

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

Electronically Filed  
Oct 21 2025 04:03 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

FRANCISCO SILVA, AN  
INDIVIDUAL,  
*Appellant,*

vs.

ED CLAY, AN INDIVIDUAL;  
SCOTT NELSON, AN  
INDIVIDUAL; DEDDRICK  
PERRY, AN INDIVIDUAL; AND  
CPI MANAGEMENT GROUP,  
LLC,  
*Respondent.*

Supreme Court Case No. 90651

District Court: A-25-909767-B

**APPEAL  
From the Eighth Judicial District Court  
The Honorable Maria A. Gall**

---

**APPELLANT'S OPENING BRIEF**

---

V.R. Bohman, Nevada Bar No. 13075  
Xyzlo Lee, Nevada Bar No. 16912  
SNELL & WILMER L.L.P.  
1700 South Pavilion Center Dr. Suite 700  
Las Vegas, NV 89135  
Phone: (702) 784-5200  
vbohman@swlaw.com  
xlee@swlaw.com

*Counsel for Appellant Francisco Silva*

## **NRAP 26.1 DISCLOSURE STATEMENT**

The undersigned counsel of record certifies that the Appellant does not have to file a Rule 26.1 disclosure statement, as Appellant is an individual, Francisco Silva, rather than a nongovernmental corporation.

## TABLE OF CONTENTS

	<b>Page</b>
Introduction .....	1
Jurisdictional Statement.....	3
Routing Statement .....	4
Statement of the Issues .....	5
Statement of the Case .....	6
A. Statement of Facts .....	6
1. The parties form CPI.....	6
2. The Clinic exclusively uses Silva's stem cells. ....	7
3. Respondents purport to expel Silva from CPI.....	9
4. Silva acts to protect his stem cells.....	10
B. Relevant Procedural History and Rulings Presented for Review .	11
Summary of the Argument .....	12
Argument .....	13
A. This Court should review the legal issues presented by this appeal de novo. ....	13
B. The Clinic may not use Silva’s stem cells without his informed, written consent.....	14
C. The Clinic never obtained Silva’s consent, nor did Respondents and Silva transact for the Clinic’s use of Silva’s stem cells. ....	18
D. Respondents are individually liable for converting Silva’s stem cells.....	23
E. The district court erred by denying Silva’s application.....	25
a. The district court abused its discretion by finding Silva was unlikely to succeed on the merits of his claim for conversion. .....	25
1. The cells are Silva’s personal property.....	26
2. Respondents committed distinct acts of dominion over Silva’s stem cells.....	31

3. Respondents’ wrongful exertion of dominion over Silva’s property denies Silva’s title or rights to the stem cells. ..31

b. Silva suffers great and irreparable harm due to Respondents’ conversion. .... 32

c. The balance of equities and public interest both sharply favor Silva..... 34

Conclusion..... 36

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>CASES</b>	
<i>Blige v. Terry</i> , 139 Nev. 607, 540 P.3d 421 (2023) .....	31
<i>Clark Cnty. Sch. Dist. v. Buchanan</i> , 112 Nev. 1146, 924 P.2d 716 (1996) .....	35
<i>ELT Sight, Inc. v. EyeLight, Inc.</i> , No. 19-CV-05545-JAK-RAO, 2020 WL 7862134 (C.D. Cal. Aug. 28, 2020) .....	33
<i>Evans v. Dean Witter Renyolds, Inc.</i> , 116 Nev. 598, 5 P.3d 1043 (2000) .....	26
<i>Excellence Cmty. Mgmt. v. Gilmore</i> , 131 Nev. 347, 351 P.3d 720 (2015) .....	13, 25
<i>Gardner v. Henderson Water Park, LLC</i> , 133 Nev. 391, 399 P.3d 350 (2017) .....	23, 24
<i>Google, Inc. v. United States</i> , 95 Fed. Cl. 661 (2011) .....	33
<i>Kaldi v. Farmers Ins. Exch.</i> , 117 Nev. 273, 21 P.3d 16 (2001) .....	20
<i>Martinez v. Johnson</i> , 61 Nev. 125, 119 P.2d 880 (1941) .....	30
<i>Robinson v. Goldfield Merger Mines Co.</i> , 46 Nev. 291, 206 P. 399 (1922) .....	27
<i>S.O.C., Inc. v. Mirage Casino-Hotel</i> , 117 Nev. 403, 23 P.3d 243 (2001) .....	32

<i>SynQor, Inc. v. Artesyn Techs., Inc.</i> , No. 07-CV-497-TJW-CE, 2011 WL 238645 (E.D. Tex. Jan. 24, 2011) .....	33
<i>Teets v. Chromally Gas Turbine</i> , 83 F.3d 403 (Fed. Cir. 1996) .....	27
<i>Univ. &amp; Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't</i> , 120 Nev. 712, 100 P.3d 179 (2004) .....	34
<i>Winchell v. Schiff</i> , 124 Nev. 938, 193 P.3d 946 (2008) .....	24, 31

**STATUTES**

NRS 86.241(2)(d) .....	21, 22
NRS 86.286(4)(b).....	23
NRS 201.460(1).....	30
NRS 201.460(2)(a).....	30
NRS 597.790 .....	15
NRS 603A.535.....	16
NRS 629 .....	35
NRS 629.161(2).....	16
NRS 629.181 .....	16
NV SB 370.....	16
NV SB 370 § 22.3.d.....	35

**RULES**

NRAP 17(a)(9).....	4
NRAP 3A(b)(3) .....	3

NRAP 4(a)(1)..... 3

**OTHER AUTHORITIES**

AMA Code of Ethics, Op. 7.3.9, last accessed online on October 20, 2025  
at [https://code-medical-ethics.ama-assn.org/ethics-  
opinions/commercial-use-human-biological-materials](https://code-medical-ethics.ama-assn.org/ethics-opinions/commercial-use-human-biological-materials)..... 14, 15

