LLC, either prepared
24 by Defendant Fundamental Administrative Services, LLC or another entity, for any
25 and all work performed by employee(s), contractor(s) and subcontractor(s) of
26 Defendant Fundamental Administrative Services, LLC on the electrical/breaker panel
27 at College Park Rehabilitation Center two (2) years prior to and one (1) year after of
28 the incident of June 6, 2014.

29 **Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Response:**
30 FAS objects to this request on the ground it is vague and ambiguous as to
31 "inspection reports." FAS further objects to this request on the grounds it
32 seeks documents protected by the attorney work-product doctrine and seeks
33 documents not reasonably calculated to lead to the discovery of admissible
34 evidence. Subject to and without waiving said objections, none. By way of
35 further response, no employees of FAS performed work on the
36 electrical/breaker panel at COLLEGE PARK.

37 **Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Response:**
38 HEALTHCARE REALTY objects to this request on the ground it is vague
39 and ambiguous as to "inspection reports." HEALTHCARE REALTY further
40 objects to this request on the grounds it seeks documents protected by the
41 attorney work-product doctrine and seeks documents not reasonably
42 calculated to lead to the discovery of admissible evidence. Subject to and
43 without waiving said objections, HEALTHCARE REALTY does not have
44 any of the requested documents in its possession, custody and control.

45 **Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
46 REHABILITATION CENTER'S Responses:**

47 **Defendant stands on its initial response to this request which reads as
48 follows:**

49 COLLEGE PARK objects to this request on the ground it is vague and
50 ambiguous as to "inspection reports." COLLEGE PARK further objects to
51 this request on the grounds it seeks documents protected by the attorney
52 work-product doctrine and seeks documents not reasonably calculated to lead
53 to the discovery of admissible evidence. Subject to and without waiving said
54 objections, employees did not perform work on the electrical/breaker panel
55 at COLLEGE PARK. COLLEGE PARK does not have any of the requested

documents in its possession, custody and control. COLLEGE PARK further states that it hired All Services, Inc. to perform service and repair work on the electrical systems at the facility. Please see Exhibit C attached hereto which contains All Services, Inc. invoices numbered 430240, 430233, 430234, 30267, 30268, 30355, and 30415. Discovery is continuing and COLLEGE PARK reserves the right to supplement its response to this request.

In regards to Response to Request for Production No. 3, your client again provided irrelevant documents. It is our understanding that at least one power study was done that included this panel. We believe there is another as well as other documents regarding inspections of this panel.

REQUEST NO. 4: Please produce a copy of the job description of any employee of Defendant Fundamental Administrative Services, LLC who were involved in repairs, maintenance, installation and/or service of the electrical/breaker panel at College Park Rehabilitation Center prior to the incident of June 6, 2014.

Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Response:

FAS objects to this request on the grounds it seeks confidential and proprietary information and seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, none. No employee of FAS was involved in repairs, maintenance, installation and/or service of the electrical/breaker panel at COLLEGE PARK.

Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Response:

HEALTHCARE REALTY objects to this request on the ground it seeks confidential and proprietary information. HEALTHCARE REALTY further objects to this request on the ground it seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, there are no such documents in HEALTHCARE REALTY's possession, custody and control.

Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER'S Responses:

Defendant stands on its initial response to this request which reads as follows:

COLLEGE PARK objects to this request on the grounds it seeks confidential and proprietary information and seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, no employee of COLLEGE PARK was involved in repairs, maintenance, installation and/or service of the electrical/breaker panel at COLLEGE PARK.

In regards to Response to Request for Production No. 4, your client's objections are noted. However, we know that Roy Comstock worked at College Park and had some involvement in the work done on the panel at issue in this case. Please provide his job description.

REQUEST NO. 5: Please produce a copy of the personnel file, limited to the employment history, training and qualifications of each employee of Defendant Fundamental Administrative Services, LLC, who were involved in repairs, maintenance, installation and/or service of the electrical/breaker panel at College Park Rehabilitation Center prior to the incident of June 6, 2014.

Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Response:

FAS objects to this request on the grounds it seeks confidential and proprietary information and seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, none. No employee of FAS was involved in repairs, maintenance, installation and/or service of the electrical/breaker panel at COLLEGE PARK.

1 Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Response:

2 HEALTHCARE REALTY objects to this request on the ground it seeks
3 confidential and proprietary information. HEALTHCARE REALTY further
4 objects to this request on the ground it seeks documents not reasonably
5 calculated to lead to the discovery of admissible evidence. Subject to and
6 without waiving these objections, there are no such documents in
7 HEALTHCARE REALTY's possession, custody and control.

8 Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
9 REHABILITATION CENTER'S Responses:

10 **Defendant stands on its initial response to this request which reads as**
11 **follows:**

12 COLLEGE PARK objects to this request on the ground it seeks confidential
13 and proprietary information and on the ground it seeks documents not
14 reasonably calculated to lead to the discovery of admissible evidence. Subject
15 to and without waiving these objections, no employee of COLLEGE PARK
16 was involved in repairs, maintenance, installation and/or service of the
17 electrical/breaker panel at COLLEGE PARK.

18 In regards to Response to Request for Production No. 5, your client's
19 objections are noted. However, we know that Roy Comstock had some involvement
20 in work done on the panel at issue in this case. Please provide his Personnel File.

21 **REQUEST NO. 6:** Please produce any and all business cards or other
22 information regarding any person or entity who you called to repair, maintain or
23 otherwise look at or inspect the electrical/breaker panel at College Park
24 Rehabilitation Center on or before June 6, 2014.

