

IN THE SUPREME COURT OF THE STATE OF NEVADA

JARED MOSS

Plaintiff-Respondent,

vs.

SEAN EDWARD TOMESCO,
individually; SECOND OPINION
PLUMBING, LLC, a domestic limited
liability company

Defendants-Appellants.

Electronically Filed
Apr 16 2025 05:02 PM
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 90330

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with Nevada Rules of Appellate Procedure (NRAP) 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment, and compiling statistical information.

WARNING

This statement must be completed fully, accurately, and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or the appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal. *Id.*

A complete list of the documents that must be attached appears as Question 28 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions. *Id.*

This court has noted that when obligations under NRAP 14 to complete the docketing statement properly and conscientiously are not taken seriously, valuable judicial resources of this court are wasted, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use divider pages to separate any attached documents.

1. Judicial District: Eighth Judicial District County: Clark County
Judge: Hon. Eric Johnson District Ct. Case No.: A-21-840372-C
Department: 20

2. Person filing this docketing statement:

Name: Steven G. Knauss, Esq. Bar #: 12242
Law Firm Name: MESSNER REEVES, LLP
Address: 8945 West Russell Road, Suite 300
Las Vegas, Nevada 89148
Telephone: 702-363-5100
Email address: sknauss@messner.com
Client(s): Sean Edward Tomesco
Second Opinion Plumbing, LLC

If this is a joint statement by multiple appellants, add the names and addresses of the other appellants and, if applicable, the names of their counsel and have them sign the certification below. N/A

Name	Bar # (if applicable)
Law Firm Name (if applicable)	
Address	
Telephone #	
Email address	
Client name(s) (if represented by counsel):	

I certify I concur in the filing of this statement.

Signature of other appellant(s) or of counsel for other appellant Date

3. Nature of disposition (check all that apply):

- ☐ Judgment after bench trial
- ☒ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Dismissal:
 - ☐ Lack of Jurisdiction
 - ☐ Failure to state a claim
 - ☐ Failure to prosecute
 - ☐ Other (specify):
- ☐ Divorce Decree:
 - ☐ Original
 - ☐ Modification
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☒ Other disposition (specify): District Court Order of Post-Verdict Attorney Fees and Costs

4. Does this appeal raise issues concerning any of the following? No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

5. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Jared Moss v. Sean Edward Tomesco, et. al: NV Supreme Ct Case No. 89509

- 6. Pending and prior proceedings in other courts.** List the case name, number, and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

- 7. Nature of the action.** Briefly describe the nature of the action and the result below:

This matter arose from a motor vehicle vs. pedestrian accident that occurred on July 9, 2020. Liability was not disputed, and trial proceeded on causation and damages. After deliberations on March 29, 2024, the jury returned a verdict in favor of Plaintiff/Respondent and awarding him a total of \$5,000,000 in damages. However, a judgment was not entered until September 19, 2024.

Thereafter, Plaintiff/Respondent filed a Motion for Attorney Fees, Costs and Interest, which was opposed by Defendant/Appellant. The Court's order from the same awarded Plaintiff a total of \$2,578,990.14 (including accruing interest), despite misapplying and misconstruing the evaluative factors defined in *Beattie v. Thomas*, 99 Nev. 579 (1983), as well as clearly mischaracterizing the defense of the matter as being brought in bad faith, made possible primarily because the Court improperly excluded critical evidence on the eve of trial.

- 8. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Appellant appeals the grant of attorney fees based on NRS 18.010 and Nevada caselaw precedents, including the propriety of characterizing the defense as being brought in bad faith.

- 9. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

10. Constitutional issues. Does this appeal challenge the constitutionality of a Nevada Statute or ordinance?

☒ No. Continue to #11.

☐ Yes:

a. Identify the Nevada statute or ordinance being challenged:

b. Is the State, any State agency, or a State officer or employee a party to this appeal in an official capacity?

☐ Yes ☐ No

11. Other Issues.

a. Does this appeal involve any of the following issues? No.

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

b. If so, explain:

12. Assignment to the Court of Appeals or retention in the Supreme Court.

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls.

Pursuant to NRAP 17(b)(5), the Court of Appeals is assigned appeals from judgments, exclusive of interest attorney fees and costs, of less than \$250,000. Therefore, given this appellate matter seeks an appeal regarding an award of attorney fees of 2,578,990.14 (including accruing interest), Appellant believes this matter should be retained by the Supreme Court.

13.Trial. If this action proceeded to trial, how many days did the trial last? 4 days

Was it a: ☐ bench trial ☒ jury trial?

14.Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice/judge recuse him/herself from participation in this appeal? See NRAP 35. If so, which Justice?

No.

15.Oral Argument. Would you object to submission of this appeal for disposition without oral argument?

☒ Yes ☐ No

TIMELINESS OF NOTICE OF APPEAL

16.Date the written judgment or order appealed from was/were filed in the district court: February 18, 2025

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A

17.Date written notice of entry of judgment or order was served: February 18, 2025

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18.Were any motions seeking relief under NRCP 50(b), 52(b), 59, or 60 or seeking rehearing or reconsideration filed in the district court either before or after the notice of appeal was filed? (attach a copy of the motion)

☐ No, continue to # 19.

☒ Yes:

a. Specify the type of motion and the date the motion was filed in the district court (check all that apply)

☒ NRCP 50(b)

Date filed: April 26, 2024

☐ NRCP 52(b)

Date filed: _____

☒ NRCP 59

Date filed: April 26, 2024

☐ NRCP 60

Date filed: _____

☐ Rehearing/Reconsideration

Date filed: _____

b. Date the motion was served: April 26, 2024

c. How was the motion served:

☒ Electronic or personal delivery

☐ Mail

d. Date the written order resolving the motion was filed: September 19, 2024

e. Date written notice of entry of the order resolving the motion was served:
September 19, 2024.

f. Was service by:

☒ Electronic or personal delivery

☐ Mail

19. Are there any motions other than those identified in #18 above still pending in the district court?

☐ Yes. Identify the motion and the date it was filed in the district court:

☒ No.

20. Date the notice of appeal was filed in the district court: March 19, 2025

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A

21. Specify the statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other: NRAP 4(a)

///

///

///

SUBSTANTIVE APPEALABILITY

22. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

a.

- | | |
|---|---|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRAP 3A(b)(2) |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRAP 3A(b)(4) |
| <input type="checkbox"/> NRAP 3A(b)(5) | <input type="checkbox"/> NRAP 3A(b)(6) |
| <input type="checkbox"/> NRAP 3A(b)(7) | <input checked="" type="checkbox"/> NRAP 3A(b)(8) |
| <input type="checkbox"/> NRAP 3A(b)(9) | <input type="checkbox"/> NRAP 3A(b)(10) |
| <input type="checkbox"/> NRAP 3A(b)(11) | <input type="checkbox"/> NRAP 3A(b)(12) |
| <input type="checkbox"/> NRS 38.205 | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRS 703.376 | <input type="checkbox"/> Other (specify): _____ |

b. Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal from a special order entered after final judgment which granted attorney fees to Respondent.

23. List all parties involved in the action or consolidated actions in the district court:

a. Parties:

Defendants: Second Opinion Plumbing, LLC

Sean Edward Tomesco

Plaintiff: Jared Moss

b. If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other: N/A

24. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff brought claims of negligence, negligence per se, and gross negligence against Defendant Sean Edward Tomesco, and claims of vicarious liability, and negligent hiring/training/supervision/retention against Defendant Second Opinion Plumbing.

All claims were resolved by jury verdict entered September 19, 2024.

25. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

26. If you answered "No" to question 24, complete the following: N/A

- a. Specify the claims remaining pending below:
- b. Specify the parties remaining below:
- c. Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)? ☐ Yes ☐ No
- d. Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment? ☐ No ☐ Yes

27. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)): N/A

28. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any motion(s) identified in questions 18 and the order(s) resolving the motion(s)
- Any motions identified in question 19
- Orders or NRCP 41(a)(1) dismissals that formally resolve each claim, counterclaim, cross-claim and/or third-party claim asserted in the action or consolidated action below, **even if not at issue on appeal**
- All orders that finally disposes of any parties in the action below, **even if not at issue on appeal**
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information, and belief, and that I have attached all required documents to this docketing statement.

DATED this 16th day of April, 2025.

MESSNER REEVES LLP

/s/ Steven Knauss

M. CALEB MEYER, ESQ.

Nevada Bar No. 13379

STEVEN G. KNAUSS, ESQ.

Nevada Bar No. 12242

8945 W. Russell Road, Ste. 300

Las Vegas, Nevada 89148

Attorneys for Appellants Second Opinion

Plumbing, LLC and Sean Edward Tomesco

CERTIFICATE OF SERVICE

I certify that on the 16th day of April, 2025, I served a copy of this completed docketing statement upon all parties to this appeal:

☒ by electronic means to registered users of the court's electronic filing system

If served other than through the court's electronic filing system, enter the names and email address of the parties served by this means and attach a copy of each party's written consent authorizing service by this means. See NRAP 25(c)(2)

☐ by personally serving it upon him/her;

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

Signature: /s/ *James Alvarado* Date: 4/16/2025

Printed name: James Alvarado

Law Firm Name: Messner Reeves LLP

Address: 8945 W. Russell Road, Ste. 300

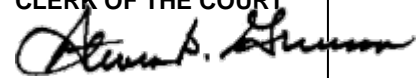
Las Vegas, Nevada 89148

Telephone #: 702-363-5100

Email address: jalvarado@messner.com

EXHIBIT “1”

EXHIBIT “1”



1 **COMP**

2 JUSTIN W. WILSON, ESQ.

3 Nevada Bar No. 14646

4 **HICKS & BRASIER, PLLC**

5 2630 S. Jones Blvd

6 Las Vegas, Nevada 89146

7 Phone: (702) 628-9888

8 Fax: (702) 960-4118

9 E-Mail: jwilson@lvattorneys.com

10 *Attorneys for Plaintiff*

CASE NO: A-21-840372-C

Department 20

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JARED MOSS, individually,

14 Plaintiff,

15 vs.

16 SEAN EDWARD TOMESCO,
17 individually; SECOND OPINION
18 PLUMBING, LLC., a domestic limited
19 liability company; DOES I through X,
20 inclusive; ROE CORPORATIONS XI
21 through XX, inclusive,

22 Defendants.

) CASE NO.:

) DEPT. NO.:

) **COMPLAINT**

23 Plaintiff JARED MOSS, by and through his attorney of record, JUSTIN W. WILSON,
24 ESQ., of HICKS & BRASIER, PLLC, and for his causes of action against Defendants, and each
25 of them, complains and alleges as follows:

26 **GENERAL ALLEGATIONS**

27 1. That Plaintiff JARED MOSS (hereinafter "Plaintiff") is, and at all times mentioned
28 herein, was, a resident of the County of Clark, State of Nevada.

2. That Defendant SEAN TOMESCO (hereinafter "TOMESCO") is, and at all times
mentioned herein, was, a resident of the County of Clark, State of Nevada.

1 3. That Defendant SECOND OPINION PLUMBING, LLC. is, and at all times mentioned
2 herein, was a domestic limited-liability company, licensed to do business in the County of
3 Clark, State of Nevada
4

5 4. That the true names and capacities of the Defendants designated herein as Doe or Roe
6 Corporations are presently unknown to Plaintiff at this time, who therefore sues said Defendants
7 by such fictitious names. When the true names and capacities of these defendants are
8 ascertained, Plaintiff will amend this Complaint accordingly.
9

10 5. That at all times pertinent, Defendants were agents, servants, employees or joint
11 venturers of every other Defendant herein, and at all times mentioned herein were acting within
12 the scope and course of said agency, employment, or joint venture, with knowledge and
13 permission and consent of all other named Defendants.
14

15 6. That at all times mentioned herein Plaintiff was a pedestrian.
16

17 7. That at all times mentioned herein Defendant TOMESCO was driving a 2004 Ford
18 Econoline (hereinafter "the Vehicle").
19

20 8. That on July 9, 2020, in Clark County, Nevada Defendant TOMESCO negligently
21 operated the Vehicle, striking Plaintiff while he walked in a designated crosswalk.
22

23 9. That on July 9, 2020, at the time of the subject collision, Defendant TOMESCO was a in
24 the course of his employment with Defendant SECOND OPINION PLUMBING, LLC.
25

26 10. That on July 9, 2020, at the time of the subject collision, Defendant TOMESCO, was
27 operating a vehicle owned by Defendant, SECOND OPINION PLUMBING, LLC.
28

11. That on July 9, 2020, at the time of the subject collision, Defendant TOMESCO was
operating the subject vehicle with the permission of the owner, Defendant SECOND OPINION
PLUMBING, LLC.

1 12. As a direct and proximate result of the negligence of Defendants, Plaintiff sustained
2 serious injuries, all or some of which condition may be permanent and disabling, and all to
3 Plaintiff's damage in a sum in excess of \$15,000.00.

4
5 13. That as a direct and proximate result of the negligence of Defendants, Plaintiff received
6 medical and other treatment for the aforementioned injuries, and that said services, care, and
7 treatment are continuing and shall continue in the future, all to the damage of Plaintiff.

8 14. That as a direct and proximate result of the negligence of Defendants, Plaintiff has been
9 required to, and has limited occupational and recreational activities, which have caused and
10 shall continue to cause Plaintiff loss of earning capacity, lost wages, physical impairment,
11 mental anguish, and loss of enjoyment of life, in a presently unascertainable amount.

12
13 15. That as a direct and proximate result of the aforementioned negligence of all
14 Defendants, Plaintiff has been required to engage the services of an attorney, incurring
15 attorney's fees and costs to bring this action.
16

17 **FIRST CAUSE OF ACTION: NEGLIGENCE**
18 **(Against Defendant TOMESCO)**

19 16. Plaintiff incorporates paragraphs 1 through 15 of the Complaint as though said
20 paragraphs were fully set forth herein.

21 17. Defendant TOMESCO owed Plaintiff a duty of care to operate the Vehicle in a
22 reasonable and safe manner.

23 18. Defendant TOMESCO breached that duty of care by striking Plaintiff in the crosswalk.

24
25 19. As a direct and proximate result of the negligence of Defendant TOMESCO, Plaintiff
26 has been damaged in an amount in excess of \$15,000.00.

SECOND CAUSE OF ACTION: NEGLIGENCE PER SE
(Against Defendant TOMESCO)

20. Plaintiff incorporates paragraphs 1 through 19 of the Complaint as though said paragraphs were fully set forth herein.

21. The acts of Defendant TOMESCO, as described herein, violated the traffic laws of the State of Nevada and Clark County, constituting negligence per se.

22. When official traffic-control devices are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be so to yield, to a pedestrian crossing the highway within a crosswalk when the pedestrian is upon the half of the highway upon which the vehicle is traveling or onto which the vehicle is turning, or when the pedestrian is approaching so closely from the opposite half of the highway as to be in danger. NRS 484B.283(1)(a).

23. Plaintiff was among the class of individuals that NRS 484B.283(1)(a) was designed to protect.

24. As a direct and proximate result of the negligence of Defendant TOMESCO, Plaintiff has been damaged in an amount in excess of \$15,000.00.

THIRD CAUSE OF ACTION: GROSS NEGLIGENCE
(Against Defendant TOMESCO)

25. Plaintiff incorporates paragraphs 1 through 24 of the Complaint as though said paragraphs were fully set forth herein.

26. At all times herein mentioned, Defendant TOMESCO owed a duty of care to Plaintiff and breached that duty by failing to operate his vehicle in a safe and proper manner.

27. Defendant TOMESCO's carelessness, gross negligence and failure to operate his vehicle in a safe and proper manner proximately caused damages to Plaintiff.

1 28. As a direct and proximate result of Defendant TOMESCO's carelessness, and gross
2 negligence, Plaintiff suffered damages, including special damages and general damages in the
3 excess of this Court's jurisdictional minimum.

4
5 29. Defendant TOMESCO's conduct was a product of his deliberate indifference to the duty
6 of care that he owed Plaintiff, which constituted an obvious and extremely dangerous risk of
7 harm to Plaintiff and all pedestrians.

8 30. Defendant TOMESCO'S outrageous and unconscionable conduct warrants an award of
9 exemplary and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish
10 and make an example of Defendant, and to deter similar conduct in the future.

11
12 31. The actions of Defendant TOMESCO has forced Plaintiff to retain counsel to represent
13 him in the prosecution of this action, and he is therefore entitled to an award of a reasonable
14 amount as attorney fees and costs of suit.

15
16 **FOURTH CAUSE OF ACTION: VICARIOUS LIABILITY**
17 **(Against Defendant SECOND OPINION PLUMBING, LLC)**

18 32. Plaintiff incorporates paragraphs 1 through 31 of the Complaint as though said
19 paragraphs were fully set forth herein.

20 33. At all times relevant, Defendant TOMESCO, was acting within the course and scope of
21 employment with Defendant SECOND OPINION PLUMBING, LLC.

22
23 34. As such, Defendant SECOND OPINION PLUMBING, LLC., is legally responsible
24 (vicariously liable) for the negligent conduct of Defendant TOMESCO as alleged herein.

25 35. As alleged herein, Defendant TOMESCO operated the Vehicle in such a
26 negligent, reckless and careless manner so as to cause it to collide with Plaintiff, a pedestrian
27 who was legally crossing the street in the designated crosswalk.
28

1 36. As a proximate cause of the negligence and gross negligence of Defendant TOMESCO,
2 which is imputed to Defendant SECOND OPINION PLUMBING, LLC., Plaintiff was injured
3 and damaged in a manner as alleged herein in in excess of \$15,000.00.
4

5 **FIFTH CAUSE OF ACTION: NEGLIGENT HIRING, TRAINING, SUPERVISION,**
6 **and/or RETENTION)**
7 **(Against Defendant SECOND OPINION PLUMBING, LLC)**

8 37. Plaintiff incorporates paragraphs 1 through 36 of the Complaint as though said
9 paragraphs were fully set forth herein.