ISSCR 2025 Guidelines for Stem Cell Research and Clinical  
Translation, Guideline 2.3.2 (“Informed Consent for the Donation of  
Human Cells and Tissues”), last accessed online on October 20, 2025  
at [https://www.isscr.org/guidelines/laboratory-based-human-  
embryonic-stem-cell-research-embryo-research-and-related-research-  
activities](https://www.isscr.org/guidelines/laboratory-based-human-embryonic-stem-cell-research-embryo-research-and-related-research-activities)..... 15

## INTRODUCTION

Appellant Francisco Silva (“Silva”) seeks a preliminary injunction to halt Respondents Ed Clay, Scott Nelson, and Deddrick Perry (“Respondents”) from using, or authorizing or causing others to use Silva’s stem cells. The cells derive from Silva and his wife genetically, as Silva harvested them from the umbilical cords of his two children. They also derive from Silva intellectually because he modified them to treat a variety of medical conditions. Respondents have taken Silva’s cells and—without Silva’s consent—continue to inject them into patients at a cross-border clinic in Tijuana operated by Respondents and CPI Management Group, LLC (the “Clinic”). Respondents profiteer handsomely from this misconduct; the Clinic generates more than **\$1,000,000 each week** from Silva’s cells.

This appeal presents substantial issues of first impression and public policy regarding a business’s ability to use an individual’s stem cells without obtaining written, informed consent. Pluripotent stem cells—stem cells that can be developed into virtually any cell or tissue type—can now be derived from nasal or oral mucosa, teeth, and blood. The *reductio ad absurdum* of Respondents’ theory is that a business can

simply pluck a used Kleenex from the school, curbside, or courtroom trash and use stem cells derived therefrom without any consent at all, let alone informed consent, from the source of those materials.

The district court rejected Silva's application for preliminary injunction against Respondents' use of his cells. It found, for Silva to succeed on a claim for conversion against Respondents, he had to persuade the Court that he entered a transaction with Respondents whereby he could withdraw his consent at any time. But the district court erred by finding a transaction must have occurred; it ignored the Clinic's operating agreement and assumed that the absence of documentary evidence of such a transaction supports the Respondents' ownership of the stem cells rather than Silva's ownership. To the contrary: stem cells should presumptively belong to their biological and intellectual source. Fundamental concepts of informed consent and medical ethics similarly require the treating entity—not the source individual—to demonstrate proof of consent for use an individual's biological material.

If the Court upholds the district court's order, then any individual could have their stem cells collected and exploited by unscrupulous businessmen without their consent. Then, the onus would lie on the

victim to prove that they did not consent to use of their stem cells. Such a rule flouts both longstanding Nevada public policy and established medical ethics, creating perverse incentives for businesses to take advantage of the public, especially the most vulnerable members of the population. Respectfully, the Court cannot endorse such a myopic view of biological commercialization. Informed, written consent lies at the foundation of modern medicine and related law. Further, the Court should reverse those portions of the district court's order that ignore Nevada law regarding parol evidence and LLC member liability. In sum, the Court should grant Silva's appeal, reverse the district court's order, and remand for further proceedings to reevaluate Silva's application in light of this Court's guidance.

### **JURISDICTIONAL STATEMENT**

The Supreme Court has appellate jurisdiction pursuant to NRAP 3A(b)(3) because Appellant timely appeals from an order refusing to grant an injunction. The appeal is timely pursuant to NRAP 4(a)(1) because the order issued on April 30, 2025, 2 AA 273; the written notice of entry of the order issued on May 5, 2025, 2 AA 282; and Appellant filed the Notice of Appeal on May 16, 2025, 2 AA 295.

## **ROUTING STATEMENT**

The Supreme Court should retain this matter pursuant to NRAP 17(a)(9) because it arose in business court.

## **STATEMENT OF THE ISSUES**

1. Whether a business can properly inject its customers with an individual's stem cells in the absence of informed, written consent from the source individual.
2. Whether an LLC can properly rely on extrinsic evidence to alter the terms of its operating agreement when the agreement contains an integration clause.
3. Whether members of an LLC remain liable for their own misconduct, even if acting on behalf of the LLC.

## STATEMENT OF THE CASE

### **A. Statement of Facts**

#### **1. The parties form CPI.**

Silva is a biologist while Respondents are businessmen. 1 AA 52–53. In 2021, Silva and Respondents formed CPI, a Nevada limited-liability company, as its sole members. 1 AA 52. Silva contributed \$250 for a 25% membership interest in CPI, and each of the other three Respondents contributed proportionate to their own membership interest. 1 AA 112. Specifically, Clay contributed \$375 for his 37.5% interest, Nelson contributed \$225 for his 22.5% interest, and Perry contributed \$150 for his 15% interest. *Id.* Each member received financial and voting rights with their membership interest. *Id.* No other contributions were made. *Id.*; see also 1 AA 87 (section 3.1 of the operating agreement, stating that the members’ capital contributions are listed on Exhibit A [1 AA 112]).

The members formed CPI for the purpose of operating a biotech business. 1 AA 86. CPI does business as the “Cellular Performance Institute,” widely known for its Tijuana Clinic, where it provides stem cell therapy to high-performance athletes and individuals with chronic pains. 1 AA 53. While Silva initially procured the stem cells that the

Clinic used for treatments, disagreements with Respondents culminated in Respondents purporting to expel Silva from CPI in 2024 and to strip him of his interest therein.<sup>1</sup> 1 AA 60–63. But Respondents never secured Silva’s consent for their use of his stem cells. 1 AA 64. Now, Silva wants Respondents to stop their continuing direct and indirect use of his stem cells. *Id.* Respondents refuse. 1 AA 64–65.

