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

Andrew Sheep, M.D. and Fremont  
Emergency Services (Mandavia), Ltd.  
aka Fremont Emergency Services  
(Scheer), Ltd.

Petitioners

vs.

The Eighth Judicial District Court of the  
State of Nevada, ex rel. The County of  
Clark, and The Honorable Crystal Eller,

Respondents

and

Shawn Charles,

Real Party in Interest

Supreme Ct. No.: 88797

Dist. Ct. Case No.: A-23-875752-C

**Las Vegas Defense Lawyers' Motion  
for Leave to File Amicus Brief**

1 **Memorandum of Points & Authorities**

2 **I. LVDL requests leave to file an amicus brief.**

3 Las Vegas Defense Lawyers (“LVDL”) is a professional organization of  
4 civil defense lawyers based in the Las Vegas and broader Clark County, Nevada.  
5 One of LVDL’s purposes is to provide a balanced defense perspective regarding  
6 civil litigation. It is in this capacity that LVDL requests leave per NRAP 29(c) to  
7 file the attached amicus brief discussing the issues raised in this petition.

8 LVDL’s members frequently represent civil defendants in cases where  
9 punitive damages are alleged. LVDL’s interest in this petition arises from the fact  
10 that punitive damage awards are sometimes both uninsured and nondischargeable  
11 in bankruptcy. This possibility can be the biggest concern a client might have if  
12 they are well insured. Thus, LVDL’s members evaluating a client’s initial  
13 appearance options need to know both 1) whether a request for punitive damages is  
14 subject to NRCP 12(b)(5); and 2) what factual specificity is required for a  
15 complaint to support a request for punitive damages? By resolving this petition on  
16 its merits, LVDL members could use this appellate guidance to better counsel  
17 clients about their legal options and potential exposure.

18 An amicus brief in this matter is desirable because LVDL believes its brief  
19 offers additional arguments that explain why the issue described in this petition is a  
20 recurring problem and worthy of advisory mandamus. LVDL’s also provides

1 authority the petition did not discuss. LVDL’s view of the issue is also broader  
2 than the direct parties to this petition.

3 LVDL requests this motion be granted and its proposed brief filed.

4 DATED this 30<sup>th</sup> day of June, 2024.



6  
7 BY: /s/ Michael P. Lowry  
8 MICHAEL P. LOWRY  
9 Nevada Bar No. 10666  
10 Attorneys for Las Vegas Defense Lawyers

11 **Certificate of Service**

12 Per Rule 25(c), I certify that on June 30, 2024, **Las Vegas Defense**  
13 **Lawyers’ Motion for Leave to File Amicus Brief** was served via electronic  
14 means by operation of the Court’s electronic filing system to all parties registered  
15 for service.

16  
17 BY: /s/ Michael Lowry  
18  
19  
20



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

7 Andrew Sheep, M.D. and Fremont  
8 Emergency Services (Mandavia), Ltd.  
9 aka Fremont Emergency Services  
(Scheer), Ltd.

10 Petitioners

vs.

11 The Eighth Judicial District Court of the  
12 State of Nevada, ex rel. The County of  
13 Clark, and The Honorable Crystal Eller,

14 Respondents

15 and

16 Shawn Charles,

17 Real Party in Interest

Supreme Ct. No.: 88797

Dist. Ct. Case No.: A-23-875752-C

**Las Vegas Defense Lawyers' Amicus  
Brief Supporting Petitioners and  
Granting the Petition**

18 **ORIGINAL PETITION**

19 From the Eighth Judicial District Court, Clark County  
20 The Honorable Crystal Eller, District Judge

**Table of Contents**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

Table of Authorities ..... iii

Attorney’s Certificate of Compliance.....v

NRAP 26.1(a) Disclosure ..... vii

Routing Statement..... viii

Identification of Amicus Curiae ..... 1

Relief Sought ..... 1

Issues Presented ..... 1

Facts Necessary to Consider the Petition.....2

Why the Writ Should Issue.....3

    1. Judicial economy favors considering this petition. ....3

        a. Punitive damages can be uninsurable and nondischargeable.....5

        b. District courts are using varying standards. ....6

    2. Standard of Review.....9

    3. NRCp 12(b)(5) is the way to challenge a request for punitive damages. ....9

    4. A complaint must plead facts sufficient to support punitive damages.....12

    5. This complaint lacked factual support to allege punitive damages.....14

Conclusion ..... 15

**Table of Authorities**

**Cases**

*Archon Corp. v. Dist. Ct.*, 133 Nev. 816, 407 P.3d 702 (2017) .....4

*Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008)....9, 11

*Carillo v. Su (In Re Su)*, 290 F.3d 1140 (9th Cir. 2002).....6

*Chur v. Dist. Ct.*, 136 Nev. 68, 458 P.3d 336 (2020) .....4

*Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (2008)  
..... 14, 15

*Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002) ....10

*Gopinath v. Somalogic, Inc.*, 2023 U.S. Dist. LEXIS 146816 (S.D. Cal. August 21,  
2023).....11

*MCB Woodberry Developer, LLC v. Council of Owners of the Millrace Condo.,  
Inc.*, 265 A.3d 1140 (Md. 2021).....14

*Monge v. Superior Court*, 176 Cal. App. 3d 503 (1986).....12

*Oppenheimer v. Southwest Airlines Co.*, 2013 U.S. Dist. LEXIS 85633, 2013 WL  
3149483 (S.D. Cal. 2013).....10

*Oxbow Constr., LLC v. Dist. Ct.*, 130 Nev. 867, 335 P.3d 1234 (2014).....3

*Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202 (9th Cir. 2001) .....6

*Scott v. Jenkins*, 690 A.2d 1000 (Md. 1997)..... 13, 14

*Smith v. Superior Court*, 10 Cal. App. 4th 1033 (1992)..... 12, 13

*Teva Parenteral Meds., Inc. v. Dist. Ct.*, 137 Nev. Adv. Op. 6, 481 P.3d 1232  
(2021).....9

*Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970 (9th Cir. 2010)..... 10, 11

**Statutes**

11 U.S.C. § 523(a)(6).....6

California Civil Code § 3294.....12

1	NRS 34.170.....	3
2	NRS 42.001.....	5, 12, 14
	NRS 42.005.....	5, 12
3	NRS 42.007.....	12
4	NRS 681A.095.....	4, 5
5		<b>Rules</b>
	FRCP 12(b)(6).....	10, 11
6	FRCP 12(f).....	10
7	NRCP 12(b)(5).....	passim
8		<b>Treatises</b>
9	2-12 Moore's Federal Practice - Civil § 12.34.....	11
10		
11		
12		
13		
14		
15		
16		
17		
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**Attorney's Certificate of Compliance**

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2           1. I certify that this brief complies with the formatting requirements of  
3 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style  
4 requirements of NRAP 32(a)(6) because it has been prepared in a proportionally  
5 spaced typeface using Microsoft Word 2013 in 14 point Times New Roman.

6           2. I further certify that this brief complies with the page- or type-volume  
7 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by  
8 NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or  
9 more, and contains 2,825 words.

10          3. Finally, I certify that I have read this petition, and to the best of my  
11 knowledge, information, and belief, it is not frivolous or interposed for any  
12 improper purpose. I further certify that this petition complies with all applicable  
13 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires  
14 every assertion in the petition regarding matters in the record to be supported by a  
15 reference to the page and volume number, if any, of the transcript or appendix  
16 where the matter relied on is to be found. I understand that I may be subject to  
17 sanctions in the event that the accompanying petition is not in conformity with the

18 ///

19 ///

20 ///

1 requirements of the Nevada Rules of Appellate Procedure.

2 DATED this 30<sup>th</sup> day of June, 2024.



4  
5 BY: /s/ Michael P. Lowry  
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1 **NRAP 26.1(a) Disclosure**

2 The undersigned counsel of record certifies that the following are persons  
3 and entities, as described in NRAP 26.1(a), and must be disclosed. These  
4 representations are made in order that the judges of this court may evaluate  
5 possible disqualification or recusal.

- 6 1. Parent Corporation: None.
- 7 2. Publicly held company that owns 10% or more of the party’s stock: None.
- 8 3. Law firms who have appeared or are expected to appear for Las Vegas

9 Defense Lawyers: Wilson Elser Moskowitz Edelman & Dicker, LLP

10 DATED this 30<sup>th</sup> day of June, 2024.



12

13 BY: */s/ Michael P. Lowry*

14 MICHAEL P. LOWRY

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1 **Routing Statement**

2 This petition challenges an order denying a motion to dismiss a request for  
3 punitive damages. This order does not specifically align with any of the  
4 presumptive categories in NRAP 17(a) or (b). Las Vegas Defense Lawyers  
5 believes NRAP 17(a)(12) best applies to this writ petition.

6 The principal issue raised in this petition is one that many of Las Vegas  
7 Defense Lawyers’ members consistently encounter. It is important to their clients  
8 because punitive damages are often not insured and may not be dischargeable in  
9 bankruptcy. LVDL members have found district courts are using different  
10 standards to consider these motions. The district courts also vary significantly as  
11 to the level of factual support required to allege punitive damages. Given this  
12 uncertainty, LVDL believes appellate guidance is beneficial, thus NRAP 17(a)(12)  
13 seems to fit best.

14 DATED this 30<sup>th</sup> day of June, 2024.



16  
17 BY: /s/ Michael P. Lowry  
18 MICHAEL P. LOWRY  
19 Nevada Bar No. 10666  
20 Attorneys for Las Vegas Defense Lawyers

1 **Identification of Amicus Curiae**

2 Las Vegas Defense Lawyers (“LVDL”) is a professional organization of  
3 civil defense lawyers based in the Las Vegas. One of LVDL’s purposes is to  
4 provide a balanced defense perspective regarding civil litigation. It is in this  
5 capacity that LVDL chose to submit an amicus brief on this issue. Its members  
6 frequently represent defendants in civil cases where a complaint requests punitive  
7 damages but lacks factual allegations that could support the relief. Appellate  
8 guidance on this topic would help clients facing a punitive damages request  
9 evaluate their exposure and litigation strategies.

10 **Relief Sought**

11 The petition seeks a writ of mandamus concerning the district court’s order  
12 denying a motion to dismiss the complaint’s request for punitive damages.  
13 Petitioners seek to reverse that order. LVDL urges that 1) the petition be decided  
14 on its merits so as to provide guidance to litigants and the district courts; and 2)  
15 that the petition be granted.

16 **Issues Presented**

- 17 **1.** Is a motion to dismiss a request for punitive damages subject to review per  
18 NRCF 12(b)(5)?
- 19 **2.** What facts must be pled in a complaint to sufficiently support a request for  
20 punitive damages?

1 **Facts Necessary to Consider the Petition**

2 The complaint alleges the real party in interest Shawn Charles sought  
3 medical care at an emergency room in Las Vegas. It then alleges certain of the  
4 healthcare providers who treated him were professionally negligent.

5 The staff at Sunrise Hospital, including Dr. Sheep, Nurse Bacani, and  
6 other hospital staff fell below the standard of care by 1) not  
7 recognizing the severity of Shawn’s stroke, 2) not initiating a stroke  
8 alert or not obtaining an emergent neurology evaluation of Shawn  
9 upon his arrive to the ED at Sunrise Hospital despite him being within  
10 the 4.5-hour therapeutic window for tPA.<sup>1</sup>

11 Relevant to punitive damages, the complaint alleged “Dr. Sheep and Nurse  
12 Bacani’s continuous and pervasive failure to appropriately and timely treat  
13 Shawn’s stroke for over 3 hours created an unsafe environment and demonstrates a  
14 conscious disregard for Shawn’s safety.”<sup>2</sup> It also alleged “Sunrise Hospital’s and  
15 Dr. Phaniraj Iyengar’s failure to have, maintain and enforce appropriate stroke  
16 policies and procedures ... created an unsafe environment and demonstrates a  
17 conscious disregard for Shawn’s safety.”<sup>3</sup> Finally, “Sunrise Hospital is personally  
18 guilty of express and implied oppression and malice for either failing to have  
19 appropriate policies and procedures in place for stroke code activation, or for

20 <sup>1</sup> Appendix at 0011, ¶ 44. These allegations were substantively repeated in ¶ 45.

<sup>2</sup> *Id.* at 0015, ¶ 52.

<sup>3</sup> *Id.* at 0015, ¶ 53.

1 failing to use them in this case.”<sup>4</sup> The prayer for relief included a request for  
2 “exemplary and punitive damages.”<sup>5</sup>

3 Petitioners moved to dismiss the request for punitive damages. They argued  
4 if the facts alleged were true, the facts could support a cause of action for  
5 professional negligence but not a request for punitive damages. Charles opposed  
6 the motion. The district court denied the motion to dismiss.

7 Based upon what has been alleged in the Complaint (i.e. that a stroke  
8 alert was either not initiated or was discontinued on a patient brought  
9 to the hospital under an emergency stroke alert) a reasonable jury  
10 could find that Defendants’ conduct amounted to conduct that  
11 subjected Plaintiff to cruel and unjust hardship with conscious  
12 disregard of his rights in violation of NRS 41.001(3) and (4).<sup>6</sup>

### 11 Why the Writ Should Issue

#### 12 1. Judicial economy favors considering this petition.

13 Writ relief is available when there is no “plain, speedy and adequate remedy  
14 in the ordinary course of law.”<sup>7</sup> “Because an appeal from a final judgment or order  
15 is ordinarily an adequate remedy, in most cases, we decline to exercise our  
16 discretion to consider writ petitions challenging interlocutory district court  
17 orders.”<sup>8</sup> “We generally decline to entertain writ petitions challenging the denial

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18 <sup>4</sup> *Id.* at 0016 at ¶ 57.

19 <sup>5</sup> *Id.* at 0024.

20 <sup>6</sup> *Id.* at 0135-0136.

<sup>7</sup> NRS 34.170.

<sup>8</sup> *Oxbow Constr., LLC v. Dist. Ct.*, 130 Nev. 867, 872, 335 P.3d 1234, 1238 (2014).

