IN THE SUPREME COURT FOR THE STATE OF NEVADA

FRANCISCO SILVA, AN INDIVIDUAL, Appellant, vs. ED CLAY, AN INDIVIDUAL; SCOTT NELSON, AN INDIVIDUAL; DEDDRICK PERRY, AN INDIVIDUAL; AND CPI MANAGEMENT GROUP, LLC, A NEVADA LIMITED LIABILITY COMPANY Respondents.	Electronically Filed Dec 19 2025 02:58 PM Elizabeth A. Brown Clerk of Supreme Court **Supreme Court Case No. 90651** Dist. Ct. Case No. A-25-909767-B Appeal from the Eighth Judicial District Court

RESPONDENTS' ANSWERING BRIEF

JEFFERY A. BENDAVID, ESQ., Nevada Bar No. 6220
JACQUELINE VOKOUN, ESQ., Nevada Bar No. 16400
BENDAVID LAW
7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128
(702) 385-6114

PETER R. CHRISTIANSEN, ESQ., Nevada Bar No. 1656
WHITNEY J. BARRETT, ESQ., Nevada Bar No. 13662
CHRISTIANSEN TRIAL LAWYERS
710 S 7th Street
Las Vegas, Nevada 89101
(702) 240-7979

Attorneys for Respondents

Docket 90651 Document 2025-55358

NRAP 26.1 DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal:

Respondents are not persons or entities requiring disclosure pursuant to NRAP 26.1(a).

Jeffery A. Bendavid, Esq. and Jacqueline Vokoun, Esq. of Bendavid Law and Peter R. Christiansen, Esq. and Whitney J. Barrett, Esq. of Christiansen Trial Lawyers have appeared and/or are expected to appear on behalf of Respondents.

NRAP 28.2 CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 2511 in Size 14 Times New Roman.

2. I further certify that this brief complies with type-volume limitations of NRAP 32(a)(7)(A)(ii) because it is proportionately spaced, has a typeface of 14 points or more, and contains 10,520 words.

3. Finally, I hereby certify that I have read this appellate 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, including NRAP 28(e)(1), if applicable, 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 19th day of December 2025.

/s/ Jeffery A. Bendavid, Esq.

Jeffery A. Bendavid
Bendavid Law
7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128
(702) 385-6114
jbendavid@bendavidfirm.com

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I. STATEMENT OF THE ISSUES ON APPEAL

1. Whether the district court abused its discretion in concluding that Silva failed to present sufficient evidence to establish a likelihood of success on the merits of his conversion claim against the Member Respondents and irreparable harm warranting injunctive relief.

II. STATEMENT OF THE CASE

A. Relevant Facts

Prior to the formation of CPI, Ed Clay ("Clay"), Scott Nelson ("Nelson"), and Deddrick Perry ("Perry") (together the "Member Respondents") operated the Centro Hospitalario Internacional del Pacifico, S.A., now known as the Translational Advanced Medical Center (the "TAM Center") in Tijuana, Mexico. 1 AA140. Over a ten-year period, the Member Respondents developed the TAM Center into a world-class medical institution employing 16 PhD scientists, 28 medical doctors, and 16 specialists. *Id.*

In 2018, the Member Respondents secured a separate facility in Tijuana to explore offering stem cell operations and treatments (the "Clinic"). *Id.* The Clinic, an entity organized under Mexican law and distinct from both the Member Respondents and CPI Management Group, LLC ("CPI"), obtained a cellular manufacturing license from Mexico's Federal Committee for Protection from Sanitary Risks in January 2020. *Id.*

In 2021, Appellant Francisco Silva ("Silva") approached the Member Respondents with a proposed transaction wherein he would contribute certain assets to support the Clinic's stem cell operations. Those proposed contributions to the Clinic included ownership rights to certain patents he purported to own relating to the extraction and growth of stem cells derived from umbilical cords, in-person monthly training, policy and training materials, and several vials of frozen stem cells for use in his supposedly patented processes. In exchange, Silva sought a 25% interest in the management entity that Member Respondents planned to form to manage the stem cell operations. *Id.*; *see also* 1 AA123 ("Silva contributed the scientific know-how and biological material necessary for stem cell treatments"). Silva's contribution of the frozen cell vials was unconditional. 1 AA142. The parties did not agree, nor did Silva indicate, that the Clinic would not own the frozen cell vials upon contribution or that Silva could unilaterally withdraw his consent to their use at any time. *Id.*

According to Silva's First Amended Verified Complaint ("FAVC"), Silva claims that he created and owns the "master" stem cell lines derived from his children's umbilical cords. 1 AA058. He further alleges that the five (5) vials of frozen stem cells he personally delivered to the Clinic "[came] from the 'master' cell lines" he created. *Id.* Prior to proposing the transaction with Member Respondents, Silva sold vials derived from the same cell line to other medical facilities and biotechnology

companies. 1 AA142. Silva also showed Member Respondents a freezer containing a stock of additional vials of cells allegedly derived from the "master" cell line *Id.* Based on this existing inventory, Silva assured Member Respondents that the vials created from his "master" cell line would never be depleted and represented that he could supply the Clinic with additional cells from the same umbilical cord if needed. *Id.*

On June 29, 2021, Member Respondents and Silva formed CPI Management Group, LLC, a Nevada limited liability company ("CPI") to <u>provide management and marketing services</u> to multiple entities associated with the Clinic. *Id.* At CPI's kickoff meeting on June 28, 2021, Silva committed to completing fourteen (14) specific action items, including providing Scientific Advisory Board member lists, stem cell culture protocols, laboratory work descriptions, standard operating procedures, lists of necessary reagents and consumables, information regarding natural killer cells, and proposed visit dates for monthly in-person training of laboratory staff. *Id.*

The Member Respondents were optimistic and excited about CPI's future and Silva's involvement. *Id.* Those feelings were quickly stifled, however, as Silva began to display a pattern of unreliable and unethical behavior. *Id.* Despite his promise to provide monthly in-person training, Silva traveled to the Clinic only a handful of times during his tenure with CPI, remaining for just a few days on each occasion. 1

AA143. Silva never created the promised standard operating procedure. *Id.* As a result, the Clinic staff, drawing on their knowledge and experience with stem cells, developed a comprehensive process in the absence of the training Silva promised to provide. *Id.* Moreover, Silva disclosed for the first time in July of 2022 that he had previously been involved in the illegal sale of aborted fetal tissue. *Id.* The Member Respondents were both shocked and displeased that Silva had not disclosed this information prior to the formation of CPI. *Id.*

Notwithstanding Silva's absenteeism, CPI managed to flourish under the management structure designed and implemented by Member Respondents and through the diligent work of the Clinic staff. *Id.* Silva financially benefitted from CPI's success and was compensated as a CPI member despite his failure to fully contribute or perform as promised. *Id.* Over time, however, Silva's lack of competence and follow-through began to negatively affect CPI's management of the Clinic, resulting in delays, cost overruns, and interruptions in patient treatment. *Id.*

The Member Respondents also learned that Silva had misrepresented material facts in order to induce them to grant him a 25% membership interest in CPI. *Id.* For instance, in 2021, Silva represented to Member Respondents that his involvement with CPI and the Clinic did not conflict with his obligations as Vice President, Director, and employee of, Bio-Restorative Therapies, Inc. ("BRTX"), a publicly traded company. *Id.* The Member Respondents later discovered that Silva had

renewed his contract with BRTX in 2021 and was subject to non-compete and intellectual property assignment clause that prohibited his work with CPI. *Id.* Silva concealed his ongoing obligations to BRTX and simultaneously drew a salary from both CPI and BRTX for three years, despite his activities with CPI being expressly barred by his contract with BRTX. 1 AA144.