## **2. The Clinic exclusively uses Silva’s stem cells.**

The Clinic’s treatment exclusively relies on Silva’s stem cell lines, as well as processes that Silva developed for the duplication and injection of the stem cells produced from those lines. 1 AA 58–59. Silva developed the stem cell lines from the umbilical cords of his two children, which he harvested at the time of their births (“First Generation Cells”). 1 AA 58. From those First Generation Cells, he prepared five stem cell vials and provided them to the Clinic (“Second Generation Cells”). *Id.* Each of the vials can be duplicated multiple times in a process that generates billions of Third Generation Cells. *Id.* The Clinic then injects several millions of

---

<sup>1</sup> Issues relating to Respondents’ business torts against Silva are pending before this Court in a separate appeal, Supreme Court Case No. 91228. While both appeals involve the same parties, this appeal concerns only Silva’s request for a preliminary injunction based on Respondents’ conversion of Silva’s stem cells.

these Third Generation Cells into a single patient per treatment. *Id.* Patients pay tens of thousands of dollars per treatment and the Clinic treats hundreds of patients each month. 1 AA 59. Respondents make more than \$1,000,000 per week from the unauthorized use of Silva’s cells. 1 AA 173.

Respondents also advertise CPI’s relationship with Silva and his role in providing the Clinic with stem cells. 1 AA 54 (citing Cellular Performance Institute, “Curing Cancer Became an Obsession’ — CPI Stem Cells & The TAM Center”; last accessed October 21, 2025, <https://www.youtube.com/watch?v=faUXymrht2Y>). In marketing materials posted by CPI’s official YouTube account, Clay describes Silva as “one of the top cellular scientists, stem cell scientists in the world” and that “after he agreed to partner ... the stem cell aspect just blew up. We [CPI] are now the largest manufacturer of mesenchymal stem cells in the world. We’re making more stem cells than anybody, by far.” *Id.* Further, Silva’s stem cells have funded CPI’s cancer research and the laboratory that CPI built in Mexico. *Id.*

### **3. Respondents purport to expel Silva from CPI.**

After Silva partnered with Respondents the Clinic boomed in profitability. 1 AA 59. However, in 2024, Silva and Respondents' relationship deteriorated after Silva discovered financial and accounting irregularities at CPI. 1 AA 59–60. CPI's former Chief Financial Officer, hand-picked by Respondents, embezzled millions of dollars from CPI. 1 AA 60. Silva also discovered that Respondents used CPI funds to purchase property in other states without his knowledge. 1 AA 61. Silva attempted to investigate these improprieties, but Respondents shut him down at every turn. 1 AA 61–62.

The tension between Silva and Respondents reached its apogee in late 2024, when Respondents purported to terminate Silva as an officer of CPI and to strip his membership interest in CPI.<sup>2</sup> 1 AA 62–63. They did not purport to compensate Silva in any way for either action, nor did they redeem Silva's 25% membership interest, financial rights, or voting rights in CPI in any manner, let alone a manner permitted by CPI's Operating Agreement. 1 AA 63.

---

<sup>2</sup> While Silva disputes the legal effectiveness of Respondents' termination and revocation, those issues fall outside the scope of this appeal.

#### **4. Silva acts to protect his stem cells.**

After Respondents purported to expel Silva from CPI and the Clinic, Silva sought to stop Respondents from further use of his stem cells. 1 AA 64. In January 2025, Silva sent CPI and Respondents letters clarifying that he revoked any consent for the Clinic to use or duplicate the stem cell vials, or for the Clinic to continue injecting patients with the duplicated stem cells. 1 AA 64, 116–18. A week later, Respondents replied that Silva lacked any rights to the cells and rejected any obligation to cease using them. 1 AA 64–65. They did not cite any authority, legal or otherwise, nor did they identify any agreement between themselves or CPI and Silva that authorized the ongoing use of Silva’s cells. *Id.* However, after Silva initiated the underlying litigation, Respondents requested a meeting to discuss a “Material Purchase and Licensing Agreement” for Silva’s “IP assets.” 1 AA 121. Silva understood that request as an overture from Respondents to rectify the lack of consent to use the cells by attempting to purchase the stem cell vials, duplicated cells, and techniques required for duplication and injection. 1 AA 121. But by that point it was too late.

## **B. Relevant Procedural History and Rulings Presented for Review**

On January 10, 2025, Silva sued Respondents for, among other torts, converting his stem cells. 1 AA 1. On March 7, 2025, he filed the Verified First Amended Complaint, operative at the times relevant to this appeal. 1 AA 52. Concurrently, Silva applied for a preliminary injunction to prevent Respondents from using, or authorizing or causing others to use Silva's stem cells. 1 AA 119. On March 31, 2025, Respondents opposed Silva's application. 1 AA 136. On April 8, 2025, Silva replied in support. 1 AA 177. On April 15, 2025, the district court heard the application. 2 AA 244–72. On April 30, 2025, it denied the application in full. 2 AA 273–81. On May 5, 2025, it filed notice of entry of the order denying the application. 2 AA 282–94. Silva now appeals that denial. 2 AA 295.

## **SUMMARY OF THE ARGUMENT**

A stem cell clinic must obtain informed written consent from the source of the stem cells it injects into patients. The Clinic operated by Respondents never secured Silva's consent, but it continues to treat patients using Silva's stem cells after Silva made his lack of consent unmistakably clear. Respondents' conduct violates Nevada law, medical ethics, and multiple guidelines relating to the use of human stem cells in modern medicine. Yet when Silva requested that Respondents and the Clinic cease use of his stem cells, they refused. The district court below erred in finding that Respondents transacted for the use of Silva's stem cells, including by relying on parol evidence, as well as an incorrect view of LLC member liability.