1 of a motion to dismiss.”<sup>9</sup> “However, we may nevertheless review an order denying  
2 a motion to dismiss ... when: ... (2) an important issue of law needs clarification  
3 and considerations of sound judicial economy and administration militate in favor  
4 of granting the petition.”<sup>10</sup>

5 Petitioners seek advisory mandamus, “which may be appropriate when an  
6 important issue of law needs clarification and considerations of sound judicial  
7 economy and administration militate in favor of granting the petition.”<sup>11</sup> Advisory  
8 mandamus may be used “to address the rare question that is likely of significant  
9 repetition prior to effective review, so that our opinion would assist other jurists,  
10 parties, or lawyers.”<sup>12</sup>

11 LVDL believes deciding this writ on its merits would assist the litigants,  
12 lawyers, and district courts because it would help clarify the pleading standards  
13 applicable to a request for punitive damages. District courts are applying different  
14 standards to reach different conclusions. Appellate guidance would help  
15 significantly and is important to civil defendants for the reasons described below.

16 **a. Punitive damages can be uninsurable and nondischargeable.**

17 A request for punitive damages is a serious allegation for civil defendants.  
18 NRS 681A.095 states punitive damages are insurable in Nevada, but only for

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19 <sup>9</sup> *Chur v. Dist. Ct.*, 136 Nev. 68, 70, 458 P.3d 336, 339 (2020).

20 <sup>10</sup> *Id.*

<sup>11</sup> *Archon Corp. v. Dist. Ct.*, 133 Nev. 816, 820, 407 P.3d 702, 706 (2017).

<sup>12</sup> *Id.* at 822-23, 407 P.3d at 708.

1 “punitive damages that do not arise from a wrongful act of the insured committed  
2 with the intent to cause injury to another.” The district court here concluded the  
3 complaint alleged facts that could meet the thresholds in NRS 42.001(3) and (4).  
4 In conjunction with NRS 42.005, NRS 42.001(3) permits punitive damages for  
5 “conduct which is intended to injure a person or despicable conduct which is  
6 engaged in with a conscious disregard of the rights or safety of others.”  
7 “‘Conscious disregard’ means the knowledge of the probable harmful  
8 consequences of a wrongful act and a willful and deliberate failure to act to avoid  
9 those consequences.”<sup>13</sup> If a jury awarded punitive damages under either option in  
10 NRS 42.001(3), those damages appear to be uninsurable per NRS 681A.095. The  
11 same concern arises for NRS 42.001(4). It permits punitive damages for  
12 “despicable conduct that subjects a person to cruel and unjust hardship with  
13 conscious disregard of the rights of the person.”

14 Even if NRS 681A.095 can be overcome, Dr. Sheep’s motion to dismiss  
15 noted punitive damages are often not insured.<sup>14</sup> Many of the clients that LVDL’s  
16 members represent have policies that exclude punitive damages.

17 Finally, in certain scenarios punitive awards can be nondischargeable in  
18 bankruptcy. “A discharge under [citations to statutes] does not discharge an  
19 individual debtor from any debt— (6) for willful and malicious injury by the

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20 <sup>13</sup> NRS 42.001(1).

<sup>14</sup> Appendix at 0086:10-12.

1 debtor to another entity or to the property of another entity.”<sup>15</sup> The “willful injury  
2 requirement is met only when the debtor has a subjective motive to inflict injury or  
3 when the debtor believes that injury is substantially certain to result from his own  
4 conduct.”<sup>16</sup> “A malicious injury involves (1) a wrongful act, (2) done  
5 intentionally, (3) which necessarily causes injury, and (4) is done without just  
6 cause or excuse.”<sup>17</sup> Thus, a punitive award under Nevada law might not be  
7 dischargeable depending upon the reason the punitive award is given.

8 **b. District courts are using varying standards.**

9 While the district court here applied NRCPP 12(b)(5), the district courts  
10 disagree on whether it is even possible to dismiss a request for punitive damages  
11 using NRCPP 12(b)(5). In A-23-869014-C the district court ruled “Rule 12(b)(5) is  
12 not a proper mechanism to challenge a prayer for punitive damages. Punitive  
13 damages are a remedy, not a claim, and are not proper for a motion to dismiss  
14 under Rule 12(b)(5).”<sup>18</sup> In A-23-881653-C the district court struck punitive  
15 damages allegations from the complaint, but “noted that punitive damages is not a  
16 ‘claim for relief’ to be dismissed so [it] may remain in the ‘prayer for relief.’”<sup>19</sup>

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<sup>15</sup> 11 U.S.C. § 523(a)(6).

20 <sup>16</sup> *Carillo v. Su (In Re Su)*, 290 F.3d 1140, 1142 (9th Cir. 2002).

<sup>17</sup> *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1209 (9th Cir. 2001).

<sup>18</sup> LVDL Appendix at 0029.

<sup>19</sup> *Id.* at 36.

1 In district courts applying NRC 12(b)(5), there are significant differences  
2 in the level of factual support required to support a request for punitive damages.  
3 For instance, case A-22-858408-C alleged professional negligence from a visit to  
4 an emergency room, just like occurred in this petition. The operative complaint  
5 alleged the emergency room physicians negligently misdiagnosed the plaintiff's  
6 injuries.<sup>20</sup> The prayer for relief then requested punitive damages. The district  
7 court dismissed that request because the complaint lacked "essential language  
8 required to plead punitive damages and instead only alleges recklessness."<sup>21</sup> This  
9 ruling contrasts with the ruling at issue here yet arises from similar allegations.

10 The plaintiff in A-21-839618-C alleged he was struck by a forklift.<sup>22</sup> The  
11 complaint alleged the forklift was operated "in a negligent, grossly negligent,  
12 careless, reckless, malicious, and oppressive manner, in conscious disregard for the  
13 rights of others including Plaintiff."<sup>23</sup> The defendant allegedly

14 had, or should have had, knowledge of the probable harmful  
15 consequences of his wrongful acts, but acted with a willful and  
16 deliberate failure to avoid those consequences to Plaintiff, constituting  
17 such despicable conduct engaged in with a conscious disregard of the  
18 rights or safety of others including Plaintiff, and subjecting Plaintiff to  
19 cruel and unjust hardships....<sup>24</sup>

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20 <sup>20</sup> *Id.* at 0042, ¶ 11 and 0043, ¶ 26.

21 <sup>21</sup> *Id.* at 0053.

22 <sup>22</sup> *Id.* at 0014, ¶ 18.

23 <sup>23</sup> *Id.* at 0014, ¶ 17.

24 <sup>24</sup> *Id.* at 0014, ¶ 19.

1 “Defendants’ conduct and that of their employee, representative, and/or agent, was  
2 malicious, oppressive, and in conscious disregard to Plaintiff’s right, entitling  
3 Plaintiff to an award of punitive damages.”<sup>25</sup> The district court denied the motion  
4 to dismiss the request for punitive damages.<sup>26</sup>

5 Case A-24-885417-C alleged a rear-end motor vehicle collision. It  
6 contained one paragraph as to punitive damages. “Defendants acts and omissions  
7 were a reckless and conscious disregard for public safety, subjecting Plaintiff to  
8 unjust hardship, constituting malice and/or oppression warranting an award of  
9 punitive damages.”<sup>27</sup> The prayer for relief sought “punitive damages for the  
10 reckless and conscious disregard for the safety of others.”<sup>28</sup> Defendant’s motion to  
11 dismiss the request for punitive damages was denied.<sup>29</sup>

12 Yet, in case A-20-821445-C the defendant driver allegedly struck a  
13 pedestrian. The complaint alleged one defendant negligent entrusted a motor  
14 vehicle to another defendant. The complaint asserted the entrustor “possessed  
15 knowledge of the probable harmful consequences [of entrusting the vehicle] and  
16 willfully and deliberately failed to act to avoid those consequences....”<sup>30</sup> It alleged  
17 the entrustment “was done with a conscious disregard for the safety of others,

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18 <sup>25</sup> *Id.* at 0015, ¶ 26.

19 <sup>26</sup> *Id.* at 0023.

20 <sup>27</sup> *Id.* at 0035, ¶ 16.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 0049.

<sup>30</sup> *Id.* at 0003, ¶ 11.

1 including Plaintiffs, as described in NRS 42.001 and 42.007.”<sup>31</sup> The district court  
2 granted a motion to dismiss, concluding “the sparse facts that have been pled do  
3 not support a claim of punitive damages.”<sup>32</sup>

## 4 **2. Standard of Review**

5 A court considering a motion to dismiss per NRCP 12(b)(5) “will recognize  
6 all factual allegations in [a] complaint as true and draw all inferences in  
7 [plaintiff’s] favor.”<sup>33</sup> The “complaint should be dismissed only if it appears  
8 beyond a doubt that it could prove no set of facts, which, if true, would entitle it to  
9 relief.”<sup>34</sup> “We review the district court’s legal conclusions de novo.”<sup>35</sup>

## 10 **3. NRCP 12(b)(5) is the way to challenge a request for punitive damages.**

11 In Nevada, punitive damages are “a remedy and not a separate cause of  
12 action.”<sup>36</sup> NRCP 12(b)(5) allows a defendant to move to dismiss for “failure to  
13 state a claim upon which relief can be granted.” As noted above, district courts  
14 disagree on whether a defendant may move to dismiss a request for punitive  
15 damages via NRCP 12(b)(5).

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17 <sup>31</sup> *Id.* at 0003, ¶ 12.

18 <sup>32</sup> *Id.* at 0010.

19 <sup>33</sup> *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672,  
(2008).

20 <sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Teva Parenteral Meds., Inc. v. Dist. Ct.*, 137 Nev. Adv. Op. 6, 481 P.3d 1232,  
1241 n.4 (2021).

1 This split is also reflected in the federal system upon which NRCP 12(b)(5)  
2 is based. “Federal cases interpreting the Federal Rules of Civil Procedure are  
3 strong persuasive authority, because the Nevada Rules of Civil Procedure are  
4 based in large part upon their federal counterparts.”<sup>37</sup> In the Ninth Circuit,  
5 *Whittlestone, Inc. v. Handi-Craft Co.* concerned a FRCP 12(f) motion to strike a  
6 punitive damages prayer.<sup>38</sup> The court concluded FRCP 12(f) is not a proper  
7 procedural mechanism to attack on the grounds that punitive damages are  
8 precluded as a matter of law.<sup>39</sup> Instead, these arguments were “better suited for a  
9 Rule 12(b)(6) motion or a Rule 56 motion, not a Rule 12(f) motion.”<sup>40</sup>

10 Despite that ruling, some district courts in the Ninth Circuit still hold that a  
11 prayer for punitive damages as a remedy cannot be challenged per FRCP  
12 12(b)(6).<sup>41</sup> *Gopinath v. Somalogic, Inc.* criticized that line of logic. It noted  
13 *Whittlestone* stated “a Rule 12(b)(6) motion is the means by which a party can  
14  
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16 <sup>37</sup> *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876  
17 (2002) (quotation and citation omitted).

18 <sup>38</sup> *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970 (9th Cir. 2010).

19 <sup>39</sup> *Id.* at 974-75.

20 <sup>40</sup> *Id.* at 974.

<sup>41</sup> *See, e.g., Oppenheimer v. Southwest Airlines Co.*, 2013 U.S. Dist. LEXIS 85633,  
2013 WL 3149483, \*4 (S.D. Cal. 2013) (“Because punitive damages are but a  
remedy, and thus neither constitutes a claim nor pertains to whether any claim has  
been stated, requests for punitive damages provide no basis for dismissal under”  
FRCP 12(b)(6)).

1 ‘dismiss some or all of a pleading.’”<sup>42</sup> *Gopinath* then noted the obvious problem if  
2 FRCP 12(b)(6) did not apply.

3 A request for punitive damages, even in a prayer for relief, is  
4 inarguably “some” of a pleading. Were the Court to reject this  
5 interpretation of *Whittlestone* defendants would be left with no  
6 mechanism to challenge a damage request like the one here since  
7 *Whittlestone* held that Rule 12(f) cannot be used for this purpose.

8 Legal commentators have reached similar conclusions. A defendant may  
9 use FRCP 12(b)(6) to “seek dismissal as to particular elements of a claim such as  
10 one or more categories of damages sought by the plaintiff, even if granting the  
11 motion will not entirely dispose of the claim for relief.”<sup>43</sup>

12 LVDL agrees with *Gopinath* and requests its statement of law be adopted in  
13 Nevada. If a complaint requests punitive damages, it must plead facts that would  
14 support that request if true. NRCP 12(b)(5) is the means by which a defendant can  
15 challenge whether sufficient facts have been pled to support the relief sought.

#### 16 **4. A complaint must plead facts sufficient to support punitive damages.**

17 As *Buzz Stew* noted, a complaint must plead a set of facts that, if true, would  
18 support the relief sought. It appears no Nevada appellate court has addressed that  
19 standard in the context of a motion to dismiss a request for punitive damages.<sup>44</sup>

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20 <sup>42</sup> 2023 U.S. Dist. LEXIS 146816, \*18 (S.D. Cal. August 21, 2023) (*quoting*  
*Whittlestone*, 618 F.3d at 974).

<sup>43</sup> 2-12 Moore's Federal Practice - Civil § 12.34.4

<sup>44</sup> LVDL acknowledges some jurisdictions have held it is not necessary to  
specifically request punitive damages in the complaint. That issue is not present in

1 Nevada’s punitive damages statutes, NRS 42.001, NRS 42.005, and NRS  
2 42.007, are modeled on California Civil Code § 3294. California plaintiffs must  
3 plead the facts supporting punitive damages with specificity; conclusory  
4 allegations devoid of any factual assertions are insufficient.<sup>45</sup> For instance, in  
5 *Monge v. Superior Court*, plaintiffs suing a former employer alleged their  
6 supervisors conspired to make a lewd message appear on a computer screen while  
7 one plaintiff was using it. The supervisors refused to investigate the plaintiffs’  
8 complaints about the message and retaliated against those who complained by  
9 creating a hostile work environment. *Monge* concluded “sufficient facts are  
10 pleaded to allow recovery of punitive damages as to each cause of action.”<sup>46</sup>

11 By contrast, in *Smith v. Superior Court* the plaintiff alleged her lawyers  
12 failed “to adequately represent her and her property interests in the dissolution  
13 proceeding thereby resulting in economic injury.”<sup>47</sup> As to punitive damages, the  
14 complaint pled the lawyers:

15 misrepresented and fraudulently concealed the true nature of the  
16 representation being afforded by ... defendants and that plaintiff’s  
17 legal interests and rights were being protected, when in fact, they were  
not. The defendants’ conduct ... was intentional, knowing, malicious,

18 this petition though because the complaint here did request punitive damages.  
Appendix at 0015-0016 ¶¶ 52-57, 0019 ¶¶ 68-73, 0022-0023 ¶¶ 84-89 & 0024 ¶ d.  
19 Further, the district court stated during oral argument that NRCP 8 required  
pleading punitive damages in the complaint. Appendix at 0131:5-8.