10 38. Upon information and belief, Defendant SECOND OPINION PLUMBING, LLC hired,
11 trained, supervised, and/or retained employees to conduct their day-to-day business operations.
12 Defendant SECOND OPINION PLUMBING, LLC hired employees to travel in company
13 vehicles and perform plumbing services for the residents of Clark County, Nevada.
14

15 39. Defendant SECOND OPINION PLUMBING, LLC had a duty to hire competent
16 employees, to properly train, properly supervise, and/or properly retain competent employees,
17 agents, independent contractors and/or representatives.
18

19 40. Upon information and belief, Defendant SECOND OPINION PLUMBING, LLC
20 breached the duty of care by improperly hiring, improperly training, improperly supervising,
21 and/or improperly retaining incompetent employees, agents, independent contractors, and/or
22 representatives.
23

24 40. Upon information and belief, employees of Defendant SECOND OPINION
25 PLUMBING, LLC are supposed to be trained to drive company vehicles in accordance with the
26 traffic laws of the State of Nevada, and to avoid personal injury to pedestrians, yet Defendant
27 TOMESCO failed to exercise even a slight degree of care when operating the Vehicle for
28 Defendant SECOND OPINION PLUMBING, LLC.

1 41. Upon information and belief, Defendant TOMESCO was not properly supervised by
2 Defendant SECOND OPINION PLUMBING, LLC to ensure his compliance with company
3 policies regarding the safe operation of their vehicles.
4

5 42. Upon information and belief, Defendant TOMESCO'S driving history was not properly
6 checked to ensure that he would not be an unnecessary safety risk when Defendant SECOND
7 OPINION PLUMBING, LLC dispatched him to conduct their business operations in Clark
8 County, Nevada.
9

10 43. As a direct and proximate or legal result of the aforesaid negligence and carelessness of
11 Defendant SECOND OPINION PLUMBING, LLC, Plaintiff was injured. Plaintiff thereby
12 experienced great pain, and anxiety to his body and mind, sustaining injuries and damages in a
13 manner as alleged herein in in excess of \$15,000.00.
14

15 44. As a further direct and proximate or legal result of the aforesaid negligence and
16 carelessness of Defendant SECOND OPINION PLUMBING, LLC, Plaintiff incurred damages,
17 both general and special, including medical expenses as a result of the necessary treatment of
18 his injuries, in a sum in a manner as alleged herein in in excess of \$15,000.00.
19

20 45. As a further direct and proximate or legal result of the aforementioned negligence and
21 carelessness of Defendant SECOND OPINION PLUMBING, LLC, Plaintiff was required to,
22 and did, employ physicians, and other health care providers to examine, treat, and care for him
23 and did incur medical and incidental expenses thereby. The exact amount of such expenses is
24 unknown at this present time, but Plaintiff alleges that he has suffered special damages in a
25 manner as alleged herein in in excess of \$15,000.00.
26
27
28

1 46. The actions of Defendant SECOND OPINION PLUMBING, LLC have forced Plaintiff
2 to retain counsel to represent him in the prosecution of this action and are therefore entitled to
3 an award of a reasonable amount as attorney fees and costs of suit.
4

5 WHEREFORE, Plaintiff expressly reserving the right to amend this complaint prior to
6 or at the time of trial of this action, to insert those items of damage not yet fully ascertainable,
7 pray judgment against all Defendants, and each of them, as follows:

- 8 1. For general damages sustained by Plaintiff in an amount in excess of \$15,000.00;
- 9 2. For special damages sustained by Plaintiff in an amount in excess of \$15,000.00;
- 10 3. For reasonable attorney's fees and costs;
- 11 4. Punitive damages;
- 12 5. For interest at the statutory rate; and
- 13 6. For such other relief as the Court deems just and proper.
- 14
- 15

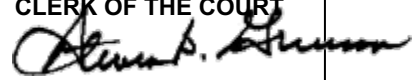
16
17 DATED THIS 31st day of August 2020.

18
19 **HICKS & BRASIER, PLLC**

20
21 /s/ Justin W. Wilson
22 JUSTIN W. WILSON, ESQ.
23 Nevada Bar No. 14646
24 **HICKS & BRASIER, PLLC**
25 2630 S. Jones Blvd
26 Las Vegas, Nevada 89146
27 *Attorneys for Plaintiff*
28

EXHIBIT “2”

EXHIBIT “2”



1 **TB**
2 ALISON BRASIER, ESQ.
3 Nevada Bar No. 10522
4 BETSY C. JEFFERIS-AGUILAR, ESQ.
5 Nevada Bar No. 12980
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7 2630 S Jones Blvd.
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11 E: baguilar@lvattorneys.com
12 *Attorney for Plaintiff*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 JARED MOSS, individually,
16
17 Plaintiff,

18 vs.

19 SEAN EDWARD TOMESCO,
20 individually; SECOND OPINION
21 PLUMBING, LLC., a domestic limited
22 liability company; DOES I through X,
23 inclusive; ROE CORPORATIONS XI
24 through XX, inclusive,
25
26 Defendants.

)
) CASE NO.: A-21-840372-C
) DEPT. NO.: 20

) **PLAINTIFF'S TRIAL BRIEF NO. 1**
) **REGARDING HIS UNRELATED**
) **SUBSEQUENT ACCIDENT ON**
) **OCTOBER 17, 2020**

27 Plaintiff JARED MOSS, by and through his attorneys of record of the law firm HICKS
28 & BRASIER, PLLC, hereby submits Plaintiff's Trial Brief No. 1 Regarding his Unrelated
Subsequent Collision on October 17, 2020 pursuant to EDCR 7.27.

This Trial Brief is made and based upon the attached memorandum of points and
authorities, all papers and pleadings on file herein and such oral argument as the court may
allow at hearing on this matter.

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1 When Jared returned to his treatment providers related to the subject accident, he did
2 not report any additional or new pain/symptoms in his low back and his pain ratings for his low
3 back did not increase.

4 In his Deposition, Jared testified as follows:

5 7 Q So some of your medical records indicate that there
6 8 was a second accident on October 17th of 2020. Does
7 9 that sound right?

8 10 A That does sound right.

9 11 Q Now, do you remember like what parts of
10 12 your body other than you said the backs of your legs
11 13 and your head do you remember if you sustained
12 14 injuries to any other parts of your body?

13 15 A No, it was—the injury is just to my
14 16 head, but they had my head wrapped up in gauze and
15 17 that was the injury I sustained was to my head and
16 18 had a nice scar for it.

17 See **Exhibit “1”** as the Deposition of Jared Moss at Pg. 23, lines 7-18.

18 Plaintiff’s treating physician, and retained medical expert, Dr. William Muir does not
19 relate any of Jared’s low back injuries or treatment to the subsequent accident.

20 The patient’s discharge diagnosis was motor vehicle accident with resulting
21 altered mental status and head contusion. **There is no evidence that the patient**
22 **sustained an exacerbation of low back pain neither in the medical records**
23 **reviewed nor from the patient pertaining to the 10/7/20 accident.**

24 See **Exhibit “2”** as the Initial Expert Report of Dr. Muir at Pg. 9.

25 Moreover, even *Defendant’s own medical expert*, Dr. Wang, does not relate any of Jared’s
26 low back injuries or treatment to the subsequent accident. The totality of his causation opinions
27 are as follows:

28 ///

1 This is a 41 year-old male, who was involved in a pedestrian versus MVA on
2 7/9/20. There is no identified structural injury to the lumbar spine from the
3 incident on any of the post-accident radiological studies. He had a soft tissue
4 buttock contusion and a possible lumbar strain from the incident, which would
5 warrant a reasonable amount of conservative soft tissue treatments. I would relate
6 the need for the initial medical evaluations, the initial radiological studies of the
7 spine, and the initial chiropractic treatments, to be associated with the incident.
8 After allowing for a reasonable period of time for these strains to resolve, I could
9 no longer relate any further medical care, to be linked to the incident. *After the*
10 *completion of about 3 months of chiropractic treatments in October 2020, I do*
11 *not relate the need for any further medical treatments for the spine, to be linked to*
12 *the incident of 7/9/20.* I do not relate the spinal injections nor the lumbar facet
13 ablations, to be linked to the MVA, as the structures injected or ablated, were not
14 injured or altered by the incident. I would relate the conservative care, with the
15 exception of the facet injections, up to the subsequent accident in October 2020,
16 to be connected to the incident of 7/9/20. I do not relate any ongoing subjective
17 reports of spine symptoms, nor any future medical care for the spine, to be
18 causally linked to the MVA of 7/9/20. (emphasis added).

19 See **Exhibit “3”** as Dr. Wang’s Initial Expert Report at Pg. 5.

20 In fact, Dr. Wang believes that Jared’s treatment should have ended before Jared
21 underwent the bilateral facet injections to his low back, which occurred on October 6, 2020 (11
22 days prior to the subsequent accident). Dr. Wang cannot opine that the subsequent accident
23 caused an exacerbation of Jared’s low back injury or pain because there is no evidence in the
24 medical records to support such a finding.

25 Dr. Wang is limited to the contents of his report at trial, which is notably silent as to any
26 opinion that the second accident had any causal effect on Jared’s low back injuries from the
27 subject accident.

28 With absolutely no medical evidence to support that the subsequent accident had any
effect on Jared’s claimed injuries for this case, there is no basis for admitting such information
or evidence at trial.

29 II.

30 ARGUMENT

31 In Nevada, only relevant evidence may be admitted at trial. “Relevant evidence” is
32 “evidence having any tendency to make the existence of any that is of consequence to the

1 determination of the action more or less probable than it would be without the evidence.” NRS
2 48.015. Relevant evidence is admissible unless its “probative value is substantially outweighed
3 by the danger of unfair prejudice, confusion of the issues or misleading the jury.” NRS 48.035.

4 Plaintiff anticipates that Defendants will attempt to argue, offer evidence, or refer to
5 Jared’s October 17, 2020, pedestrian versus auto accident. Any mention of this subsequent
6 accident would be improper, however, as none of the medical providers or medical experts
7 have opined the subsequent accident had any impact on the injuries and damages Jared is
8 claiming for the subject accident. Thus, information about the subsequent accident has no
9 probative value to the claims in this case and must be excluded as irrelevant under NRS 48.015
10 and 48.025.

11 Even if this information had some minute probative value, which it does not, the
12 probative value would be substantially outweighed by the confusion that it would cause the
13 jury to hear about a different accident that caused different injuries. The jury would
14 undoubtedly be confused into thinking that these other injuries are somehow related to our
15 case. It would also be unfairly prejudicial to Plaintiff for the jury to hear about the unrelated
16 injuries he sustained in the subsequent accident, as there is a significant chance that the jury
17 would be tempted to speculate – despite the absence of evidence – that Jared must have
18 reinjured his low back in this subsequent accident.

19 It is well-settled law that causation of injury and damages must be established by
20 medical expert testimony to a reasonable degree of medical probability. *Morsicato v. Sav-On*
21 *Drug Stores, Inc.*, 121 Nev. 153, 157, 111 P.3d 1112 (2005); *Williams v. Eighth Jud. Dist. Ct.*,
22 127 Nev. 518, 262 P.3d 360, 362-63 (2011); *Layton v. Yankee Caithness Joint Venture*, 774 F.
23 Supp. 576 (1991); *Fernandez v. Admirand*, 108 Nev. 963, 973, 843 P.2d 354 (1993); *Brown v.*
24 *Capanna*, 105 Nev. 665, 671-72, 782 P.2d 1299 (1989). Further, “[a] verdict may not be based
25 on speculation, whether the testimony comes from the mouth of a lay witness or an expert.”
26 *Gramanz v. T-Shirts & Souvenirs*, 111 Nev. 479, 894 P.2d 342 (1995) (citing *Advent Systems*
27 *Ltd. v. Unisys Corp.*, 925 F. 2d 670, 682 (3rd Cir. 1991)).

1 In order for evidence of any injury or accident other than the subject accident to be
2 admissible, a party must present, by competent evidence, a causal connection between the prior
3 event and the incident at issue. *See, generally, FGA, Inc. v Giglio*, 128 Nev. Adv. Rep. 26, 278
4 P.3d 490, 498 (2012). A party seeking to introduce evidence of a prior [or subsequent] incident
5 bears the burden to establish why it is relevant to a fact of consequence. *Id.* In other words, any
6 evidence of or reference to the October 17, 2020, accident should be excluded unless Jared
7 sustained injury to his low back (he did not) and Defendants can offer medical expert testimony
8 linking the subsequent accident to the injuries claimed in this case (they cannot).

9 Defendants' expert, Dr. Wang, was required, pursuant to NRCP 16.1(a)(2)(B)(i), to
10 provide "a complete statement of all opinions (he) will express, and the basis and reasons for
11 them." Notably, Dr. Wang's report fails to provide the necessary link between the two
12 accidents. Defendants cannot now attempt to expand Dr. Wang's testimony beyond the
13 opinions contained in his report simply to introduce irrelevant and prejudicial information
14 about Jared's subsequent accident. Allowing new opinions that were not contained in his
15 report would be a complete disregard for the rules regarding disclosures of evidence and would
16 constitute trial by ambush. This must be avoided.

17 **IV. CONCLUSION**

18 Based on the foregoing, Plaintiff respectfully requests that during trial, this Court
19 preclude any mention of or questioning related to Plaintiff's subsequent, unrelated collision of
20 October 17, 2020.

21
22 DATED THIS 17th day of March 2024.

HICKS & BRASIER, PLLC

/s/ Betsy C. Jefferis-Aguilar, Esq.
BETSY C. JEFFERIS-AGUILAR, ESQ.
Nevada Bar No. 12980
2630 S. Jones Blvd.
Las Vegas, Nevada 89146
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HICKS & BRASIER, PLLC,
3 and that on this 17th day of March 2024, I served a copy of the foregoing **PLAINTIFF’S**
4 **TRIAL BRIEF NO. 1 REGARDING HIS UNRELATED SUBSEQUENT ACCIDENT ON**
5 **OCTOBER 17, 2020** in accordance with Administrative Order 14-2 and Rule 9 of the Nevada
6 Electronic Filing and Conversion Rules (N.E.F.C.R.) by transmitting via the Court’s electronic
7 filing services by the document(s) listed above to the Counsel set forth on the service list below:
8

9 Steven Knauss, Esq.
10 Jason Martinez, Esq.
11 MESSNER REEVES, LLP.
12 8945 W. Russell Road, Suite 300
Las Vegas, NV 89148
Attorneys for Defendants

13
14 /s/ Danielle Alvarado
15 An employee of Hicks & Brasier, PLLC
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EXHIBIT “1”



is now



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DISTRICT COURT
CLARK COUNTY, NEVADA

JARED MOSS, individually)	
)	
Plaintiff,)	
)	
vs.)	
)	Case No. A-21-840372-C
SEAN EDWARD TOMESCO,)	
individually; SECOND)	
OPINION PLUMBING, LLC, a)	
domestic limited)	
liability company; DOES)	
I through X, inclusive;)	
ROE CORPORATIONS XI)	
through XX, inclusive,)	
)	
Defendants.)	