Silva is entitled to an injunction. The stem cells belong to Silva, biologically and legally. Silva is likely to succeed on the elements of a conversion claim against Respondents who continue to wrongfully exert dominion over his stem cells. Respondents' profiteering from Silva's stem cells causes Silva great and irreparable harm, while Respondents admit that they will suffer no harm if forced to switch to an alternate source of stem cells. The balance of hardships and public interest also both favor

Silva. Respectfully, the Court should reverse the district court order denying Silva's application for preliminary injunction and remand this matter for further consideration before the district court.

### **ARGUMENT**

#### **A. This Court should review the legal issues presented by this appeal de novo.**

The district court “has discretion in determining whether to grant a preliminary injunction,” and this Court “will only reverse the district court’s decision when ‘the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact.’” *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015) (citation omitted). But “[i]n an appeal from a preliminary injunction,” the Court “reviews questions of law de novo.” *Id.*

While Silva challenges some of the district court’s clearly erroneous findings of fact, the primary issues posed by this appeal are all questions of law. The Court should determine, de novo, whether a stem cell clinic may inject third parties with an individual’s stem cells when the clinic lacks written, informed consent to use those stem cells. It should confirm that parol evidence cannot be used to alter the terms of a written operating agreement, particularly where it contains an integration

clause. It should confirm that LLC members remain liable for their own misconduct, even if acting on behalf of the LLC. And it should reverse the district court order denying the injunction.

**B. The Clinic may not use Silva’s stem cells without his informed, written consent.**

Medical ethics, public policy regarding consent, and Nevada law compel a single conclusion: Respondents and the Clinic cannot use Silva’s stem cells without Silva’s informed, written consent. Anyone profiting from another individual’s biological material must first obtain written, informed consent from the individual to do so. It is such a bedrock principle of medical ethics that nobody seriously challenges it—except Respondents.

This is because medical ethics plainly forbid such takings. “Human biological materials and their products may not be used for commercial purposes without the consent of the tissue donor.” AMA Code of Ethics, Op. 7.3.9, last accessed online on October 21, 2025, <https://code-medical-ethics.ama-assn.org/ethics-opinions/commercial-use-human-biological-materials>. The American Medical Association adds that physicians should “[s]hare profits from the commercial use of human biological

materials with the tissue donor in accordance with lawful contractual agreements.” *Id.*

The International Society for Stem Cell Research requires a similar approach. “Embryos, fetal tissue, and other cells and tissues should be used in research only if voluntary informed consent was obtained from the donors before the research commences. The informed consent process should be robust and document” various applications and potential uses. ISSCR 2025 Guidelines for Stem Cell Research and Clinical Translation, Guideline 2.3.2 (“Informed Consent for the Donation of Human Cells and Tissues”), last accessed online on October 21, 2025, <https://www.isscr.org/guidelines/laboratory-based-human-embryonic-stem-cell-research-embryo-research-and-related-research-activities>.

Even CPI’s advertisements and marketing materials referencing Silva or employing his likeness require his written consent. *See* NRS 597.790 (stating that each person has a right of publicity in their likeness enduring for their life plus 50 years, and that commercial use of such likeness requires written consent). While not directly applicable to stem cells, surely sound public policy places at least as great an interest

in the protection of an individual's unique biological material as in their name and likeness.

Furthermore, under Nevada law, even if Respondents *had* obtained Silva's informed, written consent, such consent is inherently revocable unless a valid, enforceable agreement expressly provides otherwise. "Informed consent" under Nevada law (*see* NRS 629.181) includes the right to withdraw consent. (*See generally* NRS 629.161(2)). There is no provision in Nevada law that makes such consent irrevocable. Indeed, Nevada's Consumer Health Data Privacy Act, which reflects Nevada's ethical norms over control of health and genetic information, includes a right to withdraw consent. *See generally* NRS 603A.535. Neither CPI nor Respondents had consent to use Silva's stem cells, and attempted to obtain his consent only after Silva initiated this litigation. 1 AA 121. Silva did not grant it to them. *Id.*

While Silva argued below that the Clinic bore the burden of demonstrating that it obtained consent to use his stem cells, the district court neglected to address the Clinic's failure to provide proof of consent. *See generally* Order, 2 AA 273–81. In fact, the district court came to the opposite conclusion—that Silva had to present sufficient evidence that he

entered a transaction with Respondents whereby he could withdraw his consent. 2 AA 275.

The district court's reasoning is painfully flawed: while the Clinic could easily prove consent if it had obtained it, Silva cannot prove lack of consent except by expressly disclaiming and revoking any such consent, which he did to no avail. 1 AA 64, 116–18. This Court should reverse the district court's legal error. Taken to its logical end, a wrongdoer could take a victim's Kleenex from the trash to develop a commercially successful stem cell line, then allege it had consent to shift the burden to the victim to prove no consent was given or such consent was limited or subject to revocation. The district court itself noted the possibility that someone could take genetic material without permission while the victim slept, 2 AA 263, but placed the burden on the victim (Silva) to prove the scope and limits of the alleged consent. No individual should be presumed to have given unlimited, irrevocable consent to use biological materials in the absence of a written agreement to the contrary. Nor is the undersigned aware of any area of the law—let alone the sensitive area of an individual's biological material—that such a presumption has been permitted.

While Silva bears the burden of demonstrating his entitlement to an injunction, he cannot and should not bear the burden of proving that Respondents lack consent to use his stem cells—otherwise, any victim of biological theft would be at the mercy of the bad actor. Such a rule would create perverse incentives for businesses to take advantage of the public generally, and especially those most vulnerable to exploitation.