20 <sup>45</sup> *Smith v. Superior Court*, 10 Cal. App. 4th 1033, 1042 (1992).

<sup>46</sup> 176 Cal. App. 3d 503, 508 (1986).

<sup>47</sup> *Smith*, 10 Cal. App. 4th at 1042.

1 fraudulent, false and deceitful. Said acts and omissions were  
2 undertaken with a conscious and knowing disregard of the interests  
and rights of plaintiff and to benefit the defendants ... financially, and  
3 were part and parcel of a scheme and plan to defraud plaintiff.  
Defendants' conduct ... was thus such as to constitute oppression,  
4 fraud or malice....

5 This was inadequate to support a request for punitive damages because “that  
6 paragraph is devoid of any factual assertions supporting a conclusion petitioners  
7 acted with oppression, fraud or malice.”<sup>48</sup>

8 In Maryland, *Scott v. Jenkins* specifically concerned “the pleading  
9 requirements for a claim of punitive damages.”<sup>49</sup> It concluded a complaint “must  
10 set forth facts that, if proven true, would entitle the plaintiff to punitive damages.”

11 In Maryland, a complaint must request punitive damages and plead “facts  
12 sufficient to show actual malice must be pleaded and proven by clear and  
13 convincing evidence....”<sup>50</sup> Since the clear and convincing standard is higher than  
14 the preponderance standard for negligence, “it follows that a more detailed factual  
15 allegation is necessary to put the other party on notice that such damages are being  
16 sought.”<sup>51</sup> Further, “punitive damages embody a public policy determination that a  
17 particular defendant engaged in heinous and malicious conduct sufficient to

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18  
19 <sup>48</sup> *Id.*

<sup>49</sup> 690 A.2d 1000, 1001 (Md. 1997).

20 <sup>50</sup> *Id.* at 1004.

<sup>51</sup> *Id.* at 1006.

1 warrant the equivalent of a ‘civil penalty.’”<sup>52</sup> Consequently, a complaint demands  
2 “a high degree of specificity from a plaintiff seeking punitive damages.”<sup>53</sup>

3 This requirement was applied in *MCB Woodberry Developer, LLC v.*  
4 *Council of Owners of the Millrace Condo., Inc.* where the complaint sought  
5 \$25,000,000 of punitive damages. It was based upon a single email that “described  
6 some of the public opposition to the Tractor Building Project as a ‘ploy to try to  
7 get [the developer] to buzz off.’ These facts are insufficient patently to show that  
8 the HOA parties acted with actual malice in opposing VS’s development efforts.”<sup>54</sup>

9 **5. This complaint lacked factual support to allege punitive damages.**

10 The complaint here alleged a set of facts that would support causes of action  
11 for professional negligence. However, these facts do not rise to the level of  
12 conduct NRS 42.001 defines as qualifying for punitive damages. *Thitchener* stated  
13 meeting NRS 42.001’s definitions requires “conduct that, at a minimum, must  
14 exceed mere recklessness or gross negligence.”<sup>55</sup> For instance, in *Thitchener* the  
15 plaintiffs proved conscious disregard by presenting “evidence of multiple ignored  
16 warning signs suggesting that Countrywide knew of a potential mix-up, as well as  
17 evidence indicating that Countrywide continued to proceed with the foreclosure

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18 <sup>52</sup> *Id.* at 1007.

19 <sup>53</sup> *Id.* at 1007.

20 <sup>54</sup> 265 A.3d 1140, 1158 (Md. 2021).

<sup>55</sup> *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243, 255 (2008).

1 despite knowing of the probable harmful consequences of doing so.”<sup>56</sup> The  
2 complaint here alleges no similar facts, thus the request for punitive damages  
3 should have been dismissed per NRCPP 12(b)(5).

4 **Conclusion**

5 LVDL urges that this petition be decided on its merits and granted.  
6 Ultimately, the motion to dismiss should have been granted without prejudice.  
7 LVDL hopes deciding this petition on its merits will provide needed guidance to  
8 litigants and the district courts alike.

9 DATED this 30<sup>th</sup> day of June, 2024.



11 BY: */s/ Michael P. Lowry*  
12 MICHAEL P. LOWRY  
13 Nevada Bar No. 10666  
14 Attorneys for Las Vegas Defense Lawyers

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20  

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<sup>56</sup> *Id.* at 744, 192 P.3d at 255.



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Attorneys for Las Vegas Defense Lawyers

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

7 Andrew Sheep, M.D. and Fremont  
8 Emergency Services (Mandavia), Ltd.  
9 aka Fremont Emergency Services  
(Scheer), Ltd.

10 **Petitioners**

vs.

11 The Eighth Judicial District Court of the  
12 State of Nevada, ex rel. The County of  
13 Clark, and The Honorable Crystal Eller,

14 **Respondents**

15 and

16 Shawn Charles,

17 **Real Party in Interest**

Supreme Ct. No.: 88797

Dist. Ct. Case No.: A-23-875752-C

**Appendix to Las Vegas Defense  
Lawyers' Amicus Brief**

**Table of Contents**

1  
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Complaint from A-20-821445-C ..... 1-8

Complaint from A-21-839618-C ..... 11-21

Complaint from A-22-858408-C ..... 40-48

Complaint from A-24-885417-C ..... 32-35

Order from A-20-821445-C..... 9-10

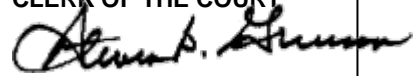
Order from A-21-839618-C..... 22-25

Order from A-22-858408-C..... 52-57

Order from A-23-869014-C..... 26-31

Order from A-23-881653-C..... 36-39

Order from A-24-885417-C..... 49-51



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CASE NO: A-20-821445-C  
Department 16

11 Attorneys for Plaintiffs,  
12 MARILYN SUTTLEMYRE and LARRY SUTTLEMYRE

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DISTRICT COURT  
CLARK COUNTY, NEVADA

MARILYN SUTTLEMYRE, an individual; and  
LARRY SUTTLEMYRE, an individual,

Plaintiffs,

v.

RAVDISH KAUR ARORA, individually; and  
DR. MANDIP ARORA, individually; DOES 1  
through 10, inclusive; and ROE  
CORPORATIONS 11 through 20, inclusive,

Defendants.

CASE NO:

DEPT.

**PLAINTIFFS', MARILYN  
SUTTLEMYRE AND LARRY  
SUTTLEMYRE, COMPLAINT**

COMES NOW Plaintiffs, MARILYN SUTTLEMYRE and LARRY SUTTLEMYRE, by and through their attorneys of record, LINCOLN, GUSTAFSON & CERCOS, LLP, and for their causes of action, allege as follows:

**JURISDICTION AND VENUE**

1. Subject matter jurisdiction is conferred upon this Court as all of the facts and circumstances that gave rise to the subject lawsuit occurred in Clark County, State of Nevada.

2. At all times relevant to these proceedings, Plaintiff, MARILYN SUTTLEMYRE, was and is a resident of the State of Utah, visiting in the County of Clark, State of Nevada.

3. At all times relevant to these proceedings, Plaintiff, LARRY SUTTLEMYRE, was and is a resident of the State of Utah.

1           4.       Plaintiffs are informed, believe and thereon allege that at all times relevant to these  
2 proceedings Defendant, RAVDISH KAUR ARORA, was a resident of the City of Las Vegas, State of  
3 Nevada.

4           5.       Plaintiffs are informed, believe and thereon allege that at all times relevant to these  
5 proceedings Defendant, DR. MANDIP ARORA, was a resident of the City of Las Vegas, State of  
6 Nevada.

7           6.       Pursuant to NRCP 10(a) and *Nurenberger Hercules-Werke GMBH v. Virostek*, 107  
8 Nev. 873, 822 P.2d 1100 (1991), the true names and capacities, whether individual, corporate,  
9 associate or otherwise of Defendants named herein as DOES 1 through 10 and ROE  
10 CORPORATIONS 11 through 20, are unknown to Plaintiffs, who, therefore, sue said Defendants by  
11 said fictitious names. Upon information and belief, these DOE and ROE Defendants, and each of them,  
12 are responsible in some manner for the events and happenings upon which this action is premised, or  
13 of similar actions directed against Plaintiffs about which Plaintiffs are presently unaware, and which  
14 directly and proximately caused injury and damages to Plaintiffs as herein alleged. DOE and ROE  
15 Defendants include, but are not limited to employees, independent contractors, subcontractors,  
16 suppliers and/or drivers. Plaintiffs will ask leave of this Court to amend their Complaint to insert the  
17 true names and capacities of, DOE 1 through 10, and ROE CORPORATIONS 11 through 20, when  
18 the same have been ascertained and to join such Defendants in this action.

19           7.       On October 05, 2018, Plaintiff, MARILYN SUTTLEMYRE, was walking as a  
20 pedestrian in a private gated neighborhood known as Lamplight Estates, located in Las Vegas, Nevada,  
21 at approximately 8 a.m.

22           8.       At said time and place, Defendant, RAVDISH KAUR ARORA, was operating a 2015  
23 Hyundai Genesis, license plate 643ZCD, which was owned and maintained by Defendant, DR.  
24 MANDIP ARORA.

25           9.       At said time and place, Defendant, RAVDISH KAUR ARORA, was operating the 2015  
26 Hyundai Genesis, with the express permission and knowledge of the owner, Defendant DR. MANDIP  
27 ARORA.

28 ///

1           10.     As a result of Defendant RAVDISH KAUR ARORA's failure to pay proper attention  
2 to her driving, she struck the body of Plaintiff MARILYN SUTTLEMYRE with her vehicle, thereby  
3 causing Plaintiff MARILYN SUTTLEMYRE to sustain serious and debilitating injuries.

4           11.     Defendant DR. MANDIP ARORA possessed knowledge of the probable harmful  
5 consequences of the wrongful acts described HEREIN, and willfully and deliberately failed to act to  
6 avoid those consequences; and that such knowledge was possessed by Defendant DR. MANDIP  
7 ARORA who expressly authorized Defendant RAVDISH KAUR ARORA's conduct and driving of  
8 said vehicle.

9           12.     The conduct of Defendant DR. MANDIP ARORA, described herein, including but not  
10 limited to improperly entrusting and authorizing driver Defendant RAVDISH KAUR ARORA to  
11 continue to operate a motorized vehicle was more than momentary thoughtlessness, inadvertence, or  
12 error of judgment, but rather was done with a conscious disregard for the safety of others, including  
13 Plaintiffs, as described in NRS 42.001 and 42.007.

14           13.     As more fully set forth herein, at the time of the subject incident, Defendant DR.  
15 MANDIP ARORA had advance knowledge that Defendant RAVDISH KAUR ARORA was unfit to  
16 operate a motor vehicle and still entrusted and authorized Defendant RAVDISH KAUR ARORA to  
17 drive a motor vehicle.

18           14.     That doing so was a conscious disregard by Defendant DR. MANDIP ARORA of the  
19 rights and/or safety of others, including Plaintiff.

20           15.     That Defendant DR. MANDIP ARORA ratified the unsafe driving habits of Defendant  
21 RAVDISH KAUR ARORA when he allowed her to continue to be entrusted and authorized to drive  
22 said motor vehicle despite ample evidence that she was not fit to continue driving said vehicle.

23           16.     The conduct of Defendant DR. MANDIP ARORA, in entrusting and authorizing  
24 Defendant RAVDISH KAUR ARORA to drive said motor vehicle keeping her on the road, was  
25 despicable conduct with a willful and conscious disregard of the rights of the safety of others, including  
26 Plaintiffs. The conduct of the Defendant DR. MANDIP ARORA as described more fully herein,  
27 further subjected the Plaintiffs to cruel and unjust hardship, was done with a conscious disregard of  
28 the rights of the Plaintiffs, or was done to otherwise oppress or cause injury to the Plaintiffs, such as

1 to constitute malice, oppression, or fraud under NRS 42.001 and NRS 42.007, thereby entitling  
2 Plaintiffs to punitive damages.

3 17. Plaintiffs are therefore entitled to recover judgment against Defendants, in addition to  
4 compensatory damages, for exemplary damages for the sake of punishing Defendants and making an  
5 example of Defendants.

6 18. It has become necessary for Plaintiffs to retain the services of an attorney to prosecute  
7 this action, and Plaintiffs are therefore entitled to attorneys' fees and costs of suit.

8 **FIRST CAUSE OF ACTION**

9 **(Negligence and Negligent Entrustment)**

10 19. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 18 as  
11 though fully set forth herein at length.

12 20. Defendant, RAVDISH KAUR ARORA, owed Plaintiffs a duty of reasonable and  
13 ordinary care to ensure that her operation of the motor vehicle was not done so in a negligent, careless,  
14 reckless, or wanton manner.

15 21. Defendant, RAVDISH KAUR ARORA, owed Plaintiffs a duty of reasonable and  
16 ordinary care to obey all traffic signs and signals while operating the motor vehicle.

17 22. Defendant, RAVDISH KAUR ARORA, owed Plaintiffs a duty of reasonable and  
18 ordinary care to ensure that her operation of the motor vehicle was not done so in a negligent, careless,  
19 reckless, or wanton manner so as to avoid contact with pedestrians and other objects.