25 Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Response:

26 FAS objects to this request on the ground it is vague and ambiguous as to
27 "other information." FAS further objects to this request on the grounds it
28 seeks documents not reasonably calculated to lead to the discovery of
admissible evidence, and Plaintiffs can independently obtain the requested
documents by issuance of a subpoena duces tecum. Subject to and without
waiving these objections, FAS does not have any of the requested documents
in its possession, custody and control.

18 Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Response:

19 HEALTHCARE REALTY objects to this request on the ground it is vague
20 and ambiguous as to "other information." HEALTHCARE REALTY further
21 objects to this request on the ground Plaintiffs can independently obtain the
22 requested documents by issuance of a subpoena duces tecum.
23 HEALTHCARE REALTY objects to this request on the ground it seeks
24 documents not reasonably calculated to lead to the discovery of admissible
25 evidence. Subject to and without waiving these objections, there are no such
26 documents in HEALTHCARE REALTY's possession, custody and control.

27 Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
28 REHABILITATION CENTER'S Responses:

COLLEGE PARK objects to this request on the ground it is vague and
ambiguous as to "other information." COLLEGE PARK further objects to
this request on the grounds it seeks documents not reasonably calculated to
lead to the discovery of admissible evidence, and Plaintiffs can independently
obtain the requested documents by issuance of a subpoena duces tecum.
Subject to and without waiving these objections, in the event COLLEGE
PARK maintained business cards for the persons at SCI Construction, who
repaired, maintained, looked at or inspected the electrical/breaker panel,
COLLEGE PARK will produce the same. **No such business cards have
been located.** COLLEGE PARK further states please see EXHIBITS A, B
and C for information responsive to this request. COLLEGE PARK reserves
the right to supplement this response and assert further objections if

warranted.

In regards to Response to Request for Production No. 6, your client's objections are noted. Your client has failed to provide any information about any person who has been called in to work on the panel at issue in this case prior to the incident at issue. We know work was done beforehand and have a right to information regarding who performed the work and what work was performed. Likewise, please provide any information not yet provided regarding entities or people who worked on the panel after the subject incident.

REQUEST NO. 7: Please produce any and all business cards or other information regarding any person or entity who you called to repair, maintain or otherwise look at or inspect the air conditioning unit on the property at College Park Rehabilitation Center since June 6, 2014.

Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER'S Responses:

COLLEGE PARK objects to this request on the ground it is vague and ambiguous as to "other information." COLLEGE PARK further objects to this request on the grounds it seeks documents not reasonably calculated to lead to the discovery of admissible evidence, and Plaintiffs can independently obtain the requested documents by issuance of a subpoena duces tecum. COLLEGE PARK objects to this request on the grounds the air conditioning unit is not at issue in the instant litigation. The allegations contained in Plaintiffs' Complaint pertain to the electrical/breaker panel at COLLEGE PARK. Subject to and without waiving said objections, COLLEGE PARK states please see Exhibit C attached to the original response, invoice numbers 430240, 430234, 30267, 30268, and 30415. Please also see Exhibit D attached to the original response, invoices from All Services Inc., numbers 302665, 430233, 430245, 430234, 30267, 430249, 302730, 302805, 30507, 30509, 30624, and 302889. Please also see Helix Electric, Inc. documents previously produces as Helix 00001-00077. NO business cards have been located.

REQUEST NO. 8: Please produce a copy of any log or other document detailing each and every time the electrical/breaker panel at College Park Rehabilitation Center was accessed by any person or entity for the 5 years prior to, and since June 6, 2014.

Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Response:

FAS objects to this request on the ground it is overbroad as to scope of time and as to "accessed," which is also vague and ambiguous. FAS further objects to this request on the ground it seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FAS does not have the requested documents in its possession custody and control.

Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Response:

HEALTHCARE REALTY objects to this request on the ground it is overbroad as to scope of time and as to "accessed," which is also vague and ambiguous. HEALTHCARE REALTY further objects to this request on the ground it seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, HEALTHCARE REALTY has no such documents in its possession, custody and control.

Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER'S Responses:

COLLEGE PARK objects to this request on the ground it is overbroad as to scope of time and as to "accessed," which is also vague and ambiguous.

COLLEGE PARK further objects to this request on the ground it seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, COLLEGE PARK **does not have a log responsive to this request.** COLLEGE PARK further states please see Exhibits A, B, C, and D **attached to the original response and Helix Electric, Inc. documents Bates stamped Helix 00001-00077** for further information on electrical work, service and/or maintenance done at the facility.

In regards to Response to Request for Production No. 8, your client's objections are noted. However, it is our understanding that a facility such as College Park is required by law to keep a log of people who do work such as repairs to an electrical panel such as the one at issue in this case. In fact, we have been informed by a government inspector that employees at College Park refused to allow him access to the log that was supposed to be kept and in their possession.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify the employee(s), contractor(s) and subcontractor(s) of Defendant (NAME OF DEFENDANT) who were responsible for the installation, repair, maintenance, and/or service of the electrical/breaker panel located at College Park Rehabilitation Center, before June 6, 2014.

Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Answer:

Objection. This interrogatory is compound, overbroad in scope and time, and vague. Subject to and without waiving said objections, none. Defendant further states that discovery is continuing and it reserves the right to supplement its response to this interrogatory.

Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Answer:

Objection. This interrogatory is compound, overbroad in scope and time, and vague. Subject to and without waiving said objections, none. Defendant has never had any employees, contractors and/or subcontractors who were responsible for the installation, repair, maintenance and/or service of the electrical/breaker panel located at College Park Rehabilitation Center. Defendant further states that the operator of the facility, THI OF NEVADA AT CHEYENNE, LLC d/b/a COLLEGE PARK REHABILITATION CENTER, is responsible for maintenance and repair of the facility and must indemnify Defendant for this claim. Defendant further states that discovery is continuing and it reserves the right to supplement its response to this interrogatory.

Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER'S Answers:

Defendant stands on its previous response to this Interrogatory which is as follows:

Objection. This interrogatory is compound, overbroad in scope and time, and vague. Subject to and without waiving said objections, Defendant states that the panel was installed before this Defendant became the operator of the facility. No employee of Defendant performed work on the electrical panel/breaker. Defendant further states that it contracted with SCI Construction, Ltd. for new electrical panels and wiring per the plans and specifications by MSA Engineering Consultants. Defendant believes that SCI Construction hired Industrial Light and Power as its subcontractor to perform electrical services which included modifications to the electrical panel. Discovery is continuing and it reserves the right to supplement its response to this interrogatory.

INTERROGATORY NO. 2: Please identify the employee(s), contractor(s) and subcontractor(s) of (NAME OF DEFENDANT) who were responsible for the installation, repair, maintenance, and/or service of the electrical/breaker panel located

1 at College Park Rehabilitation Center, after June 6, 2014.2014.

2 Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Answer:

3 Objection. This interrogatory is compound, overbroad in scope and time, and
4 vague. Subject to and without waiving said objections, none. Defendant
5 further states that discovery is continuing and it reserves the right to
6 supplement its response to this interrogatory.

7 Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Answer:

8 Objection. This interrogatory is compound, overbroad in scope and time, and
9 vague. Subject to and without waiving said objections, none. Defendant has
10 never had any employees, contractors and/or subcontractors who were
11 responsible for the installation, repair, maintenance and/or service of the
12 electrical/breaker panel located at College Park Rehabilitation Center
13 Defendant further states that the operator of the facility, THI OF NEVADA
14 AT CHEYENNE, LLC d/b/a COLLEGE PARK REHABILITATION
15 CENTER, is the party responsible for maintenance and repair of the facility
16 and must indemnify Defendant for this claim. Defendant further states that
17 discovery is continuing and it reserves the right to supplement its response to
18 this interrogatory.

19 Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
20 REHABILITATION CENTER'S Answers:

21 Objection. This interrogatory is compound, overbroad in scope and time, and
22 vague. Subject to and without waiving said objections, Defendant states that
23 the panel was installed before this Defendant became the operator of the
24 facility. No employee of Defendant performed work on the electrical
25 panel/breaker. Defendant further states that it contracted with SCI
26 Construction, Ltd. for new electrical panels and wiring per the plans and
27 specifications by MSA Engineering Consultants. Defendant believes that SCI
28 Construction hired Industrial Light and Power as its subcontractor to perform
electrical services which included modifications to the electrical panel.
**Defendant further states that Helix Electric, Inc. was contracted to
perform work o the electrical/breaker panel. Helix's work included
replacement of two damaged breakers in the existing switch gear. Helix
did install two 125amp breakers along with mounting brackets as needed
to replace the damaged breakers and did repair damaged cable. Specific
details of Helix Electric, Inc's work is outlined in Helix's documentation
produced in this litigation as Helix 00001-00077.** Defendant further states
that discovery is continuing and it reserves the right to supplement its
response to this interrogatory.

21 **INTERROGATORY NO. 3:** For the employee(s), contractor(s) and
22 subcontractor(s) identified in your Answers to Interrogatories No. 1 and 2 above,
23 please state what type of training and/or certification they had for the installation,
24 repair, maintenance, and/or service of the electrical/breaker panel located at College
25 Park Rehabilitation Center.2014.

26 Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Answer:

27 Objection. This interrogatory is compound, overbroad in scope and time, and
28 vague. Subject to and without waiving said objections. Defendant states
please see answers to Interrogatories No. 1 and 2. Defendant further states
none of its employees, contractors or subcontractors were responsible for the
installation, repair, maintenance, and/or service of the electrical breaker panel
located at College Park. Defendant further states that discovery is continuing
and it reserves the right to supplement its response to this interrogatory.

29 Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Answer:

30 Objection. This interrogatory is compound, overbroad in scope and time, and
31 vague. Subject to and without waiving said objections, not applicable.
32 Defendant has never had any employees, contractors and/or subcontractors

1 who were responsible for the installation, repair, maintenance and/or service
2 of the electrical/breaker panel located at College Park Rehabilitation Center
3 Defendant further states that the operator of the facility, THI OF NEVADA
4 AT CHEYENNE, LLC d/b/a COLLEGE PARK REHABILITATION
5 CENTER, is the party responsible for maintenance and repair of the facility
6 and must indemnify Defendant for this claim. Defendant further states that
7 discovery is continuing and it reserves the right to supplement its response to
8 this interrogatory.

9 Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
10 REHABILITATION CENTER'S Answers:

11 Please see answers to interrogatories 1 and 2. Additionally, Defendant states
12 that it was unaware of the specific training of the SCI Construction Ltd.
13 employees and Industrial Light and Power employees, **and Helix Electric,**
14 **Inc. employees** who performed the work but believes them to have been
15 duly licensed to perform the services. Discovery is continuing and Defendant
16 reserves the right to supplement its response to this interrogatory.

17 In regards to Answer to Interrogatories No.'s 1, 2 and 3, your client's
18 objections are noted. However, we have a right to obtain information regarding
19 anyone who performed work on the panel and might be able to provide information
20 as to its status before and after the incident on June 6, 2014. While some information
21 has been provided about a company that responded to perform work on the subject
22 panel, we cannot be sure that no other entity or person did so. Nor has any
23 information about work done on the panel prior to the incident been provided.
24 Certainly, such information is available to one or more of the Defendants.