In March 2024, Respondent Nelson asked Silva to provide a link to the patents Silva had claimed to own and intended to contribute to the Clinic. *Id.* Rather than identifying any patents, Silva responded by providing links to several "studies." *Id*. In June 2024, Clinic staff discovered that a competitor was using the same hypoxic stem cell process Silva had previously represented he owned. *Id.* Nelson again requested proof of Silva's patent ownership so the Clinic could assure current and prospective patients of the Clinic's unique process. *Id.* Silva stated he would provide links to his alleged patents to "the team," but never did. *Id.*

As the Member Respondents started closing in on the fact that Silva had fraudulently represented his interests in the patents, Silva attempted to recast his position. *Id.* In a November 11, 2024, email, Silva proposed a licensing agreement under which he demanded 5% of CPI's revenue for items and processes he agreed to contribute as part of the consideration for his 25% membership interest in CPI. *Id.* Notably, this proposed "licensing agreement" did not include any of the patents Silva had originally and fraudulently represented to own outright. *Id.* In light of Silva's

repeated failures and the discovery that he held no ownership interest in the promised patents, CPI terminated Silva's employment on November 21, 2024, and redeemed his membership interest on December 18, 2024. *Id.*

On January 10, 2025, the same day that Silva initiated the underlying litigation, Silva sent a letter addressed solely to CPI purporting to "withdraw his consent" to CPI's use of the frozen stem cell vials he had personally delivered to the Clinic, as well as the cells manufactured by the Clinic for patient treatment. 1 AA144-45. Silva did not identify any legal or contractual basis for his asserted ability to unilaterally "withdraw his consent," nor did he address the letter to either the Clinic or Member Respondents. 1 AA145; 1 AA116-17.

B. PROCEDURAL HISTORY

On March 7, 2025, Silva filed his First Amended Verified Complaint ("FAVC") against Member Respondents. 2 AA301. The FAVC asserted sixteen (16) causes of action, including thirteen (13) claims asserted directly by Silva against Member Respondents and two (2) claims asserted derivatively against Member Respondents on CPI's behalf. 1 AA065-77. Silva did not assert any claims directly against CPI, which he named solely as a nominal defendant. *Id.* That same day, Silva filed his Application for Preliminary Injunction based exclusively on his conversion claim against the Member Respondents in their individual capacities. 2 AA301; 1 AA128.

On April 15, 2025, the district court held a hearing on Silva's Application for Preliminary Injunction. 2 AA244. At the conclusion of the hearing, the court announced its decision denying the Application, finding that Silva failed to demonstrate either a likelihood of success on the merits of his conversion claim or irreparable harm in the absence of injunctive relief. 2 AA270. Notice of the Court's Order Denying Silva's Application for Preliminary Injunction was entered on May 5, 2025, and Silva filed the instant appeal on May 16, 2025. 2 AA306-07.

Prior to the entry of the order denying injunctive relief, the Member Respondents moved to dismiss the FAVC, including the conversion claim upon which Silva's Application for Preliminary Injunction was based. 2 AA302. On July 18, 2025, the district court issued its order on the Member Respondents' Motion to Dismiss. 1 RA001. While the district court held Silva's conversion claim in abeyance pending the resolution of the instant appeal, it clarified aspects of its prior ruling on the Application for Preliminary Injunction. 1 RA020-21. The district court reiterated that neither the allegations contained in the FAVC nor the evidence Silva presented in support of his Application for Preliminary Injunction demonstrated that Member Respondents converted Silva's property. *Id.*

Following the district court's decision on the Motion to Dismiss and the filing of this appeal, Silva filed his Second Amended Verified Complaint ("SAVC") on August 18, 2025. 1 RA109. The SAVC superseded the FAVC and materially altered

Silva's claims. 1 RA031-54. The FAVC asserted sixteen (16) causes of action, including thirteen (13) claims asserted directly against Member Respondents and two (2) derivative claims on CPI's behalf, with CPI named only as a nominal defendant. 1 AA065-77. In contrast, the SAVC asserts only four (4) causes of action, including a conversion claim asserted directly against both Member Respondents and CPI. 1 RA044-52.

III. SUMMARY OF ARGUMENT

The instant appeal must be dismissed as moot because Silva's SAVC materially altered, and entirely superseded, the FAVC upon which Silva's Application for Preliminary Injunction is based. By significantly revising his factual allegations and adding CPI as a new defendant to the conversion claim underpinning the injunction request, Silva rendered the FAVC inoperative. As the district court's order denying Silva's Application for Preliminary Injunction was based on the now inoperable and irrelevant FAVC, a preliminary injunction based on a nonexistent claim for relief would not be an enforceable judgment. Furthermore, this case is limited to a specific set of facts and does not fall within the narrow exception for matters of widespread importance that are capable of repetition yet evading review.

Should the Court decline to dismiss the appeal as moot, the applicable standard of review is an abuse of discretion. Despite Silva's efforts to recharacterize this appeal as one concerning multiple questions of law, the only issues properly before

the Court are whether the district court abused its discretion in concluding that Silva failed to establish both a likelihood of success on the merits of his conversion claim asserted solely against Member Respondents, and that he would suffer irreparable harm in the absence of injunctive relief. Silva's attempt to frame the appeal around the abstract question of whether a clinic can "inject its customers with an individual's stem cells in the absence of informed, written consent from the source individual" is misplaced. The "clinic" to which Silva refers to is separate Mexican entity that is not a party to the district court action or to this appeal.

Silva has identified no legal authority establishing that he retained the right to withdraw consent for the Clinic's use of the frozen cell vials he contributed or the cells subsequently manufactured by the Clinic. Critically, Silva's conversion claim was asserted solely against the Member Respondents, and the Mexican Clinic is a separate and distinct entity. Additionally, questions involving medical ethics and consent are not relevant. The Member Respondents are not doctors, the Clinic is not a named party, and Silva was not the "source individual" of the biological material contributed to the Clinic. Likewise, Nevada statutes governing genetic testing and consumer health data have no application to Silva's provision of a commercialized cell product to a Mexican Clinic.

The district court correctly found that the sparse and inconsistent evidence presented by Silva failed to establish a likelihood of success on the merits of his

conversion claim. Silva bore the burden of persuading the district court that he was entitled to injunctive relief. His failure to meet that burden did not shift it to the Member Respondents.

Silva presented no substantial evidence demonstrating he retained an ownership interest in the frozen cell vials he delivered to the Clinic or in the cells manufactured by the Clinic for patient treatment. As the district court observed, Silva's contention of ownership retention over the cell vials due to absence of a transaction between him, Member Respondents, CPI, or the Clinic "belies credulity." In reaching this result, the district court did not rely on parol evidence because it did not find that Silva had contributed the cell vials to the Clinic, but merely that he had not met his burden of establishing the terms of the underlying transaction.

Moreover, Silva's own pleadings, injunction application, and Opening Brief clearly demonstrate that he believes either CPI or the Clinic are exercising wrongful dominion over the frozen cell vials, not the Member Respondents individually. Despite his clear and persisting contentions that either CPI or the Clinic possess and use the frozen cell vials Silva personally delivered to the Clinic, Silva's Application for Preliminary Injunction is based on his conversion claim brought solely against Member Respondents in their individual capacities. Thus, as Silva did not sufficiently demonstrate that the Member Respondents themselves exercised

wrongful dominion over the cell vials, the district court correctly denied injunctive relief.