20 23. That as a result of Defendant RAVDISH KAUR ARORA's failure to exercise  
21 reasonable and ordinary care while operating the motor vehicle on October 5, 2018, she drove her  
22 motor vehicle into Plaintiff MARILYN SUTTLEMYRE and struck the body of Plaintiff MARILYN  
23 SUTTLEMYRE and caused Plaintiff MARILYN SUTTLEMYRE to sustain serious and debilitating  
24 injuries.

25 24. That Defendant RAVDISH KAUR ARORA's breach was the actual and proximate  
26 cause of Plaintiffs' injuries and damages.

27 ///

28 ///

1           25. Defendant, DR. MANDIP ARORA, and each other Defendant, owed Plaintiffs a duty  
2 of reasonable and ordinary care to ensure that his motor vehicle was not operated in a negligent,  
3 careless, reckless, or wanton manner.

4           26. That Defendant, DR. MANDIP ARORA, and all other Defendants sued herein, are  
5 vicariously liable to Plaintiffs by virtue of the doctrine of vicarious liability in that Defendant,  
6 RAVDISH KAUR ARORA, was entrusted with the motor vehicle with the express knowledge and  
7 authorization of DR. MANDIP ARORA and RAVDISH KAUR ARORA failed to operate the motor  
8 vehicle with reasonable and ordinary care causing harm to Plaintiffs.

9           27. Defendant, DR. MANDIP ARORA, breached this duty by failing to adequately  
10 monitor and educate Defendant's driving habits resulting in Defendant RAVDISH KAUR ARORA's  
11 negligent operation of the motor vehicle which caused the subject collision to occur.

12           28. Upon information and belief, prior to the subject motor vehicle accident, Defendant  
13 DR. MANDIP ARORA had knowledge of other accidents and incidents that Defendant RAVDISH  
14 KAUR ARORA caused while driving a motor vehicle owned and maintained by Defendant DR.  
15 MANDIP ARORA.

16           29. That Defendant DR. MANDIP ARORA, at all times relevant hereto, had the authority  
17 and ability to withdraw or terminate authority and entrustment of the motor vehicle to RAVDISH  
18 KAUR ARORA.

19           30. That Despite his knowledge of the facts set forth above and Defendant RAVDISH  
20 KAUR ARORA's inexperience and/or incompetence as a driver of a motor vehicle, Defendant DR.  
21 MANDIP ARORA chose to allow to RAVDISH KAUR ARORA to continue drive a motor vehicle  
22 with his express authorization and entrustment.

23           31. The negligence, carelessness and recklessness of Defendant, DR. MANDIP ARORA,  
24 in entrustment and authorization of Defendant, RAVDISH KAUR ARORA, to drive the subject  
25 vehicle was the actual and proximate cause of Plaintiffs' injuries and damages.

26           32. As a direct and proximate result of the negligence and lack of ordinary care of  
27 Defendants, Plaintiff MARILYN SUTTLEMYRE incurred and sustained significant damage to her  
28 person and Plaintiffs have suffered general and special damages in an amount in excess of \$15,000.



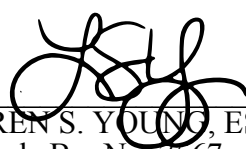


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- 4. Damages for costs of medical care and treatment and costs incidental therein, when the same have been fully ascertained, but upon information and belief are in excess of \$15,000;
- 5. For exemplary and punitive damages in an amount in excess of \$15,000.00;
- 6. For all applicable pre-judgment and post-judgment interest;
- 7. For attorneys' fees and costs incurred; and
- 8. For such other and further relief as the Court deems just and proper.

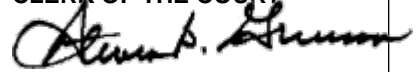
DATED this 18<sup>th</sup> day of September, 2020.

LINCOLN, GUSTAFSON & CERCOS, LLP



---

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Attorneys for Defendants

7  
8 EIGHTH JUDICIAL DISTRICT COURT  
9 CLARK COUNTY, NV

10 MARILYN SUTTLEMYRE, an individual;  
and LARRY SUTTLEMYRE, an individual,

11 Plaintiffs,

12 vs.

13 RAVDISH KAUR ARORA, individually;  
14 and DR MANDIP ARORA, individually;  
DOES 1 through 10, inclusive; and ROE  
15 CORPORATIONS 11 through 20, inclusi  
DEFENDANT(S)

CASE NO.: A-20-821445-C  
DEPT. NO.: XVI

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS PLAINTIFFS'  
PRAYER FOR PUNITIVE DAMAGES  
AND CLAIM FOR NEGLIGENT  
ENTRUSTMENT PURSUANT TO NRCP  
12(b)(5)**

17 THIS MATTER having come before this Honorable Court for hearing on November 17,  
18 2020, the Honorable Timothy C. Williams presiding; Defendants being represented by Thomas  
19 E. Winner of Winner & Sherrod; and Plaintiffs being represented by Loren S. Young of Lincoln,  
20 Gustafson & Cercos, LLP. The Court having reviewed the Motion, the papers and pleadings on  
21 file herein, entertaining the oral argument of counsel, and good cause appearing:

22 IT IS HEREBY ORDERED AND ADJUDGED that Defendants RAVDISH KAUR  
23 ARORA's and DR MANDIP ARORA's Motion to Dismiss Plaintiffs' Prayer for Punitive  
24 Damages and Claim for Negligent Entrustment is GRANTED pursuant to NRCP 12(b)(5), and  
25 Plaintiffs' prayer for punitive damages and claim for negligent entrustment are DISMISSED  
26 WITHOUT PREJUDICE.

27 IN SO RULING, the court rules that sufficient facts supporting a claim of negligent  
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entrustment have not been pled with any specificity. Further, the sparse facts that have been pled do not support a claim of punitive damages.

If, during discovery, further facts should present themselves so as to support a claim of punitive damages and/or negligent entrustment, Plaintiffs may accordingly file a motion to amend its complaint to reflect it as such.

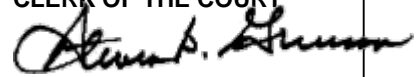
IT IS SO ORDERED this 30th day of November \_\_\_\_\_, 2020.

  
DISTRICT COURT JUDGE TJ

Submitted By:

WINNER & SHERROD

/s/ McKay G. Miles  
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Nevada Bar No. 5168  
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CASE NO: A-21-839618-C  
Department 29

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

GRANT GRAAN, individually,

Plaintiff,

vs.

GLOBAL EXPERIENCE SPECIALISTS,  
INC., a Domestic Corporation; WORLD PET  
ASSOCIATION, INC., a Foreign California  
Corporation; DOES I through X and ROE  
BUSINESS ENTITIES I through V inclusive,

Defendants.

CASE NO.:  
DEPT. NO.:

**COMPLAINT**

Plaintiff, GRANT GRAAN, (hereafter, "Plaintiff,"), by and through his attorneys of record, Dillon G. Coil, Esq., and Ryan Loosvelt, Esq., of **GGRM Law Firm**, and as for his Complaint against Defendant above-named, and for his causes of action, alleges and states as follows:

**JURISDICTIONAL ALLEGATIONS**

1. That at all times relevant to this action, Plaintiff, GRANT GRAAN was and is a resident of Clark County, Nevada.
2. That upon information and belief, and at all times relevant to this action,



LAW FIRM  
INJURY ATTORNEYS



LAW FIRM  
INJURY ATTORNEYS

1 Defendant Global Experience Specialists, Inc. (“GES”) was and is a domestic limited-liability  
2 company licensed to do business in the state of Nevada.

3 3. That upon information and belief, and at all times relevant to this action,  
4 Defendant World Pet Association, Inc. (“WPA”), was and is a foreign corporation conducting  
5 business in the State of Nevada.

6 4. That DOES Defendants I though X and ROE BUSINESS ENTITIES Defendants  
7 I through X, are sued herein by their fictitious names for the reason that their respective true  
8 names are unknown to Plaintiff at this time. When their true names are ascertained, Plaintiff will  
9 ask leave of this Court to insert their true names herein, in the place and stead of their fictitious  
10 names. That at all times mentioned herein, each of the DOE and ROE Defendants was the agent,  
11 employee, servant or corporate employer of the other, and of the Defendants, and was acting  
12 within the scope and purpose of said agency, employment, service or corporate activity. Plaintiff  
13 is informed and believes, and therein alleges, that each of the Defendants designated herein as a  
14 DOE or ROE BUSINESS ENTITY Defendants is negligently or otherwise responsible in some  
15 manner for the acts, events, circumstances and happenings complained of herein, and actually  
16 and proximately thereby caused Plaintiff to suffer the injuries and damages herein below alleged.  
17 Further, Plaintiff alleges that Defendants and DOE and ROE Defendants, and each of them, were  
18 an owner, operator, lessor, lessee, manager, producer, supervisor, or some other entity interested  
19 in the operation, maintenance, and control of the Defendants at all relevant times to this action.

20 5. This court has jurisdiction over this matter pursuant to Nev. Const. art. VI, § 6,  
21 as this Court has original jurisdiction in all cases not assigned to the justices’ courts. Plaintiff’s  
22 injurie and damages claimed exceed \$15,000.00 exclusive of interest, fees, and costs. Venue is  
23 proper here as the relevant facts and circumstances that are the subject of this Complaint all took  
24 place in Clark County, Nevada and multiple Defendants resides herein.

25 **GENERAL ALLEGATIONS**

26 6. Plaintiff repeats and realleges each and every allegation contained in the  
27 preceding paragraphs of this Complaint as though the same were fully set forth at length herein.  
28



LAW FIRM  
INJURY ATTORNEYS

1           7.       On August 23, 2019, in the State of Nevada, County of Clark, Plaintiff, was  
2 working and supervising his crew during a booth dismantle at the Mandalay Bay during and/or  
3 at or near the conclusion of the Superzoo Expo 2019.

4           8.       GES controlled, supervised, managed and/or worked at the Superzoo Expo 2019  
5 at Mandalay Bay in and around August 2019, and that was being dismantled on or around August  
6 23, 2019.

7           9.       WPA worked at, controlled, supervised, directed, produced, and/or managed the  
8 subject Superzoo Expo 2019 at the Mandalay Bay in and around August 2019, and that was  
9 being dismantled on or around August 23, 2019 on the day of the incident, and retained or hired  
10 GES to perform forklift related services thereat.

11           10.       Plaintiff is not and was not an employee of GES or WPA.

12           11.       The Defendants had non-delegable duties to render, keep, supervise, and  
13 maintain the premises where the incident occurred by exercising reasonable care and to keep the  
14 premises safe.

15           12.       The Defendants owned, controlled, managed, the cart and forklift services on the  
16 Mandalay Bay premises for the Superzoo Expo 2019, and otherwise imposed requirements, rules,  
17 regulation, directions, and parameters for the use of forklifts.

18           13.       Each Defendant is responsible for the conduct and omissions of the other  
19 Defendants.

20           14.       On or around August 23, 2019, Defendants negligently entrusted, provided, and  
21 directed, an employee, representative, and/or agent to use and drive the subject forklift at issue  
22 in this action.

23           15.       Defendants knew, or should have known, that the employee, representative,  
24 and/or agent was unfit to drive and handle the forklift and the duties and responsibilities  
25 associated therewith.

26           16.       The employee, representative, and/or agent of Defendants entrusted to drive the  
27 subject forklift, and his company, were unfit for their duties and were negligently, and  
28 unreasonably, hired, trained, retained, and/or supervised by the Defendants.



1           17.     The employee, representative, and/or agent of Defendants, in the course and  
2 scope of his employment for them, was operating the subject forklift on or around August 23,  
3 2019 in a negligent, grossly negligent, careless, reckless, malicious, and oppressive manner, in  
4 conscious disregard for the rights of others including Plaintiff.

5           18.     Among other things, the subject employee, representative, and/or agent of  
6 Defendants for whom Defendants are responsible was operating the subject forklift unsafely, a  
7 forklift which is thousands of pounds itself, additionally carrying hundreds if not a thousand  
8 pounds of pallets and materials, without reasonably watching or paying due care to others around  
9 him including Plaintiff, at an unreasonably high and unsafe speed, in violation of rules,  
10 regulations, procedures, and other requirements, when he violently slammed into and struck  
11 Plaintiff out of nowhere and without warning, with the extremely heavy and dense forklift and  
12 pallets, in and around several areas of Plaintiff's body, including, but not limited to, injuring his  
13 head, shoulders, hip and foot, causing Plaintiff severe, debilitating, and continuing injuries, as  
14 well as significant and imminent fear of death at the time, in addition to other past and future  
15 pain and suffering.

16           19.     The subject employee, representative, and/or agent of Defendants had, or should  
17 have had, knowledge of the probable harmful consequences of his wrongful acts, but acted with  
18 a willful and deliberate failure to avoid those consequences to Plaintiff, constituting such  
19 despicable conduct engaged in with a conscious disregard of the rights or safety of others  
20 including Plaintiff, and subjecting Plaintiff to cruel and unjust hardships and the serious injuries  
21 alleged hereinabove and below.

22           20.     Defendants are responsible for the conduct of each other and the forklift driver,  
23 and have non-delegable duties to perform their duties and responsibilities in a safe manner and  
24 to provide a safe environment.

25           21.     Despite violently and unreasonably dangerously striking Plaintiff with the deadly  
26 machinery, the subject employee, representative, and/or agent of Defendants was unremorseful,  
27 failed to initially even apologize, dropped off a pallet at an adjacent booth, and left.

28           22.     Plaintiff immediately reported the incident.





LAW FIRM  
INJURY ATTORNEYS

1 oppressively, and maliciously, breached their duties of care to Plaintiff, in conscious disregard  
2 for his rights and safety.

3 31. Defendants' breaches, and that of each of them and their employees,  
4 representatives and/or agents, caused Plaintiff's injuries and damages, in excess of \$15,000,  
5 exclusive of interest, fees, and costs, including but not limited to, past and future general and  
6 special damages, lost wages, and loss of earning capacity.