REMOTE DEPOSITION OF JARED MOSS
Taken on Tuesday, January 31, 2023
By a Certified Court Reporter
At 1:30 p.m. PST

Reported by: Kelly R. Rexroat, CCR 673, RPR, CRR
Job No. 51809, Firm No. 061F/116F

<p>2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 For the Plaintiff:</p> <p>4 CHARLES S. JACKSON, ESQ.</p> <p>5 HICKS & BRASIER, PLLC</p> <p>6 2630 South Jones Boulevard</p> <p>7 Las Vegas, NV 89146</p> <p>8</p> <p>9 For the Defendants:</p> <p>10 JASON G. MARTINEZ, ESQ.</p> <p>11 MESSNER REEVES LLP</p> <p>12 8945 West Russell Road</p> <p>13 Suite 300</p> <p>14 Las Vegas, NV 89148</p> <p>15</p> <p>16 * * * * *</p> <p>17 INDEX</p> <p>18</p> <p>19 WITNESS</p> <p>20 JARED MOSS</p> <p>21 Examination by Mr. Martinez</p> <p>22</p> <p>23 NO EXHIBITS MARKED</p> <p>24</p> <p>25</p> <p>PAGE 3</p>	<p>4</p> <p>1 are testifying from today?</p> <p>2 A.</p> <p>3 Q. Is that a residence?</p> <p>4 A. Yeah, this is my apartment.</p> <p>5 Q. Do you have an apartment number?</p> <p>6 A. Yeah, apartment .</p> <p>7 Q. Okay. And do you have the ZIP code?</p> <p>8 A. 89123.</p> <p>9 Q. Is anybody in the room with you?</p> <p>10 A. No.</p> <p>11 Q. You understand that as part of this</p> <p>12 deposition you are not to get instructions or</p> <p>13 assistance from any other person in responding to my</p> <p>14 questions; right?</p> <p>15 A. Yeah, yes.</p> <p>16 Q. And obviously a little bit of prep on</p> <p>17 that depo there because you were anticipating one of</p> <p>18 my admonitions, but typically have you ever had your</p> <p>19 deposition taken before?</p> <p>20 A. No.</p> <p>21 Q. Have you ever testified in court under</p> <p>22 oath?</p> <p>23 A. No.</p> <p>24 Q. Okay. So we'll run through some ground</p> <p>25 rules, just for the sake of ease while we're moving</p>
<p>3</p> <p>1 PROCEEDINGS</p> <p>2 (Prior to the commencement</p> <p>3 of the deposition, all of</p> <p>4 the parties present agreed</p> <p>5 to waive statements by the</p> <p>6 court reporter pursuant to</p> <p>7 Rules 30(b)(5)(A) and</p> <p>8 30(b)(5)(C) of the NRCP.)</p> <p>9 JARED MOSS</p> <p>10 of lawful age, having been first duly sworn to tell</p> <p>11 the truth, the whole truth, and nothing but the</p> <p>12 truth, testified as follows:</p> <p>13 EXAMINATION</p> <p>14 BY MR. MARTINEZ:</p> <p>15 Q. All right. Good afternoon, Mr. Moss. My</p> <p>16 name is Jason Martinez.</p> <p>17 Would you please state and spell your</p> <p>18 name for the record.</p> <p>19 A. Yeah. My name is Jared, J-A-R-E-D, S, as</p> <p>20 in Scott, Moss, M-O-S-S.</p> <p>21 Q. Have you ever been known by any other</p> <p>22 names or aliases?</p> <p>23 A. No.</p> <p>24 Q. So obviously we're doing this deposition</p> <p>25 by Zoom. Can you give me the address of where you</p>	<p>5</p> <p>1 through the deposition.</p> <p>2 The first question I'm going to ask</p> <p>3 though before we get to that is have you had any</p> <p>4 drugs or alcohol in the last 24 hours that would</p> <p>5 effect your ability either to understand my</p> <p>6 questions or provide truthful answers?</p> <p>7 A. No.</p> <p>8 Q. Any other reason why we shouldn't go</p> <p>9 forward with your deposition today?</p> <p>10 A. No.</p> <p>11 Q. Okay. So moving into the questions or</p> <p>12 the admonitions kind of like the ground rules for a</p> <p>13 deposition. Kelly is our wonderful court reporter.</p> <p>14 She is taking down every word we are saying</p> <p>15 ultimately to produce it into a written transcript</p> <p>16 that appears like a question and answer format.</p> <p>17 A. Uh-huh.</p> <p>18 Q. So one of the important things to do is</p> <p>19 that we have to give audible answers. So nodding</p> <p>20 your head, shaking your head those things don't</p> <p>21 translate into a transcript. It has to be a yes or</p> <p>22 a no. Do you understand that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And sometimes when I ask you a question</p> <p>25 because in normal conversation you might be like</p>

<p>6</p> <p>1 uh-huh, uh-huhs and huh-uhs also don't translate. 2 So I might ask you is that a yes or is 3 that a no. I'm not trying to be rude. I'm just 4 trying to make sure that the transcript is clear. 5 Okay? 6 A. I understand. 7 Q. And again it applies to, like I said, 8 words not gestures like nods, hands up, stuff like 9 that. You have to try and describe it with words. 10 Okay? 11 A. Okay. 12 Q. And you are doing a great job of it so 13 far. Via Zoom sometimes in person it's a little 14 easier, but Zoom sometimes there is a delay. 15 So it's important that you let me finish 16 asking my question so that I get the whole question 17 out there before you start to answer. Okay. You 18 have done a great job of that so far. 19 There will be a small window of time 20 where your attorney might object to one of my 21 questions. The majority -- overwhelming majority of 22 the time all he's doing is preserving an objection 23 for future reference because, as you know, there is 24 no judge here, right. 25 A. Uh-huh.</p>	<p>8</p> <p>1 not yet answered, I'm entitled to that answer before 2 we go on that break. Okay? 3 A. Okay. 4 Q. And sometimes this is one of the things 5 that is interesting about depositions is I'm not 6 looking for you to guess. I don't want you to 7 guess. I want you to tell me what you know, what 8 you remember to the best of your ability. Okay? 9 A. Okay. 10 Q. And sometimes I might ask you to estimate 11 or give me what is your best estimate of something 12 whether it be timing, location something like that, 13 but do you understand the difference between an 14 estimate and a guess? 15 A. Yes. 16 Q. So, for example, estimates are something 17 that you have yourself experienced. You would be 18 able to tell me how big the couch is you are sitting 19 on because you are sitting in the room with it, it's 20 your couch, but the difference would be a guess to 21 ask you to say how big is my desk that I'm sitting 22 at right now. You have never seen it. You have no 23 idea. So that would be a complete guess. 24 Is that the same understanding you have 25 between those two things?</p>
<p>7</p> <p>1 Q. So the reason why he's doing that is he's 2 preserving that for future issues. 3 I am still entitled to an answer from you 4 to the best of your ability unless he instructs you 5 not to answer. Do you understand that? 6 A. I do understand that, yes. 7 Q. Okay. Now, also understand that the oath 8 you just took is the same oath you would take in a 9 court of law and it is subject to the penalties of 10 perjury? 11 A. Yes, I understand that. 12 Q. Okay. Now, I'll do my best to ask the 13 clearest questions possible, but if at any point you 14 don't understand my question, please ask me to 15 rephrase it. Okay? 16 A. Okay. 17 Q. If you answer one of my questions, I'm 18 going to assume that you understood it. You 19 understand that? 20 A. Yes. 21 Q. You have a right to a break at any time 22 you want. You want to get up, you want to stretch, 23 you want to use the restroom let me know. I have no 24 problem with that. The only exception to that if 25 there is currently a question pending that you have</p>	<p>9</p> <p>1 A. Yes, it would be. 2 Q. So just to give you a brief little 3 rundown of how the depo is going to go. I start 4 with kind of some background information just about 5 you. I don't get into the accident right way, but 6 then we'll break into the accident, and then we'll 7 probably talk about some of your medical treatment. 8 Okay? 9 A. Okay. 10 Q. Now, in preparation for your deposition 11 today, did you review any documents either whether 12 it be medical records, discovery that's been 13 produced in this case or written discovery that 14 you've responded to, did you review anything like 15 that in preparation for your deposition? 16 A. No. 17 Q. Do you have any documents sitting in 18 front of you right now that you brought with you or 19 you have in front of you for this deposition? 20 A. I have a piece of paper right here in 21 front of me that have a couple of dates on it just 22 so I can remember them off the top of my head for 23 you, but other than that, no. 24 Q. Can you show me that piece of paper. Can 25 you hold it up so I can see the whole thing?</p>

<p style="text-align: right;">10</p> <p>1 A. (Witness complying.)</p> <p>2 Q. Can you do me a favor and can you provide</p> <p>3 a copy of that to your attorney so he can produce it</p> <p>4 to me --</p> <p>5 A. Yes.</p> <p>6 Q. -- since you are going to be testifying</p> <p>7 from it?</p> <p>8 MR. JACKSON: We'll produce that. We'll</p> <p>9 disclose that.</p> <p>10 MR. MARTINEZ: Thanks, Charles.</p> <p>11 BY MR. MARTINEZ:</p> <p>12 Q. All right. Have you reviewed any of your</p> <p>13 medical records in this case in preparation for</p> <p>14 today?</p> <p>15 A. No.</p> <p>16 Q. Did you review any of your medical bills</p> <p>17 in preparation for today?</p> <p>18 A. No, I haven't. Medical bills I believe</p> <p>19 went to my lawyer.</p> <p>20 Q. Okay. And have you ever reviewed your</p> <p>21 medical records even if it's a while back have you</p> <p>22 ever looked at them before?</p> <p>23 A. Just as it was happening at the time, of</p> <p>24 course. Anybody would read them, but yeah, I</p> <p>25 haven't like gone over them again since, no.</p>	<p style="text-align: right;">12</p> <p>1 birth?</p> <p>2 A. 9-1-81.</p> <p>3 Q. Where were you born?</p> <p>4 A. Salt Lake City, Utah.</p> <p>5 Q. And is the address that you are</p> <p>6 testifying to today, that's your current address;</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Does anybody live with you?</p> <p>10 A. My wife.</p> <p>11 Q. What is your wife's name?</p> <p>12 A. Jennifer Moss.</p> <p>13 Q. How long have you guys been married?</p> <p>14 A. Going on two years.</p> <p>15 Q. Okay. How long have you lived at your</p> <p>16 current address?</p> <p>17 A. About a year and a half.</p> <p>18 Q. Okay. Where did you live before that?</p> <p>19 A. I lived at my mother's house.</p> <p>20 Q. Do you know the address for that?</p> <p>21 A. Yeah. It's 9004 Campanella Street, Las</p> <p>22 Vegas, Nevada 89123.</p> <p>23 Q. Is that -- I believe I recognize the</p> <p>24 address. Is that the address you were living at at</p> <p>25 the time of this accident in July of 2020?</p>
<p style="text-align: right;">11</p> <p>1 Q. Do you know how much your medical bills</p> <p>2 total today?</p> <p>3 A. I do not.</p> <p>4 Q. All right. Now, in preparation for your</p> <p>5 deposition, did you speak with anybody?</p> <p>6 A. I spoke with my lawyer.</p> <p>7 Q. Okay. Now, I'm not asking -- I don't</p> <p>8 want to know what the subject or any of the content</p> <p>9 of that discussion was because that's privileged.</p> <p>10 I'm not asking for that.</p> <p>11 What I'm going to ask you as related to</p> <p>12 that discussion, but like I said I don't want any of</p> <p>13 the content. Okay?</p> <p>14 A. Okay.</p> <p>15 Q. Now, in relation to the conversation you</p> <p>16 had with your attorney, when was it?</p> <p>17 A. Yesterday midafternoon.</p> <p>18 Q. And do you know approximately how long it</p> <p>19 was?</p> <p>20 A. About an hour, hour and a half.</p> <p>21 Q. Have you spoken with anybody else related</p> <p>22 to your deposition other than your attorney?</p> <p>23 A. No.</p> <p>24 Q. All right. I'm going to break into a</p> <p>25 little bit of background. What is your date of</p>	<p style="text-align: right;">13</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do you have any children?</p> <p>3 A. No, sir.</p> <p>4 Q. Do you have anybody that you are</p> <p>5 financially responsible for?</p> <p>6 A. Just me and my wife.</p> <p>7 Q. What is your highest level of education</p> <p>8 that you completed?</p> <p>9 A. My -- I got my GED.</p> <p>10 Q. Okay. When did you get your GED?</p> <p>11 A. May 2011.</p> <p>12 Q. Have you done any college, some college</p> <p>13 maybe you didn't complete to get a degree, but did</p> <p>14 you do any college work?</p> <p>15 A. I did do college, but I didn't finish the</p> <p>16 courses. It was a year of college right now for --</p> <p>17 it was going to be cyber security, but I quit a year</p> <p>18 into it.</p> <p>19 Q. Where were you taking courses in cyber</p> <p>20 security?</p> <p>21 A. Grand Canyon University.</p> <p>22 Q. Is that one online?</p> <p>23 A. Yes.</p> <p>24 Q. When were you taking those courses and</p> <p>25 when did you quit?</p>

<p>14</p> <p>1 A. I don't remember the exact dates</p> <p>2 honestly.</p> <p>3 Q. Do you remember the year like roughly?</p> <p>4 A. It was when I was living at my mom's</p> <p>5 house right before this happened. So probably three</p> <p>6 years ago.</p> <p>7 Q. Okay. So like 2019, 2020?</p> <p>8 A. Yeah, but right before that probably,</p> <p>9 yeah, around there.</p> <p>10 Q. Okay. That's a good example of where I'm</p> <p>11 asking for kind of an estimate. Like you might not</p> <p>12 remember perfectly, but you can give me close.</p> <p>13 Okay. Are you currently employed?</p> <p>14 A. Yes, I am.</p> <p>15 Q. Who is your employer?</p> <p>16 A. Sin City Diabetics.</p> <p>17 Q. And what do you do for Sin City</p> <p>18 Diabetics?</p> <p>19 A. I'm the shipping and receiving manager.</p> <p>20 Q. What does Sin City Diabetics do?</p> <p>21 A. It is a medical supply company an</p> <p>22 E-commerce medical supply company for diabetic</p> <p>23 products.</p> <p>24 Q. Which location do you work at?</p> <p>25 A. I work off of Tropicana and -- there is</p>	<p>16</p> <p>1 A. Most of the week I'm seated cleaning</p> <p>2 boxes in the product that come into the store and</p> <p>3 inventorying them and most of the time I'm seated.</p> <p>4 Q. Okay. Do you do any lifting as a part of</p> <p>5 your job?</p> <p>6 A. Yeah, when product comes into the store</p> <p>7 generally about usually two to four times a week a</p> <p>8 box will come in that I have to lift and unpack.</p> <p>9 Q. Okay. And I imagine that those boxes</p> <p>10 have varying weights and sizes; right?</p> <p>11 A. Yeah.</p> <p>12 Q. Can you give me an estimate of kind of</p> <p>13 the average weight and size of those boxes?</p> <p>14 A. The main box is a pretty large box. I'd</p> <p>15 say 50 pounds or 50, 60 pounds, and it has lots of</p> <p>16 smaller product in it like diabetic products inside</p> <p>17 of those boxes.</p> <p>18 Q. Okay. Sorry. It can vary. Is that what</p> <p>19 you said?</p> <p>20 A. Yes.</p> <p>21 Q. I apologize for talking over you. So the</p> <p>22 large box comes in and it's about 50 pounds; right?</p> <p>23 A. Yes.</p> <p>24 Q. Do you pick the box up yourself?</p> <p>25 A. I need -- I usually need help. My boss</p>
<p>15</p> <p>1 only one location. I think it's Trop and Maryland.</p> <p>2 I can't remember the exact address on Trop and</p> <p>3 Maryland.</p> <p>4 Q. You said there is only one location for</p> <p>5 this?</p> <p>6 A. Yeah.</p> <p>7 Q. What kind of job duties do you have for</p> <p>8 Sin City Diabetics as a shipping and receiving</p> <p>9 manager?</p> <p>10 A. Just all the product that comes in, I</p> <p>11 identify it and log it however we need to for the</p> <p>12 appropriate product and customers and ship</p> <p>13 everything back out to those customers, and then</p> <p>14 anything that needs to be sent out as a payment to</p> <p>15 customers, I ship all of those out as well.</p> <p>16 Q. You said ship out as in payment?</p> <p>17 A. Yeah, checks go out to customers as well</p> <p>18 as product.</p> <p>19 Q. Is that the E-commerce side of Sin City</p> <p>20 Diabetics?</p> <p>21 A. Yes.</p> <p>22 Q. Checks, okay. Now, as part of your job</p> <p>23 duties, do you do a lot of -- is it mostly seated,</p> <p>24 or are you standing? You walking around? What are</p> <p>25 you doing?</p>	<p>17</p> <p>1 Daniel Coronto (phn) helps with that.</p> <p>2 Q. What did you say your boss's name was?</p> <p>3 A. Daniel Coronto.</p> <p>4 Q. Do you know how to spell his last name?</p> <p>5 A. I don't.</p> <p>6 Q. Okay. Do you have a best guess or a best</p> <p>7 estimate.</p> <p>8 A. I'm horrible at spelling, but Daniel</p> <p>9 Coronto. I don't know. I can't spell his last</p> <p>10 name.</p> <p>11 Q. No problem. How long have you worked at</p> <p>12 Sin City Diabetic -- well, I guess, when did you</p> <p>13 start?</p> <p>14 A. I started about two years ago.</p> <p>15 Q. So like early part of 2021?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. For the smaller boxes that you end up</p> <p>18 taking out of the larger box, about roughly what is</p> <p>19 the average of what those weigh and are those ones</p> <p>20 that you pick up by yourself?</p> <p>21 A. Yeah, they're just the normal size of a</p> <p>22 diabetic box containing either 50 or 100 strips.</p> <p>23 It's very light. Ounces is what it would weigh</p> <p>24 probably.</p> <p>25 Q. Okay.</p>

<p>18</p> <p>1 A. A hand-held box is what it's down to by 2 that point.</p> <p>3 Q. Okay. Is there any other physical labor 4 that you have to do as a result of that job?</p> <p>5 A. No.</p> <p>6 Q. Okay. Now, in your written discovery I 7 think you already answered that, but are you making 8 any lost wage claim as a result of this accident?</p> <p>9 A. No, I'm not.</p> <p>10 Q. Now, prior to working at Sin City 11 Diabetics what was the job you had before that?</p> <p>12 A. Before Sin City Diabetics, I was 13 self-employed as a painter and sometimes a handyman, 14 but mostly paint work, interior, exterior of 15 people's homes.</p> <p>16 Q. Okay. Do you remember the last time you 17 did any painting or handyman work prior to working 18 at Sin City Diabetics?</p> <p>19 A. It was just prior to COVID was the last 20 job I had.</p> <p>21 Q. Do you know was that before this accident 22 or after?</p> <p>23 A. That was before.</p> <p>24 Q. Okay.</p> <p>25 A. The COVID whenever the COVID outbreak</p>	<p>20</p> <p>1 Vegas ever since that time period?</p> <p>2 A. Yes.</p> <p>3 Q. All right. So now I'm going to move 4 into -- well, actually let me confirm. So based on 5 what you just told me you were not employed at the 6 time of this accident in July of 2020?</p> <p>7 A. No, I was not employed.</p> <p>8 Q. All right. So now I'm going to get into 9 a little bit of your prior like medical history.</p> <p>10 Have you ever had other than like we're 11 talking prior to the July 9th, 2020, accident, okay.</p> <p>12 So all of my questions are going to be before then. 13 Does that make sense?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Have you ever had any prior 16 accidents whether they be motor vehicle accidents, 17 slip and falls or anything where you ended up 18 getting injured --</p> <p>19 A. No.</p> <p>20 Q. -- prior to this accident?</p> <p>21 A. No.</p> <p>22 Q. Had you ever had any injuries whether 23 they be sports related or anything like that to any 24 part of your body prior to July 9th of 2020?</p> <p>25 A. No.</p>
<p>19</p> <p>1 was. I don't remember the exact date. That was my 2 last job.</p> <p>3 Q. Yeah, I think that was in early 2020 was 4 kind of the first little bit we got here.</p> <p>5 You were self-employed in Las Vegas?</p> <p>6 A. Yes.</p> <p>7 Q. Had you lived in Las Vegas pretty much 8 the entire time since this accident?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. That was a bad question actually. 11 Have you lived in Las Vegas the entire time since 12 July 9th of 2020?</p> <p>13 A. Since July 9th of 2020, I have lived in 14 Las Vegas.</p> <p>15 Q. Okay. When did you first start living in 16 Las Vegas?</p> <p>17 A. I moved here years ago when I was a young 18 man probably 20 more years ago.</p> <p>19 Q. Which year was that? We don't have to 20 say. You are only a little older than me.</p> <p>21 So moved to Las Vegas. Do you know 22 roughly when that was like 20 years ago?</p> <p>23 A. I believe, yeah, early 2000, '99 24 probably.</p> <p>25 Q. Okay. Okay. And you've lived in Las</p>	<p>21</p> <p>1 Q. Have you ever injured yourself while at 2 work?</p> <p>3 A. No.</p> <p>4 Q. Have you ever filed a workers' 5 compensation claim for any injury you sustained 6 while at work?</p> <p>7 A. No.</p> <p>8 Q. Have you ever been in any prior auto 9 accidents prior to July 9th of 2020?</p> <p>10 A. No.</p> <p>11 Q. All right. Now, the next question is 12 after July 9th of 2020, do you have any subsequent 13 auto accidents?</p> <p>14 A. I was -- had an auto accident after that 15 that I was in a coma for two days in the hospital.</p> <p>16 Q. Were you in a motor vehicle or was it -- 17 were you a pedestrian?</p> <p>18 A. No, I was a pedestrian.</p> <p>19 Q. You said you were in a coma for two days?</p> <p>20 A. Yes.</p> <p>21 Q. What parts of your body were injured as a 22 result of that subsequent auto accident?</p> <p>23 A. Everything that I remember is I woke up 24 in the hospital after the fact obviously. The car 25 hit me from behind, clipped my legs from behind, and</p>