Public policy and established law require the treating entity to bear the burden of proving that it obtained the biological material lawfully, including obtaining written, informed consent for its use. This Court should uphold those policy considerations and hold that, in the absence of informed, written consent, neither the Clinic nor Respondents may continue to use Silva’s stem cells.

**C. The Clinic never obtained Silva’s consent, nor did Respondents and Silva transact for the Clinic’s use of Silva’s stem cells.**

The district court erred by finding “a real dispute of fact as to the terms of the underlying transaction” between Silva and Respondents “through which [Silva] provided the stem cells and cell duplication processes to CPI.” 2 AA 275. No such transaction occurred. Worse, the district court created this specter out of inadmissible parol evidence.

Faced with the mountain of evidence, biology, and law all demonstrating that Silva owns the stem cells, Respondents desperately and disingenuously claimed, for the first time in the underlying briefing on the application, that Silva contributed his stem cells to them for a membership interest in CPI. 1 AA 150. Despite this argument's legal impossibility and Respondents' utter absence of supporting evidence, this is the argument that the district court credited. 2 AA 275–76. It found that there was some unknown and undescribed transaction whereby Silva exchanged the cells for his 25% membership interest in CPI. *Id.* This finding constitutes clear error as a matter of fact and abuse of discretion as a matter of law.

Factually, the district court failed to identify (and Respondents did not provide) evidence of any transaction in exchange for the stem cells. It did not find any offer or acceptance, the terms of such a transaction, or even when or how the transaction occurred. The district court's failure to identify the essential terms of such a deal reflects the truth: that the alleged transaction never happened. Respondent Nelson's own declaration proves that there was no transaction. He states: "**Plaintiff volunteered to provide initial vials** of umbilical cord mesenchymal

stem cells (UCMSC) to the lab.” 1 AA 168–69 (emphasis added). “Volunteered” is an accurate word here, as Silva originally allowed CPI to use his stem cells due to his personal and financial interests in seeing the business flourish. 1 AA 180. This gratuitous volunteering does not create a binding transaction, nor can it replace written, informed consent.

To overcome the absence of evidence of any transaction, the district court turned to inadmissible parol evidence. It relied on Respondents’ **argument** that Silva contributed his stem cells in exchange for a membership interest in CPI. 2 AA 275. That argument contradicts CPI’s Operating Agreement by interpolating prerequisites for Silva’s membership interest in CPI that never existed. For these reasons, the Court should hold that Nelson’s declaration is parol evidence and decline to consider it.

“The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001). CPI’s Operating Agreement contains a merger clause stating that it “embodies the entire understanding and agreement among the parties pertaining to the

subject matter hereof,” and that all prior or contemporaneous representations or understandings of the parties, “whether written or oral, are superseded by this Agreement.” 1 AA 109. Therefore, CPI’s Operating Agreement constitutes both a valid contract and the entire agreement as to each CPI member’s expected contributions to the LLC. Any extrinsic evidence to the contrary constitutes parol evidence.

CPI’s Operating Agreement provides that Silva and Respondents pledged the items listed on Exhibit A to the Operating Agreement as their capital contributions. 1 AA 87. Exhibit A to the Operating Agreement lists money and only money, as each member contributed a set sum in proportion to their membership interest. 1 AA 112. It does not mention stem cells, nor does it contemplate the members contributing any other tangible or intellectual property. *Id.* And it is governed by Nevada law, which requires LLCs to fastidiously record capital contributions. LLCs must keep “[t]rue and complete records regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future[.]” NRS 86.241(2)(d).

CPI's records regarding the capital contributions of each member, even those "which each member has agreed to contribute in the future[.]" are silent on stem cells. 1 AA 87; 112. To the contrary, each member contributed \$10 per percentage point of membership interest in CPI: Silva contributed \$250 for 25%, Clay \$375 for 37.5%, Nelson \$225 for 22.5%, and Perry \$150 for 15%. 1 AA 112. No member contributed any property beyond cash. *Id.* If Silva contributed his stem cells as capital to CPI, then CPI would have had to keep a true and complete record of such a transaction. NRS 86.241(2)(d). But no such record exists (whether in CPI's Operating Agreement or in any other document), nor is there any evidence that the parties ever contemplated such a transaction.

However, the district court determined that Respondents' argument could somehow overcome the plain and binding language of CPI's Operating Agreement. 2 AA 275. While Silva asserted that Respondents' argument constituted inadmissible parol evidence below, 1 AA 187–88, the district court ignored the issue completely. 2 AA 274–78. This legal error vitiates CPI's Operating Agreement. It also violates Nevada law by failing "to give the maximum effect to the principle of freedom of contract and enforceability" that is due when interpreting any

LLC operating agreement. NRS 86.286(4)(b). If parties can wield parole evidence to fashion new terms for membership in an LLC years after they adopt an operating agreement, no party can have confidence in the terms of any contract. For that reason, the Court cannot consider Respondents' arguments regarding Nelson's declaration, nor should it defer to the district court's baseless finding of a "transaction" regarding Silva's stem cells.

**D. Respondents are individually liable for converting Silva's stem cells.**

The district court further erred by finding that, even if Silva could demonstrate that Respondents took Silva's stem cells without his consent, Silva could not bring a conversion claim against them in their individual capacities. 2 AA 277. Specifically, it determined that a member of an LLC cannot be held liable for the acts of the entity. *Id.* While Silva agrees that a member of an LLC is not *per se* liable for the acts or omissions of an LLC, the district court erred by failing to address the evidence Silva provided demonstrating that Respondents are the individual actors converting Silva's stem cells. For example, in *Gardner v. Henderson Water Park, LLC*, this Court required a plaintiff to identify "how any individual act or omission by the member-LLCs contributed to

[plaintiff's] injuries.” 133 Nev. 391, 393, 399 P.3d 350, 351 (2017). It indicated that a member of an LLC “remains responsible for his or her acts or omissions to the extent those acts or omissions would be actionable against the member ... if that person were acting in an individual capacity[.]” *Id.* (quoting *Cortez v. Nacco Material Handling Grp., Inc.*, 356 Or. 254, 337 P.3d 111, 119 (2014)).