7 32. Among other things, the subject employee, representative, and/or agent of  
8 Defendants was operating the subject forklift unsafely, which is thousands of pounds itself,  
9 additionally carrying hundreds if not a thousand pounds of pallets, without reasonably watching  
10 or paying due care to others around him including Plaintiff, at an unreasonably high and unsafe  
11 speed, when he violently struck Plaintiff out of nowhere without warning, with the extremely  
12 heavy and dense forklift and pallets, in and around the areas of Plaintiff's head, shoulders, hip  
13 and foot, causing Plaintiff severe, debilitating, and continuing injuries, as well as significant fear  
14 of death and other past and future pain and suffering.

15 33. Additionally, the subject employee, representative, and/or agent of Defendants  
16 otherwise operated Defendants' forklift with a conscious disregard for the rights and safety of  
17 Plaintiff, so as to unreasonably bring it into sudden, forcible contact with Plaintiff, failing to  
18 exercise reasonable care, and failing to maneuver the forklift so as to avoid a collision and  
19 contact with Plaintiff, among other things.

20 34. Further, Defendants, and each of them, and by and through the subject employee,  
21 representative, and/or agent of Defendants, failed to obey and violated applicable rules, codes,  
22 standards, statutes, provisions, and laws in the use, direction, and operation of the forklift, or  
23 otherwise, for which Plaintiff was in the class of persons meant to be protected, causing  
24 Plaintiff's injuries and damages which Plaintiff suffered.

25 35. As a direct and proximate consequence and cause of the above stated conduct of  
26 the Defendants, and each of them, Plaintiff has suffered bodily injuries and other damages in  
27 excess of \$15,000.

28



LAW FIRM  
INJURY ATTORNEYS

1           36. As a direct and proximate consequence and cause of the above stated conduct of  
2 the Defendants, and each of them, Plaintiff has received and will continue to receive medical  
3 treatment, and has incurred and will continue to incur medical expenses.

4           37. As a direct and proximate consequence and cause of the above stated conduct of  
5 the Defendants, and each of them, Plaintiff has incurred medical expenses to date as of the filing  
6 of this Complaint in excess of \$90,000.

7           38. Plaintiff's medical treatment is and was reasonable and necessary and causally  
8 related to the incident caused by Defendants, and each of them, on or around August 23, 2019,  
9 and the associated medical costs and expenses are and were usual and customary in Nevada.

10           39. As a direct and proximate consequence and cause of the above stated conduct of  
11 the Defendants, and each of them, Plaintiff has endured and will continue to endure pain,  
12 suffering, and physical impairment and disability, mental anguish and emotional distress, and a  
13 loss of enjoyment of life.

14           40. As a direct and proximate result of the above-stated acts and/or omissions of  
15 Defendants, and each of them, Plaintiff was required to seek and undergo medical treatment,  
16 including, but not limited to, treatment by physicians, physical therapists and the taking of  
17 prescribed medications.

18           41. Plaintiff has been required to obtain the services of an attorney in order to  
19 prosecute this action, and, as such, they are entitled to recover reasonable attorney's fees plus  
20 costs of suit and interest.

21           42. Defendants caused Plaintiff past and future general damages, past and future  
22 special damages, lost wages, and loss of earning capacity.

23           43. Defendants' conduct was malicious and oppressive, and Defendants  
24 demonstrated a conscious disregard for the rights of Plaintiff. Plaintiff is therefore entitled to  
25 punitive damages, in addition to past and future general damages, past and future special  
26 damages, wage loss, loss of earning capacity.

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**SECOND CAUSE OF ACTION**

**(Negligent Entrustment as to all Defendants)**

44. Plaintiff repeats and realleges, and incorporates herein in full by this reference, each and every allegation contained in the preceding paragraphs 1-43 of this Complaint.

45. Defendants, and each of them, owned, controlled, directed, and/or regulated use of, the subject forklift.

46. Defendants knowingly and negligently entrusted the forklift to an inexperienced, incompetent, negligent, and reckless company and/or person.

47. Defendants either knew, or should have known, that such entrustment was negligent.

48. As a direct and proximate result of the negligent entrustment, Plaintiff sustained injuries and damages for which Defendants are liable, in excess of \$15,000 exclusive of interest, fees, and costs.

49. Defendants caused Plaintiff past and future general damages, past and future special damages, lost wages, loss of earning capacity, in excess of \$15,000, and Plaintiff is further entitled to punitive damages.

50. Plaintiff has been required to obtain the services of attorneys in order to prosecute this action, and is entitled to recover reasonable attorney's fees, costs, and interest.

**THIRD CAUSE OF ACTION**

**(Negligent Hiring, Retention, Training and Supervision against all Defendants)**

51. Plaintiff repeats and realleges, and incorporates herein in full by this reference, each and every allegation contained in the preceding paragraphs 1-50 of this Complaint.

52. Defendants have and had a duty to conduct a reasonable inquiry into each other and into the subject employee, representative, and/or agent when hiring or retaining the company or subject employee, representative, and/or agent.

53. Defendants breached that duty by failing to conduct a reasonable inquiry or background check into each other and/or the subject employee, representative, and/or agent



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when hiring him, and into each other when hiring or retaining each other, all of whom negligently caused the injuries and damages in the course and scope of their employment.

54. Defendants' breaches of such duties caused Plaintiff's injuries and damages in excess of \$15,000, exclusive of interest, fees, and costs.

55. Defendants have and had a duty to exercise reasonable care to ensure that their employees, representatives, and/or agents are properly trained and supervised in the performance of their job duties, responsibilities, and position, including, but not limited to, the safe use and operation of forklifts in such a manner as to avoid incidents and injuries such as occurred as alleged herein above and were caused to Plaintiff, in producing, managing, working at, and operating the subject expo.

56. Defendants breached that duty by failing to reasonably train and supervise, and in unreasonably retaining, unfit companies, and their unfit employee, representative, and/or agent who was driving the subject forklift, which caused the subject incident and injuries and damages to Plaintiff in excess of \$15,000, exclusive of fees, costs, and interest, in the course and scope of their employment.

57. Defendants knew or should have known the companies and the employee, representative, and/or agent behaved and would behave in a dangerous or otherwise incompetent manner, and Defendants, armed with that actual or constructive knowledge, negligently retained and failed to adequately supervise each other and the employee, representative, and/or agent.

**FOURTH CAUSE OF ACTION**

**(Respondeat Superior as to all Defendants)**

58. Plaintiff repeats and realleges, and incorporates herein in full by this reference, each and every allegation contained in the preceding paragraphs 1-57 of this Complaint.

59. Defendants' employees, representatives, and/or agents were in the course and scope of their work for Defendants at the time of, and when causing, the subject incident.

60. The forklift being driven at the time of the subject incident was owned, operated, leased, controlled by, regulated, and/or otherwise utilized by Defendants.



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61. Defendants, and each of them, are vicariously liable and/or jointly and severally liable for the negligence of each other and of their employees, representatives, and/or agents, under the doctrine of respondent superior or otherwise, which directly and proximately caused and resulted in Plaintiff's aforesaid damages in excess of \$15,000, exclusive of interest, fees, and costs.

62. Plaintiff has been required to obtain the services of attorneys in order to prosecute this action, and is entitled to recover reasonable attorney's fees, costs, and interest.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff reserves the right to amend this Complaint at the time of trial or beforehand and demands judgment against Defendants, and each of them, as follows:

1. For judgment in favor of Plaintiff against Defendants on all claims;
2. For a sum in excess of \$15,000 for past and future special damages;
3. For a sum in excess of \$15,000 for past and future general damages, including, but not limited to, past and future pain, suffering, mental distress and anguish;
4. For other past or future general and special damages incurred and to be incurred;
5. For wage loss and loss of earning capacity, in excess of \$15,000;
6. For reasonable attorney's fees and costs of suit incurred herein;
7. For pre-judgement and post-judgement interest;
8. For punitive damages; and,

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9. For such other and further relief as this Honorable Court may deem just and proper.

Dated this 17<sup>th</sup> day of August, 2021.

**GGRM LAW FIRM**

*/s/ Ryan A. Loosvelt*

---

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*Attorneys for Plaintiff*



LAW FIRM  
INJURY ATTORNEYS

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**ORDR**

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*Attorneys for Defendants, GLOBAL  
EXPERIENCE SPECIALISTS, INC.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

GRANT GRAAN, an individual,  
  
Plaintiff,

vs.

GLOBAL EXPERIENCE SPECIALISTS,  
INC., a domestic corporation; WORLD PET  
ASSOCIATION, INC., a Foreign California  
Corporations; DOES I through X and ROE  
BUSINESS ENTITIES, I through V,  
inclusive,  
  
Defendants.

CASE NO.: A-21-839618-C  
DEPT. NO.: 29

**ORDER DENYING DEFENDANTS'  
MOTION TO STRIKE PLAINTIFF'S  
CLAIM FOR PUNITIVE DAMAGES,  
WITHOUT PREJUDICE**

**AND ALL RELATED CLAIMS.**

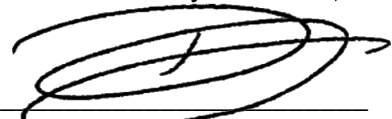
1 This matter, came before the Court on Defendant Global Experience Specialists, Inc.'s  
2 Motion to Strike Plaintiff's Request for Punitive Damages (filed September 13, 2021) and on  
3 Defendant World Pet Association, Inc.'s Motion to Strike Plaintiff's Request for Punitive  
4 Damages (filed September 21, 2021). Plaintiff filed Oppositions on September 27, 2021 and  
5 October 4, 2021, respectively. Defendants filed a joint Reply on October 12, 2021. Plaintiff,  
6 GRANT GRAAN, appeared by and through his counsel, Ryan A. Loosvelt, Esq., of GGRM Law  
7 Firm, and Defendants GLOBAL EXPERIENCE SPECIALISTS, INC., and WORLD PET  
8 ASSOCIATION, INC., appeared by and through their counsel, Michael A. Royal, Esq., of Royal  
9 & Miles LLP. The court having reviewed the motions, oppositions, and reply, having considered  
10 the arguments of counsel at the hearing, being fully advised in the premise, and for good cause  
11 appearing, hereby orders as follows:  
12

13  
14 IT IS HEREBY ORDERED that Defendants' motions to strike the punitive damages  
15 claim set forth in the Complaint is DENIED WITHOUT PREJUDICE. .

16 IT IS FURTHER ORDERED that Defendants will file a responsive pleading within 14  
17 days of the date of this Order pursuant to NRCPC 12(A).

18 DATED this \_\_\_\_ day of November, 2021.

Dated this 10th day of November, 2021



19  
20 **DISTRICT COURT JUDGE**

21 **8B9 2A7 DA52 B2D4**  
22 **David M Jones**  
23 **District Court Judge**

1 Approved as to form and content:

2 **ROYAL & MILES LLP**

3  
4 By: --Refused to Sign--

5 Michael A. Royal, Esq.  
6 Nevada Bar No. 4370  
7 1522 W. Warm Springs Road  
8 Henderson, NV 89014

9 DaCORSI PLACENCIO, P.C.

10 John R. DaCorsi, Esq.

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12 10161 Park Run Drive, #150

13 Las Vegas, Nevada 89145

14 *Attorneys for Defendants*

15 *GLOBAL EXPERIENCE SPECIALISTS, INC.*

16 *WORLD PET ASSOCIATION, INC.*

17 Submitted by:

18 **GGRM LAW FIRM**

19 By: /s/ Ryan A. Loosvelt, Esq.

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25 Las Vegas, NV 89109

26 *Attorneys for Plaintiff*

27 *GRANT GRAAN*

28

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Grant Graan, Plaintiff(s)

CASE NO: A-21-839618-C

7 vs.

DEPT. NO. Department 29

8 Global Experience Specialists  
9 Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/10/2021

16 John DaCorsi

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*Attorneys for Defendants*  
*Las Vegas Surgical Associates, LLP and*  
*Jiashou Xu, M.D.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JAMES ROGER GLADWIN,

Plaintiff,

vs.

SAN MARTIN SURGERY CENTER, LLC  
D/B/A DURANGO OUTPATIENT SURGERY  
CENTER; LAS VEGAS SURGICAL  
ASSOCIATES, LLP; JIASHOU XU, M.D.;  
VLADIMIR SOCHOR, M.D.; DOE NURSE;  
DOES I-X, ROE BUSINESS ENTITIES XI-XX,

Defendants.

CASE NO. A-23-869014-C

DEPT NO. 9

**ORDER GRANTING IN PART  
DEFENDANTS LAS VEGAS  
SURGICAL ASSOCIATES, LLP  
AND JIASHOU XU, M.D.'S MOTION  
FOR PARTIAL DISMISSAL OF  
PLAINTIFF'S CLAIMS FOR  
ORDINARY NEGLIGENCE,  
NEGLIGENT HIRING, TRAINING,  
SUPERVISION AND RETENTION,  
AND PUNITIVE DAMAGES  
AND  
DEFENDANT VLADIMIR SOCHOR,  
M.D.'S MOTION TO DISMISS  
PLAINTIFF'S ORDINARY  
NEGLIGENCE CLAIM AND  
PRAYER FOR PUNITIVE  
DAMAGES**

**Hearing Date: July 26, 2023  
Hearing Time: 9:00 a.m.**

On July 26, 2023, Defendants Las Vegas Surgical Associates, LLP and Jiashou Xu, M.D.'s Motion for Partial Dismissal of Plaintiff's Claims for Ordinary Negligence, Negligent Hiring, Training, Supervision and Retention, and Punitive Damages and Defendant Vladimir Sochor, M.D.'s Motion to Dismiss Plaintiff's Ordinary Negligence Claim and Prayer for Punitive Damages came on for hearing before the Honorable Maria Gall. David Creasy, Esq. of

**HALL PRANGLE & SCHOONVELD, LLC**  
1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
LAS VEGAS, NEVADA 89144  
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1 Claggett & Sykes Law Firm appeared on behalf of Plaintiff, Zachary Thompson, Esq. of Hall  
2 Prangle & Schoonveld, LLC appeared on behalf of Defendants Las Vegas Surgical Associates,  
3 LLP and Jiashou Xu, M.D., Robert McBride, Esq. appeared on behalf of Defendant Vladimir  
4 Sochor, M.D., and Justin Shiroff, Esq. appeared on behalf of Defendant San Martin Surgery  
5 Center, LLC d/b/a Durango Outpatient Surgery Center.  
6

7 With good cause so appearing, after review and consideration of the points and  
8 authorities on file herein, and having heard the oral argument of counsel in this matter, the Court  
9 hereby finds and orders as follows:

10 **I.**

11 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12 1. On May 26, 2023, Vladimir Sochor, M.D.’s Motion to Dismiss Plaintiff’s  
13 Ordinary Negligence Claim and Prayer for Punitive Damages (“Sochor’s Motion to Dismiss”) was filed. On May 30, 2023, Las Vegas Surgical Associates, LLP and Jiashou Xu, M.D.’s  
14 Motion for Partial Dismissal of Plaintiff’s Claims for Ordinary Negligence, Negligent Hiring,  
15 Training, Supervision and Retention, and Punitive Damages (“LVSA Defendants’ Motion for  
16 Partial Dismissal”) was filed. On the same day, Las Vegas Surgical Associates, LLP and  
17 Jiashou Xu, M.D. filed a Joinder to Dr. Sochor’s Motion to Dismiss. On June 5, 2023, Vladimir  
18 Sochor, M.D. filed a joinder to LVSA Defendants’ Motion for Partial Dismissal. On June 9,  
19 2023, Plaintiff filed an Opposition to Sochor’s Motion to Dismiss (“Opposition to Sochor’s  
20 Motion to Dismiss”). On June 13, 2023, plaintiff filed an Opposition to LVSA Defendants’  
21 Motion for Partial Dismissal (“Opposition to LVSA Defendants’ Motion for Partial Dismissal”).  
22 On June 19, 2023, Vladimir Sochor, M.D. and Las Vegas Surgical Associates, LLP and Jiashou  
23 Xu, M.D. filed replies in support of their motions for dismissal.  
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1           2.       “Professional negligence” under NRS 41A.015 is defined as “the failure of a  
2 provider of health care, in rendering services, to use the reasonable care, skill or knowledge  
3 ordinarily used under similar circumstances by similarly trained and experienced providers of  
4 health care.”