25 **INTERROGATORY NO. 4:** Please describe the nature and scope of the
26 work performed by Defendant (NAME OF DEFENDANT)'s employee(s),
27 contractor(s) and subcontractor(s) at College Park Rehabilitation Center.2014.
28 Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Answer:

None.

Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Answer:

Objection. This interrogatory is compound, overbroad in scope and time, and
vague. Subject to and without waiving said objections, none. Defendant has
never had any employees, contractors and/or subcontractors who have
performed work at College Park Rehabilitation Center. Defendant further
states the operator, THI OF NEVADA AT CHEYENNE, LLC d/b/a
COLLEGE PARK REHABILITATION CENTER is the party responsible for
maintenance and repair of the facility and must indemnify Defendant for this
claim. Defendant further states that discovery is continuing and it reserves the
right to supplement its response to this interrogatory.

Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
REHABILITATION CENTER'S Answers:

Objection. This interrogatory is compound, overbroad in scope and time, and
vague. Subject to and without waiving said objections, Defendant states that
SCI Construction performed remodeling work, including electrical
modifications, pursuant to the agreement entered into on or about December
9, 2013. No employee of Defendant performed work on the electrical
panel/breaker. Defendant believes that SCI Construction hired Industrial
Light and Power as its subcontractor to perform electrical services which
included modifications to the electrical panel. Defendant believes that Jeffrey
Myers and Andrew James were employees of Industrial Light and Power at
the time they worked on the subject panel. Defendant further states that
discovery is continuing and it reserves the right to supplement its response to
this interrogatory.

In regards to Interrogatory No. 4, your client's objections have been noted.
However, the question seeks what THI of Nevada at Cheyenne's duties are to

perform work at College Park. Please have your client respond accordingly.

INTERROGATORY NO. 5: Please identify all materials supplied by Defendant (NAME OF DEFENDANT) for the work performed at College Park Rehabilitation Center.2014.

Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Answer:

None.

Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Answer:

None.

Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER'S Answers:

None.

In regards to Interrogatory No. 5, it is our understanding that Roy Comstock, at the very least, ordered and supplied at least one breaker for the panel at issue in this case. Please provide a list of all materials that were ordered by THI of Nevada at Cheyenne for work performed at College Park. Please feel free to limit this to electrical and electronic items.

INTERROGATORY NO. 6: Please identify all subcontractors, contractors, engineers, designers, developers, etc. hired by Defendant (NAME OF DEFENDANT) to perform work at College Park Rehabilitation Center.2014.

Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Answer:

None. All subcontractors, contractors, engineers, designers, developers etc. are retained by Defendant College Park.

Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Answer:

Objection. This interrogatory is compound, overbroad in scope and time, and vague. Subject to and without waiving said objects, none. Defendant has never hired and subcontractors, engineers, designers, developers and/or "etc." to perform work at College Park Rehabilitation Center. Defendant further states that the operator of the facility, THI OF NEVADA AT CHEYENNE, LLC d/b/a COLLEGE PARK REHABILITATION CENTER, is the party responsible for maintenance and repair of the facility and must indemnify Defendant for this claim. Defendant further states that discovery is continuing and it reserves the right to supplement its response to this interrogatory.

Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER'S Answers:

Objection. This interrogatory is compound, overbroad in scope and time, and vague. Subject to and without waiving said objections, Defendant states, to the extent this interrogatory is directed at electrical issues, the panel was installed before this Defendant became the operator of the facility. Defendant states that SCI Construction performed remodeling work, including electrical modifications, pursuant to the agreement entered into on or about December 9, 2013. Defendant believes that SCI Construction hired Industrial Light and Power as its subcontractor to perform electrical services which included modifications to the electrical panel. Defendant believes that Jeffrey Myers and Andrew James were employees of Industrial Light and Power at the time they worked on the subject panel. Defendant further states that All Services Inc. was retained to perform service and maintenance work on electrical systems of the facility. Defendant further states that discovery is continuing and it reserves the right to supplement its response to this interrogatory.

In regards to Interrogatory No. 6, your client's objections have been noted. Your clients limited their responses to the project at which my clients were injured. The Interrogatory is much broader than that and seeks information of any such people or entities. Please feel free to limit your response to those performing electrical or electronic work at College Park before or after the incident on June 6, 2014.

1 **INTERROGATORY NO. 8:** Please state what, if any, regular maintenance
2 was performed on the electrical/breaker panel on the property at College Park
3 Rehabilitation Center prior to or on June 6, 2014. For each such maintenance
4 performed, please state:

- 5 a. the name of the person or entity performing the maintenance;
6 b. the type of maintenance performed;
7 c. the date of the maintenance; and
8 d. whether or not the person or entity performing the maintenance was
9 licensed to do so.

10 Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Answer:

11 Objection. This interrogator' is objected to as being vague as to the term
12 regular maintenance. Subject to and without waiving said objections. please
13 see answers to interrogatories 1 and 2. Additionally. please refer to responses
14 of the operator. THI OF NEVADA AT CHEYENNE. LLC d/b/a COLLEGE
15 PARK REHABILITATION CENTER. Discovery is continuing and
16 Defendant reserves the right to supplement its response to this interrogatory.