<p style="text-align: right;">22</p> <p>1 I have a scar on my head from the impact. Like I</p> <p>2 don't remember.</p> <p>3 So I can't say what happened. I was</p> <p>4 knocked out instantly obviously, but from what they</p> <p>5 told me, I spun around in the air and my head hit</p> <p>6 the ground.</p> <p>7 Q. From your understanding of what other</p> <p>8 people told you about that accident you actually</p> <p>9 were shot up into the air as a result of getting hit</p> <p>10 by the car?</p> <p>11 A. Yes.</p> <p>12 Q. And then obviously you would have landed</p> <p>13 on the ground I assume; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Was anybody there with you?</p> <p>16 A. My wife was, yes.</p> <p>17 Q. And this was prior to you guys getting</p> <p>18 married I assume?</p> <p>19 A. Yes, I believe it was just prior.</p> <p>20 Q. Do you know roughly when this subsequent</p> <p>21 accident happened?</p> <p>22 A. I don't remember the exact date, no. I</p> <p>23 should have written it down on this little piece of</p> <p>24 paper, but I didn't. Sorry about that.</p> <p>25 Q. No, you are good. Just one little point.</p>	<p style="text-align: right;">24</p> <p>1 roadway or were you on the sidewalk?</p> <p>2 A. My wife was on the sidewalk and I was</p> <p>3 intermittently in the gutter and on the sidewalk so</p> <p>4 I would say I was both.</p> <p>5 Q. Okay. Did you ever step out into the</p> <p>6 roadway?</p> <p>7 A. I did.</p> <p>8 Q. Do you remember roughly where that</p> <p>9 accident happened like major cross street that might</p> <p>10 be near there?</p> <p>11 A. It was in a neighborhood just off of</p> <p>12 Mountain Vista and Tropicana. We were on the way</p> <p>13 from one friend's house to the other in that</p> <p>14 neighborhood.</p> <p>15 Q. Okay. So this was in a residential</p> <p>16 neighborhood?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you have any idea how fast that car</p> <p>19 was going?</p> <p>20 A. I don't.</p> <p>21 Q. But the speed limit in there was I would</p> <p>22 assume is 25?</p> <p>23 A. If he was going the speed limit, I mean,</p> <p>24 he hit me on purpose, so I don't know if he was</p> <p>25 following the law of the speed, but I believe</p>
<p style="text-align: right;">23</p> <p>1 This is not a memory test, so if you don't remember,</p> <p>2 let me know you don't remember and then I'll try and</p> <p>3 jog your memory if I have some records, which might</p> <p>4 tell you.</p> <p>5 A. All right.</p> <p>6 Q. Which is what I'm going to do right now.</p> <p>7 So some of your medical records indicate that there</p> <p>8 was a second accident on October 17th of 2020. Does</p> <p>9 that sound right?</p> <p>10 A. That does sound right.</p> <p>11 Q. Now, do you remember like what parts of</p> <p>12 your body other than you said the back of your legs</p> <p>13 and your head do you remember if you sustained</p> <p>14 injuries to any other parts of your body?</p> <p>15 A. No, it was -- the injury was just to my</p> <p>16 head, but they had my head wrapped up in gauze and</p> <p>17 that was the injury I sustained was to my head and</p> <p>18 had a nice scar for it.</p> <p>19 Q. Okay. Do you know roughly the size of</p> <p>20 the car like what type of car it was that hit you?</p> <p>21 Was it a truck? A van? A sedan?</p> <p>22 A. I believe it was a car. Like I said,</p> <p>23 didn't see it. He came from behind me, but I was</p> <p>24 told that it was a smaller sedan, four-wheel car.</p> <p>25 Q. And when you were hit were you in the</p>	<p style="text-align: right;">25</p> <p>1 whatever residential would be is whatever is posted.</p> <p>2 Q. And that was not really my question so</p> <p>3 let me rephrase it.</p> <p>4 My question is that the speed limit in</p> <p>5 there in a residential area that one to your</p> <p>6 knowledge is 25?</p> <p>7 A. Whatever it would be legally. I'm not</p> <p>8 sure what it is, but you know, you might know better</p> <p>9 than me on that. I don't know. I assume it's 25,</p> <p>10 if you say so, yeah.</p> <p>11 Q. Most residential areas are 25. Some are</p> <p>12 less, but most of the time they're closer to 25?</p> <p>13 A. Yeah, yep.</p> <p>14 Q. Okay. But like I said this was in a</p> <p>15 residential area. So there were homes that it was</p> <p>16 directly adjacent to the street?</p> <p>17 A. Yes, sir.</p> <p>18 Q. You said it was a hit and run?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if the police ever located</p> <p>21 the person who hit you?</p> <p>22 A. They did not. They said they located the</p> <p>23 car and they knew it was the car from I don't know</p> <p>24 why. The rearview mirror was broken off, and I</p> <p>25 think my wife said that the make of whatever color</p>

<p>26</p> <p>1 so they figured it was that car, but it was parked 2 down the street and left there, but I don't even 3 know if it was that car for sure. 4 Q. Okay. If the police or maybe the police 5 haven't told you anything about the investigation, 6 but do you know if they made any arrests or brought 7 in anybody for related to that subsequent motor 8 vehicle accident? 9 A. No, nothing. 10 Q. So of the injuries that you can remember, 11 the ones you remember are head and your knees, both 12 knees? 13 A. The injury was to my head. 14 Q. Okay. But did any other parts of your 15 body that you know of make contact with the vehicle? 16 A. It had to have made contact with the 17 vehicle, but the injury itself was to my the side -- 18 the right side of my skull. 19 Q. Okay. But it's probably safe to say that 20 that vehicle since it hit you from behind and you 21 were catapulted into the air that probably your 22 whole body at some point from head to toe made 23 contact with the vehicle? 24 A. I couldn't guess at that. I couldn't 25 guess at that. I don't know. I just know that the</p>	<p>28</p> <p>1 A. That's quite a long time ago, but I don't 2 recall that happening. 3 Q. Now, other than this lawsuit -- well, 4 actually let me back up. So you're the plaintiff in 5 this lawsuit. You understand that? 6 A. Yes. 7 Q. Okay. In civil lawsuits there are 8 typically and just do the simplified version there 9 are plaintiffs and defendants. Plaintiffs are the 10 ones that bring the lawsuit. Defendants are the 11 ones that defend themselves in the lawsuit. 12 Do you understand that? 13 A. Yes. 14 Q. So sometimes those people are referred to 15 as parties to a lawsuit. Does that make sense? 16 A. Yes. 17 Q. Other than this lawsuit, have you ever 18 been a party to any other lawsuit? 19 A. I don't think so, no. 20 Q. Okay. Do you have any ongoing medical 21 conditions maybe you claim are as a result of this 22 accident or any other type of injury? Do you have 23 any ongoing medical conditions? 24 A. I mean, the only ongoing medical 25 condition would be the pain I'm dealing with if I</p>
<p>27</p> <p>1 injury was to my head. 2 Q. Understood. Did you have any other 3 injuries that you were specifically told about other 4 than the right side of your head? 5 A. No. 6 Q. Have you had any other -- and now we're 7 going back to prior to this accident. Prior 8 non-automobile related injuries? 9 A. No. 10 Q. Have you ever injured yourself in a slip 11 and fall or a slip or trip and fall anything like 12 that? 13 A. No. 14 Q. And this is going back a little bit, but 15 have you ever fallen and landed on like your 16 tailbone or anything like that in the time like 17 maybe the five years prior to this accident? 18 A. No, not at all. 19 Q. So would it surprise you to know that 20 there is an ER record from 2016 that indicates that 21 you fell backwards onto your -- and injured your 22 coccyx which is your tailbone? It's like a small 23 bone on your tailbone. It was in 2016. 24 A. 2016? 25 Q. Yeah.</p>	<p>29</p> <p>1 overdo anything. If I overexert myself at all, I 2 have to decide how much pain I have to deal with 3 because of it. 4 Q. Okay. Where is -- sorry. Didn't mean to 5 interrupt. Where is that pain normally? 6 A. It's located in my lower back. 7 Q. And you said if you overexert yourself. 8 Do you feel the pain all the time, or is it only if 9 you push too far? 10 A. If I push too far. 11 Q. So you're not -- if you don't exert 12 yourself or overexert yourself, you are not 13 experiencing that pain in your lower back? 14 A. There is a dull pain maybe very low, but 15 nothing that stops me from doing anything unless I 16 overexert myself. Like if I have to lift anything 17 at work, I make sure to put my back brace on and the 18 stuff that I learned from my chiropractic too the 19 little exercises the stretches and things to make 20 sure that the stabilizer muscles continue working to 21 keep me from feeling that pain and those things help 22 a lot, but -- 23 Q. Okay. Other than the pain in your lower 24 back, do you have any other ongoing medical 25 conditions whether they cause pain or not?</p>

<p>30</p> <p>1 A. No.</p> <p>2 Q. Do you have any other ongoing medical</p> <p>3 conditions that cause pain in another area of your</p> <p>4 body other than your lower back?</p> <p>5 A. No.</p> <p>6 Q. So you've gotten treatment for your lower</p> <p>7 back from both it looks like a chiropractor and a</p> <p>8 pain management doctor.</p> <p>9 Would you -- you are familiar with the</p> <p>10 range they use from zero to 10 to like what they</p> <p>11 call a pain scale?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And what was the -- what is your</p> <p>14 understanding of that scale, meaning like how what</p> <p>15 you are supposed to use to rate your pain on it?</p> <p>16 Does that make sense?</p> <p>17 A. Yeah. I would say like a 1 or a 1 or 2</p> <p>18 would be normal, everyday adult person pain -- aches</p> <p>19 and pains just nothing, you know, but if it's to a</p> <p>20 10, that would be debilitating pain that stops you</p> <p>21 from doing things you need to do.</p> <p>22 Q. Okay. And have -- is that how your</p> <p>23 doctors have explained that scale to you?</p> <p>24 A. That's how I understood the scale to be.</p> <p>25 Q. Okay. Did they ever explain it to you</p>	<p>32</p> <p>1 do anything is kind of what a 10 out of 10 to you</p> <p>2 is?</p> <p>3 A. Yes.</p> <p>4 Q. Now, for the pain in your lower back, I'm</p> <p>5 going to kind of break it apart because you said</p> <p>6 there is a dull pain that you kind of have.</p> <p>7 Is it constant that you have this dull</p> <p>8 pain?</p> <p>9 A. Maybe a 1 I would say.</p> <p>10 Q. Okay. And then the pain if you overexert</p> <p>11 yourself, what is the typical range on that zero to</p> <p>12 10 for that?</p> <p>13 A. The typical range it's only gotten to a</p> <p>14 10 twice, and I've had to have medical procedures to</p> <p>15 correct it, and that's what I do daily is to try to</p> <p>16 focus on to not happen again.</p> <p>17 Q. Okay. Sorry. Go ahead.</p> <p>18 A. I was finished.</p> <p>19 Q. Okay. So you've only ever had a 10 out</p> <p>20 of 10 pain twice, but you had medical procedures</p> <p>21 when that happened. What medical procedures did you</p> <p>22 have?</p> <p>23 A. I believe it's called a rhizotomy.</p> <p>24 Q. Okay. Have you ever heard of it called</p> <p>25 radiofrequency ablation?</p>
<p>31</p> <p>1 that like a 10 out of 10 on pain is the most</p> <p>2 excruciating pain you could ever experience and them</p> <p>3 give like a contextual type thing like for women</p> <p>4 they usually give which I've asked women and they</p> <p>5 say it's not accurate, but for women they usually</p> <p>6 say childbirth without meds.</p> <p>7 For men they usually use kidney stones as</p> <p>8 an example like 10 out of 10 that has just doubled</p> <p>9 you over, you can't function type of pain.</p> <p>10 Has any doctor ever described it that</p> <p>11 way?</p> <p>12 A. Just, yeah, a 10 is debilitating pain</p> <p>13 that you can't really function anymore, yes.</p> <p>14 Q. So that would be consistent with like the</p> <p>15 kidney stones or --</p> <p>16 A. Not to interrupt you, I'm sorry. I have</p> <p>17 never had a kidney stone, so I don't know, but I</p> <p>18 just know that it's excruciating pain that stops you</p> <p>19 at a 10, you know.</p> <p>20 Q. I've heard other doctors describe it as</p> <p>21 like having an arm amputated without any pain</p> <p>22 medication. Have you ever had them describe it that</p> <p>23 way as a 10?</p> <p>24 A. No.</p> <p>25 Q. So just debilitating unable to function</p>	<p>33</p> <p>1 A. Yes.</p> <p>2 Q. So that's the same -- we have the same</p> <p>3 understanding of those two terms?</p> <p>4 A. Yes.</p> <p>5 Q. So your pain level has only gotten to 10</p> <p>6 out of 10 twice since this accident; correct?</p> <p>7 A. To where I was debilitated and finally</p> <p>8 had to do something about it to where I couldn't</p> <p>9 move, yes.</p> <p>10 Q. And then once you got to that 10 out of</p> <p>11 10 pain level, you went and got a radiofrequency</p> <p>12 ablation or rhizotomy?</p> <p>13 A. Yes.</p> <p>14 Q. Who performed the radiofrequency ablation</p> <p>15 or rhizotomy, do you remember?</p> <p>16 A. Dr. Muir I believe.</p> <p>17 Q. Other than those two occurrences where it</p> <p>18 went to 10 out of 10, what was the highest level of</p> <p>19 pain that you experienced any other time since the</p> <p>20 accident?</p> <p>21 A. If I overexert myself you mean, it hasn't</p> <p>22 gotten to a 10, but I don't know. I would say up</p> <p>23 there a good 5, 6, pretty painful.</p> <p>24 Q. So 5 to 6 out of 10 is the highest it's</p> <p>25 been if you overexerted yourself since the accident?</p>