To be clear, Silva’s conversion claim against Respondents lies for their individual acts and/or omissions in exerting wrongful dominion, or authorizing or causing others to exert wrongful dominion, over Silva’s stem cells. Respondents individually use Silva’s stem cells, including for personal facial, discal, and penile injections. 1 AA 180. They authorize the continued duplication and use of Silva’s stem cells. 1 AA 179–80; 203–09. They own and manage CPI, which operates the Clinic. 1 AA 112. The text messages that Silva provided to the district court evidence Respondents’ personal involvement and control over Silva’s stem cells. 1 AA 186 (citing 1 AA 203–09). And to the extent that Respondents control or cause other individuals at the Clinic to use Silva’s cells without Silva’s consent, Respondents may remain liable for their conversion under an agency theory. *See Winchell v. Schiff*, 124 Nev. 938, 944,

193 P.3d 946, 950 (2008) (affirming defendant/principal’s liability for nonparty/agent’s exertion of dominion over plaintiff’s property). Respondents cannot escape liability for converting Silva’s stem cells by hiding behind an LLC; their own wrongful acts and omissions expose them individually.

**E. The district court erred by denying Silva’s application.**

Silva is likely to succeed against Respondents on the merits of his claim for conversion. He faces great or irreparable harm every time Respondents use or authorize the continued use of his stem cells. And the balance of equities and public interest both sharply support an injunction. A “preliminary injunction is proper where the moving party can demonstrate that it has a reasonable likelihood of success on the merits and that, absent a preliminary injunction, it will suffer irreparable harm for which compensatory damages would not suffice.”

*Excellence Cmty. Mgmt.*, 131 Nev. at 350–51, 351 P.3d at 722.

**a. The district court abused its discretion by finding Silva was unlikely to succeed on the merits of his claim for conversion.**

The complaint and evidence before the district court demonstrated that Silva was likely to succeed on the merits of his claim for conversion

against Respondents. “Conversion is ‘a distinct act of dominion wrongfully exerted over another’s personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.’” *Evans v. Dean Witter Renyolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) (quoting *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1958)). It is “an act of general intent, which does not require wrongful intent and is not excused by care, good faith, or lack of knowledge.” *Id.* Under this formulation, Silva must demonstrate three elements: (1) that the stem cells are his personal property; (2) that Respondents committed a distinct act of dominion; and (3) that such dominion was wrongfully exerted in denial of, or inconsistent with Silva’s title or rights therein or in derogation, exclusion, or defiance of such title or rights. Silva easily clears each element.

### **1. The cells are Silva’s personal property.**

The stem cells belong to Silva alone. They undisputedly derive from Silva biologically, as he extracted them from his wife’s umbilical cords and testing would confirm that they contain her mitochondria. 1 JA 178. The only other entity with any conceivable claim to the stem cell lines is

Silva's former employer, BioRestorative Therapies, Inc. But BioRestorative has expressly confirmed Silva's ownership in writing. 1 JA 243. Even if the Court considers the Second Generation Cells to be inventions derived from Silva's master cell line, absent any agreement to the contrary, courts make "the presumption that the inventor owns his invention[.]" *Teets v. Chromally Gas Turbine*, 83 F.3d 403, 407 (Fed. Cir. 1996). Silva created the cells "through [his] own [proprietary] process that has never been shared with anyone." 1 AA 178. And Silva did not enter any contrary agreement with anyone, and certainly not with Respondents. 1 AA 178. Therefore, the stem cells are Silva's both biologically and legally. No other party can demonstrate that he ever transferred his interest to them.

By contrast, Respondents hold no property right to Silva's stem cells. "[A] thief acquires no title to the property which he steals[.]" *Robinson v. Goldfield Merger Mines Co.*, 46 Nev. 291, 291, 206 P. 399, 401 (1922). Respondents stole Silva's stem cells by retaining them, using them, and continuing to duplicate them for further injections into third parties. 1 AA 120–21. Several indicia of Respondents' own recognition that the cells belonged to Silva are highlighted below.

First, on February 19, 2025—weeks after Silva initiated the underlying lawsuit and claimed that Respondents were converting his stem cells—Respondents believed the stem cells were Silva’s because they tried, unsuccessfully, to license use from Silva. 1 AA 198. CPI and the Clinic’s Head of Intellectual Property sought to “schedule time to discuss the IP assets which are to be included in [an] agreement with Mr. Silva and the ownership lineage thereof.” *Id.* Respondents would have had no reason to license something that they already owned; their stance on Silva’s ownership has morphed only due to prolonged litigation.

Second, when the parties were still on amicable terms, Respondent Nelson created t-shirts for the Clinic that said, “Francisco’s finest cells.” 1 AA 206. This slogan speaks for itself.

Third, the Clinic’s CEO texted Silva updates regarding his cells, including a message that “Your [Silva’s] stuff is goin like hotcakes amigo!! [pancake emoji] [cheers emoji] [fire emoji]” 1 AA 207. This reference to Silva’s cells uses “your” possessively; the Clinic’s CEO could have used “our” or “CPI’s” in reference to the cells had the Clinic owned the cells. But he did not.