17 Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Answer:

18 Objection. This interrogatory is compound, overbroad in scope and time, and
19 vague. Subject to and without waiving said objections, Defendant states that
20 it has no knowledge of what, if any, regular maintenance was performed on
21 the electrical/breaker panel on the property at College Park Rehabilitation
22 Center prior to or on June 6, 2014. Defendant further states that the operator
23 of the facility, TI-B OF NEVADA AT CHEYENNE, LLC d/b/a COLLEGE
24 PARK REHABILITATION CENTER, is the party responsible for
25 maintenance and repair of the facility and must indemnify Defendant for this
26 claim. Defendant further states that discovery is continuing and it reserves the
27 right to supplement its response to this interrogatory.

28 Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
REHABILITATION CENTER'S Answers:

Objection. This interrogatory is objected to as being vague as to the term
regular maintenance. Subject to and without waving said objections, please
see answers to interrogatories 1, 2 and 3. **Defendant and its employees did
not perform work on the electrical/breaker panel.** Discovery is
continuing and Defendant reserves the right to supplement its response to this
interrogatory.

1 **INTERROGATORY NO. 9:** Please state what, if any, regular maintenance
2 was performed on the electrical/breaker panel on the property at College Park
3 Rehabilitation Center since June 6, 2014. For each such maintenance performed,
4 please state:

- 5 a. the name of the person or entity performing the maintenance;
6 b. the type of maintenance performed;
7 c. the date of the maintenance; and
8 d. whether or not the person or entity performing the maintenance was
9 licensed to do so.2014.

10 Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Answer:

11 Objection. This interrogatory is objected to as being vague as to the term
12 regular maintenance. Subject to and without waiving said objections. please
13 sec answers to interrogatories 1 and 2. Additionally. Defendant please refer
14 to the responses of the operator. THI OF NEVADA AT CHEYENNE. LLC
15 dba COLLEGE PARK REHABILITATION CENTER. Discovery is
16 continuing and Defendant reserves the right to supplement its response to this
17 interrogatory.

18 Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Answer:

19 Objection. This interrogatory is compound, overbroad in scope and time, and

1 vague. Subject to and without waiving said objections, Defendant states that
2 it has no knowledge of what, if any, regular maintenance was performed on
3 the electrical/breaker panel on the property at College Park Rehabilitation
4 Center since June 6, 2014. Defendant further states that the operator of the
5 facility, THI OF NEVADA AT CHEYENNE, LLC d/b/a COLLEGE PARK
6 REHABILITATION CENTER, is the party responsible for maintenance and
7 repair of the facility and must indemnify Defendant for this claim. Defendant
8 further states that discovery is continuing and it reserves the right to
9 supplement its response to this interrogatory.

10 Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
11 REHABILITATION CENTER'S Answers:

12 Objection. This interrogatory is objected to as being vague as to the term
13 regular maintenance. Subject to and without waving said objections, please
14 see answers to interrogatories 1, 2, and 3. Defendant further states that All
15 Services Inc. was retained to perform service and maintenance work on the
16 electrical systems of the facility. These services included maintenance of the
17 air conditioning systems, fans, and coolers. Discovery is continuing and
18 Defendant reserves the right to supplement its response to this interrogatory.

19 In regards to Interrogatories No.'s 8 and 9, your client's objections have been
20 noted. Again, the Plaintiffs have a right to know who was in the panel at issue in this
21 case before and after the accident to discover what information they have about when
22 it was repaired, by whom it was repaired, what repairs were made, when the repairs
23 were made and what, if any, repairs were suggested but not made.

24 REQUESTS FOR ADMISSIONS

25 REQUEST NO. 2: Admit that you had work performed on the
26 electrical/breaker panel at College Park Rehabilitation Center prior to June 6, 2014.
27 Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Response:

28 Deny.

29 Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Response:

30 Deny.

31 Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
32 REHABILITATION CENTER'S Response:

33 Deny. Defendant states that the panel was installed before this
34 Defendant became the operator of the facility. No employee of
35 Defendant performed work on the electrical panel/breaker. Defendant
36 further states that it contracted with SCI Construction, Ltd. for new
37 electrical panels and wiring per the plans and specifications by MSA
38 Engineering Consultants. Defendant believes that SCI Construction
39 hired Industrial Light and Power as its subcontractor to perform
40 electrical services which included modifications to the electrical panel.

41 REQUEST NO. 3: Admit that you had work performed on the
42 electrical/breaker panel at College Park Rehabilitation Center after June 6, 2014.
43 Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC's Response:

44 Deny.

45 Defendant HEALTHCARE REALTY OF CHEYENNE, LLC's Response:

46 Deny.

47 Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK
48 REHABILITATION CENTER'S Response:

49 Deny. Defendant states that the panel was installed before this
50 Defendant became the operator of the facility. No employee of
51 Defendant performed work on the electrical panel/breaker. Defendant
52 further states that it contracted with SCI Construction, Ltd. for new
53 electrical panels and wiring per the plans and specifications by MSA
54 Engineering Consultants. Defendant believes that SCI Construction

1 hired Industrial Light and Power as its subcontractor to perform
2 electrical services which included modifications to the electrical panel.
3 Defendant further states that Helix Electric, Inc. was also contracted to
4 perform work on the electrical/breaker panel. The work performed by
5 Helix included replacement of two damaged breakers. Helix did install
6 two 125amp breakers along with mounting brackets as needed to replace
7 the damaged breakers and did repair damaged cable. Specific details of
8 Helix Electric, Inc.'s work is outlined in Helix's documentation produced
9 in the litigation as Helix 00001-00077.

10 THI has denied that it has had work done on the panel at issue before and
11 after the incident at issue in this case "pending further investigation." We know that
12 work was done both before and after the case based on the evidence we have
13 gathered and seen at the scene of the incident. We also know that the Defendant's
14 employee, Roy Comstock, ordered parts for the work to be performed by my clients
15 based on his knowledge of the inside of the panel. Your client has had plenty of time
16 to investigate this issue and either admit or deny Requests for Admissions No.'s 2
17 and 3.