5           3.       To determine whether a cause of action sounds in “professional negligence,” the  
6 Court must evaluate whether the claim involves medical diagnosis, judgment, or treatment.  
7 *Estate of Curtis v. S. Las Vegas Med. Inv’rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d 1263, 1267  
8 (2020). “If the alleged breach involves ‘medical judgment, diagnosis, or treatment,’ it is likely a  
9 claim for medical malpractice.” *Id.* (quoting *Szymborski v. Spring Mountain Treatment Ctr.*, 133  
10 Nev. 638, 642, 403 P.3d 1280, 1284 (Nev. 2017)). “Thus, ‘if the jury can only evaluate the  
11 plaintiffs claim after presentation of the standards of care by a medical expert, then it is a  
12 [professional negligence] claim.” *Id.* “If, on the other hand, the reasonableness of the health  
13 care provider's actions can be evaluated by jurors on the basis of their common knowledge and  
14 experience, then the claim is likely based in ordinary negligence.” *Id.* (quoting *Szymborski*, 133  
15 Nev. at 642, 403 P.3d at 1285).

16           4.       In conducting this evaluation, the Court should look to the gravamen of the claim  
17 or substantial point of essence of the claim to determine the character of the action, not the form  
18 of the pleadings. *See White v. Ward*, 491 P.3d 755 (Nev. App. 2021); *Curtis*, 136 Nev. Adv. Op.  
19 39, 466 P.3d at 1266; *Szymborski.*, 133 Nev. at 643, 403 P.3d at 1285.

20           5.       The Court finds that the gravamen or substantial point of essence of Plaintiff’s  
21 Complaint, including each of the claims alleged therein, is professional negligence. The Court  
22 finds that Plaintiff has not alleged any facts in his Complaint constituting anything but  
23 professional negligence.  
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1           6.       With respect to Plaintiff’s Third Cause of Action for Ordinary Negligence, the  
2 Court finds that the gravamen of the claim sounds in professional negligence. Therefore, the  
3 Court grants Defendants’ requests to dismiss Plaintiff’s Third Cause of Action for Ordinary  
4 Negligence.

5           7.       If a negligent hiring, training, or supervision claim sounds in professional  
6 negligence or is related to or intertwined with an underlying medical malpractice cause of action,  
7 the claim cannot be maintained separately to avoid the requirements of NRS Chapter 41A. *See,*  
8 *e.g., Estate of Curtis*, 136 Nev. Adv. Op. 39, 466 P.3d at 1267; *see also Zhang v. Barnes*, 382  
9 P.3d 878 (Nev. 2016). Pursuant to *Zhang*, a claim for negligent hiring, training, and supervision  
10 cannot exist alongside a professional negligence claim unless the Plaintiff has pled facts, which  
11 if true, make the claim of negligent hiring, training, and supervision an independent tort.  
12 Plaintiff has not alleged such facts here.

13           8.       With respect to Plaintiff’s Fourth Cause of Action for Negligent Hiring, Training,  
14 Supervision and/or Retention – Ordinary Negligence, the Court finds that the gravamen of the  
15 claim sounds in professional negligence and/or is inextricably intertwined with the alleged  
16 professional negligence. Therefore, the Court grants Defendants’ requests to dismiss Plaintiff’s  
17 Fourth Cause of Action for Negligent Hiring, Training, Supervision and/or Retention – Ordinary  
18 Negligence.

19           9.       As for punitive damages, although the Nevada Supreme Court has not directly  
20 ruled on whether dismissal of punitive damages is proper under Nevada Rule of Civil 12(b)(5)  
21 (“Rule 12(b)(5)”), the Court holds that Rule 12(b)(5) is not a proper mechanism to challenge a  
22 prayer for punitive damages. Punitive damages are a remedy, not a claim, and are not proper for  
23 a motion to dismiss under Rule 12(b)(5). The Court also holds that punitive damages are not  
24  
25  
26  
27  
28

1 proper for a motion to strike under Nevada Rule of Civil Procedure 12(f) because there is  
2 nothing scandalous about the request for punitive damages. Therefore, the Court denies  
3 Defendants' requests to dismiss and/or strike Plaintiff's prayer for punitive damages at this stage.  
4 This ruling does not preclude Defendants from raising this issue on summary judgment, motion  
5 in limine, or other stage of the proceedings.

6  
7 **II.**

8 **ORDER**

9 Pursuant to the foregoing Findings of Fact and Conclusions of Law, and good cause  
10 appearing therefore:

11 1. IT IS HEREBY ORDERED, ADJUDGED and DECREED that Defendants Las  
12 Vegas Surgical Associates, LLP and Jiashou Xu, M.D.'s Motion for Partial Dismissal of  
13 Plaintiff's Claims for Ordinary Negligence, Negligent Hiring, Training, Supervision and  
14 Retention, and Punitive Damages and Defendant Vladimir Sochor, M.D.'s Motion to Dismiss  
15 Plaintiff's Ordinary Negligence Claim and Prayer for Punitive Damages and the joinders thereto  
16 are GRANTED IN PART AND DENIED IN PART.  
17

18 2. Defendants Las Vegas Surgical Associates, LLP, Jiashou Xu, M.D., and Vladimir  
19 Sochor, M.D.'s motions to dismiss Plaintiff's Third Cause of Action for Ordinary Negligence  
20 and joinders to the same are hereby GRANTED. Plaintiff's Third Cause of Action for Ordinary  
21 Negligence is hereby dismissed with prejudice as to Defendants Las Vegas Surgical Associates,  
22 LLP, Jiashou Xu, MD, and Vladimir Sochor, MD.  
23

24 3. Defendants Las Vegas Surgical Associates, LLP, Jiashou Xu, M.D., and Vladimir  
25 Sochor, M.D.'s motions to dismiss Plaintiff's Fourth Cause of Action for Negligent Hiring,  
26 Training, Supervision and/or Retention – Ordinary Negligence and joinders to the same are  
27  
28

HALL PRANGLE & SCHOONVELD, LLC  
1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
LAS VEGAS, NEVADA 89144  
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1 hereby GRANTED. Plaintiff's Fourth Cause of Action for Negligent Hiring, Training,  
2 Supervision and/or Retention – Ordinary Negligence is hereby dismissed with prejudice as to  
3 Defendants Las Vegas Surgical Associates, LLP, Jiashou Xu, MD, and Vladimir Sochor, MD.

4 4. Defendants Las Vegas Surgical Associates, LLP, Jiashou Xu, M.D., and Vladimir  
5 Sochor, M.D.'s motions to dismiss and/or strike Plaintiff's prayer for punitive damages are  
6 hereby DENIED. Defendants shall not be precluded from challenging punitive damages at a  
7 later stage of the proceedings.

Dated this 17th day of August, 2023

9 IT IS SO ORDERED.

  
\_\_\_\_\_

11 Respectfully Submitted by:

12 /s/ Zachary J. Thompson, Esq.

13 ZACHARY J. THOMPSON, ESQ.  
14 Nevada Bar No. 11001  
15 HALL PRANGLE & SCHOONVELD, LLC  
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19 *Las Vegas Surgical Associates, LLP and*  
20 *Jiashou Xu, M.D.*

11 Approved as to Form and Content:  
12 **142 AB 344 F640**  
13 **Maria Gall**  
14 **District Court Judge**

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22 *Attorney for Plaintiff*

18 Approved as to Form and Content:

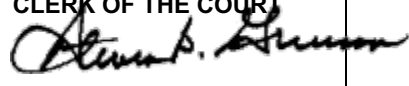
19 /s/ Heather Hall

20 ROBERT C. McBRIDE, ESQ.  
21 Nevada Bar No. 7082  
22 HEATHER S. HALL, ESQ.  
23 Nevada Bar No. 10608  
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28 *Vladimir Sochor, M.D.*

Approved as to Form and Content:

19 /s/ Justin Shiroff

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27 Las Vegas, NV 89119  
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*San Martin Surgery Center, LLC d/b/a*  
*Durango Outpatient Surgery Center*



CASE NO: A-24-885417-C  
Department 18

1 **NGUYEN & ASSOCIATES, LLC**  
2 MIKE H.T. NGUYEN, ESQ.  
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8 *Counsel for Plaintiff*

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11 ANJAN GEWALI ESQ.  
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13 **MICHAEL T. HUA LAW**  
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16 Telephone: (702) 852-2228  
17 Facsimile: (702) 832-0266  
18 efile@michaelhua.com  
19 *Counsel for Plaintiff*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 TUNG NGUYEN, an individual;  
15  
16 Plaintiff,  
17  
18 vs.  
19 TROY TIMEON, an individual; DOES I-X;  
20 ROES I-X,  
21  
22 Defendants.

Case No.:  
Dept. No.:  
**COMPLAINT**

21 Plaintiff alleges against Defendants the following:

- 22 1. At all times relevant, Plaintiff Tung Nguyen was and is a resident of Las Vegas, NV,  
23 and that the events as described occurred in Nevada.  
24 2. Upon information and belief, at all times relevant, Defendant Troy Timeon, was and  
25 is a resident of Henderson, NV.  
26 3. Pursuant to NRCP 10(a) and Nurenberger Hercules-Werke GMBH v. Virostek, 107  
27 Nev. 873, 822 P.2d 1100 (1991), the identity of resident and non-resident defendants designated as  
28 DOES I through X, and ROE CORPORATIONS I through X, are presently unknown to Plaintiff.

1 Upon information and belief these DOE and ROE defendants, and each of them, were involved in  
2 the initiation, approval, support, or execution of one or more of the wrongful acts or omissions  
3 upon which this action is premised, or of similar actions directed against Plaintiff about which  
4 Plaintiff is presently unaware, and which directly and proximately caused injury and damages to  
5 Plaintiff, including but not limited to: unreasonably owning, maintaining, operating, entrusting, or  
6 repairing any vehicle that caused injury to Plaintiff. ROE and DOE defendants also include but are  
7 not limited to:

8 a) presently unknown employers of defendant(s) who are responsible for the acts of their  
9 employees under NRS 41.745, or under the doctrine of *respondeat superior*;

10 b) owners of the defendant's vehicle who are liable under NRS 41.440, or the family purpose  
11 doctrine;

12 c) persons involved in the design, manufacturer distribution and placement into the stream  
13 of commerce of an unreasonably dangerous and unfit product that caused damages to  
14 Plaintiff, and which persons are strictly liable under products liability law; and,

15 d) known witnesses whose particular culpability is not known at this time but may be made  
16 known once true facts are learned.

17 As the specific identities of these parties are revealed through discovery, the DOE or ROE  
18 appellation will be replaced to identify these parties by their true names and capacities. Hereinafter  
19 reference to Defendant or Defendants includes DOES and ROES and each of them.

20 4. Upon information and belief, Defendants, inclusive of DOES and ROES, and each  
21 of them, at all relevant times, were the owner, partner, servant, officer, agent, employer and/or  
22 employee of the other, and each of them, and were at all relevant times acting within the scope and  
23 performance of said partnership, agency, master/servant, and employment relationship.

24 5. This Court has jurisdiction over this matter under NRS 14.065 and NRS 4.370(1), as  
25 the facts alleged occurred in Clark County, Nevada and involve an amount in controversy in excess  
26 of \$15,000.00. Venue is proper pursuant to NRS 13.040, as Defendants, or any one of them resided  
27 in Clark County, Nevada at the commencement of this action.

1           6.       On 1/27/2022, On or about January 27, 2022 Defendant failed to pay attention,  
2 decrease speed and use due care and as a result rammed into the rear end of Plaintiff Tung Nguyen's  
3 vehicle. Defendant was driving a 2018 Nissan Leaf Electric.

4           7.       At that date, time and place, Defendants, and each of them, unreasonably owned,  
5 entrusted, rented, maintained, operated and controlled the Defendants vehicle so as to proximately  
6 cause the collision between the vehicles and personal injuries and damages to Plaintiff.

7           8.       Defendants and each of them were **negligent** and are liable for Plaintiff's damages.

8           9.       At that date, time and place, Defendants and each of them, violated one or more  
9 statutes, codes, ordinances or rules which governed the operation of Defendants vehicle and which  
10 were enacted to protect persons such as Plaintiff and prevent the types of injuries and damages  
11 Plaintiff sustained, and Defendants, and each of them, were **negligent per se**, and are liable for  
12 Plaintiff's damages.