Silva also failed to establish irreparable harm for which an award of compensatory damages would be inadequate. As the district court correctly noted, Silva's alleged "missed opportunity costs" are quantifiable and "the definition of an adequate remedy at law." Likewise, Silva's alleged harm suffered from denial of his "right to exclude" does not establish irreparable harm. Silva cites to no Nevada authority holding that the "deprivation of the right to exclude" constitutes irreparable harm. Setting aside the fact that Silva has no "right to exclude" in relation to property he does not own, Silva failed to identify any harm resulting from the alleged deprivation that could not be remedied by monetary damages. Because irreparable harm is a prerequisite for injunctive relief, the district court did not err in denying Silva's Application.

Finally, though the district court was not required to consider either the balance of potential hardships to the parties or the potential adverse effects on the public interest, both factors weigh against granting Silva's requested injunction. Silva identified no legitimate public harm, while the Member Respondents presented evidence that granting the injunction would disrupt the Clinic's operations and adversely affect patient access to healthcare. Silva likewise offered no evidence to support his conclusory statement that he "faces great harm" in the absence of

injunctive relief, while the Member Respondents demonstrated substantial hardship to the Clinic, its staff, and its patients.

Accordingly, should this Court decline to find the instant appeal moot, the record clearly supports the district court's determination that Silva failed to establish either a likelihood of success on the merits or irreparable harm. The district court did not abuse its discretion in denying Silva's Application for Preliminary Injunction, and the order should be affirmed.

IV. STANDARD OF REVIEW

The Nevada Supreme Court generally reviews decisions denying preliminary injunctions under the abuse of discretion standard of review. *Labor Comm'r of Nev. v. Littlefield*, 123 Nev. 35, 39, 153 P.3d 26, 28 (2007). A district court's decision denying a preliminary injunction "will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact." *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009).

Despite Silva's attempts to frame this appeal as presenting questions of law regarding the consent for use of a "source individual's" stem cells, application of the parol evidence rule, and individual member liability for acts of a limited liability company, the only issues properly before this Court are whether the district court abused its discretion in determining that Silva failed to establish both a likelihood of

success on the merits of his conversion claim and irreparable harm warranting injunctive relief.

As discussed in greater detail *infra*, Silva's proposed legal question as to whether a clinic can "inject its customers with an individual's stem cells in the absence of informed, written consent from the source individual" has no application to this case. The "stem cell clinic" to which Silva refers is not a named party to the underlying district court litigation or the instant appeal. The Clinic that manufactures stem cells and provides treatment to patients is a Mexican entity distinct and separate from both the Member Respondents and CPI. 1 AA141. Setting aside Silva's failure to demonstrate how Nevada courts could exercise jurisdiction over a foreign entity organized and operating in another country, questions concerning the legality of the Mexican medical facility's legal conduct are wholly unrelated to Silva's conversion claim asserted solely against the Member Respondents.

Even if Silva did not erroneously conflate the Mexican-based Clinic with CPI, his purported question on appeal pertaining to the propriety of a business entity's actions also has no relation to Silva's conversion claim asserted solely against Member Respondents in their individual capacities. In the FAVC, Silva named CPI only as a nominal defendant, did not assert a conversion claim against CPI, and did not seek to enjoin CPI in his Application for Preliminary Injunction. 1 AA052; *see also* 1 AA073-74; 1 AA128 ("Silva seeks injunctive relief solely as to his conversion

claim stemming from [Member Respondents'] ongoing use of his stem cells and Processes"). Accordingly, the only issues presented by this appeal pertain exclusively to whether Silva satisfied the requirements for obtaining a preliminary injunction based on the alleged acts of conversion by the Member Respondents individually.

Additionally, Silva's attempts to inject into this appeal purported legal questions as to parol evidence and the individual liability of limited liability company members for acts of the entity likewise fail. As discussed in more detail *infra*, CPI's Operating Agreement does not preclude Silva's contribution of the frozen cell vials to the Clinic. In fact, Silva expressly acknowledged in his Application for Preliminary Injunction that, upon CPI's formation, "Silva contributed the scientific know-how and biological material necessary for stem cell treatments." 1 AA123. As the district court made clear, Silva failed to demonstrate that any of the Member Defendants exerted wrongful dominion over his alleged stem cells. 1 RA020-21. The appeal therefore does not involve legal questions pertaining to parol evidence or veil-piercing principles.

Accordingly, should this Court decline to dismiss the appeal as moot based on Silva's material amendment of the FAVC, the appropriate standard of review is whether the district court abused its discretion in denying Silva's Application for Preliminary Injunction.

V. LEGAL ARGUMENT

A. THE SUBSEQUENT FILING OF SILVA'S SECOND AMENDED VERIFIED COMPLAINT RENDERS THIS APPEAL MOOT.

The instant appeal is moot because Silva subsequently amended the complaint and the claim upon which his Application for Preliminary Injunction relied. It is well settled under Nevada law that this Court's duty is to "resolve actual controversies by an enforceable judgment." *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). Where subsequent events prevent the court from rendering effective relief, the appeal must typically be dismissed as moot. *Id.* Here, the Court cannot render effective relief regarding Silva's Application for Preliminary Injunction because Silva amended the complaint and the claim upon which the Application was based. As the exception to the mootness doctrine is inapplicable here, Silva's appeal must be dismissed as moot.

1. Silva's SAVC Is a Distinct Pleading Entirely Superseding the FAVC Upon Which His Application for Preliminary Injunction Relied

Under Nevada law, the existence of an underlying complaint is necessary to permit the granting of a preliminary injunction. *See Manzonie v. State,* 81 Nev. 53, 55, 398 P.2d 694, 695 (1965); *Peccole v. City of Las Vegas*, 385 P.3d 594, 132 Nev. 1016 (2016). Furthermore, where a complaint is amended in a material way, the amended complaint is a "distinct pleading which supersede[s] the original complaint." *Randono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984); *see*

also Del, L.P. v. Heritage Bank of Nev., 2025 Nev. Unpub. LEXIS 53, *5, 562 P.3d 1070 (2025). Thus, where the complaint underlying an application for preliminary is dismissed, materially amended, or otherwise made irrelevant, an appeal challenging the denial of the preliminary injunction is rendered moot. *Manzonie,* 81 Nev. at 55, 398 P.2d at 695.

Here, Silva's Application for Preliminary Injunction was based exclusively on his claim for conversion asserted against Member Respondents Clay, Nelson, and Perry in his FAVC. 1 AA128. After the district court denied the Preliminary Injunction by order noticed on May 5, 2025, Silva filed his Notice of Appeal challenging that decision on May 16, 2025. 2 AA306-07. Following the filing of his Notice of Appeal, however, Silva filed an amended complaint on August 18, 2025 (the "SAVC"). The SAVC significantly and materially altered the FAVC in general, and Silva's claim for conversion in particular. 1 RA031. As the SAVC materially altered the FAVC, it is a "distinct pleading which supersede[s] the original." *Randono,* 100 Nev. at 143, 676 P.2d at 808.