<p style="text-align: right;">34</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And that's obviously excluding the</p> <p>3 two times where it went to 10 out of 10?</p> <p>4 A. Yes.</p> <p>5 Q. Have you ever been a smoker?</p> <p>6 A. I do smoke.</p> <p>7 Q. Do you currently smoke?</p> <p>8 A. I do.</p> <p>9 Q. How long have you been a smoker?</p> <p>10 A. Off and on since I was 18.</p> <p>11 Q. Roughly how many cigarettes do you smoke</p> <p>12 a day?</p> <p>13 A. Maybe a half a pack.</p> <p>14 Q. So other than the two radiofrequency</p> <p>15 ablations rhizotomies that you had, have you had any</p> <p>16 other either surgeries or procedures like that since</p> <p>17 this accident -- actually scratch that.</p> <p>18 Prior to this accident, have you had any</p> <p>19 surgeries or procedures for any kind of treatment?</p> <p>20 A. Prior to this accident? No.</p> <p>21 Q. Yeah, prior to July of 2020.</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 A. Not that I remember I haven't, no.</p> <p>25 Q. Okay. Now, as it relates to this</p>	<p style="text-align: right;">36</p> <p>1 A. I'm sorry. No, just my lower back. I'm</p> <p>2 sorry.</p> <p>3 Q. You said there was an abrasion to your</p> <p>4 buttocks. I'm assuming that's resolved itself?</p> <p>5 A. Yeah, that took about a good month to</p> <p>6 resolve itself.</p> <p>7 Q. So lower back and the abrasion to your</p> <p>8 buttocks those are the only two areas of your body</p> <p>9 that were injured as a result of this accident?</p> <p>10 A. Well, the palms of my hands were scuffed</p> <p>11 up from the street, and the abrasion on my lower</p> <p>12 back and buttocks.</p> <p>13 Q. Okay. Have you ever injured your lower</p> <p>14 back prior to the accident that we're talking about</p> <p>15 today?</p> <p>16 A. To my knowledge, no.</p> <p>17 Q. Have you ever injured your hands prior to</p> <p>18 the accident that we're discussing today?</p> <p>19 A. Not to my knowledge, no.</p> <p>20 Q. Have you had any X-rays of your lower</p> <p>21 back prior to this motor vehicle accident?</p> <p>22 A. Prior to this accident? I don't believe</p> <p>23 so. Not to my knowledge, no.</p> <p>24 Q. And I'm going to ask this more generally.</p> <p>25 Are you familiar with the term "MRI"?</p>
<p style="text-align: right;">35</p> <p>1 accident, okay, the July 9, 2020, what areas of your</p> <p>2 body were injured?</p> <p>3 A. Prior to this accident?</p> <p>4 Q. No, no, no. Now, and it was kind of hard</p> <p>5 because we jump around a little bit. Now, I'm</p> <p>6 talking specifically related to this accident. What</p> <p>7 injuries did you sustain as a result of it?</p> <p>8 A. As a result of this accident, when I was</p> <p>9 thrown in the street the initial -- the abrasion</p> <p>10 that was on my lower back and buttocks is I guess</p> <p>11 and to that and then just whatever it's done to my</p> <p>12 lower back. I'm not a doctor. I don't know the</p> <p>13 actual injuries. I just know when I overexert</p> <p>14 myself and the pain comes on I try to do what the</p> <p>15 chiropractors have taught me, and if it gets out of</p> <p>16 my hands, then I go to the surgeon, and I hope I</p> <p>17 don't have to do it again, but other than that, I</p> <p>18 don't -- you know, I don't really know how to answer</p> <p>19 that.</p> <p>20 Q. And my question was not really a medical</p> <p>21 kind of question.</p> <p>22 A. Yeah.</p> <p>23 Q. It was more like what parts of your body</p> <p>24 were injured and you can just do generally my head,</p> <p>25 my back, my neck, my legs?</p>	<p style="text-align: right;">37</p> <p>1 A. Yeah.</p> <p>2 Q. Are you familiar with the term "CT scan"?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Those and X-rays are typically</p> <p>5 like generally referred to as imaging.</p> <p>6 A. Okay.</p> <p>7 Q. So my next question is just to cover the</p> <p>8 basics because you said you haven't had any X-rays</p> <p>9 of these areas prior to this accident.</p> <p>10 Have you had any other imaging of your</p> <p>11 lower back prior to the July 2020 accident?</p> <p>12 A. To my knowledge, no. Everything that all</p> <p>13 the scans and everything that happened were because</p> <p>14 of the accident that -- to my knowledge I haven't</p> <p>15 had anything prior to this, no.</p> <p>16 Q. Okay. Now, have you ever treated with a</p> <p>17 chiropractor before this accident?</p> <p>18 A. No.</p> <p>19 Q. Have you ever treated with a pain</p> <p>20 management doctor like an anesthesiologist or</p> <p>21 somebody that you went to specifically for pain</p> <p>22 prior to the July 9th, 2020, accident?</p> <p>23 A. Not to my knowledge, no.</p> <p>24 Q. Okay. Have you ever undergone any</p> <p>25 injections to your spine prior to this accident?</p>

<p>38</p> <p>1 A. No.</p> <p>2 Q. Do you have a primary-care doctor that</p> <p>3 you go to for routine medical treatment?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know what that doctor's name is?</p> <p>6 A. Off the top of my head I don't. I would</p> <p>7 have to go look it up his name.</p> <p>8 Q. Do you know --</p> <p>9 A. I do have a primary-care doctor.</p> <p>10 Q. Okay. Do you know where that office is</p> <p>11 located that you go to?</p> <p>12 A. It's off of Silverado Ranch and Eastern I</p> <p>13 believe. I can have that information for you, but I</p> <p>14 don't have it offhand.</p> <p>15 Q. That's fine. Do you know the name of</p> <p>16 that office?</p> <p>17 A. Like I said, I don't know off the top of</p> <p>18 my head. I do have a primary care though.</p> <p>19 Q. Okay. Did you use insurance for any of</p> <p>20 your treatment for this accident?</p> <p>21 MR. JACKSON: Object to form. Collateral</p> <p>22 source, but go ahead and answer.</p> <p>23 BY MR. MARTINEZ:</p> <p>24 Q. You can answer.</p> <p>25 A. I believe that I used my insurance for</p>	<p>40</p> <p>1 A. No.</p> <p>2 Q. How did you find your current attorney?</p> <p>3 A. How did I find my current attorney.</p> <p>4 Q. Yeah. How did you figure out who they</p> <p>5 were and then go to them for legal advice?</p> <p>6 A. Well, I guess -- I guess, I was referred</p> <p>7 to them to correct what I just said because my</p> <p>8 mother is the one who told me about my attorney.</p> <p>9 Q. Okay. And do you know how she -- go</p> <p>10 ahead.</p> <p>11 A. What?</p> <p>12 Q. Do you know why she referred you to this</p> <p>13 particular attorney?</p> <p>14 A. Just asked her if she knew an attorney</p> <p>15 and that was the first thing that came out of her</p> <p>16 mouth was that.</p> <p>17 Q. Okay. Do you know if your mom has ever</p> <p>18 been in like a plaintiff in a personal injury case</p> <p>19 or anything like that?</p> <p>20 A. To my knowledge, no, I don't know though.</p> <p>21 Q. Okay. So you don't know why your mom</p> <p>22 would have referred this particular attorney?</p> <p>23 A. She was just trying to help her son.</p> <p>24 Other than that, no.</p> <p>25 Q. No, that was not -- that was a bad</p>
<p>39</p> <p>1 the very first when I initially went to the</p> <p>2 emergency room, and then after that whatever</p> <p>3 paperwork I had to sign I believe it was for my</p> <p>4 lawyer's office. So I don't know exactly how that</p> <p>5 works after that if that makes sense.</p> <p>6 Q. Yeah, no, I understand that. So normally</p> <p>7 that's called a lien. Are you familiar with that</p> <p>8 term?</p> <p>9 A. Yes.</p> <p>10 Q. When did you first retain your attorney</p> <p>11 or actually when did you first speak to any attorney</p> <p>12 about this accident?</p> <p>13 A. Immediately after it happened.</p> <p>14 Q. Okay. So that was on the day of the</p> <p>15 accident?</p> <p>16 A. I believe the next day.</p> <p>17 Q. What made you want to go to an attorney?</p> <p>18 A. I just -- nothing made me go to an</p> <p>19 attorney. I just followed what you are supposed to</p> <p>20 do. You know, it's a normal -- the normal thing to</p> <p>21 do is to acquire a legal counsel and pursue</p> <p>22 whatever.</p> <p>23 Q. Were you instructed to go to any</p> <p>24 particular attorney or did somebody refer you to an</p> <p>25 attorney?</p>	<p>41</p> <p>1 question. I'm not like asking what her motive was</p> <p>2 for providing an example. I'm saying do you know</p> <p>3 why she provided this particular attorney as your --</p> <p>4 as a recommendation? Do you know why?</p> <p>5 A. Other than them being a good attorney,</p> <p>6 no.</p> <p>7 Q. Okay. That's fine. Have you ever filed</p> <p>8 for bankruptcy?</p> <p>9 A. No.</p> <p>10 Q. Have you ever served in the military?</p> <p>11 A. No, sir.</p> <p>12 Q. Have you ever been convicted of a felony?</p> <p>13 A. Yes, I have.</p> <p>14 Q. What felony were you convicted of?</p> <p>15 A. In 2013 I was convicted of possession and</p> <p>16 in 2016 I was convicted of possession and larceny.</p> <p>17 Q. I assume possession is of a controlled</p> <p>18 substance?</p> <p>19 A. Yes, sir.</p> <p>20 Q. In 2013 what were you in possession of?</p> <p>21 A. Controlled substance.</p> <p>22 Q. Which one?</p> <p>23 A. I mean, that was a very hectic part of my</p> <p>24 life, and I don't -- I don't know if it was -- it</p> <p>25 was a drug. I'm not sure if it was meth or heroin</p>

<p>42</p> <p>1 or what, but I just know I had controlled 2 substances. 3 Q. Okay. And I'm not doing this to pass 4 judgment. 5 A. No. 6 Q. Just for fact information. You say it's 7 a pretty hectic part of your life, and I noticed 8 throughout a lot of your medical records it mentions 9 that you had substance abuse problems. 10 Is that the reason why that time period 11 you are not entirely clear on it? 12 A. Yes. 13 Q. And in 2016, we'll break it up, but the 14 possession part, was that also controlled 15 substances? 16 A. That possession was of documents I 17 believe. 18 Q. Stolen documents? 19 A. Yes. 20 Q. And the only reason why I kind of ask 21 that question is because it's related to larceny. 22 What were you stealing? 23 A. I wasn't stealing anything. I was in 24 possession of stolen passports. 25 Q. Okay. Now, what was the larceny portion</p>	<p>44</p> <p>1 A. I think it was after. 2 Q. Okay. So after 2016, but not in the last 3 three years I would guess? 4 A. I would believe that not in the last 5 three years for sure. So I would guess. 6 Q. So this is after 2016, but you are not 7 sure exactly? 8 A. Yes. 9 Q. Okay. Now, some of these questions are 10 going to sound weird, but I got to ask them. I know 11 your highest level of education is a GED, but do you 12 have any training or experience in the medical 13 field? 14 A. No. 15 Q. Do you have any training or experience in 16 law enforcement? 17 A. No. 18 Q. Do you have any training or experience in 19 biomechanical engineering? 20 A. No. 21 Q. Do you have any training or experience in 22 the legal field? 23 A. No. 24 Q. And do you have any training or 25 experience in the insurance industry?</p>
<p>43</p> <p>1 of that charge about because usually it deals with 2 money or something involving money? 3 A. Yeah, like I said it was a very hectic 4 time. I've changed myself completely 180, and I've 5 tried to forget every portion of that portion of my 6 life. It's hard for me to remember every little 7 detail, but possession and larceny. 8 Q. No, I understand that and like I said I'm 9 not passing judgment. This is just a simple 10 question that certain things that we're allowed to 11 ask you about. 12 A. Yeah, 100 percent. 13 Q. Were you ever convicted of any 14 misdemeanors that involved being dishonest? 15 A. I believe I was arrested for a 16 misdemeanor of a machete or something. I don't know 17 if that's being dishonest. I think it was for 18 carrying concealed weapon I thought was my 19 misdemeanor arrest. 20 Q. Do you know roughly when that was? 21 A. Like I said, I've tried to forget it. 22 I'm sorry. I don't. 23 Q. That's all good. Do you have a general 24 time period? Was it before these two felony charges 25 or maybe after?</p>	<p>45</p> <p>1 A. No. 2 Q. All right. So we've been going about 3 50 minutes. Normally I like to take a little short 4 break every hour or so if it's needed especially if 5 you need to get up and stretch or anything like 6 that. 7 Are you good to keep going or would you 8 like to take a good little five-minute stretch 9 break? 10 A. I'm good to keep going if you guys are. 11 MR. JACKSON: I'm fine. 12 MR. MARTINEZ: Kelly, do you need a break 13 or good to go? Good to go. 14 BY MR. MARTINEZ: 15 Q. Now, we're going to move into talking 16 more about this particular accident, the July 9th 17 accident 2020 accident, okay. 18 Now, do you remember roughly what time of 19 day it was? 20 A. Maybe noon-ish I think, midday. 21 Q. Okay. Well, it's Vegas so I know this 22 question is a stupid question, but what was the 23 weather like? 24 A. It was sunny, nice day. 25 Q. I'm assuming the road conditions were</p>

<p style="text-align: right;">46</p> <p>1 dry?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Was there a lot of traffic?</p> <p>4 A. It didn't -- no, not a lot.</p> <p>5 Q. So you were a pedestrian at the time of</p> <p>6 this accident; right?</p> <p>7 A. Yes.</p> <p>8 Q. Do you remember what kind of vehicle hit</p> <p>9 you?</p> <p>10 A. I believe it was a 15-passenger van.</p> <p>11 Q. Okay. Do you remember what color it was?</p> <p>12 A. I don't remember exactly the color, no.</p> <p>13 Q. Do you know who was the owner of the</p> <p>14 vehicle?</p> <p>15 A. I believe it was Second Opinion Plumbing</p> <p>16 was the advertisement on both sides of the van.</p> <p>17 Q. Okay. And did you speak with the driver</p> <p>18 of the van?</p> <p>19 A. No.</p> <p>20 Q. Now, do you remember the cross streets of</p> <p>21 where the accident happened?</p> <p>22 A. Maryland Parkway and Bevel -- I don't</p> <p>23 know the exact cross street. Maryland Parkway.</p> <p>24 Q. Okay.</p> <p>25 A. It's right in the 8400 block of Maryland</p>	<p style="text-align: right;">48</p> <p>1 house.</p> <p>2 Q. Okay. I just want to walk through a</p> <p>3 little bit so I understand where you were kind of</p> <p>4 coming from. So the side of the street that you</p> <p>5 were on you were walking through the crosswalk.</p> <p>6 Was the traffic -- was there traffic like</p> <p>7 immediately to your left that was stopped at a red</p> <p>8 light?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So you were walking across the</p> <p>11 stopped traffic and you saw that you were getting</p> <p>12 close to the median that was halfway across the</p> <p>13 crosswalk?</p> <p>14 A. Yes.</p> <p>15 Q. That's the time period where the van made</p> <p>16 a -- what looks to be like a left-hand turn.</p> <p>17 Essentially they were going the same direction you</p> <p>18 were but turning left in front of you?</p> <p>19 A. They were going the opposite way. I was</p> <p>20 crossing from west to east and they were coming from</p> <p>21 east to west making the southbound left-hand turn,</p> <p>22 if that makes sense.</p> <p>23 Q. And have to draw myself a diagram. Okay.</p> <p>24 So you were heading from west to east?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">47</p> <p>1 Parkway.</p> <p>2 Q. Okay. Now, what I'm going to do I'm just</p> <p>3 going to ask you to kind of like walk me through,</p> <p>4 you know, a few minutes before the accident and then</p> <p>5 all the time after the accident and just kind of do</p> <p>6 it in your own words. Like describe what you were</p> <p>7 doing and what happened. Okay?</p> <p>8 A. Okay. Prior to the accident, I was</p> <p>9 standing at the crosswalk intersection waiting for</p> <p>10 the light to change indicating for me to be able to</p> <p>11 go, and as soon as the light changed, I started</p> <p>12 walking across the street.</p> <p>13 I made it about halfway. I remember</p> <p>14 seeing the median and halfway through the -- halfway</p> <p>15 across the street, I got hit by the van. I believe</p> <p>16 he was running a red light. I don't know how he</p> <p>17 made that turn if my light indicated for me to be</p> <p>18 walking, but he hit me near the median, and it threw</p> <p>19 me backwards, and I landed almost right next to the</p> <p>20 gutter. So probably two lanes of street I was</p> <p>21 thrown back, and after I got my senses back, I</p> <p>22 guess, the next thing I remember is he had parked</p> <p>23 the van on the side of the street and the car that</p> <p>24 was witness to this helped me up to the side of the</p> <p>25 street, and then after that I made my way back to my</p>	<p style="text-align: right;">49</p> <p>1 Q. And he was heading east to west -- okay.</p> <p>2 So you were on the south side of the street then?</p> <p>3 A. The south side -- I was on the west side,</p> <p>4 I guess, the southwest corner, yeah.</p> <p>5 Q. Okay. And you were going from west to</p> <p>6 east on the south side of the street which we're</p> <p>7 not -- southwest is obviously where you were and you</p> <p>8 were heading from southwest to southeast on that</p> <p>9 corner?</p> <p>10 A. Across Maryland, yes.</p> <p>11 Q. Okay. And the van was going east to west</p> <p>12 on basically heading opposite direction of you at</p> <p>13 the time before he started the turn is the direction</p> <p>14 he was facing?</p> <p>15 A. Yeah, he would have just passed me if he</p> <p>16 hadn't of turned south onto Maryland, if that makes</p> <p>17 sense.</p> <p>18 Q. No, I understand that. Yeah, he would</p> <p>19 have gone past you in the opposite direction if he</p> <p>20 was going straight?</p> <p>21 A. Yeah, yes.</p> <p>22 Q. Now, you said there were two lanes of</p> <p>23 traffic on each side of the street?</p> <p>24 A. I believe there is, yeah.</p> <p>25 Q. Okay. So on the street you were</p>