13          10.      As a direct and proximate result of the acts and omissions of Defendants, and each  
14 of them, Plaintiff has sustained great pain of body and mind, including serious and painful physical  
15 injuries to Plaintiff, as well as shock and injury to Plaintiff's nervous system entailing mental stress,  
16 anxiety, and anguish, all or some of which conditions may be permanent and disabling in nature, all  
17 to Plaintiff's **general damages** in an amount in excess of \$15,000.00.

18          11.      As a direct and proximate result of the acts and omissions of Defendants, and each  
19 of them, Plaintiff has incurred **expenses for medical care** and expenses incidental, and upon  
20 information and belief such expenses and damages will continue in the future, all to Plaintiff's  
21 damage in a presently unascertainable amount.

22          12.      As a direct and proximate result of the acts and omissions of Defendants, and each  
23 of them, Plaintiff has **lost income and earning capacity**, and upon information and belief such  
24 damages will continue in the future, all to Plaintiff's damage in a presently unascertainable amount.

25          13.      Plaintiff had to retain the services of an attorney to prosecute this action and is  
26 entitled to **prejudgment interest, reasonable attorney's fees and costs of suit** incurred.

27          14.      Plaintiff **demands a trial by jury**.



**ORDER**

1 EBAN M. MILMEISTER, ESQ.  
Nevada Bar No. 11844  
2 MATTHEW D. HUGHES, ESQ.  
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6 [mdh@thorndal.com](mailto:mdh@thorndal.com)

7 *Attorneys for Defendants*

8  
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 CHERYL RIVAS, an individual;

12 Plaintiff,

13 vs.

14 JUAN CARLOS LUCERO, an individual;  
15 ELIZABETH CASTILLO, an individual; DOE  
16 Family Members 1 thru 10; DOE Individuals 11  
17 thru 20; and ROE Corporations 21 thru 30;

18 Defendants.

CASE NO. A-23-881653-C  
DEPT. NO. 29

**ORDER REGARDING DEFENDANTS’  
MOTION TO STRIKE; MOTION TO  
DISMISS PUNITIVE DAMAGES AND  
NEGLIGENCE PER SE CLAIM; AND  
ALTERNATIVELY, MOTION FOR  
MORE DEFINITE STATEMENT**

19  
20 On February 1, 2024, this Court heard argument on Defendants’ Motion to Strike; Motion  
21 to Dismiss Puntive Damages and Negligence Per Se Claim; and Alternatively, Motion for More  
22 Definite Statement. After listening to argument, and reading the pleadings, this Court finds that  
23 there is presently not enough evidence to support the allegation that Defendant consumed alcohol  
24 and/or another substance. The Court further finds that there is presently not enough evidence to  
25 include the terms “violated NRS 42.010” and/or “acted with malice and a conscious disregard” in  
26 the allegations. The Court **noted that punitive damages is not a ‘claim for relief’ to be dismissed**  
27 **so may remain in the ‘prayer for relief.’** The Court further noted that discovery may be conducted  
28 to search for facts that will establish punitive damages, but until those facts are discovered,

1 Defendant may file a motion for protective order to prevent unwarranted discovery regarding  
2 Defendants' financial condition before the facts support punitive damages. Plaintiff's counsel  
3 conceded that negligence per se is not a cause of action on its own but instead a theory to establish  
4 a negligence claim. Plaintiff is permitted to seek punitive damages in her prayer for relief, and  
5 therefore, she is entitled to discovery to establish her claim for punitive damages.

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to  
7 Strike is GRANTED and that alternative relief is provided. Plaintiff shall file an amended  
8 complaint that does not include allegations that Defendant consumed alcohol and/or another  
9 substance knowing that he would drive. Moreover, Plaintiff's amended complaint shall not allege  
10 that Defendant acted with "malice" or a "conscious disregard."

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to  
12 Dismiss Punitive Damages is denied. Plaintiff may include punitive damages in her prayer for  
13 relief.

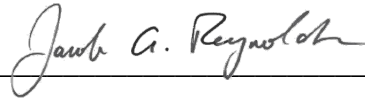
14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff's negligence  
15 per se claim is dismissed as it is not a cause of action but instead a theory to establish negligence.

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27 . . . .  
28 . . . .

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED for Plaintiff to file an  
2 Amended Complaint in accordance with this Order.

3 IT IS SO ORDERED.

Dated this 14th day of February, 2024

4   
\_\_\_\_\_

5  
6 Respectfully submitted by:

**0B2 5B6 2DBA 1C49**  
**Jacob A. Reynolds**  
**District Court Judge**

7 THORNDAL ARMSTRONG, P.C.

8 By: /s/ Matthew D. Hughes, Esq.  
9 Eban M. Milmeister, Esq  
10 Nevada Bar No. 11844  
11 Matthew D. Hughes, Esq.  
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15 *Attorney for Defendants*

16 Approval as to form and content by:

17 J. COGBURN LAW

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19 Jamie S. Cogburn, Esq.  
20 Nevada Bar No. 8409  
21 Joseph J. Troiano, Esq.  
22 Nevada Bar No. 12505  
23 2580 St. Rose Parkway, Suite 330  
24 Henderson, NV 89074  
25 *Attorneys for Plaintiff*  
26  
27  
28

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Cheryl Rivas, Plaintiff(s)

CASE NO: A-23-881653-C

7 vs.

DEPT. NO. Department 29

8 Juan Lucero, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 2/14/2024

15 Master Calendar calendar@thorndal.com

16 Eban Milmeister emm@thorndal.com

17 Kara Farris khf@thorndal.com

18 Matthew Hughes mdh@thorndal.com

19 JCL File Clerk cogburnlaw@myecfx.com

20

21

22

23

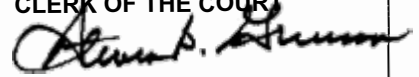
24

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27

28



1 ACOM  
2 PETER M. ANGULO, ESQ.  
3 Nevada Bar No. 3672  
4 JOSEPH R. SMITH, ESQ.  
5 Nevada Bar No. 13961  
6 **ANGULO LAW GROUP, LLC**  
7 5545 S. Mountain Vista St., 2<sup>nd</sup> Floor  
8 Las Vegas, NV 89120  
9 Tel: (702) 384-8000  
10 Fax: (702) 384-8200  
11 *Attorneys for Plaintiff*

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

9 \*\*\*\*\*

10 CATHERINE JOHNSON, individually,  
11 Plaintiff,

Case No. A-22-858408-C  
Dept. No. XXV

12 vs.

**FIRST AMENDED COMPLAINT**

**(Exempt from arbitration)**

13 VALLEY HEALTH SYSTEM, LLC d/b/a  
14 HENDERSON HOSPITAL, a foreign limited-  
15 liability company; MED-SMART, INC., a  
16 domestic corporation; KEVIN GEORGE, M.D., an  
17 individual; IBRAHEEM MONSURU, M.D., an  
18 individual; TARA KIES, RN, an individual; and  
19 BRIAN MUNN, an individual; DOES I-X and ROE  
20 CORPORATIONS I-X, inclusive,

21 Defendant(s)

22 COMES NOW, Plaintiff CATHERINE JOHNSON by and through her counsel of record with  
23 ANGULO LAW GROUP, LLC and hereby complains and alleges as follows. This matter is **EXEMPT**  
24 from the Court Annexed Arbitration Program pursuant to N.A.R. 3(A), as this action is presumptively  
25 governed under the provisions of N.R.S. 41(A).<sup>1</sup>

26 **I. GENERAL ALLEGATIONS**

- 27 1. At all times relevant hereto, Plaintiff CATHERINE JOHNSON was and is a resident of the  
28 State of Nevada, County of Clark.
2. Upon information and belief, at all times relevant hereto, Defendant VALLEY HEALTH

<sup>1</sup> See N.A.R. 5(A).

1 SYSTEM, LLC d/b/a HENDERSON HOSPITAL (“Defendant VALLEY”) was and is a  
2 foreign limited liability company, incorporated in the State of Delaware, that was registered,  
3 licensed, and doing business in the state of Nevada, County of Clark.

4 3. Upon information and belief, at all times relevant hereto, Defendant VALLEY owned,  
5 operated, and/or maintained the property commonly known as Henderson Hospital, located  
6 at 1050 W. Galleria Drive, Henderson, Nevada 89011 (hereinafter “Subject Premises”).

7 4. Upon information and belief, at all times relevant hereto, Defendant KEVIN GEORGE,  
8 M.D. (“Defendant GEORGE”) was and is a resident of the State of Nevada, County of  
9 Clark, and a physician acting under the authority of Defendant VALLEY engaged in  
10 providing medical services to Plaintiff CATHERINE JOHNSON.

11 5. Upon information and belief, at all times relevant hereto, Defendant IBRAHEEM  
12 MONSURU, M.D. (“Defendant MONSURU”) was and is a resident of the State of Nevada,  
13 County of Clark, and a physician acting under authority of Defendant VALLEY engaged in  
14 providing medical services to Plaintiff CATHERINE JOHNSON.

15 6. Upon information and belief, at all times relevant hereto, Defendant TARA KIES, RN  
16 (“Defendant KIES”) was and is a resident of the State of Nevada, County of Clark, and a  
17 registered nurse employed by, or acting on behalf of Defendant VALLEY.

18 7. Upon information and belief, at all times relevant hereto, Defendant BRIAN MUNN  
19 (“Defendant MUNN”) was and is a resident of the State of Nevada, County of Clark, and  
20 an agent or employee of Defendant MED-SMART, INC., working upon the Subject  
21 Premises.

22 8. The Eighth Judicial District Court possesses jurisdiction over this civil tort action pursuant  
23 to Nev. R. Civ. P. 8(a)(1) and/or N.R.S. 13.040, as the facts and circumstances that give rise  
24 to the subject lawsuit occurred in the State of Nevada, County of Clark, and per Nev. R.  
25 Civ. P. 8(a)(4), the amount in controversy exceeds fifteen thousand dollars (\$15,000.00).

26 9. That, pursuant to NRCP 10(a), the identities of the Defendant, DOES I through X and ROE  
27 CORPORATIONS XI through XX, are unknown at this time and may be individuals,  
28 partnerships, companies, corporations, or other entity. Plaintiff alleges that each Defendant

1 designated herein as DOE or ROE CORPORATIONS are responsible in some manner for  
2 the damages alleged herein. Therefore, Plaintiff requests leave of the Court to amend this  
3 Complaint to name the Defendant specifically when their true identities become known.

4 10. That at the time of filing the instant Complaint, and in reference to Paragraph 8, *supra*,  
5 Plaintiff hereby retains and reserves to herself those rights set forth and acknowledged by  
6 NRC 10(a), including but not limited to further amendment of the Complaint in this matter,  
7 upon the identification of further DOE or ROE CORPORATIONS, anticipating that such  
8 persons or entities shall not be known until the formal commencement of discovery in this  
9 matter.

10 11. On or about March 15, 2021, Plaintiff was admitted to the emergency room located upon  
11 the Subject Premises as the result of a fall from a mechanized scooter, which caused injury  
12 to Plaintiff's left hip.

13 12. Defendant MONSURU served as the attending physician for Plaintiff on March 15, 2021.

14 13. Defendant GEORGE served as the admitting physician for Plaintiff on March 15, 2021.

15 14. Plaintiff detailed the circumstances surrounding her fall and the injury resulting therefrom,  
16 including reports of pain and injury to her left hip, to Defendants MONSURU and  
17 GEORGE.

18 15. Defendant GEORGE provided a differential diagnosis of hip fracture, hip contusion, hip  
19 strain, and hip dislocation, while ordering an X-ray of Plaintiff's left femur.

20 16. The left femur X-ray was unremarkable. Plaintiff also received a left knee X-ray, which was  
21 unremarkable.

22 17. Defendant GEORGE sought an ED consult from Defendant MONSURU.

23 18. A left hip X-ray was also ordered, but the procedure was administratively cancelled under  
24 the authority of Defendant GEORGE by Defendant Munn and Defendant Kies prior to  
25 administration.

26 19. Defendant MONSURU discovered and knew of the left hip X-ray's cancellation, and took  
27 no additional action to assure the left hip X-ray be administered during Plaintiff's admission  
28 to the Subject Premises.

- 1 20. As a result of the left knee and left lower extremity X-rays, Plaintiff was only diagnosed as  
2 suffering from a contusion of her left hip, prescribed pain medications, and discharged.
- 3 21. Following discharge, Plaintiff continued to suffer from ongoing left hip pain and related  
4 symptoms, while continuing care with orthopedic specialist Carl Wallis, M.D.
- 5 22. On October 20, 2021, Carl Wallis, M.D. ordered a CT of the left hip and X-Ray of the left  
6 hip, administered on November 9, 2021, which imaging studies revealed chronic complete  
7 (non) ununited basicervical left femoral neck fracture without significant displacement.
- 8 23. In reviewing the imaging studies, Carl Wallis, M.D. informed Plaintiff of the findings and  
9 attributed the femoral neck fracture—as well as Plaintiff’s resulting and ongoing pain and  
10 symptomology—to the fall event of March 15, 2021.
- 11 24. Accordingly, but for the cancelled left hip X-ray, Defendants GEORGE and MONSURU  
12 would have identified the left femoral neck fracture resulting from the March 15, 2021 fall  
13 incident; the act or omission arises from Defendants’ performance of medical services  
14 involving medical diagnosis, judgment, or treatment.

## 15 **II. FIRST CAUSE OF ACTION**

### 16 *(Professional Negligence)*

- 17 25. Plaintiff repeats, re-alleges, and incorporates by reference the allegations of paragraphs 1  
18 through 24 as though fully set forth herein.
- 19 26. Defendants GEORGE and MONSURU, and each of them, through their acts and omissions  
20 in relation to the misdiagnosis and failure to treat Plaintiff’s left hip, deviated from the  
21 accepted and applicable standard of care.<sup>2</sup>
- 22 27. Instead, Defendants and each of their respective misdiagnoses of Plaintiff’s injuries directly  
23 and proximately resulted in the failure to properly diagnose and treat the left femoral neck  
24 fracture and related symptoms, as well as extended pain, suffering, and other damages,  
25 which remain ongoing to the present time, and will in the future be caused to suffer serious  
26 and disabling injuries, including but not limited to, surgery as well as injuries in and about  
27

28 <sup>2</sup> See Affidavit at Doc ID# 1.