There is no question that Silva's SAVC materially amended the FAVC and thus supersedes the FAVC upon which Silva's Application for Preliminary Injunction was based. Silva's FAVC asserted sixteen (16) causes of action, including thirteen (13) claims asserted directly against Member Respondents and two (2) derivative claims against the Member Respondents on CPI's behalf. 1 AA065-77. Most importantly,

CPI was named only as a nominal defendant, and Silva asserted no claims directly against CPI. *Id.* In contrast, the SAVC alleges only four (4) causes of action, including <u>a conversion claim alleged against both the Member Respondents and CPI</u>. 1 RA044-52. By adding CPI as a direct defendant to the conversion claim, the SAVC materially altered the complaint underlying Silva's request for injunctive relief.

The SAVC also materially altered the substance of the conversion allegations. *See* 1 AA065-77; 1 RA044-52. In the FAVC, Silva alleged that the Member Respondents–<u>and only Member Respondents</u>–converted his (1) "physical property" consisting of frozen cell vials and the cels manufactured by CPI, and (2) "intellectual property," consisting of his cell manufacturing processes and treatment dosages. 1 AA073-74. Silva further alleged that Member Respondents Clay, Perry, and Nelson "wrongfully used" and "continue to profit" from Silva's property. *Id.*

In contrast, the SAVC asserts a conversion claim against a different set of defendants, which is also based on the alleged conversion of different property. 1 RA051-52. Although the SAVC again alleges that the Member Respondents converted Silva's "tangible" cell property, Silva now claims that the conversion "<u>includes use by and on behalf of CPI</u>" as well as alleged "personal use by the [Member Respondents], including for themselves, their family, and their friends." *Id.* No such allegations exist in the FAVC's conversion claim. 1 AA073-74. The SAVC further alleges, for the first time, that CPI and the Member Respondents have

converted Silva's "intangible property," including "Silva's share of distributions" and redeemed membership interests. 1 RA051-52. Furthermore, the conversion claim in the SAVC also omits any allegations related to Silva's purported "intellectual property." *Id.*

Thus, the SAVC did not merely clarify or refine the FAVC, but materially amended and superseded it by adding new parties and fundamentally altering the allegations upon which the claim was based. Because the district court's order denying Silva's Application for Preliminary Injunction was based on the now inoperable FAVC, any injunction would rest on a nonexistent claim for relief and would not be enforceable. Therefore, the Court cannot render effective relief, and the instant appeal is moot.

2. The Denial of Silva's Application for Preliminary Injunction Is Not a Matter of Widespread Importance Capable of Repetition, Yet Evading Review.

This Court may consider an appeal that otherwise must be dismissed as moot if the appeal involves a matter of widespread importance that is "capable of repetition, yet evading repetition." *Personhood Nev,* 126 Nev. at 602, 245 P.3d at 574 (2010). This exception to the mootness doctrine, applies "*only* if (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, *and* (2) there is a reasonable expectation that *the same complaining party* will be subjected to *the same action again." Valdez-Jimenez v. Eighth Judicial Dist. Court*

of Nev., 136 Nev. 155, 168, 460 P.3d 976, 989 (2020) (emphasis in original) (quoting *United States v. Sanchez-Gomez*, 584 U.S. 381, 391).

Here, despite Silva's attempts to reframe this matter as a fight over a "source individual's" consent, the scope of this appeal is limited to whether the district court erred in finding that Silva failed to present sufficient evidence to establish either irreparable harm or a likelihood of success on the merits of his claim that the Member Respondents converted his purported physical and intellectual property.

The district court's denial of Silva's Application for Preliminary Injunction does not satisfy either requirement of the exception to the mootness doctrine. The purpose of this exception is to allow an avenue for appellate courts to consider an important question of law that could otherwise never be decided because of the nature of its timing. *State v. Washoe County Pub. Defender*, 105 Nev. 299, 301, 775 P.2d 217, 218 (1989). Unlike situations involving gestation periods, the sale of real property, or the rights of detainees, litigants are always able to immediately appeal the denial of an application for preliminary injunction. NRAP 3A(b)(3).

The instant appeal was not rendered moot by an external deadline set by nature or statute, but by Silva's decision to materially amend his FAVC upon which the Application for Preliminary Injunction was based. *See supra.* Because the mootness resulted from Silva's voluntary act of materially altering his complaint, it does not satisfy the "short duration" requirement.

Likewise, there is no reasonable expectation that Silva will be subjected to the same action again. As discussed *infra,* the district court carefully evaluated the conversion allegations in the FAVC in conjunction with evidence presented by Silva and correctly concluded that Silva failed to establish irreparable harm or a likelihood of success on the merits of his claim against Member Respondents for the alleged conversion of purported "physical" and "intellectual" property. Those allegations have been superseded by materially different allegations redefining the "property" at issue and the addition of new defendants against whom no preliminary injunction was sought.

As Silva now advances materially different allegations against a different set of parties, a preliminary injunction based on the superseded FAVC is no longer possible. Thus, there is no reasonable expectation that Silva will be subjected to the same action again, and the exception to the mootness doctrine does not apply.

B. SILVA HAS NOT IDENTIFIED ANY LEGAL AUTHORITY DEMONSTRATING HE HAS THE ABILITY TO UNILATERALLY WITHDRAW CONSENT FOR THE CLINIC'S USE OF THE FROZEN AND MANUFACTURED CELLS.

Silva cites no legal authority for the proposition that an individual can unilaterally withdraw consent to a medical facility's use of materials merely because those materials consist of biologic material allegedly derived from that individual's children. His effort to characterize this appeal as presenting a legal question

pertaining to a clinic's ability to use a "source individual's" stem cells without written consent fails for multiple reasons.

First, Silva alleged his conversion claim solely against the Member Respondents. Second, the allegations in the FAVC expressly state that Silva provided the frozen cell vials to CPI and the Clinic. Third, CPI is a separate and distinct entity from the Mexico-based Clinic that manufactures cells and treats patients. Fourth, Silva is not the biological "source" of the stem cells at issue. Fifth, Silva had already commercialized his "master" stem cell line before contributing the frozen vials to the Clinic.

Additionally, the Nevada statutes concerning genetic testing and consumer health data on which Silva relies are inapplicable to the facts of this case and, in any event, were raised for the first time on appeal. Thus, Silva's proposed legal question regarding a "source individual's" consent is not presented by the record before this Court.

1. Neither the Allegations in the First Amended Verified Complaint nor the Evidence Presented by Silva in Support of His Application for Preliminary Injunction Raise a Legal Question Regarding Consent.

Silva relies exclusively on medical ethics applicable to physicians and medical facilities in an effort to reframe the issue in this case as to whether he may unilaterally withdraw consent for use of the frozen stem cell vials contributed to the Clinic. That framing is misplaced. Whether a physician may use "human biological

materials for commercial purposes without the consent of the donor" is not relevant to the Member Respondents, who are neither physicians nor medical providers, but merely members of a management company. *App.'s Opening Brief,* at 14-15. Moreover, Silva is not the biological source of the frozen cell vials and did not "donate" the vials to the Clinic; rather, he provided them as part of his contribution in exchange for his 25% membership interest in CPI. 1 AA168.

Silva further conflates (1) the individual Member Respondents with CPI, the management company, and (2) CPI with the Mexican Clinic that manufactures stem cells and provides treatment to patients. As Silva's own pleadings reflect, however, the conversion claim upon which his injunction request is based was asserted solely against the Member Respondents in their individual capacities. As discussed *infra*, the Member Respondents are not scientists or doctors and they do not possesses or treat patients with stem cells. 1 AA149; *see also infra* at V-C-4. Silva's own allegations consistently attribute possession and use of the frozen cell vials to either CPI or the Clinic. *See* 1 AA054 at ¶16; 1 AA058 at ¶¶52-55; 1 AA064 at ¶¶107-09; *see also infra* at V-C-4. Neither CPI nor the Clinic is named as a defendant in the FAVC or as a respondent in this appeal. AA065-77. Thus, Silva's conversion claim, the order denying injunctive relief, and the instant appeal are all limited in scope to the alleged acts of conversion of the Member Respondents, only.