<p>50</p> <p>1 crossing, there is two lanes of traffic and a median 2 then two lanes of traffic? 3 A. I believe so, yes. 4 Q. And approximately where were you in 5 relation to those two lanes of traffic on your side 6 like where you were crossing before you get to the 7 median? Where were you when you got hit? 8 A. Just before the median in the second lane 9 of traffic, I guess, if one would be -- one and two 10 going from west to east I would have been in the 11 second lane just before the median, but I wasn't in 12 the lane. I was in my crosswalk. 13 Q. Okay. So you're in the crosswalk. About 14 how far do you think -- well, hey, let's go back a 15 second. So you described one and two lane as one 16 being the one closest to the curb? 17 A. Yes. 18 Q. And two being closest to the median? 19 A. Yes. 20 Q. Okay. And obviously the No. 1 lane is 21 farther west and the No. 2 lane is farther east? 22 A. Yes. 23 Q. Okay. And while you are crossing from 24 west to east, you go past the No. 1 lane and you are 25 past the dots that separate lane 1 and 2 before you</p>	<p>52</p> <p>1 the street. 2 Q. Okay. So you don't think you hit the 3 curb or anything like that? 4 A. I don't believe so, no. 5 Q. So you said it hit your hands and you are 6 certain of that; right? 7 A. I just know I turned when I noticed it 8 was going to hit me and like that split second I 9 turned my hands were obviously out in front of me, 10 but I know I had scrapes and bruises on the palms of 11 my hands probably also from trying to protect myself 12 when I hit the street throwing my hands back maybe. 13 Q. To kind of catch your fall? 14 A. Tried to maybe, yeah. 15 Q. Okay. And you said it might have hit 16 your thigh or your hip area. Are you certain of 17 that or you're not sure that the van actually made 18 contact with your body? 19 A. I think if it would have just hit my 20 hands it would have probably spun me out of the way 21 rather than threw me that far back. With that much 22 transfer of energy to my body to throw me, it had to 23 have hit me pretty well on, but I didn't have like a 24 broken leg or my knee wasn't dislocated. I didn't 25 have major injuries to my leg is what I'm trying to</p>
<p>51</p> <p>1 get hit? 2 A. Yes. 3 Q. About how far into the second lane were 4 you when you were hit? 5 A. Probably maybe midway, I guess. 6 Q. Now, what part of your body made contact 7 with the van? 8 A. I noticed it was going to hit me and not 9 pass me. I turned and a split second it impacted my 10 hands and probably the side of my thigh maybe and 11 threw me backwards, and then the main impact was me 12 hitting the ground in like a seating position, I 13 guess, on my butt, my back my lower back, butt. 14 Q. And so where did you end up landing? 15 A. In the No. 1 lane almost all the way to 16 the gutter. 17 Q. Okay. So based on that description as a 18 result of the accident, you flew back a little bit 19 more than a lane's width? 20 A. I would say so. 21 Q. Now, when you landed on the ground, you 22 were near the gutter. 23 Did you land on the curb or did you land 24 on the flat ground? 25 A. I believe I landed on the flat ground of</p>	<p>53</p> <p>1 say, but it had to have hit me like that. Do you 2 see what I'm saying. 3 Q. Yeah, I understand what you are saying. 4 A. I'm not trying to guess, but -- 5 Q. You are making an assumption? 6 A. Yeah. It happened so fast that all I 7 remember is just turning and seeing it. My hands 8 were out in front of me and the next thing I know 9 I'm in the street getting my senses brought back to 10 me and people helping me up. 11 Q. Now, which lane did the van end up 12 turning into 1 or 2? 13 A. Against the gutter. So in the one behind 14 me. 15 Q. Okay. 16 A. So like if you were pulled over by a 17 police officer, how you would pull against the side 18 of the street. 19 Q. Well, the way we described it was the No. 20 1 lane that we're referring to is the one on the 21 gutter, and the No. 2 lane is the one that goes up 22 next to the median. 23 A. Yeah, yep. 24 Q. 1 and 2 are sitting like this essentially 25 and you're walking this way?</p>

<p>54</p> <p>1 A. Yes, yep.</p> <p>2 Q. Across you enter 1 and then you enter 2</p> <p>3 and then you hit the median?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So the van turned into lane 1, but</p> <p>6 you said you were halfway through lane No. 2; right?</p> <p>7 A. I was struck while I was walking in lane</p> <p>8 2, and I was thrown all the way back into the far</p> <p>9 edge of lane 1 next to the gutter.</p> <p>10 Q. Okay. So you were thrown backwards --</p> <p>11 basically you were thrown back to where you were</p> <p>12 walking from?</p> <p>13 A. Backwards and up the street a little bit,</p> <p>14 but yes. Backwards and south, I guess.</p> <p>15 Q. Okay. So you didn't -- did you land in</p> <p>16 the crosswalk again?</p> <p>17 A. No. I landed up in the lane of the</p> <p>18 street probably a good maybe 5, 10 feet away from</p> <p>19 the crosswalk at this point.</p> <p>20 Q. And that was south of the crosswalk?</p> <p>21 A. Yeah.</p> <p>22 Q. And that would have been the same</p> <p>23 direction that when the van completed its turn, it</p> <p>24 was now heading south it was in the direction that</p> <p>25 the van was driving?</p>	<p>56</p> <p>1 before, but are you aware of any witnesses to the</p> <p>2 accident?</p> <p>3 A. Just the man and his son that were parked</p> <p>4 in lane 3, I guess, it would be to make that turn.</p> <p>5 They helped me up, and then helped me to the side --</p> <p>6 up just to get onto the sidewalk and then they were</p> <p>7 the ones that were helping me remember and making</p> <p>8 sure that I understood because at this point the guy</p> <p>9 jumped back in his van and drove off, and they</p> <p>10 wanted me to understand that it was the Second</p> <p>11 Opinion Plumbing van. The name of it was Second</p> <p>12 Opinion Plumbing, and I'm not sure where the other</p> <p>13 gentleman came from Hispanic gentleman, but he was</p> <p>14 on his phone and I believe he said he was talking to</p> <p>15 the police, and then he got in his car and chased</p> <p>16 after the person when they drove off, but other than</p> <p>17 those three people, those were the witnesses that I</p> <p>18 know about.</p> <p>19 Q. Okay. Do you know the names of any of</p> <p>20 those people?</p> <p>21 A. No, I don't.</p> <p>22 Q. Okay. Okay. So let me see if I</p> <p>23 understand this correct and if I don't, please</p> <p>24 correct me, okay.</p> <p>25 So what I'm kind of -- trying to figure</p>
<p>55</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So you said the van was turning</p> <p>3 into lane No. 1. So it would have been behind you?</p> <p>4 A. I don't know where it was turning. I</p> <p>5 just know I was walking probably through lane 2 by</p> <p>6 this point, and that's where I got struck.</p> <p>7 Q. Okay. And it pushed you south on that</p> <p>8 street out of the crosswalk, but into lane 1 again</p> <p>9 towards the gutter, but not in the gutter?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Just making sure I understand.</p> <p>12 Now, did you -- I think the answer to this is</p> <p>13 probably yes, but did you see the van before it made</p> <p>14 contact with you?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And about how long before the</p> <p>17 contact did you see the van?</p> <p>18 A. Just seeing it come and going through the</p> <p>19 intersection I assumed it was going to just go</p> <p>20 straight. So just watching traffic, yeah, I saw the</p> <p>21 van.</p> <p>22 Q. So it was basically a second or so</p> <p>23 roughly before it made contact with you?</p> <p>24 A. If that, yeah.</p> <p>25 Q. Okay. Now, I think you mentioned this</p>	<p>57</p> <p>1 out is how your body moved as a result of the</p> <p>2 accident, okay. So from what you told me, you were</p> <p>3 walking across the lanes. Then you see the van</p> <p>4 coming and you stick your hands out like you kind of</p> <p>5 turn to your left stick your hands out and your</p> <p>6 hands make contact with the van, you possibly made</p> <p>7 contact with your thigh. Now, would that be your</p> <p>8 right thigh or your left thigh?</p> <p>9 A. I wouldn't say possibly. For me to be</p> <p>10 thrown that far back, I definitely got hit by my</p> <p>11 left thigh I would say, yes.</p> <p>12 Q. Left thigh, okay. Now, okay. So left</p> <p>13 thigh and your hands?</p> <p>14 A. Just because of the way I turned like</p> <p>15 that sudden turn my left side and my hands got hit.</p> <p>16 Q. And what part of the van did you hit?</p> <p>17 A. I believe it was the front of the van.</p> <p>18 Q. Now, was it like the center of the front</p> <p>19 of the van or was it more to one side or the other?</p> <p>20 A. It happened so quick, you know, I just</p> <p>21 turned and the van is right there. It was, you</p> <p>22 know, just based on I think if he's turning into</p> <p>23 that lane and I'm in the middle of it, you know,</p> <p>24 logic dictates it would be pretty much the center of</p> <p>25 the van -- the center of the front of the van I</p>

<p style="text-align: right;">58</p> <p>1 would assume.</p> <p>2 Q. But don't have any specific memory of</p> <p>3 exactly where on the van you were hit?</p> <p>4 A. It happened so quick my honest opinion</p> <p>5 would have to be just the front of the van the</p> <p>6 grill.</p> <p>7 Q. But you're not certain -- it's not a</p> <p>8 trick. You're not certain if it's farther to the</p> <p>9 passenger side or the driver's side. You just know</p> <p>10 it was the front of the van, but can't narrow it</p> <p>11 down anymore than that?</p> <p>12 A. It happened so quick. I mean, I would be</p> <p>13 guessing at that point. It was the front of the</p> <p>14 van, you know.</p> <p>15 Q. Okay.</p> <p>16 A. Sorry not to get any closer than that for</p> <p>17 you.</p> <p>18 Q. No, that's okay. So the answer to that</p> <p>19 then is, yes, you can't narrow it down any further</p> <p>20 than that; it's just the front?</p> <p>21 A. The front of the van hit me.</p> <p>22 Q. Now, immediately after the impact after</p> <p>23 you landed, what did you do next?</p> <p>24 A. After I came like I got my wits back to</p> <p>25 me, I tried to get up, and they wouldn't really --</p>	<p style="text-align: right;">60</p> <p>1 Q. Okay. So you were dazed, but your memory</p> <p>2 is like in the moments after that accident. So you</p> <p>3 don't think you were unconscious?</p> <p>4 A. I don't think I was unconscious. I was</p> <p>5 dazed. I just got hit, but I don't believe I was</p> <p>6 unconscious, no.</p> <p>7 Q. And the only parts of your body that made</p> <p>8 contact with the van were your hands and your left</p> <p>9 thigh?</p> <p>10 A. It happened so quick, but from what I</p> <p>11 believe, yes, I tried to brace myself against the</p> <p>12 impact and took the front of the van in the thigh</p> <p>13 and my hands.</p> <p>14 Q. Now, you said that the man and the son</p> <p>15 helped you get up onto the curb and then you laid</p> <p>16 down on your back.</p> <p>17 Did you try and get up or move around at</p> <p>18 any point until emergency services or any police got</p> <p>19 there?</p> <p>20 A. Emergency services didn't show up until I</p> <p>21 called the police myself and was taken to the</p> <p>22 hospital after the fact.</p> <p>23 Q. So you weren't taken by ambulance from</p> <p>24 the scene to the hospital?</p> <p>25 A. No. The father and son left, and I</p>
<p style="text-align: right;">59</p> <p>1 the two the father and son were trying to convince</p> <p>2 me not to get up. They wouldn't really let me sit</p> <p>3 all the way up, and then they kind of both picked me</p> <p>4 up and moved me to the actual curb the sidewalk, and</p> <p>5 I laid down there on my back directly. That was</p> <p>6 pretty much instantly after the next thing that</p> <p>7 happened.</p> <p>8 Q. And you were talking to the man and the</p> <p>9 son and then the Hispanic gentleman who was on the</p> <p>10 phone who you believe was talking to the police or</p> <p>11 911?</p> <p>12 A. From what he had said, yes. He said he</p> <p>13 was calling -- he's talking to the police.</p> <p>14 Q. Okay. Did you lose consciousness as a</p> <p>15 result of the impact?</p> <p>16 A. I don't know if I lost consciousness, but</p> <p>17 I know that I was dazed, but I don't know if I was</p> <p>18 actually asleep. Do you know what I mean.</p> <p>19 Q. Yes.</p> <p>20 A. The next thing I remember, remember was</p> <p>21 he was already -- the van that hit me was already</p> <p>22 parked and standing there like looking back at the</p> <p>23 situation and then they helped -- they helped me up</p> <p>24 and then I laid back down, and that's when he kind</p> <p>25 of jogged back to the van and drove away.</p>	<p style="text-align: right;">61</p> <p>1 continued on down the street to my mother's house is</p> <p>2 maybe a block away from where this happened, and I</p> <p>3 was living there at the time, and that's where my</p> <p>4 cellphone was so I knew that was the closest phone</p> <p>5 that I had.</p> <p>6 So I hobbled -- I don't want to say</p> <p>7 hobbled, but I made my way a block down the street</p> <p>8 to my phone and that's when I called the authorities</p> <p>9 myself.</p> <p>10 Q. Now, did you -- did the police come to</p> <p>11 your house?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Now, when the police came to your house,</p> <p>14 did they ask you if you needed medical care?</p> <p>15 A. Yes.</p> <p>16 Q. Now, did you tell them that you were okay</p> <p>17 or that you needed medical treatment?</p> <p>18 A. Well, I refused the ambulance because I</p> <p>19 knew I couldn't afford it myself, and my mother was</p> <p>20 right there and she just offered to drive me</p> <p>21 herself. So the only reason I refused medical care</p> <p>22 is because I didn't want to get billed for the --</p> <p>23 really didn't know how it worked.</p> <p>24 I didn't want to get billed for the</p> <p>25 ambulance and everything. So I just had her drive</p>

<p style="text-align: right;">62</p> <p>1 me. That might have been a bad decision on my part, 2 but that's what happened. 3 Q. So you refused the ambulance, but your 4 mom drove you to the hospital. Do you know which 5 hospital you went to? 6 A. I believe Henderson hospital. Does that 7 sound right? 8 Q. It does. 9 A. Okay. 10 Q. Yeah, the ER records indicate that you 11 went to Henderson hospital. 12 A. Okay. 13 Q. Now, backing up just a quick second. At 14 the scene of the accident did anybody offer you any 15 medical help or treatment? 16 A. I mean, other than to just make sure that 17 I wasn't bleeding profusely or anything or going to 18 die. The father and the son, I wish I would have 19 gotten their name and I didn't, but father and son 20 they made sure I wasn't dying if that's medical 21 treatment, but other than that, no. 22 Q. Okay. So the father and the son kind of 23 went up to you and said like, hey, are you okay and 24 you responded? 25 A. Well, they -- I don't know if they</p>	<p style="text-align: right;">64</p> <p>1 going to walk home situation going on in my head, 2 but yeah, I wouldn't say any longer than that, no. 3 Q. Okay. Where were you coming from when 4 you were walking back to your house? What 5 destination were you at? Like were you at the gas 6 station? Did you like go to get a soda or what were 7 you doing? 8 A. There is a park right at the 8400 block a 9 park across the street and prior to this accident, I 10 liked to work out a lot and I was at the -- I was 11 doing pull-ups and stuff like that at the monkey 12 bars and the gym thing they have over there and I 13 was on my way back to my home my mother's house 14 afterwards. 15 Q. Okay. Now, we're going to go back to 16 kind of the pain levels. At the scene do you 17 remember what your pain levels were and where that 18 pain was located? 19 A. I mean, I was -- I think I was in shock. 20 It's kind of hard for me to say what my pain was 21 right then. I just got hit by a car so I was messed 22 up, but I was still able to move. I don't know if I 23 was under my own adrenaline in shock to get myself 24 to the house and in a car to the hospital. 25 Q. Okay. Do you remember the first time</p>
<p style="text-align: right;">63</p> <p>1 necessarily asked me if I was okay. They just made 2 sure I was okay and made sure I wasn't moving 3 around. I was trying to get up and they were trying 4 to make sure I didn't and then they helped me -- I 5 think they were trying to stabilize my neck. They 6 helped me lay down and get to the curb. I couldn't 7 construe that as medical attention, but other than 8 that I don't know how to answer that question. 9 Q. Fair enough. And I understand your 10 answer. 11 A. Yeah. 12 Q. In the time period from when from the 13 accident happened until you got up and started to 14 walk back to your mom's house, do you know roughly 15 how much time had elapsed? 16 A. I would be guessing. I honestly don't 17 know. 18 Q. Was it 30 minutes? 19 A. I honestly couldn't -- I mean, I would 20 say less than 30 minutes probably. 21 Q. Is it safe to say that you probably can't 22 narrow down the timeline any smaller than that? 23 A. I would be guessing, you know. Like I 24 said, I was dazed. You know what I mean. It took 25 me a good couple minutes to get up that you are</p>	<p style="text-align: right;">65</p> <p>1 that you felt pain? 2 A. The first time I felt pain at the 3 hospital. I mean, I had -- I had pain right after 4 it happened, but I don't know if I could level it 5 out, you know, if you were asking on a 1 to 10. 6 Q. Okay. So you remember that you felt pain 7 right after the accident, but you can't remember the 8 level of that pain? 9 A. I guess, yeah, that's how you would say 10 that. I can't remember the level of the pain, but I 11 just got hit by a van. So I mean, you would assume 12 the pain would be, I guess. 13 Q. Well, I don't want to make an assumption. 14 A. Neither do I. I don't know. 15 Q. Okay. So then you do remember feeling 16 pain. You just don't know the intensity of that 17 pain? 18 A. Exactly sir, yes. 19 Q. Was it immediately like kind of when you 20 came out of your dazed status, I guess, that you 21 realized you were in pain? 22 A. Yes. 23 Q. Do you remember if you told anybody at 24 the scene that you were injured or that you were in 25 pain?</p>