18 LEGAL ARGUMENT

19 The Court Should Require the Defendants to Amend

20 Their Discovery Responses to Include the Sought After

21 Information as it Is Relevant to the Issues of Liability

22 The current version of NRCP 26(b) provides the scope of Discovery stating:

23 Rule 26. General Provisions Governing Discovery

24 (b) Discovery Scope and Limits.

25 (1) Scope. Unless otherwise limited by order of the court in accordance with these rules,
26 the scope of discovery is as follows: Parties may obtain discovery regarding any
27 nonprivileged matter that is relevant to any party's claims or defenses and proportional to
28 the needs of the case, considering the importance of the issues at stake in the action, the
amount in controversy, the parties' relative access to relevant information, the parties'
resources, the importance of the discovery in resolving the issues, and whether the burden
or expense of the proposed discovery outweighs its likely benefit. Information within this
scope of discovery need not be admissible in evidence to be discoverable.¹

29 ¹ At the time the Discovery Requests were served and Answered, the scope of

30 Discovery was described in NRCP 26(b)(1).

31 (b) Discovery Scope and Limits. Unless otherwise limited by order of the court in
32 accordance with these rules, the scope of discovery is as follows:

33 In General. Parties may obtain discovery regarding any matter, not privileged, which is
34 relevant to the subject matter involved in the pending action, whether it relates to the
35 claim or defense of the party seeking discovery or to the claim or defense of any other
36 party, including the existence, description, nature, custody, condition and location of any
37 books, documents, or other tangible things and the identity and location of persons having

1 In this case, a screw that was left free to move inside the panel fell crossing two terminals
2 inside the panel causing an arc flash which severely injured the Plaintiffs. The Plaintiffs allege,
3 and the Defendants deny, that one of their employees who is a handyman had worked on the
4 panel prior to the incident and left the screws there eventually resulting in the arc flash when the
5 Plaintiffs were working inside the panel. Many of the Discovery Requests at issue seek to
6 identify what work was done on the panel at issue before and after the incident that injured the
7 Plaintiff. This, of course, is vital to the Plaintiff's case or the need to name a new party who may
8 have left the screw loose inside the panel. The Defendants have objected to these Requests and
9 have failed to provide any information regarding the identity of anyone, other than their
10 employee who might be culpable for causing the arc flash.

11 All of the following Discovery Requests seek information regarding what work was done
12 on the panel where the Plaintiffs were injured and who performed that work. - all were objected
13 to and none of the information was provided:

14 Requests for Production No.'s 1, 2, 3, 4, 5, 6, 7, and 8;

15 Interrogatories No.'s 1, 2, 3, and 8;

16 Requests for Admission No.'s 2 and 3.

17 The Defendants were able to locate some Invoices for work by All Service, Inc going
18 back to 2015. See, EXHIBIT "15". However, those Invoices were for work done on air
19 conditioners and similar units and NOT the Panel at issue or similar work. Likewise, the
20 Defendant has identified Helix Electric, Inc. as a provider of electrical work AFTER the incident
21 at issue in this case. As noted, Plaintiff has not been able to locate the records referred to in the
22 Defendants' Second Supplement and have asked for them on several occasions to no avail.

23 Request for Production No. 8 seeks a log, which Plaintiffs believe is required by law
24 showing when Panels, such as the one at issue in this case, are shut down or worked on. Again,
25 this Request would help to identify who worked on the panel, when it was worked on and what

26
27 knowledge of any discoverable matter. It is not ground for objection that the information
28 sought will be inadmissible at the trial if the information sought appears reasonably
calculated to lead to the discovery of admissible evidence. All discovery is subject to the
limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

1 work was done. The Defendants have responded that they simply do not keep such a log.

2 The Defendants have simply failed to provide any information relevant to work
3 performed on the panel at issue in the years prior to the incident despite their ability to locate
4 other, unrelated records. The Court should require them to produce the relevant records
5 immediately. If the Defendants do not turn over relevant information, the Court should order that
6 there is a negative inference against the Defendants that the work performed on the panel was
7 performed by Roy Comstock or some other employee of the Defendants.

8 In addition to seeking to identify the names of persons or entities that might have worked
9 on the panel at issue in this case, some Requests, such as Request for Production No. 3, which
10 seeks inspection reports, attempts to determine if any of the Defendants knew of any issues with
11 the panel (such as missing screws) that are relevant to how this accident occurred. Inspection
12 reports in their possession could very well identify that as well as it could identify the names of
13 people who had worked on the panel before the accident. Other information this might include is
14 any admissions by the Defendants or their employees that they had performed work on the panel
15 at issue in this case.

16 The Court should require the Defendants to
17 provide documents it has disclosed in
18 their Early Case Conference Disclosures

19 In regards to the documents that were supposed to be attached to the Defendants'
20 Supplement to their Early Case Conference Disclosures, Rule 16.1(a)(1)(A)(ii) states:

21 (a) Required Disclosures.

22 (1) Initial Disclosure.

23 (A) In General. Except as exempted by Rule 16.1(a)(1)(B) or as otherwise
24 stipulated or ordered by the court, a party must, without awaiting a
discovery request, provide to the other parties:

25 . . .