Silva also improperly conflates CPI with the Clinic, a distinct and separate entity that is organized, licensed, and operates exclusively in Mexico. 1 AA141. According to Silva's own allegations, the Clinic is the entity that (1) possesses the frozen cell vials contributed by Silva, (2) manufactures cells for treatment, and (3) administers those manufactured cells to treat patients. 1 AA058. Setting aside the fact that the Clinic is not a party, Silva asks this Court to restrict the actions of a foreign entity operating solely in Mexico without demonstrating any basis for this Court's jurisdiction over that entity. *App.'s Opening Brief,* at 14 ("**The Clinic** may not use Silva's stem cells without his informed, written consent."); *see also App.'s Opening Brief,* at 16 ("**the Clinic bore the burden** of demonstrating that it obtained consent").

Finally, Silvas proposed legal question as to whether a clinic can use "an individual's stem cells" in the absence of informed, written consent as a means to "[protect] an individual's unique biological material" is not supported by the facts of this case. *App.'s Opening Brief,* at 16. Silva alleges that his "master" cell lines were created using his children's umbilical cords and the frozen vials contributed to the Clinic "come from" those master cell lines. 1 AA058. Silva conceded in his Application for Preliminary Injunction that the frozen cell vials are derived from his children's biological material, not his own. 1 AA131; *see also* 1 AA121 (regarding Member Respondents alleged "ongoing use of the biological material derived from

[Silva's] family's genetic material.") He further acknowledges on appeal that testing of the frozen cell vials "would confirm that they contain [his wife's] mitochondria," not his. *App.'s Opening Brief,* at 26. Silva did not assert his conversion claim on behalf of his children, and thus the facts do not raise any question concerning a "source individual's consent."

In short, the facts of this case are limited to Silva's attempt to unilaterally revoke consent from the Member Respondents for a non-party's use of his children's commercialized and voluntarily contributed biological material. Silva's proposed legal question regarding a "source individual's" consent is therefore not at issue in this appeal.[1]

2. The Nevada Statutes Pertaining to Genetic Testing and Consumer Health Data Cited by Silva Are Irrelevant and Improperly Raised for the First Time on Appeal.

It is well settled that "arguments raised for the first time on appeal need not be considered by this court." *Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997). In this appeal, Silva raises for the first time the argument that an

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[1] Despite being a biologist who has "spent his entire career in the field of bioscience," Silva employs an absurd slippery slope argument claiming that denial of the instant appeal would allow "a wrongdoer to take a victim's Kleenex from the trash to develop a commercially successful stem cell line," presumably in an attempt to artificially elevate the stakes of this appeal. *App.'s Opening Brief,* at 17. However, this proposed hypothetical is irrelevant to the case at hand because Silva willingly contributed the frozen cell vials allegedly containing his children's biological material to the Clinic. The proposed hypothetical is also impossible, as stem cells cannot be harvested from a used Kleenex. *See* Saloman Poliwoda et. al., *Stem cells: a comprehensive review of origins and emerging clinical roles in medical practice*. ORTHOPEDIC REVIEWS. 2022;14(3).

individual's written consent is "inherently revocable" based on the language of NRS Chapters 629 and 603A. *App.'s Opening Brief,* at 16. Setting aside the fact that the underlying facts of the case concern a parent's alleged right to revoke consent for a non-party's use of his children's commercialized biological material, this Court need not (and should not) consider that argument because it was not raised below. *See* 1 AA 122-33.

Even if Silva had raised this argument below, the statutes he invokes are wholly inapplicable to the present case. Neither NRS Chapter 629 nor Chapter 603A pertain to the revocability of consent for the use of commercialized biological materials provided as part of a business transaction. NRS 629.181 directs the State Board of Health to enact regulations "establishing a procedure for obtaining the informed consent of a person pursuant to NRS 629.101 to 629.201, inclusive." The referenced statutes pertain solely to the retention of "Genetic Information" defined as:

> any information obtained from "a laboratory test that uses deoxyribonucleic acid extracted from the cells of a person or a diagnostic test, to determine the presence of abnormalities or deficiencies, including carrier status, that:
>
> 1. Are linked to physical or mental disorders or impairments; or
>
> 2. Indicate a susceptibility to illness, disease, impairment or any other disorder, whether physical or mental.

NRS 629.121.

The frozen cell vials Silva contributed to the Clinic do not constitute "Genetic Information" as defined by the statute. As such, NRS Chapter 629 neither provides

a definition of informed consent applicable to this case nor establishes that consent for the use of commercialized biologic material is inherently revocable under Nevada law. *See* NRS 629.101 to 629.201.

NRS 603A.535 likewise does not support Silva's position. That statute provides only that a person may not sell consumer health data "without the written authorization of the consumer to whom the data pertains," and that the consumer may revoke written authorization for the *sale* of such data at any time. NRS 603A.535(1)-(3). Consumer health data is expressly defined as "personally identifiable information that is linked or reasonably capable of being linked to a consumer and that a regulated entity uses to identify the past, present or future health status of the consumer." NRS 603A.430. Here, Silva alleges the frozen vials of commercialized cells were used by the Clinic to manufacture cells for the treatment of third-party patients in Mexico. As such, the vials do not qualify as "consumer health data" under the statute.

Even if the frozen cells somehow fell within that definition, NRS 603A.535 addresses only the revocation of authorization for the sale of consumer health data, not its use. Additionally, neither the Member Respondents nor the non-party Clinic qualifies as a "regulated entity" under the statute, as they do not "determine the means of processing or selling consumer health data" in Nevada. Thus, the statutory

provision for revocation of consent for the sale of consumer health data has no application to this case.

Accordingly, Silva's argument that consent is inherently revocable under Nevada law is unsupported by the statutes he cites and, in any event, was improperly raised for the first time on appeal.

C. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY FINDING THAT SILVA FAILED TO ESTABLISH A LIKELIHOOD OF SUCCESS ON THE MERITS OF HIS CONVERSION CLAIM.

Under Nevada law, a preliminary injunction is only proper where the requesting party has demonstrated a likelihood of success on the merits of his claim. *Dangberg Holdings Nev., LLLC v. Douglas County,* 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). To demonstrate a likelihood of success on the merits, the moving party "must make a prima facie showing through substantial evidence that it is entitled to the preliminary relief requested." *Shores v. Global Experience Specialists, Inc.*, 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018).

As Silva's Application for Preliminary Injunction was based solely on his conversion claim asserted against the Member Respondents, Silva was required to make a prima facie showing through substantial evidence that the Member Respondents wrongfully exerted dominion over Silva's property in denial of, or inconsistent with, Silva's rights or title to that property. *Winchell v. Schiff,* 124 Nev. 938, 944, 193 P.3d. 946, 950 (2008). As demonstrated by the allegations in Silva's

FAVC and the evidence accompanying his Application for Preliminary Injunction, the district court did not abuse its discretion in concluding that Silva failed to establish a likelihood of success on the merits of his conversion claim.