<p>66</p> <p>1 A. I don't remember having much of a</p> <p>2 conversation other than no, not that I was in pain.</p> <p>3 Q. Do you remember if you experienced any</p> <p>4 bruising, redness or any marks on your body at like</p> <p>5 any point after the accident?</p> <p>6 A. Yes.</p> <p>7 Q. What was that?</p> <p>8 A. My lower back and my buttocks that had</p> <p>9 basketball-sized abrasion on it.</p> <p>10 Q. A break or a bruise?</p> <p>11 A. I would assume both. It was just a very</p> <p>12 large red gnarly looking mess.</p> <p>13 Q. And you said it was like the size of a</p> <p>14 basketball?</p> <p>15 A. Road rash I guess you call it, yeah.</p> <p>16 Q. Okay. So and the reason why I ask that</p> <p>17 question is a bruise is normally purple or yellow in</p> <p>18 color; right?</p> <p>19 A. Yeah.</p> <p>20 Q. And an abrasion is like a scrape, scratch</p> <p>21 kind of thing. It's usually red to begin with.</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. So it was a red mark which you</p> <p>24 believe is an abrasion about a basketball sized and</p> <p>25 you described it as road rash?</p>	<p>68</p> <p>1 localized in my lower back I didn't feel until after</p> <p>2 I was at the hospital.</p> <p>3 Q. Okay.</p> <p>4 A. As like say the body aches kind of wore</p> <p>5 off and now I noticed, okay, this isn't wearing off.</p> <p>6 My lower back something is wrong. I guess, that's</p> <p>7 when I noticed if that helps answer the question.</p> <p>8 Q. No, I think I understand that. And that</p> <p>9 makes sense.</p> <p>10 A. Okay.</p> <p>11 Q. So after the initial hit, you kind of had</p> <p>12 like a full body ache, I guess, is the way to</p> <p>13 describe it?</p> <p>14 A. I guess.</p> <p>15 Q. Okay. But you didn't feel like localized</p> <p>16 more intense pain in your lower back until you were</p> <p>17 already at the hospital?</p> <p>18 A. Well, okay. Maybe I said that wrong. I</p> <p>19 was feeling all of the pain my lower back and my</p> <p>20 body felt like crap, but as the normal aches and</p> <p>21 pains of just the impact of it kind of wore off the</p> <p>22 bruise, the lesser stuff I guess you would say, the</p> <p>23 first time that I knew that there was pain was at</p> <p>24 the hospital that there is something wrong.</p> <p>25 Q. Okay. And when you first felt that pain</p>
<p>67</p> <p>1 A. Yeah, the officer took pictures of it. I</p> <p>2 know that there is pictures of the injury in the</p> <p>3 police report if you needed them.</p> <p>4 Q. Okay. So when was the first time that</p> <p>5 you began to experience any soreness, stiffness or</p> <p>6 pain that you attribute to the motor vehicle</p> <p>7 accident?</p> <p>8 A. Immediately thereafter after the Demerol</p> <p>9 wore off at the hospital I would say and this isn't</p> <p>10 a good situation, you know. Dawned on me pretty</p> <p>11 good.</p> <p>12 Q. You said after the Demerol wore off at</p> <p>13 the hospital?</p> <p>14 A. Well, they initially gave me pain</p> <p>15 killers, you know. That's when you know you start</p> <p>16 moving around and feel your body is not normal</p> <p>17 anymore. I guess, that's when the realization of</p> <p>18 what really happened was settling in, if that makes</p> <p>19 sense.</p> <p>20 Q. Yeah. But maybe my question needs to be</p> <p>21 a little more narrow.</p> <p>22 The first time you felt pain was</p> <p>23 immediately after the accident; correct?</p> <p>24 A. Just from the initial getting hit and</p> <p>25 thrown into the street pain, but the pain that is</p>	<p>69</p> <p>1 and I think you said it was in your lower back;</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. When you first felt that pain it was more</p> <p>5 localized in that area and kind of not like you said</p> <p>6 not the lesser pain. It was more of a greater pain.</p> <p>7 Do you know roughly or do you remember</p> <p>8 what your pain level was in that zero to 10 when you</p> <p>9 first started feeling that pain at the hospital in</p> <p>10 your lower back?</p> <p>11 A. Probably a 7 or an 8.</p> <p>12 Q. Okay. Now, I got a couple general</p> <p>13 questions about medical care before I ask you some</p> <p>14 questions about your particular providers.</p> <p>15 Now, generally would you agree with me</p> <p>16 that it's important to tell your doctors all of the</p> <p>17 things that you are experiencing so they can give</p> <p>18 you the best medical care possible?</p> <p>19 A. Absolutely.</p> <p>20 Q. And would you agree with me that you</p> <p>21 should be honest with your doctors about where and</p> <p>22 how intense your pain is?</p> <p>23 A. Yes.</p> <p>24 Q. And would you agree with me you should be</p> <p>25 honest with your doctors about any other medical</p>

<p style="text-align: right;">70</p> <p>1 conditions you might have so that they have the most</p> <p>2 information possible to give you the best possible</p> <p>3 treatment?</p> <p>4 A. Yes.</p> <p>5 Q. And specifically you should also tell</p> <p>6 your doctors about any other injuries you might have</p> <p>7 sustained to the same areas maybe and this doesn't</p> <p>8 necessarily apply to only the immediate providers</p> <p>9 you see. It's any time you go to a treatment</p> <p>10 provider, you should tell them about any other</p> <p>11 injuries you might have sustained or other treatment</p> <p>12 that you might have gotten before you went to this</p> <p>13 provider?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. How many times in your life have</p> <p>16 you been involved in a motor vehicle accident where</p> <p>17 you see multiple doctors?</p> <p>18 A. Just these two times that I recall.</p> <p>19 Q. So that would be the July 9, 2020, and</p> <p>20 the October 2020?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Now, when you got home and you walked</p> <p>23 back to your mom's house, you said you called the</p> <p>24 police; right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">72</p> <p>1 take you to drive to Henderson hospital from your</p> <p>2 mom's house?</p> <p>3 A. Maybe the same, 10, 15 minutes. It's not</p> <p>4 far.</p> <p>5 Q. So it looks like approximately based on</p> <p>6 what you said about an hour after the accident is</p> <p>7 when you arrived at Henderson hospital?</p> <p>8 A. I believe so. I'm sure they probably --</p> <p>9 the records probably say what exact time I got there</p> <p>10 I'm assuming, but I would think it would be a good</p> <p>11 hour or two.</p> <p>12 Q. Okay. Yeah, the records say what they</p> <p>13 say, right?</p> <p>14 A. Yeah, I don't remember. I don't want to</p> <p>15 guess. I'm not trying to be rude at all. I just</p> <p>16 was suggesting maybe that would be where it is. I</p> <p>17 don't know.</p> <p>18 Q. No, that's perfectly fine. Like I said I</p> <p>19 don't want you to guess.</p> <p>20 A. Yeah.</p> <p>21 Q. I don't want you to guess.</p> <p>22 A. Okay.</p> <p>23 Q. Like I said, the records will say what</p> <p>24 the records say and, you know, that we will go from</p> <p>25 there.</p>
<p style="text-align: right;">71</p> <p>1 Q. What did you do before the police got</p> <p>2 there?</p> <p>3 A. I laid down at my mom's house and waited</p> <p>4 for them to get there.</p> <p>5 Q. About how long did it take the police to</p> <p>6 get there after you called them?</p> <p>7 A. I honest -- I don't know honestly. Maybe</p> <p>8 15, 20 minutes truthfully. I don't know. Pretty</p> <p>9 quick probably.</p> <p>10 Q. So roughly 15 to 20 minutes the police</p> <p>11 arrive. You talk to the police and we already went</p> <p>12 through that part right where they asked you if you</p> <p>13 wanted medical care, you refused it and your mom</p> <p>14 ended up driving you to the hospital.</p> <p>15 Do you know roughly how long the cops</p> <p>16 were there before you left to go to the hospital?</p> <p>17 A. Took my statement and everything.</p> <p>18 Probably 20 minutes.</p> <p>19 Q. Okay. Now, from the accident scene to</p> <p>20 your mom's house, roughly how long did it take you</p> <p>21 to walk home from there?</p> <p>22 A. Oh, it's only one block. So minutes.</p> <p>23 Q. Would that be 10 minutes?</p> <p>24 A. 10 minutes call it, yeah, maybe.</p> <p>25 Q. So basically from the -- how long did it</p>	<p style="text-align: right;">73</p> <p>1 A. Yeah.</p> <p>2 Q. All right. Other than going to Henderson</p> <p>3 hospital, do you remember the first doctor or</p> <p>4 treatment provider that you went to after Henderson</p> <p>5 hospital do you know what the first one was?</p> <p>6 A. The chiropractor. His name is Dr. Janda.</p> <p>7 Q. Do you know what company or practice he</p> <p>8 works for?</p> <p>9 A. Spine -- I don't know exact name. Spinal</p> <p>10 rehabilitation or something like that. I don't</p> <p>11 remember exactly the name. I'm sorry.</p> <p>12 Q. No, that's perfectly fine. You do</p> <p>13 remember it's Dr. Janda, J-A-N-D-A?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. Does Advanced Spine and Rehabilitation</p> <p>16 ring a bell?</p> <p>17 A. Yep, yes.</p> <p>18 Q. So Dr. Janda was at Advanced Spine and</p> <p>19 Rehab?</p> <p>20 A. Yes.</p> <p>21 Q. How did you learn about Advanced Spine</p> <p>22 and Rehab?</p> <p>23 A. My mother.</p> <p>24 Q. Your mom recommended Advanced Spine and</p> <p>25 Rehab?</p>

<p style="text-align: right;">74</p> <p>1 A. She didn't recommend them, but she 2 looked -- she looked them up for me and found one I 3 should -- I guess, that's the one we chose. 4 Q. Okay. I mean, other than your mom, did 5 anybody tell you to go to that particular provider? 6 A. No. 7 Q. Do you remember the cross streets or the 8 address of the particular building you went to when 9 you got treatment at Advanced Spine? 10 A. The exact address, no. It's right behind 11 the Galleria mall. It's in that same parking lot as 12 the Galleria mall, so I don't know what that cross 13 street would actually be. 14 Q. The Galleria is on Sunset; right? 15 A. Yeah, yep. 16 Q. So it's in the same parking lot shopping 17 center that the Galleria mall is in? 18 A. It is, yes. 19 Q. What kind of treatment did you receive at 20 Advanced Chiro? 21 A. Sometimes it would be as simple as a 22 massage, and other times it would be as intense as 23 electric shock to kind of stimulate the muscles, and 24 they also did a lot to teach me how to stretch my 25 lower back and also how to do specific workouts with</p>	<p style="text-align: right;">76</p> <p>1 Q. Do you remember the name of the physical 2 therapist? 3 A. I don't. There was more than one. It's 4 like a group of girls. There is three of them I 5 think. I don't remember their names. 6 Q. Now, how many times do you think you went 7 to Advanced Chiro -- or excuse me, Advanced Spine 8 and Rehabilitation? 9 A. Just as needed. You know, he set me 10 appointments pretty regularly at first. I honestly 11 don't remember how many times. 12 Q. Did you ever cancel or cancel any of your 13 appointments without going? 14 A. I believe I missed a couple and it was 15 to -- just due to I was on the bus that time and 16 just not being able to get there. It wasn't not 17 wanting to go, but yes, I believe I had to cancel 18 once or twice. 19 Q. You said you rode the bus. Do you not 20 have a driver's license? 21 A. Oh, I do now. 22 Q. Did you have a driver's license at the 23 time? 24 A. Yes. I didn't have a vehicle at the 25 time.</p>
<p style="text-align: right;">75</p> <p>1 my legs to strengthen specific muscles in my back. 2 Q. Okay. Did they provide and I think you 3 said up to. So I guess, I'll do it this way. 4 Sometimes all they gave you was massage? 5 A. Sometimes. Like if the -- yeah, 6 sometimes I would just get a massage. 7 Q. Okay. And then the electric shock 8 sometimes they refer to that as a TENS unit. Have 9 you ever heard that term before? 10 A. I honestly don't remember what they 11 called it, but that sounds right. 12 Q. When you talk about the electric shock, 13 is it they put like receivers on you and it kind of 14 forces the muscle to contract? 15 A. Yes, for 10 minutes at a time, yes. 16 Q. Roughly how long were the massages when 17 you got those? 18 A. An hour massage. 19 Q. Okay. And then the stretching and the 20 workout, was that with a physical therapist or was 21 that taught to you by the chiropractor or who taught 22 you that? 23 A. I believe it's the physical therapists at 24 the chiropractor's office. It wasn't actually Janda 25 himself. It was like the team they have there.</p>	<p style="text-align: right;">77</p> <p>1 Q. Got you. Were you not able to like 2 borrow your mom's car or anything like that? 3 A. I mean, I don't want to get into my 4 mom's, you know, vehicle usage truthfully, but I 5 would transfer myself on the bus not to be rude. 6 That's just how I got around. 7 Q. And was this still at the time that you 8 lived at your mom's house? 9 A. Yes. 10 Q. Okay. 11 A. She's super busy. It's kind of more of 12 an inconvenience to beg her to drive me places is 13 what it was. 14 Q. No, I understand that. I understand 15 that. 16 My question is only like was there a 17 reason why you weren't driving yourself in a car? 18 You yourself didn't have one? 19 A. Yeah, yeah. Just pride basically I 20 guess, but yeah. 21 Q. But you had a valid driver's license 22 during that entire time period? 23 A. I believe so, yes. 24 Q. So you believe you missed a couple of the 25 appointments for chiropractic or PT treatment, but</p>

<p style="text-align: right;">78</p> <p>1 that was because you had transportation issues?</p> <p>2 A. Yes, sir. And, yes.</p> <p>3 Q. Did you find any of the treatment that</p> <p>4 you got at advanced chiro or excuse me Advanced</p> <p>5 Spine and Rehab, did you find any of that treatment</p> <p>6 helpful?</p> <p>7 A. Yes, absolutely.</p> <p>8 Q. Was any of it that was more helpful than</p> <p>9 others or was some of it not helpful at all?</p> <p>10 A. I think the most helpful was what I</p> <p>11 learned from how to, you know, how to deal with if I</p> <p>12 have overexerted myself how to deal with trying to</p> <p>13 combat it is the most I've learned from them is</p> <p>14 pretty valuable. Just stretching and how to work</p> <p>15 out my back.</p> <p>16 Q. Got you. Okay. Was there any part of</p> <p>17 the treatment you received at Advanced Spine and</p> <p>18 Rehab that wasn't helpful?</p> <p>19 A. No, very good over there.</p> <p>20 Q. Do you know about how long you treated</p> <p>21 with Advanced Spine and Rehab?</p> <p>22 A. I don't remember the exact amount of</p> <p>23 time, but I have records if you need them. I could</p> <p>24 look them up and send them to you.</p> <p>25 Q. No, the last treatment date I see is</p>	<p style="text-align: right;">80</p> <p>1 Q. Okay. That was the radiofrequency</p> <p>2 ablation?</p> <p>3 A. Yes.</p> <p>4 Q. I think you called it a rhizotomy before?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So those are the treatments that</p> <p>7 you received from Dr. Muir?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Do you know roughly when those</p> <p>10 radiofrequency ablations were?</p> <p>11 A. I don't off the top of my head know the</p> <p>12 dates, but like I said I can provide them for you if</p> <p>13 you don't have them right there I think.</p> <p>14 Q. No, that's fine. Based on the records,</p> <p>15 it looks like you had two procedures for</p> <p>16 radiofrequency ablation and that was once was in</p> <p>17 April of 2021?</p> <p>18 A. Sounds right.</p> <p>19 Q. And then the next one I see is May of</p> <p>20 2022?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. Who recommended that you get the</p> <p>23 radiofrequency ablation?</p> <p>24 A. Dr. Muir after conversations with the</p> <p>25 pain I was experiencing and where and I believe they</p>
<p style="text-align: right;">79</p> <p>1 January of 2021, which would have been about six</p> <p>2 months or less?</p> <p>3 A. That sounds right.</p> <p>4 Q. After the accident?</p> <p>5 A. Yeah.</p> <p>6 Q. Did anybody tell you to stop treating or</p> <p>7 why did you stop treating with Advanced Spine?</p> <p>8 A. I had -- I think I had pretty much</p> <p>9 learned everything that I needed to to combat it</p> <p>10 myself at that point.</p> <p>11 It was -- it was unnecessary at that</p> <p>12 point I think, you know. I had started going to</p> <p>13 learn about the next step, which was the Dr. Muir.</p> <p>14 Q. Okay. So it looks like the next provider</p> <p>15 you went to was Dr. Muir?</p> <p>16 A. Yes, sir.</p> <p>17 Q. What kind of doctor is he?</p> <p>18 A. A spinal doctor back and spine, I</p> <p>19 believe.</p> <p>20 Q. Okay. How did you learn of Dr. Muir?</p> <p>21 A. I was referred by Dr. Janda.</p> <p>22 Q. Okay. Now, what kind of treatment did</p> <p>23 you receive from Dr. Muir?</p> <p>24 A. They did -- I forget exactly what it's</p> <p>25 called -- a radioablation I think.</p>	<p style="text-align: right;">81</p> <p>1 sent me for more X-rays at one point from Dr. Muir</p> <p>2 himself, and they came up with that as a means to</p> <p>3 get rid of the pain, and it honestly worked</p> <p>4 amazingly.</p> <p>5 Q. Did you receive any treatments from</p> <p>6 Dr. Muir before that?</p> <p>7 A. No.</p> <p>8 Q. Did you ever do any injections in your</p> <p>9 lower back?</p> <p>10 A. Oh, I thought you meant prior to me going</p> <p>11 to him at all.</p> <p>12 Q. I meant within the treatment that you got</p> <p>13 from Dr. Muir before the radiofrequency ablations,</p> <p>14 did you get any other treatment before that from</p> <p>15 Dr. Muir?</p> <p>16 A. You know, he did -- there was a couple of</p> <p>17 appointments. I don't remember anything really</p> <p>18 other than the getting down twice for the radio</p> <p>19 ablations whatever they're called, sorry.</p> <p>20 Q. You can call them RFAs if you want.</p> <p>21 A. RFAs.</p> <p>22 Q. I don't want to say that word multiple</p> <p>23 times either. Okay. So you might have had a couple</p> <p>24 other procedures before the radiofrequency -- the</p> <p>25 RFAs, but don't remember what they were?</p>