26 (ii) a copy — or a description by category and location — of all
27 documents, electronically stored information, and tangible things
28 that the disclosing party has in its possession, custody, or control
and may use to support its claims or defenses, including for
impeachment or rebuttal, and, unless privileged or protected from
disclosure, any record, report, or witness statement, in any form,

concerning the incident that gives rise to the lawsuit;

The Defendant has not identified the location of the documents, other than that they are in their prior co-Counsel's possession. Their duty is to produce the records and they should do so immediately.

Motion for Sanctions Pursuant to NRCP 37(b)

NRCP 37(b) states:

(b) Sanctions for Failure to Comply With a Court Order.

(1) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent--or a witness designated under Rule 30 (b)(6) or 31 (a)(4)--fails to obey an order to provide or permit discovery, including an order under Rule 35 or 37 (a), the court may issue further just orders that may include the following:

- (A) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (B) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (C) striking pleadings in whole or in part;
- (D) staying further proceedings until the order is obeyed;
- (E) dismissing the action or proceeding in whole or in part;
- (F) rendering a default judgment against the disobedient party; or
- (G) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Here, the Plaintiff is filing the third Motion to Compel responses to Discovery in this case. The first due to a complete failure to respond was granted, the second, due to a failure to provide appropriate Answers was granted. This third Motion is filed in response to two of the Defendants' failure to respond to the prior Order and the third giving partial responses and failing to provide, as required by the prior Order, what efforts have been made to locate the missing information. It is time that this stonewalling and non-responsive Answers be dealt with by sanctions.

Fundamental notions of fairness and due process require that discovery sanctions be just and that sanctions relate to the specific conduct at issue. *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 900 P.2d 323 (1995). Here, the Plaintiff has been prevented from Discovering

1 any information regarding the identity of any Party or Parties, other than the Defendants who may
2 have left the screws in a place to have caused the Plaintiffs to be injured by the arc flash resulting
3 from the short caused by the falling screw. As a result, it is only fair that the Court sanction the
4 Defendants by holding that they are liable for the screw being in the position where it caused the
5 Plaintiffs to be injured.


6 While the Court could consider lighter and harsher sanctions, deeming this issue to be
7 conclusively proven is the best and proportional punishment for the Defendants' repeated failures
8 to provide Discovery into this issue.

9 **CONCLUSION**

10 At this time, the Plaintiff requests that the Court sanction the Defendants by deeming that
11 they are liable for the existence of the screw on the ledge which fell into the switch gear causing
12 the arc flash which injured them.

13 DATED this 24th day of February, 2020.

14 CAP & KUDLER

15
16 
17 Donald C. Kudler, Esq.
18 Nevada Bar No. 5041
19 3202 W. Charleston Blvd.
20 Las Vegas, Nevada 89102
21 Attorney for Plaintiff
22
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1 CERTIFICATE OF SERVICE

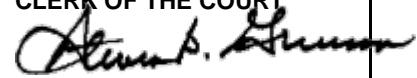
2 I hereby certify that on the 24th day of February, 2020, pursuant to Administrative
3 Order 14-2, I electronically served a true and correct copy of the foregoing **PLAINTIFFS'**
4 **THIRD MOTION TO COMPEL DISCOVERY RESPONSES**, and by depositing a copy of
5 the same in the United States Mails in Las Vegas, Nevada, postage prepaid, addressed as follows:
6

7 Robert D. Rourke, Esq.
8 rourkelaw@embarqmail.com
9 Rourke Law Firm
10 10161 Park Run Dr., #150
11 Las Vegas, NV 89145
12 Tel No. (702) 515-7440
13 Fax No. (702) 515-7441
14 *Attorney for Defendants*
15 THI of Nevada at Cheyenne, LLC;
16 Healthcare Realty of Cheyenne, LLC; and
17 Fundamental Administrative Services, LLC
18

19 
20 _____
21 An Employee of CAP & KUDLER
22
23
24
25
26
27
28

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1 **NEOJ**
2 **CAP & KUDLER**
3 Donald C. Kudler, Esq.
4 Nevada Bar No. 005041
5 3202 W. Charleston Boulevard
6 Las Vegas, Nevada 89102
7 (702) 878-8778
8 (702) 878-9350 - Fax
9 Attorney for Plaintiffs

6
7 **DISTRICT COURT**
8
9 **CLARK COUNTY, NEVADA**

9 JEFFREY A. MYERS and ANDREW JAMES,
10 individually,

11 Plaintiff,

12 vs.

13 THI OF NEVADA AT CHEYENNE, LLC a
14 Foreign Corporation d/b/a COLLEGE PARK
15 REHABILITATION CENTER; HEALTHCARE
16 REALTY OF CHEYENNE, LLC a Delaware
17 Corporation; FUNDAMENTAL
18 ADMINISTRATIVE SERVICES, LLC a
19 Delaware Corporation; DOES I-XXX; and ROE
20 CORPORATIONS I-XXX, inclusive,

21 Defendants.

) CASE NO. : A-16-735550-C

) DEPT. NO.: VI

) **NOTICE OF ENTRY OF ORDER**

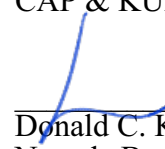
19 TO: ALL INTERESTED PARTIES TO THIS ACTION; and

20 TO: THEIR ATTORNEY'S OF RECORD:

21 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order was entered
22 in the above-entitled matter on the 12th day of August, 2020 and filed on the 12th day of August,
23 2020, a copy of which is attached hereto.