1. Silva Bears the Burden of Establishing His Right to Revoke Consent to the Clinic's Use of the Contributed Cells.

Silva repeatedly and incorrectly asserts that the Clinic (a Mexican entity not named as a party to this litigation) and the Member Respondents "bore the burden of demonstrating" that they obtained written consent for the Clinic's use of the frozen cell vials Silva admits he contributed to the Clinic for use in manufacturing stem cells to treat patients. *See App.'s Opening Brief,* at 16 and 19. That assertion misstates the law. As the moving party, Silva bore the burden of providing testimony, exhibits, or documentary evidence to support his request for an injunction. *Hospitality Int'l Grp. v. Gratitude Grp., LLC*, 132 Nev. 980, 387 P.3d 208, 209 (2016). The district court assessed Silva's contradicting allegations and limited evidentiary showing and correctly concluded that he failed to demonstrate a likelihood of success on the merits by making a prima facie showing that he was entitled to injunctive relief on his conversion claim against the Member Defendants. 2 AA276.

To satisfy his burden, Silva was required to establish that (1) he owned the frozen vials used to manufacture cells for treatment the Clinic, (2) the frozen vials were provided to the Clinic on a conditional basis, subject to his purported right to unilaterally revoke consent at any time, and (3) the Member Respondents

individually and wrongfully exercised dominion over the frozen cell vials. *Winchell,* 124 Nev. at 944, 193 P.3d. at 950. Neither the Member Respondents nor the non-party Clinic were required to disprove Silva's allegations or supply evidence.

Thus, the district court did not abuse its discretion in denying Silva's Application for Preliminary Injunction. The court properly considered the evidence Silva presented and determined that he failed to meet his burden of making a prima facie case that he is entitled to injunctive relief based on his conversion claim against the Member Respondents.

2. Silva Does Not Have an Ownership Interest in the Frozen Cells Contributed to the Clinic or the Manufactured Cells Created by the Clinic.[2]

The district court correctly denied Silva's Application for Preliminary Injunction because Silva failed to meet his burden of establishing his ownership, title, or enforceable rights to either the frozen cell vials he contributed to the Clinic or the cells subsequently manufactured by the Clinic for patient treatment. 2 AA275. Throughout the FAVC, his Application for Preliminary Injunction, and his Opening Brief on appeal, Silva repeatedly acknowledges that he willingly provided the frozen

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[2] Silva's original Application for Preliminary Injunction pertained to the Clinic's use of both the frozen cell vials given to the Clinic as well as the Clinic's use of undefined "processes" Silva purportedly owns. As Silva makes no arguments pertaining to the processes and concedes the instant appeal "concerns only Silva's request for a preliminary injunction based on Respondents' conversion of Silva's stem cells," Member Respondents do not address the arguments raised below pertaining to the alleged "processes." *App.'s Opening Brief,* at 7.

cell vials to the Clinic for use in manufacturing stem cells. *See* 1 AA054; 1 AA058; 1 AA123; *App.'s Opening Brief,* at 19.

Silva's contention that the Member Respondents, and even the district court, fabricated an underlying transaction by which he provided the frozen cell vials to the Clinic is squarely contradicted by the record. In his Application for Preliminary Injunction, Silva expressly stated that, upon CPI's formation, he "<u>contributed the scientific know-how and biological material necessary for stem cell treatments.</u>" 1 AA123.

Moreover, Silva's contention that no transaction regarding his contribution of frozen cell vials occurred is not salvageable even under his erroneous theory that consent was unilaterally revokable. As the district court observed, "it belies credulity to say that there was no transaction." 2 AA268. A "transaction" is defined as "the act or an instance of conducting business or other dealings." *Transaction, Black's Law Dictionary* (11th ed. 2019). Silva's provision of the frozen vials to the Clinic upon the formation of CPI as a means to "launch the [Clinic] and its treatment processes" was indisputably an act of business and therefore constituted a transaction. 1 AA058. Silva's post hoc assertions that he could revoke consent do not negate the existence of that transaction.

As the moving party, Silva bore the burden of presenting substantial evidence that the ability to withdraw consent was an agreed-upon term of the transaction.

Reviewing the allegations in Silva's FAVC and the evidence presented, the district court correctly concluded that Silva failed to make a prima facie showing of any such condition. Notably, Silva's FAVC contains no allegation that his contribution of the frozen cell vials to the Clinic was conditional and subject to his revocable consent. 1 AA052-77.

In support of his claim to absolute ownership, Silva relied primarily on a letter from his employer, BRTX, stating that BRTX does not have an ownership interest in the "FS Cell Lines" pursuant to Plaintiff's Executive Employment Agreement with BRTX. 1 AA114. However, this letter does nothing more than disclaim BRTX's ownership interest in the "FS cell lines;" it does not establish Silva's ownership of the individual frozen vials delivered to the Clinic, nor is it a binding authority defining the Clinic's property rights to individual vials derived from that cell line. *Id.* Furthermore, the "master cell line" labels referenced in the FAVC and the BRTX letter are not registered identifiers with any authority or entity and do not confer upon Silva an inherent right to revoke consent for the use of individual vials contributed as part of a business transaction. 1 AA172.

Contrary to Silva's arguments, neither the Member Respondents nor the Clinic ever asserted that they entered into a license agreement with Silva for the irrevocable use of the frozen cell vials. Instead, the Member Respondents argued below that Silva relinquished his ownership interests in the frozen cell vials when he

contributed them to the Clinic. 1 AA152. Silva, by contrast, now contends that his contribution amounted to a limited, revocable license. 1 AA120. The record refutes that claim. Silva first demanded a licensing agreement "completely out of the blue" on November 14, 2024–years after he delivered the frozen vials to the Clinic. 1 AA171. The responsive email from the TAM Center's Head of Intellectual Property to which Silva references merely addressed Silva's spontaneous demand for a licensing agreement and does not suggest that the Member Respondents, CPI, or the Clinic believed a license was necessary for use of the physical property Silva had already contributed to the Clinic years prior. 1 AA198.

As the moving party, it was Silva's burden to present sufficient evidence establishing that he had the right to unilaterally withdraw his consent to the Clinic's use of the contributed cells. *Winchell,* 124 Nev. at 944, 193 P.3d. at 950. As the district court aptly noted, Silva's Declaration stating that he "gave limited consent for CPI to use the duplicated stem cells at the clinic in Mexico" conflicted with Member Respondent Nelson's Declaration attesting that "no written agreement restricted the use" of the cell vials Silva delivered to the Clinic, and that "Silva never indicated that he believed he could revoke consent" for their use by the Clinic at any time. 1 AA120; 1 AA169.

Silva also failed to present evidence that he informed the Member Respondents, CPI, or the Clinic that the frozen cell vials were subject to revocable consent, much

less evidence that any such condition was agreed upon. The fact that he proposed a license agreement for the first time in November 2024, years after he delivered the vials to the Clinic, further confirms that no agreement limiting the Clinic's use or permitting unilateral revocation ever existed. 1 AA171.

Moreover, as Silva failed to establish ownership of the frozen cell vials contributed to the Clinic, he necessarily cannot establish an ownership interest in the cells manufactured by the Clinic for patient treatment. The frozen cell vials constitute only one component of the final product for treatment, which is created using additional materials such as Platelet Lysate, CryoStor10 reagent, TrypLE, and DPBS. 1 AA176. The manufactured cells generated and used by the Clinic for treating patients are therefore a separate and distinct product, and Silva has no ownership interest in them.