Fourth, there is no evidence of any transaction between Silva and Respondents regarding consent or authorization to use Silva's stem cells. While the district court erred in relying upon parol evidence to form the conclusion that a transaction must have existed, 2 AA 275, it further erred by misinterpreting the supposed "evidence" of the transaction (which, again, should not even be considered as it is parol evidence). Respondents relied on Nelson's declaration in arguing that Silva exchanged cells for his membership interest. 1 AA 150 (stating that Silva "provided the original cell vials ... as part of his contribution in consideration for his 25% membership interest in CPI" and citing Nelson's declaration at paragraph 13). Nelson used the word "volunteered" regarding the stem cells. 1 AA 168–69. He did not declare that Silva contributed the vials in exchange for membership interest. 1 AA 169. Nelson claimed that Silva pledged various patents and job duties for the membership interest, but Nelson never referenced cells. 1 AA 168. This simple mistake stems from Respondents' mischaracterization of Nelson's own testimony, and the district court's failure to review the actual evidence instead of crediting Respondents' version of it.

Fifth, even if the district court were somehow correct about a transaction existing despite the absence of evidence, it should have voided the transaction as illegal. Nevada criminalizes the exchange of stem cells for consideration. It is a misdemeanor to “knowingly sell, acquire, receive or otherwise transfer for valuable consideration any human organ for use in human transplantation.” NRS 201.460(1). The term “human organ” includes any part of the human body except blood. NRS 201.460(2)(a). Membership interest in an LLC is surely “valuable consideration.” Therefore, to the extent that the district court found that Silva and Respondents transacted to exchange stem cells for a membership interest in CPI, the district court also should have voided such a transaction as illegal. See *Martinez v. Johnson*, 61 Nev. 125, 125, 119 P.2d 880, 881 (1941) (explaining that contracts made in violation of a state statute are void).

In sum: the stem cells are Silva’s property alone. Any notion that he transacted with Respondents or CPI regarding the stem cells is not just unsupported but is affirmatively contradicted by the evidence. It is also impermissible under the law.

**2. Respondents committed distinct acts of dominion over Silva’s stem cells.**

Respondents assuredly exert dominion over Silva’s stem cells by using, and authorizing or causing others to use the stem cells. As described at length above, they treat themselves and their close friends and family with Silva’s cells; they also manage the Clinic’s treatment of hundreds of patients per year using Silva’s cells. And their intent or motive for doing so does not matter (though they pocket millions of dollars monthly through converting Silva’s cells). *See Winchell*, 124 Nev. at 944, 193 P.3d at 950 (stating that “liability for conversion is predicated upon general intent, which does not require wrongful intent and is not excused by care, good faith, or lack of knowledge”) (cleaned up).

**3. Respondents’ wrongful exertion of dominion over Silva’s property denies Silva’s title or rights to the stem cells.**

Prior to seeking a preliminary injunction, Silva demanded that Respondents and the Clinic cease all use of his stem cells. 1 AA 116–18. Respondents rejected any obligation to stop and based on Silva’s observations, continue to treat patients with Silva’s stem cells. 1 AA 121. This Court has held that “conversion may be established by the refusal of a demand for the property[.]” *Blige v. Terry*, 139 Nev. 607, 617,

540 P.3d 421, 431 (2023). Such is the case here, where Silva’s ownership claim to the stem cells clearly defeats Respondents’ ownership claim—especially as Respondents cannot identify a shred of cognizable evidence to indicate that Silva transferred ownership of the stem cells to them and Silva has clearly withdrawn any consent to use his cells.

An individual’s ownership over their own stem cells extends the right to deny others from commercializing use of those stem cells. “The right to exclude others has been held to constitute a fundamental element of private property ownership. The power to exclude has traditionally been considered one of the most treasured strands in an owner’s bundle of property rights.” *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 412, 23 P.3d 243, 249 (2001) (cleaned up). Respondents’ ongoing use denies Silva the full panoply of rights that he ought to enjoy as the sole owner of his stem cells. Therefore, their wrongful exertion of dominion over Silva’s stem cells interferes with Silva’s property rights in the cells sufficient to establish a likelihood of success on the merits for conversion.

**b. Silva suffers great and irreparable harm due to Respondents’ conversion.**

Silva suffers irreparable harm from Respondents’ continued misconduct because he cannot control who uses his cells or how they are

used. Silva also suffers from the ongoing deprivation of the aforementioned right to exclude. As long as Respondents continue to use Silva's stem cells, he cannot exclusively license his cells to other entities that might make use of them. Silva's cells are cutting-edge biotechnology that have proven effective in treating patients. Respondents themselves implicitly acknowledge the value of Silva's cells in their refusal to discontinue their use. As companies in the United States develop further technology and vie for market share, exclusive use of Silva's stem cells is extremely valuable. But Respondents' actions prevent Silva from capitalizing on the opportunity to profit from his own stem cells. These denials of property rights always constitute irreparable harm.

Courts have also found that lost business opportunity may constitute irreparable harm. *See, e.g., Google, Inc. v. United States*, 95 Fed. Cl. 661, 679 (2011). "Evidence of lost business opportunities can be sufficient to show irreparable harm." *ELT Sight, Inc. v. EyeLight, Inc.*, No. 19-CV-05545-JAK-RAO, 2020 WL 7862134, at \*28 (C.D. Cal. Aug. 28, 2020). "The best case for obtaining a permanent injunction often occurs when the plaintiff and defendant are competing in the same market[.]" *SynQor, Inc. v. Artesyn Techs., Inc.*, No. 07-CV-497-TJW-CE,

2011 WL 238645, at \*3 (E.D. Tex. Jan. 24, 2011). While Silva presently seeks a preliminary injunction rather than a permanent one, the reasoning applies with equal force to the present circumstances. Silva simply cannot compete, and is excluded from any exclusive licensing opportunity, in the same marketplace as CPI or Respondents so long as they continue to use Silva's stem cells. This constitutes both great and irreparable harm, as the window for Silva to capitalize closes with each passing day.