1 the limbs, head and systems, both physical and mental some and/or all of which may be  
2 permanent in nature, all to said Plaintiff's damages in an amount in excess of FIFTEEN  
3 THOUSAND DOLLARS (\$15,000.00).

4 28. As a further direct and proximate result of all of the foregoing, said Plaintiff has been and  
5 will in the future be caused to expend sums of money for medical care and expenses  
6 incidental thereto, in an amount presently in excess of FIFTEEN THOUSAND DOLLARS  
7 (\$15,000.00), and the total amount of which cannot at this time be determined, inasmuch as  
8 the same is yet accruing.

9 29. As a further direct and proximate result of the aforesaid negligence of the Defendants, and  
10 each of them, Plaintiff has been required to retain the services of an attorney to prosecute  
11 this claim on her behalf, and Plaintiff is therefore entitled to reasonable attorney's fees and  
12 costs incurred herein.

### 13 **III. SECOND CAUSE OF ACTION**

#### 14 *(Negligence)*

15 30. Plaintiff repeats, re-alleges, and incorporates by reference the allegations of paragraphs 1  
16 through 29 as though fully set forth herein.

17 31. Defendants MUNN and KIES, and each of them, erred by negligently cancelling (and/or  
18 ratifying the cancellation of) Plaintiff's left hip X-ray, thereby promulgating Plaintiff's  
19 misdiagnosis and lack of care for acute injury, causing Plaintiff to sustain injuries while  
20 upon the Subject Premises.

21 32. Defendants MUNN and KIES, and each of them, created, knew, or should have known that  
22 such a course of action would create an unsafe condition for Plaintiff and should have taken  
23 precaution to warn and/or prevent Plaintiff from encountering said unsafe condition, or  
24 otherwise corrected their error.

25 33. As a result of Defendants' MUNN and KIES, and each of their respective conduct, Plaintiff  
26 suffered serious injury, both mental and physical.

27 34. Defendants MUNN and KIES, and each of them, failed to warn or inform Plaintiff of the  
28 erroneous cancellation, which they caused or allowed to exist.

1 35. Plaintiff's injuries claimed herein were directly and proximately caused by the negligent  
2 and careless acts or omissions of Defendants MUNN and KIES, and each of them, by  
3 erroneously cancelling (or permitting to be cancelled) Plaintiff's left hip X-ray.

4 36. As Defendants MUNN and KIES's respective employers at the time of the subject incident,  
5 Defendant VALLEY and Defendant MED-SMART, INC., and each of them, are  
6 vicariously liable for the acts and omissions committed by Defendants MUNN and KIES in  
7 the course and scope of their respective employment relationships.

8 37. As a direct and proximate result of Defendants' respective negligence, Plaintiff sustained  
9 and suffered injuries and damages and will, in the future, suffer serious and disabling  
10 injuries including but not limited to surgical repair and injuries in and about the limbs, head  
11 and systems, both physical and mental, some and/or all of which may be permanent in  
12 nature, all to Plaintiff's respective damages in an amount in excess of FIFTEEN  
13 THOUSAND DOLLARS (\$15,000.00).

14 38. As a further direct and proximate result of all of the foregoing, said Plaintiff has suffered,  
15 and will continue to suffer, emotional injury and discomfort, as well as financial detriment  
16 and economic loss, some and/or all of which may be permanent in nature, all to Plaintiff's  
17 damages in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

18 39. As a further direct and proximate result of the aforesaid negligence of the Defendants, both  
19 direct and vicarious, and each of them, Plaintiff has been required to retain the services of  
20 an attorney to prosecute this claim on her behalf, and Plaintiff is therefore entitled to  
21 reasonable attorney's fees and costs incurred herein

22 **IV. THIRD CAUSE OF ACTION**

23 *(Negligent Supervision / Hiring)*

24 40. Defendants VALLEY and MED-SMART, INC. owed Plaintiff a duty to provide  
25 administrative services concomitant to at least the applicable standard of care by hiring and  
26 employing professionals who so abide, which duty extends to the monitoring, auditing, and  
27 oversight of on-the-ground decisions, and the supervision of professionals vis-à-vis the  
28 failure to provide adequate support services to the judgment of licensed medical personnel.

1 41. As a direct and proximate result of Defendant VALLEY and Defendant MED-SMART,  
2 INC.'s respective breach of said duty to Plaintiff, Plaintiff has suffered grave mental and  
3 physical injuries, mental anguish, humiliation and embarrassment all to her detriment, and  
4 will continue to so suffer thereby impairing Plaintiff's ability to enjoy life, all to her  
5 detriment.

6 42. Defendant VALLEY and Defendant MED-SMART, INC., and each of them, knew or  
7 should have known of the occurrence of the acts or omissions described herein, or  
8 alternatively such acts or omissions would occur absent policy and enforcement to prevent  
9 such conduct, and furthermore, knew of the type of damages that occur from these  
10 circumstances being grave in nature; Defendants' reckless disregard for such acts,  
11 omissions, policies, and procedures permit Plaintiff to seek general, special and punitive  
12 damages.

13 **WHEREFORE**, Plaintiff expressly reserves the right to amend this Complaint at the time of trial  
14 of this action to include all items of damage not yet ascertained, and demands judgment against Defendants,  
15 and each of them, as follows:

- 16 1. Past General damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00);
- 17 2. Future General Damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00);
- 18 3. Past Special damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00);
- 19 4. Future Special Damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00);
- 20 5. Punitive Damages against Defendants MUNN. KIES. VALLEY, and MED-SMART, INC.;
- 21 6. Attorney's fees as provided by the Nevada Revised Statutes and relevant authority;
- 22 7. Costs of this action; and

23  
24 ///

25 ///

26 ///

1 8. For such other and further relief as the Court deems just and proper in this matter.

2 DATED this 5 day of March, 2024.

3 ANGULO LAW GROUP, LLC

4  
5 By \_\_\_\_\_

6 PETER M. ANGULO, ESQ.  
7 Nevada Bar No. 3672  
8 JOSEPH R. SMITH, ESQ.  
9 Nevada Bar No. 13961  
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11 Las Vegas, NV 89120  
12 *Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8<sup>th</sup> day of March, 2024, I served a copy of the foregoing

FIRST AMENDED COMPLAINT, to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014:

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Linda K. Rurangirwa, Esq.  
Lora A. Schneider, Esq.  
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Las Vegas, Nevada 89119  
Attorneys for Defendant  
Kevin George, MD

/s/ Margaret Anthis  
An Employee of ANGULO LAW GROUP

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2 VIANCA VILLA, ESQ.  
Nevada Bar No. 14960  
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(725) 300-5664 Direct Line  
5 vianca\_villa@progressive.com  
Attorneys for Defendant  
6

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

9  
10 TUNG NGUYEN, an individual;  
Plaintiff,

**CASE NO.: A-24-885417-C**  
**DEPT. NO.: 18**

11 vs.

**ORDER DENYING DEFENDANT'S**  
**MOTION TO DISMISS**  
**PUNITIVE DAMAGES**

12 TROY TIMEON, an individual, THE LEBO  
13 GROUP; DOES I-X; ROES I-X,  
14 Defendants.

15 The Court, having examined Defendant's Motion to Dismiss Punitive Damages filed on  
16 February 28, 2024, Plaintiff's Opposition filed on March 11, 2024, Defendant's Reply filed  
17 March 27, 2024, and hearing oral arguments on April 2, 2024, Defendant's Motion is DENIED.

18  
19 Prepared and Submitted by:

Approved as to form and content:

20 DATED this 3<sup>rd</sup> day of April, 2024

DATED this 3<sup>rd</sup> day of April, 2024

21 **LAW OFFICE OF LEE J. GRANT, II.**

**MICHAEL T. HUA LAW**

22 *Vianca Villa*

/s/ Anjan Gewali, Esq.

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Holly C. Galloway, Esq.  
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ANJAN GEWALI, ESQ.  
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Las Vegas, NV 89146  
Attorneys for Plaintiff

1 **ORDER**

2  
3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that having had the  
4 opportunity to review the Motion and Plaintiff's Opposition to Defendant's Motion, this Court  
5 hereby finds and orders as follows: Defendant's Motion to Dismiss Punitive Damages is  
6 DENIED.

7 DATED this \_\_\_\_ day of \_\_\_\_\_, 2024.


8 Dated this 4th day of April, 2024

9   
10 \_\_\_\_\_  
11 DISTRICT COURT JUDGE

11 Respectfully Submitted by:

12 **CDE 962 AFEB C042**  
13 **Mary Kay Holthus**  
14 **District Court Judge**

15 **LAW OFFICE OF LEE J. GRANT, II.**

16   
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23 Henderson, NV 89074  
24 *Attorneys for Defendant*

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Tung Nguyen, Plaintiff(s)

CASE NO: A-24-885417-C

7 vs.

DEPT. NO. Department 18

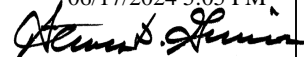
8 Troy Timeon, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

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2 CASEY W. TYLER, ESQ.  
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9 *Attorneys for Defendant Valley Health System, LLC*  
*dba Henderson Hospital*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

13 CATHERINE JOHNSON, individually,  
14 Plaintiff,

CASE NO. A-22-858408-C  
DEPT NO. 25

15 vs.

**ORDER GRANTING DEFENDANT  
VALLEY HEALTH SYSTEM, LLC'S  
MOTION TO DISMISS AND ALL  
JOINDERS THERETO AND  
RENDERING DEFENDANT MED-  
SMART AND BRIAN MUNN'S  
MOTION TO DISMISS MOOT**

16 VALLEY HEALTH SYSTEM, LLC dba  
17 HENDERSON HOSPITAL, a foreign limited-  
liability company; MED-SMART, INC., a  
18 domestic corporation; KEVIN GEORGE, M.D.,  
an individual; MONSURU IBRAHEEM, M.D.,  
19 an individual; TARA KIES, RN, an individual;  
and BRIAN MUNN, an individual; DOES I-X  
20 and ROE CORPORATIONS I-X, inclusive,

**Date of Hearing: May 21, 2024**  
**Time of Hearing: 9:00 a.m.**

21 Defendants.

22 This Court, having considered Defendant VALLEY HEALTH SYSTEM, LLC dba  
23 HENDERSON HOSPITAL'S Motion to Dismiss and all Joinders thereto, regarding negligent  
24 hiring and negligence claims, as well as punitive damages in Plaintiff's Second Amended  
25 Complaint, heard before the Honorable Kathleen E. Delaney on May 21, 2024, IT IS HEREBY  
26 ORDERED, ADJUDICATED AND DECREED as follows:

27 . . .  
28

**HALL PRANGLE & SCHOONVELD, LLC**  
1140 NORTH TOWN CENTER DRIVE, STE. 350  
LAS VEGAS, NEVADA 89144  
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The claims for negligent hiring, training and supervision as to Valley Health System and Med-Smart in this matter sound in medical malpractice per *Estate of Curtis*<sup>1</sup> and therefore require expert affidavit support under NRS 41A.071.
2. Nurse Kies' alleged actions in the Complaint sound in medical malpractice per *Estate of Curtis* and therefore require expert affidavit support under NRS 41A.071.
3. Nurse Kies is not employed by or acting on behalf of Valley Health System.
4. The Complaint lacks essential language required to plead punitive damages and instead only alleges recklessness.
5. The causes of action at issue in the First Amended Complaint were deemed timely amendments pursuant to Rule 15(a).

**ORDER**

Pursuant to the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefore:

**IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that

Defendant Valley Health System's Motion to dismiss is GRANTED and the Second and Third Causes of Action in the First Amended Complaint are dismissed without prejudice.

**IT IS FURTHER ORDERED, ADJUDGED, and DECREED** Defendant Nurse Kies' Joinder thereto is GRANTED. The Second Cause of Action is also dismissed as to Nurse Kies without prejudice.

**IT IS FURTHER ORDERED, ADJUDGED, and DECREED** Defendants Med-Smart and Brian Munn's Joinder thereto is GRANTED.

**IT IS FURTHER ORDERED, ADJUDGED and DECREED** that punitive damages are stricken as to all Defendants.

**IT IS FURTHER ORDERED, ADJUDGED and DECREED** that the above orders render Med-Smart and Brian Munn's motion to dismiss moot.

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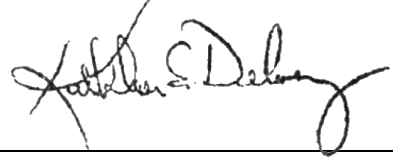
<sup>1</sup> *Est. of Curtis v. S. Las Vegas Med. Inv'rs*, 136 Nev. Adv. Op. 39.

1 CATHERINE JOHNSON VS. VALLEY HEALTH SYSTEM, LLC DBA HENDERSON HOSPITAL, ET AL.  
2 CASE No. A-22-858408-C / DEPT. 25

3 **IT IS FURTHER ORDERED, ADJUDGED and DECREED** that Plaintiff's request for  
4 fees and costs against Valley Health System is DENIED.

5 **IT IS SO ORDERED.**

Dated this 17th day of June, 2024



6  
7  
8 **67F 194 B5B1 6C45**  
9 **Kathleen E. Delaney**  
10 **District Court Judge**

11 Respectfully Submitted by:  
12 **HALL PRANGLE & SCHOONVELD, LLC**

Approved as to Form and Content:  
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*Attorneys for Plaintiff*

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29 **McBRIDE HALL**

Approved as to Form and Content:  
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31 **CHTD.**

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15 Attorneys for Defendant Tara Kies, RN  
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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4		
5		
6	Catherine Johnson, Plaintiff(s)	CASE NO: A-22-858408-C
7	vs.	DEPT. NO. Department 25
8	Valley Health System, LLC,	
9	Defendant(s)	

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/17/2024

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