In sum, the district court correctly found that Silva failed to present substantial evidence establishing that he has an ownership interest, title, or rights in the frozen cell vials or the cells manufactured by the Clinic. Without such proof, Silva could not establish a prima facie case of conversion entitling him to injunctive relief. The district court therefore did not abuse its discretion in denying his Application for Preliminary Injunction.

3. The District Court Did Not Rely on Impermissible Parol Evidence to Reach Its Decision Denying Silva's Application for Preliminary Injunction.

Silva's assertion that the district court denied his Application for Preliminary Injunction based on inadmissible parol evidence is incorrect and contradicted by the record. As explained *supra,* Silva's provision of the frozen cell vials "to launch the [Clinic] and its treatment processes" necessarily constituted a transaction of some kind, whether that transaction involved a contribution of the vials or merely permitted their use on a limited basis, as Silva now claims. *See supra* V-C-2. The district court did not find that Silva contributed the frozen cell vials as part of the consideration for his membership interest in CPI; rather, it found only that Silva failed to carry his burden of establishing that he entered into a transaction with the Member Respondents that entitled him to unilaterally "withdraw his consent" for the Clinic's use of the cell vials at any time. 2 AA275.

Nonetheless, even if the district court had found that Silva provided the frozen cell vials to the Clinic as part of the consideration for his membership interest in CPI, such a finding would not be contradicted by CPI's Operating Agreement. Contrary to Silva's assertions, the Operating Agreement does not specify the actual contributions made by each individual member. 1 AA211-16. Instead, it identifies only the agreed upon value of each member's contribution. *Id.* Section 1.1(f) of the Operating Agreement defines "Capital Contribution" as "the amount of cash and Gross Asset Value (at the time of contribution) of any property contributed to the Company by or on behalf of a Member," while Section 1.1(s) defines "Gross Asset

Value" as "the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company."1 AA211-13. The Operating Agreement therefore does not delineate the precise nature of each member's contribution, but merely defines its valuation. *Id.* Evidence regarding Silva's contribution of the frozen cell vials to the Clinic thus does not constitute parol evidence.

Regardless, the district court did not determine whether Silva contributed the frozen cell vials as consideration for his CPI membership interest. It simply concluded that Silva failed to meet his burden of establishing he could withdraw his consent for the Clinic's use of the frozen cell vials. 2 AA275. Accordingly, Silva's parol evidence argument is factually erroneous and irrelevant to the issues presented in this appeal.

4. Silva Did Not Properly Allege or Sufficiently Demonstrate That Member Respondents Are Wrongfully Exercising Dominion Over Silva's Property.

The district court correctly determined that Silva had not met his burden of establishing a likelihood of success on his conversion claim against the Member Respondents because the FAVC, Application for Preliminary Injunction, evidence in the record, and Silva's Opening Brief do not establish that the Member Respondents committed any wrongful act that is either tortious in nature or cannot be justified or excused in law. *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1958).

Ferreira v. P.C.H., Inc., 105 Nev. 305, 308, 774 P.2d 1041, 1043-44 (1989). In fact, Silva repeatedly contends that either CPI or the Clinic are exercising wrongful dominion over the frozen cell vials, not Member Respondents.

The first twenty-two pages of the FAVC, upon which Silva's Application for Preliminary Injunction was based, allege the following:

- He "permitted CPI to use the stem cells," 1 AA054;
- He "supplied the CPI clinic with 'original' stem cell lines derived from the umbilical cords of Silva's two children," 1 AA058;
- The "CPI clinic derived 'duplicated' stem cells from those 'original' stem cells," Id.;
- He "brought five vials of the 'original' stem cell line to the clinic for duplication" to "launch the CPI clinic and its treatment processes," Id.;
- The "CPI clinic treats patients with these 'duplicated' stem cells," Id.;
- He and "CPI derived economic value and a business advantage by having exclusive use of Silva's cells," 1 AA059;
- "CPI continues to misappropriate Silva's stem cell line," 1 AA064;
- The "CPI and [TAM Center] clinics possess two frozen vials of the raw, unduplicated stem cells belonging to Silva," Id.;
- The "CPI clinic further possesses billions of stem cells derived from the vials that Silva authorized CPI to duplicate." *Id.*

Notably, none of these allegations implicate possession or dominion over the frozen cell vials exerted by the Member Respondents. *Id.*

In his Application for Preliminary Injunction, Silva similarly asserted:

- He "contributed the scientific know-how and biological material necessary for stem cell treatments," 1 AA123;
- He "believes that CPI still possesses two frozen vials of his original stem cells that he delivered in 2021," 1 AA124;

- He "withdrew his consent" for the provided cells to be "published, stored, processed, propagated, or analyzed by CPI," 1 AA124-25;
- Patients "check into CPI for stem cell treatment," Id.
- "CPI continues to use Silva's stem cells," 1 AA130.

Additionally, in his Opening Brief, Silva further reiterates that:

- "The Clinic exclusively uses Silva's stem cells," *App.'s Opening Brief,* at 7;
- The Clinic "injects several millions of [the manufactured cells] into a single patient per treatment," *Id.;*
- "The Clinic treats hundreds of patients each month;" *Id.* at 8;
- His stem cells "have funded CPI's cancer research and the laboratory that CPI built in Mexico," *Id.*;
- 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 cells," *Id.* at 10;
- The Court should determine "whether a stem cell clinic may inject third parties with an individual's stem cells" when "the clinic lacks written, informed consent;" *Id.* at 13;
- He "argued below that the Clinic bore the burden of demonstrating that it obtained consent to use his stem cells," *Id.* at 16;
- "[T]he Clinic could easily prove consent," *Id.* at 17;
- "The Clinic never obtained Silva's consent" he and Member Respondents did not "transact for the Clinic's use of Silva's stem cells," *Id.* at 18

Moreover, the letter allegedly withdrawing Silva's consent for the use of "his" cells was addressed exclusively to CPI, not the Member Respondents individually. 1 AA116.

Despite Silva's repeated assertions that either CPI or the Clinic possesses and uses the frozen cell vials personally delivered to the Clinic, his Application for

Preliminary Injunction was based on his conversion claim asserted solely against Member Respondents in their individual capacities.1 AA073. As set forth in the Declaration of Member Respondent Nelson, the Member Respondents are not physicians or scientists, do not manufacture cells or treat patients, and do not personally possess or use any of the frozen cell vials. 1 AA173.

The district court subsequently addressed Silva's arguments pertaining to the Member Respondents individual liability under *Gardner v. Henderson Water Park, LLC.*. In its order on the Member Respondents' motion to dismiss the FAVC, the district court clarified that, under Nevada law, "LLC members can be sued for their own individual torts, even if they are acting within the scope of their employment when they committed the tort." 1 RA020. Acknowledging that the its earlier discussion on whether the Member Respondents acted within the scope of their membership in CPI may have been "inartful," the district court nonetheless reaffirmed its core conclusion that:

> **<u>Silva did not persuade the court that any of the Member [Respondents] converted his stem cells, whether based on the allegations alone or in looking at the evidence.</u>**

The district court correctly recognized that the FAVC alleges that CPI—not the Member Respondents—is exerting dominion "wrongfully or not" over the frozen

cell vials.[3] 1 RA021. The district court further stated it "remains unpersuaded" that the Member Respondents are exercising dominion over the cell vials wrongfully or otherwise inconsistent with their rights to do so because Silva did not present sufficient evidence establishing that he had the right to unilaterally revoke consent to CPI's use of the frozen cell vials. *Id.* Accordingly, the district court reiterated its finding that Silva failed to demonstrate a likelihood of success on his conversion claim asserted solely against Member Respondents, and therefore properly denied him injunctive relief.

D. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY FINDING THAT SILVA FAILED TO ESTABLISH IRREPARABLE HARM.

Even apart from his failure to demonstrate a likelihood of success on the merits, Silva's appeal fails because he did not demonstrate that he would suffer irreparable harm for which compensatory damages would be insufficient. Under Nevada law, irreparable harm is an injury "for which compensatory damage is an inadequate remedy." *Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 353, 351 P.3d 720, 723-24 (2015) (quoting *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987)). Silva presented no evidence establishing that he would suffer any harm for

[3] As explained *supra*, Silva's conflation of "the CPI clinic" with CPI the management company in both the FAVC and the instant appeal is inaccurate. The Clinic that Silva allegedly provided the frozen cell vials to is a Mexican entity distinct and separate from both Member Respondents and CPI. However, for the purposes of the District Court's analysis here, the distinction is immaterial.

which monetary damages would be insufficient absent injunctive relief, and the district court correctly denied his Application for Preliminary Injunction. 2 AA276. Likewise, Silva does not cite a single Nevada case supporting his contention that his alleged "lost opportunity costs" or the purported deprivation of his "right to exclude" constitute irreparable harm. *App.'s Opening Brief,* at 32-33.

As the district court observed at the injunction hearing, Silva's argument that he suffered irreparable harm due to an alleged inability to capitalize on licensing opportunities "is the definition of an adequate remedy at law." 2 AA270. Any purported lost opportunity costs are, by their very nature, economic in nature and can be remedied through an award of money damages.

Moreover, the Clinic is just one of multiple medical facilities that possess and use vials derived from Silva's alleged "master" cell line. 1 AA172-73. Silva maintains in his possession at least one freezer full of additional cell vials from this cell line, and he has sold vials from the same cell line to medical facilities throughout the continent. *Id.* The Clinic has never asserted any exclusive right to the use of the "master" cell line itself. *Id.* Silva therefore remains free to market and sell any remaining vials of the "master" cell line in his possession to other biotechnology companies. Under these circumstances, Silva cannot demonstrate irreparable harm based on the alleged missed licensing opportunities, which are either readily quantifiable or entirely nonexistent.

Silva's newly raised argument, asserted for the first time on appeal, that he suffers irreparable harm from the deprivation of a "right to exclude" likewise does not establish any injury for which monetary damages would be insufficient. Silva identifies no Nevada authority holding that the "deprivation of the right to exclude" constitutes irreparable harm under Nevada law. *App.'s Opening Brief,* at 32-33. In any event, as established *supra,* Silva does not own the frozen cell vials he contributed to the Clinic and therefore possesses no property rights therein, including the right to exclude. *See supra,* V-C-2.[4]

As Silva failed to present evidence establishing a reasonable probability that he would suffer irreparable harm for which monetary damages would not suffice, the district court did not abuse its discretion and the order denying injunctive relief should be affirmed.

E. NEITHER THE BALANCE OF EQUITIES NOR THE PUBLIC INTEREST WEIGH IN FAVOR OF GRANTING SILVA'S APPLICATION FOR PRELIMINARY INJUNCTION.

Even where a plaintiff has demonstrated both a likelihood of success on the merits and irreparable harm, a district court can still deny a requested injunction based on potential hardships to the parties and the considerations of public interest.

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[4] Moreover, accepting Silva's argument that the denial of the right to exclude qualifies as irreparable harm would lead to an absurd result. Finding irreparable harm without requiring any evidence as to the calculability of damages would automatically establish irreparable harm for any plaintiff asserting a conversion claim.

Clark County Sch. Dist. v. Buchanan, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996). As Silva failed to demonstrate both a likelihood of success on the merits and irreparable harm, the district court was not required to consider the hardships or public interests potentially implicated by Silva's requested injunction. Nevertheless, both factors undeniably weigh against granting Silva's Application for Preliminary Injunction.

Silva's public-interest arguments merely repackage his deficient consent theory. *App.'s Opening Brief,* 35-36. As discussed *supra,* Silva identifies no legal authority supporting the proposition that an individual can unilaterally withdraw consent to a non-party medical facility's use of materials merely because those materials are allegedly derived from his children's biological material. *See supra,* V-B. Moreover, NRS Chapter 629 is inapplicable to the present case. *Id.* Thus, Silva's asserted public interest in protecting a "source individual's" consent is not implicated here.

In contrast, to the extent Silva's requested injunction would be enforceable against the non-party Mexico Clinic, the Member Respondents presented unrebutted evidence that such an injunction would substantially harm the public's interest in access to healthcare. 1 AA159-60. The Nevada Supreme Court has long recognized that the public has an interest in the accessibility of specialized forms of medical care. *Ellis v. McDaniel*, 95 Nev. 455, 459, 596 P.2d 222, 225 (1979). Silva's proposed injunction would directly undermine that interest by denying patients access to the

treatments provided by the Clinic, imposing significant hardships on patients already undergoing treatment and those scheduled to imminently receive care.

In opposing Silva's Application for Preliminary Injunction, the Member Respondents presented evidence that the Clinic would be unable to treat over 1,000 patients currently receiving treatment or scheduled for treatment over the following six (6) months. 1 AA173. Moreover, as a patient's treatment requires a series of multiple injections over a sustained period of time, the patients currently undergoing treatment would be completely abandoned in the middle of the process. *Id.*

Silva, by contrast, provided no evidence demonstrating how he "faces great harm" in the absence of injunctive relief. The Member Respondents, however, established significant hardships. *Id.* The Clinic employs over 240 doctors, specialists, nurses, and administrative staff involved in the cell manufacturing process and patient treatment, all of whom would be furloughed. *Id.*

The Clinic also manufactures roughly 6 billion cells each week and has around 40 billion manufactured stem cells in stock at any given time. *Id.* These stem cells are the final product of the Lab's process and include supplies, materials, and reagents that cannot be recovered or reused. *Id.* As these manufactured cells have a limited shelf life, a preliminary injunction restricting use of the Clinic's manufactured cell would result in costs of over $7,000,000. *Id.*

Accordingly, the balance of hardships and public interest weigh strongly against granting Silva's requested injunction. Thus, the district court did not abuse its discretion, and the order denying Silva's Application for Preliminary Injunction should be affirmed.

VI. CONCLUSION AND RELIEF SOUGHT

As the district court's Order denying Silva's Application for Preliminary Injunction was based on the now-superseded and inoperative FAVC, any injunction premised on that pleading would rest on a nonexistent claim for relief and would not be enforceable. The Court therefore cannot render effective relief, and the appeal is moot. Nevertheless, the record conclusively establishes that the district court did not abuse its discretion in determining that Silva failed to demonstrate either (1) a likelihood of success on the merits of his conversion claim asserted solely against the Member Defendants, or (2) a reasonable probability of irreparable harm in the absence of injunctive relief. Accordingly, even if the appeal were not moot, the order denying Silva's Application for Preliminary Injunction should be affirmed.

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this RESPONDENTS' ANSWERING BRIEF upon all parties as follows:

☒ By electronic service. Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

☐ By personally serving it upon him/her; or

☐ By mailing it by first-class mail with sufficient postage prepaid to the following address(es):

DATED this 19th day of December 2025.

By: *<u>/s/ Leilani Gamboa</u>*__________
An employee of BENDAVID LAW