**c. The balance of equities and public interest both sharply favor Silva.**

“In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest.” *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). While Silva faces immense hardship if Respondents' use of his stem cells continues unabated, Respondents have admitted they face virtually no hardship at all.

In opposing Silva's application before the district court, Respondents argued that the “five original cell vials are not unique or otherwise unobtainable without [Silva's] involvement” and that the Clinic could “acquire similar cells easily and at little or no cost.”

1 AA 151. Perry declared under oath that “such [] stem lines are easily accessible by medical facilities and available for a low cost.” 1 AA 169. This admission both begs the question as to why Respondents refuse to find a separate source of stem cells and proves that Respondents will not face significant hardship if forced to ethically source stem cells from a consenting donor. Nor will the Clinic, its employees, or its patients face hardship, as the Clinic can ostensibly continue its treatments with “similar cells” that it could acquire “at little or no cost.” 1 AA 151. Because Silva faces great harm while Respondents, the Clinic, and its customers may continue to proceed with business as normal with alternative stem cells, the balance of hardships tips sharply toward Silva.

Finally, the public interest weighs heavily in favor of restraining Respondents from taking and injecting stem cells into third parties despite actual notice that they lack consent or other authorization to use them. Public interest concerns presumably animate the Legislature when it enacts statutes. *Clark Cnty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1153, 924 P.2d 716, 721 (1996). And the Legislature enacted NRS 629 and drafted SB 370 Sec 22.3.d, enshrining informed, written consent as the backbone of Nevada’s public policy in this area. The public surely

lacks any interest in allowing commercial actors to profit from an individual's stem cells without informed, written consent. But the public retains a great interest in ensuring that citizens' property rights and bodily integrity are respected.

Ultimately, Silva is likely to succeed on the merits of his claim for conversion against Respondents, faces great or irreparable harm from their ongoing use of his stem cells, and the balance of equities and public interest weigh in his favor. These showings compel reversal.

### **CONCLUSION**

Respectfully, the Court should reverse the district court's order denying Silva's application for a preliminary injunction. He lacks any other recourse to stop Respondents and the Clinic from using his stem cells without his consent. The district court erred when it assigned the burden of proving a lack of consent to Silva, rather than finding that Respondents must demonstrate informed consent themselves. It further erred when it considered inadmissible parol evidence to alter the terms of CPI's Operating Agreement. It erred again by finding that Respondents could not be liable for converting Silva's stem cells due to their roles as Members of CPI. Those errors compounded in the district

court's analysis regarding the likelihood that Silva would succeed on his claim for conversion. But medical ethics, public policy, and Nevada law all align; they compel a stem cell clinic to demonstrate that it obtained informed and written consent from a donor prior to commercializing the individual's stem cells. CPI failed to do so here, and Respondents continue to authorize CPI to treat patients using unethically sourced stem cells, Silva's cells.

BY: /s/ Xyzlo Lee  
V.R. Bohman, Esq.  
Nevada State Bar No. 13075  
Xyzlo Lee, Esq.  
Nevada State Bar No. 16912  
SNELL & WILMER LLP  
1700 S Pavilion Center Dr., Ste 700  
Las Vegas, NV 89135  
Phone: (702) 784-5200  
Fax: (702) 784-5252  
vbohman@swlaw.com  
xlee@swlaw.com

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that the **APPELLANT'S OPENING BRIEF** complies with the typeface and type style requirements of NRAP 32(a)(4)–(6), because this brief has been prepared in a proportionally spaced typeface using a Microsoft Word 2010 processing program in 14-point Century Schoolbook type style. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because it contains approximately 7,891 words.

Finally, I hereby certify that I have read the **APPELLANT'S OPENING BRIEF**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 21st day of October 2025.

BY: /s/ Xyzlo Lee  
V.R. Bohman, Esq.  
Nevada State Bar No. 13075  
Xyzlo Lee, Esq.  
Nevada State Bar No. 16912  
SNELL & WILMER L.L.P.  
1700 S Pavilion Center Dr., Ste 700  
Las Vegas, NV 89135  
Phone: (702) 784-5200  
Fax: (702) 784-5252  
vbohman@swlaw.com  
xlee@swlaw.com

## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, on October 21, 2025, I caused to be served a true and correct copy of the foregoing **APPELLANT'S OPENING BRIEF** by the method indicated:

- BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the following:

Jeffery A. Bendavid, Esq.  
Jacqueline Vokoun, Esq.  
**BENDAVID LAW**  
7310 Peak Drive, Ste. 150  
[jbendavid@bendavidfirm.com](mailto:jbendavid@bendavidfirm.com)

[jvokoun@bendavidfirm.com](mailto:jvokoun@bendavidfirm.com)  
Peter S. Christiansen, Esq.  
Whitney Barrett, Esq.  
**CHRISTIANSSEN TRIAL LAWYERS**  
710 S 7<sup>th</sup> Street  
Las Vegas, NV 89101  
[pete@christianssenlaw.com](mailto:pete@christianssenlaw.com)  
[wbarrett@christianssenlaw.com](mailto:wbarrett@christianssenlaw.com)

Aubrey B. Harwell III, Esq. (*PHV pending*)  
**ADAMS AND REESE LLP**  
1600 West End Avenue, Suite 1400  
Nashville, TN 37203  
[trey.harwell@arlaw.com](mailto:trey.harwell@arlaw.com)

*Attorneys for CPI Management Group, LLC,  
and Defendants Clay, Nelson, and Perry*

/s/ Joanna Fung  
An Employee of Snell & Wilmer L.L.P.