24 DATED this 12th day of August, 2020.

CAP & KUDLER

25
26 
27 Donald C. Kudler, Esq.
28 Nevada Bar No. 5041
3202 W. Charleston Blvd.
Las Vegas, Nevada 89102
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 2020, pursuant to Administrative Order 14-2, I electronically served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**, and by depositing a copy of the same in the United States Mails in Las Vegas, Nevada, postage prepaid, addressed as follows:

Robert D. Rourke, Esq.
rourkelaw@embarqmail.com
Rourke Law Firm
10161 Park Run Dr., #150
Las Vegas, NV 89145
Tel No. (702) 515-7440
Fax No. (702) 515-7441
Attorney for Defendants
THI of Nevada at Cheyenne, LLC;
Healthcare Realty of Cheyenne, LLC; and
Fundamental Administrative Services, LLC

/s/ Liz Carrion

An Employee of CAP & KUDLER

Heather S. Smith
CLERK OF THE COURT

ORDR
CAP & KUDLER
Donald C. Kudler, Esq.
Nevada Bar #005041
3202 W. Charleston Blvd
Las Vegas, NV 89102
Tel. (702)878-8778
Fax (702)878-9350
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,
individually,

Plaintiff,

vs.

THI OF NEVADA AT CHEYENNE, LLC a Foreign
Corporation d/b/a COLLEGE PARK
REHABILITATION CENTER; HEALTHCARE
REALTY OF CHEYENNE, LLC a Delaware
Corporation; FUNDAMENTAL ADMINISTRATIVE
SERVICES, LLC a Delaware Corporation; DOES I-
XXX; and ROE CORPORATIONS I-XXX, inclusive,

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: VI

ORDER

This matter is before the court on Defendant's Objection to the Discovery
Commissioner's Report and Recommendations and Plaintiff's Opposition to Defendant's
Objection to the Discovery Commissioner's Report and Recommendations.

FINDINGS

The court considered the following in reaching its decision:

At the November 6, 2019 hearing for the motion to compel filed on October 3, 2019, the
Discovery Commissioner ruled that Defendant needed to comply with four conditions:

1. Counsel for Defense would supplement discovery by November 20, 2019.
2. Documents in Defendants possession, custody, or control would be provided to Plaintiff.
3. If Defendant did not have any of the requested documents, Defendant would

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1 indicate what efforts were taken to located documents, or state if the documents
2 never existed.

3 4. Defendant would identify if any responsive documents are in possession, custody,
4 or control of a Third Party.

5 While Defendant believed he answered some of these questions in written discovery, he
6 never complied with recommendation number three.

7 Furthermore, when Defendant did not comply, the matter came back in front of Discovery
8 Commissioner Truman on March 21, 2020 for a hearing on a third Motion to Compel filed by
9 Plaintiff, which Defendant did not oppose. Discovery Commission Truman found that
10 Defendant did not comply with the recommendations, did not oppose the motion to compel, that
11 this was the second motion to compel that had gone unopposed, and that Defendant did not
12 request more time to comply with the previous order. Thus, Plaintiff's Motion to Compel and
13 request for sanction in the form of an adverse inference was granted. Defendant's failure to
14 comply with the discovery commissioner's report and recommendations, and failure to oppose
15 two Motions to Compel, provided justification for the adverse inference ordered.

16 After reviewing the Discovery Commissioner's Report and Recommendations,
17 Defendant's Objection thereto, Plaintiff's Opposition to the Objection, hearing argument thereon
18 on May 20, 2020 and reviewing the JAVS from the hearing in front of the Discovery on
19 November 6, 2019 the court finds as follows:

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Objection is
21 denied.

22 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that the
23 Discovery Commissioner's Report and Recommendations dated April 20, 2020 is affirmed and
24 adopted.

25 DATED this ____ day of August, 2020.

Dated this 12th day of August, 2020

26 
27
28

DISTRICT COURT JUDGE

95B 0A3 69CC 3D36
Jacqueline M. Bluth
District Court Judge

KJ

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Submitted by:

Donald C. Kudler, Esq.
Cap & Kudler
3202 W. Charleston Blvd.
Las Vegas, NV 89102
Attorney for Plaintiffs

Approved as to form and content:

/s/ Robert D. Rourke

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Rourke Law Firm
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Liz Carrion

From: Robert Rourke <robert@rourkelawfirm.com>
Sent: Wednesday, August 12, 2020 9:24 AM
To: Liz Carrion
Subject: Myers

You may use my signature on the order. Thanks, Rob

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Jeffrey Myers, Plaintiff(s)

CASE NO: A-16-735550-C

7 vs.

DEPT. NO. Department 6

8 THI of Nevada at Cheyenne,
9 LLC, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/12/2020

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To prevail on a negligence claim, a plaintiff must establish that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the legal cause of the plaintiff's injuries, and (4) the plaintiff suffered damages.

Plaintiffs claim that they were harmed because of the way Defendants managed their property. To establish this claim Plaintiffs must provide all of the following:

1. That Defendants controlled the property;
2. That Defendants were negligent in the inspection, use or maintenance of the property;
3. That Plaintiffs were harmed; and
4. That Defendants' negligence was a substantial factor in causing Plaintiffs' harm.

The owner or occupier of land has a duty to inspect the premises for latent or concealed dangerous conditions not known to them. If reasonable inspection would have revealed a dangerous condition, the owner or occupier of land is charged with constructive notice of it.

Constructive knowledge of a latent defect may be established by circumstantial evidence.

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3 An owner or occupant of land must exercise ordinary care and prudence to
4 render the premises reasonably safe for the visit of a person invited on their
5 premises for business purposes. An owner or occupant of land who knows, or in
6 the exercise of reasonable care should know, of their dangerous and unsafe
7 condition, and who invites other to enter upon the property, owes to such invitees a
8 duty to warn them of the danger, where the peril is hidden, latent, or concealed, or
9 the invitees are without knowledge thereof
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