<p style="text-align: right;">82</p> <p>1 A. I mean, those are the two main ones I 2 remember. I had a few doctor appointments with him. 3 Q. Yeah. It looks to me like were a lot of 4 those appointments in person? 5 A. There was a couple -- there was one or 6 two video appointments for the back brace, and then 7 the actual procedures were in person, yeah, and then 8 the doctor appointments. 9 Q. Okay. So your medical records indicate 10 that you actually got injections and they had -- may 11 have been different types of injections in your 12 spine a couple times before you got radiofrequency 13 ablations. You don't remember those? 14 A. Well, I remember them. I think I'm just 15 lumping them the procedures all together as the 16 radio ablations is what they did. 17 Every time I had an appointment, they 18 would -- I would get put under, and they would do 19 injections or the frequency ablation in my back. 20 Every time I was getting a stab in my lower back. 21 So I don't know exactly if they were injections or 22 if it was the radiofrequency ablation, but those 23 were the appointments. 24 Q. Okay. Yeah, no, and that's fine. The 25 medical records show that the first injection that</p>	<p style="text-align: right;">84</p> <p>1 of odd timing, but you had what I see in the medical 2 records, and I'll represent to you I'm looking at 3 the medical records like that lower back injection 4 that you had in October of 2020 was on October 6th 5 and then I believe that subsequent motor vehicle 6 accident was on October 17th just eleven days later. 7 Do you remember whether or not you were 8 having any lower back pain symptoms between that 9 injection and before you got hit by the second car? 10 A. I don't remember exactly the pain levels. 11 I know that once I got hit by the second car, you 12 know, I had injury obviously to my head, and just my 13 normal pain level I would say went up just from 14 getting hit and then getting in the hospital getting 15 normal pain, but it went probably back down to a 16 normal level I would assume or back to wherever it 17 would have been beforehand. Does that make sense? 18 Q. So you are saying that prior to the 19 subsequent motor vehicle accident the one in October 20 of 2020, you believe your pain levels -- you're not 21 sure what they were before that, but just before 22 that and after that accident they went back down to 23 the same level? 24 A. Yes. 25 Q. Okay. Now, as part of that second motor</p>
<p style="text-align: right;">83</p> <p>1 you had from Dr. Muir was in your lower back and it 2 was in October of 2020. Do you remember? 3 A. Okay. Like I said, there was multiple -- 4 like I don't remember exact dates, but there were 5 multiple appointments and yes, I would remember 6 them. 7 Q. Do you know what your pain level was 8 around the time that you ended up getting injections 9 or the RFAs do you remember like -- let me ask that 10 question differently. 11 What level of pain would you have to have 12 on that zero to 10 to want to get something more 13 invasive like an injection or a radiofrequency 14 ablation other than just doing the chiropractic PT 15 treatment? 16 A. Oh, it would need to be the 10, yeah. I 17 wouldn't want anything -- yeah, it's a very invasive 18 surgery. It doesn't probably seem like that to most 19 people, but it's something going in my back. So 20 yes, stressful. 21 Q. So that would relate to like for you to 22 undergo the injections or even the RFAs you would 23 have to have 10 out of 10 pain? 24 A. Yeah, I was up there. 25 Q. Okay. And then the -- I guess, it's kind</p>	<p style="text-align: right;">85</p> <p>1 vehicle accident, which sounds like it was a little 2 more traumatic -- I'm not trying to discount this 3 one, but it sounds like it was a little more 4 traumatic. You jumped up in the air, you lost 5 consciousness, you had a head injury, you landed on 6 the ground. It seems a little more severe than the 7 one we're talking about today? 8 A. I mean, I know it sounds more severe, but 9 I think I'm lucky truthfully and all I have is a 10 scar on my head. I was unconscious for two days and 11 scared the heck out of my wife, but I truthfully 12 feel like I was lucky. 13 Q. Lucky? 14 A. Head injuries. Yeah, head injuries. 15 Q. Head injuries can definitely be scary. 16 A. Yes. 17 Q. But at least we get the cool haircut. 18 A. I'm going bald. Sorry about that. 19 Q. It's all right. Save us on hair 20 products. 21 A. Right. 22 Q. Okay. So okay. We went through -- when 23 did you stop treating with Dr. Muir? 24 A. After the last -- I don't remember the 25 exact date. I honestly haven't stopped treating</p>

<p>86</p> <p>1 with him, but if my pain rises anywhere near a 10</p> <p>2 again, I'm going to have to call him again, but I</p> <p>3 mean -- I mean, my last treatment though was</p> <p>4 whatever the last ablation was.</p> <p>5 Q. The last RFA?</p> <p>6 A. Yeah.</p> <p>7 Q. That looks like it was May of 2022.</p> <p>8 A. Yeah, that sounds right, yep.</p> <p>9 Q. And I think you had a couple more visits</p> <p>10 after that as like follow-ups, but they look to all</p> <p>11 be tele med, meaning either on a phone or video</p> <p>12 conference; is that correct?</p> <p>13 A. I went and got -- they were tele med, but</p> <p>14 I actually went down there once and they gave me a</p> <p>15 back brace for the job I have now just to make sure</p> <p>16 to try to combat when the pain level rises at all,</p> <p>17 and that was probably the second to last, I believe,</p> <p>18 appointment I had with him and then the video call</p> <p>19 one, yeah.</p> <p>20 Q. Okay. So the records indicate the last</p> <p>21 treatment date you had was, excuse me, July 14th of</p> <p>22 2022. Does that sound right?</p> <p>23 A. It sounds right.</p> <p>24 Q. And the medical records in Dr. Muir's</p> <p>25 records he indicates that on that day you had</p>	<p>88</p> <p>1 Q. Does that sound right to you?</p> <p>2 A. It sounds right.</p> <p>3 Q. Now, after you got the injections, do you</p> <p>4 remember if those were helpful or not?</p> <p>5 A. I know they were helpful. I know that</p> <p>6 the main help that I remember were the two radio</p> <p>7 ablations though. I remember twice my pain was so</p> <p>8 bad that that's what we decided to do.</p> <p>9 Q. So that would have been -- that would</p> <p>10 have had to have been 10 out of 10 pain for you</p> <p>11 then?</p> <p>12 A. For sure, yes. I think maybe that's why</p> <p>13 I focus on those two appointments so much and</p> <p>14 remember them maybe is because it was like I can't</p> <p>15 deal with this anymore, twice and maybe it -- I'm</p> <p>16 not recollecting the two injections you are talking</p> <p>17 about so much. I apologize for that.</p> <p>18 Q. No, that's fine. Like I said it's not a</p> <p>19 memory test. I can't remember everything I did in</p> <p>20 the last two years. There is no way I'd be able to</p> <p>21 do that.</p> <p>22 So you would and like I said this sounds</p> <p>23 a little bit like I'm repeating but I'm just making</p> <p>24 clear. You would have had to have had 10 out of 10</p> <p>25 pain and then conveyed that to Dr. Muir before you</p>
<p>87</p> <p>1 ongoing relief of your lower back pain and you</p> <p>2 didn't have any back pain problems; is that correct?</p> <p>3 A. I didn't have any pain levels anywhere</p> <p>4 near prior.</p> <p>5 Q. Okay. So then relating to the treatment</p> <p>6 that you got. So you don't remember the injections</p> <p>7 specifically; right?</p> <p>8 A. I mean, I don't know exactly what they</p> <p>9 were doing each time. I just know that I had the</p> <p>10 radio ablations and I guess an injection, it sounds</p> <p>11 like, but I was put under every time, you know.</p> <p>12 Q. Okay. How many times were you put under</p> <p>13 for a procedure?</p> <p>14 A. I want to say two or three.</p> <p>15 Q. Okay. It looks like you had injections</p> <p>16 twice -- let me double-check.</p> <p>17 A. Yeah, I truly don't remember every time.</p> <p>18 I just know as our discussions went as it was</p> <p>19 needed, Dr. Muir would schedule and he would come up</p> <p>20 with what would fix the problem.</p> <p>21 Q. It looks to me based on glancing through</p> <p>22 that real quick it looks to me like you had two</p> <p>23 procedures where you had injections done and two</p> <p>24 procedures where you had the RFA?</p> <p>25 A. Okay.</p>	<p>89</p> <p>1 were willing to undergo a procedure like an RFA?</p> <p>2 A. Yeah, the pain was intense.</p> <p>3 Q. And you would have told Dr. Muir I'm in</p> <p>4 unbearable amount of pain 10 out of 10 we got to do</p> <p>5 something before you'd be willing to go through with</p> <p>6 those procedures?</p> <p>7 A. The pain needs to be bad. I would hope</p> <p>8 for anybody to go through with that procedure, but</p> <p>9 yes.</p> <p>10 Q. And is that the same thing with the</p> <p>11 injections before you would be willing to have the</p> <p>12 doctor inject something into your spine, you'd have</p> <p>13 to be a 10 out of 10 pain?</p> <p>14 A. You know what, as I'm remembering it, I</p> <p>15 remember the 10 out of 10 pain the two times. I</p> <p>16 can't say what my pain level was at when he did</p> <p>17 these injections. Like I said, I don't know why I</p> <p>18 don't remember them exactly. I had a few</p> <p>19 appointments, but like I said, I remember the two</p> <p>20 times that it was so bad, you know, twice.</p> <p>21 Q. Okay. And again you haven't had to go</p> <p>22 back to Dr. Muir since July of last year?</p> <p>23 A. Not yet, no.</p> <p>24 Q. Do you have any appointments scheduled</p> <p>25 with Dr. Muir in the future?</p>

<p style="text-align: right;">90</p> <p>1 A. Not as of now, no.</p> <p>2 Q. Do you have any appointments scheduled</p> <p>3 with anybody right now?</p> <p>4 A. No.</p> <p>5 Q. Okay. So you're not currently treating</p> <p>6 with any of your medical providers for any of your</p> <p>7 injuries?</p> <p>8 A. Well, I myself don't have insurance. So</p> <p>9 that might be one reason I'm not seeking anything</p> <p>10 and the pain level hasn't gotten -- they taught me</p> <p>11 so much about how to try to combat it through my,</p> <p>12 you know, through the two teams that I dealt with</p> <p>13 that I feel like I'm doing pretty good of dealing</p> <p>14 with it, you know, fighting it off and dealing with</p> <p>15 just the way I live now, you know.</p> <p>16 Q. The lack of insurance wouldn't</p> <p>17 necessarily be a reason why you wouldn't treat</p> <p>18 because you were treating on liens before; right?</p> <p>19 A. Well, yeah, but at some point, you know,</p> <p>20 with the procedure that we had done helped to that</p> <p>21 point. At some point we have to move forward with</p> <p>22 whatever the lien and this lawsuit. So I can't just</p> <p>23 constantly say, oh, you guys are going to pay for</p> <p>24 this and feed off. That would be dishonest, you</p> <p>25 know.</p>	<p style="text-align: right;">92</p> <p>1 Advanced Spine and Rehab and Dr. Muir at his own</p> <p>2 office, do you have any other treatment providers</p> <p>3 that you've gone to for injuries that you say are</p> <p>4 related to this accident?</p> <p>5 A. No.</p> <p>6 Q. I think I already asked this. You</p> <p>7 stopped going to Dr. Muir. Did anybody tell you to</p> <p>8 stop treating with Dr. Muir?</p> <p>9 A. No. It was just a decision that we came</p> <p>10 to after the last procedure.</p> <p>11 Q. When you say "we," who are you referring</p> <p>12 to?</p> <p>13 A. Me and the doctor.</p> <p>14 Q. Okay. Did you discuss any of that with</p> <p>15 your wife?</p> <p>16 A. No.</p> <p>17 Q. Okay. Why not?</p> <p>18 A. Well, I mean, not to be rude to my wife,</p> <p>19 but it's my medical situation personal and my</p> <p>20 doctors. It's not really a, I don't know. That's</p> <p>21 not one of those joint decisions in my book. Maybe</p> <p>22 I'm wrong there.</p> <p>23 Q. I'm not going to ask that question. That</p> <p>24 would be for the wife to decide, right. Okay. Keep</p> <p>25 moving forward here.</p>
<p style="text-align: right;">91</p> <p>1 So we came to the decision that, you</p> <p>2 know, let's stop this, and then in the future if</p> <p>3 God, you know, forbid if the pain comes back, you</p> <p>4 know, obviously he's extended that call me back.</p> <p>5 Q. But you don't have any concrete plans</p> <p>6 right now to go seek any additional treatment for</p> <p>7 your injuries?</p> <p>8 A. Not unless the pain comes back. I hope</p> <p>9 not.</p> <p>10 Q. It looks like you have some treatment</p> <p>11 from a provider called Anesthesia and Intensive</p> <p>12 Care. Does that sound familiar?</p> <p>13 A. I guess.</p> <p>14 Q. It looks like they might have been --</p> <p>15 based on the dates they're probably the surgery</p> <p>16 center or the anesthesiologist that you went to when</p> <p>17 you did these --</p> <p>18 A. Yeah, at his office, okay, yes. I didn't</p> <p>19 know it was a separate provider. I just assumed</p> <p>20 that was his Muir's, you know, anesthesiologist.</p> <p>21 Q. I mean, that's all medical treatment,</p> <p>22 right. Every time you go to the hospital you got 15</p> <p>23 people that have a piece to it.</p> <p>24 A. Right.</p> <p>25 Q. Okay. So other than Dr. Janda at</p>	<p style="text-align: right;">93</p> <p>1 MR. MARTINEZ: So we've been going almost</p> <p>2 two hours now. Does anybody want to take a quick</p> <p>3 little bathroom break like 5 minutes? I don't have</p> <p>4 a ton more moving forward.</p> <p>5 I should be able to get through a lot of</p> <p>6 this pretty quickly, but I think I have probably</p> <p>7 like an hour left at most. So do we want to take a</p> <p>8 quick break? Do you want to stretch?</p> <p>9 MR. JACKSON: I'm okay.</p> <p>10 THE WITNESS: I'm good.</p> <p>11 MR. MARTINEZ: Kelly, you good to keep</p> <p>12 going?</p> <p>13 THE REPORTER: Yeah, I'm fine.</p> <p>14 MR. MARTINEZ: Like I said if anybody</p> <p>15 needs a break at any point, please let me know. We</p> <p>16 can take a quick, little five-minute break.</p> <p>17 BY MR. MARTINEZ:</p> <p>18 Q. Okay. So your mom was the one that kind</p> <p>19 of researched and found Advanced Spine and Rehab for</p> <p>20 you; right?</p> <p>21 A. That's Dr. Janda; right?</p> <p>22 Q. Yes.</p> <p>23 A. Yes.</p> <p>24 Q. And Dr. Janda referred you to Dr. Muir?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">94</p> <p>1 Q. Now, did you do any research separately 2 on your own about any of doctors like Dr. Janda or 3 Dr. Muir about their qualifications to see if they 4 could actually help you for what you were looking 5 for? 6 A. I kind of just trusted in Janda's opinion 7 when it came to Muir truthfully, and my mother has 8 dealt with the chiropractor in the past, and, you 9 know, that's how she knew them and knew that it was 10 a good chiropractor, so I trusted her. 11 Q. I'm not trying to get into your mom's 12 personal medical history, and that's not really why 13 I'm asking this question, but is that because your 14 mom has treated with a chiropractor before that 15 she's familiar with Dr. Janda? 16 A. I believe so, yes. 17 Q. Because I mean, the other option would be 18 I guess related to her line of work maybe she comes 19 across Dr. Janda and maybe that's why she 20 recommended? 21 A. No. I'm almost positive she has been a 22 patient of his in the past for massages. 23 Q. Got you, okay. Why didn't you go to your 24 primary-care doctor instead of a chiropractor? 25 A. Because -- well, my primary-care doctor</p>	<p style="text-align: right;">96</p> <p>1 him about half the time? 2 A. Yes. 3 Q. And the other half of the time was 4 treatment from his team or somebody that worked 5 within the Advanced Spine? 6 A. Yes. 7 Q. Got it. Same question regarding 8 Dr. Muir. How many times when you went -- when you 9 had an appointment with Dr. Muir's office did you 10 see Dr. Muir? 11 A. I don't remember the lady's name. There 12 is another doctor there a blond woman. She would 13 see me any time that he -- I'm assuming it's just 14 his partner -- any time that he was out of the 15 office, but it was -- I always had appointments 16 scheduled with him when I went, but sometimes it 17 would be her that I saw. Does that make sense? 18 Q. Yeah, no, I understand. So but she was a 19 medical doctor like Dr. Muir? 20 A. Absolutely, yes. 21 Q. And you don't remember her name? 22 A. I don't off the top of my head, sir, no. 23 Q. I'm sure it's in the records. 24 A. I apologize. 25 Q. No, that's fine. And approximately if</p>
<p style="text-align: right;">95</p> <p>1 is like my ulcer, you know. He gives me my ulcer 2 medication. It's like if I'm sick and have 3 sniffles, you know what I mean. That's more of what 4 I go to for him. This was a situation that was I 5 didn't feel in his wheelhouse, you know what I mean. 6 Q. So more it's kind of not his specialty? 7 A. Yeah, I guess. 8 Q. Sorry. I'm looking through some of my 9 notes. Some of these things we've already gone 10 through so I'm trying not to repeat. 11 For your treatments with Dr. Janda, if 12 you remember, roughly how many of them were with 13 Dr. Janda himself instead of like a PA or a physical 14 therapist? 15 A. I think I would say roughly about every 16 other time I would see him for actual like hands-on 17 treatment with him, but I would always talk to him 18 every time. It was maybe 10 minutes, 5 minutes at 19 the end or whatever. I would always talk to him and 20 see him whatever, but for the actual his hands on 21 and not me just working with his team and the actual 22 electrical equipment would probably I think have 23 been about every other time. 24 Q. Okay. So you talked to him every time 25 you were there, but only got treatment directly from</p>	<p style="text-align: right;">97</p> <p>1 you had to give like a percentage, how many times 2 did you see Dr. Muir overseeing the other doctor 3 that was there? 4 A. Maybe twice. Twice I saw her and the 5 rest of the time it would have been him. 6 Q. Okay. Did any of your doctors tell 7 you -- well, let's put it this way. Did Janda ever 8 tell you what your diagnosis was? 9 A. My diagnosis, not to my recollection, no. 10 He just -- no. He would just -- no, he would just 11 deal with the problem the pain I was having. I 12 don't think he ever diagnosed me with like a 13 sickness of anything, no, not that I remember. 14 Q. Did he ever diagnose you with like 15 sprain, strain or any of those types of discussions 16 or dislocations or anything like that? 17 A. You know what, I know that him and his 18 assistant would take super detailed notes, and I 19 don't remember truthfully the actual, do you know 20 what I'm saying, but I know that that information is 21 completely out there. 22 Q. Okay. So you don't remember -- 23 A. No. 24 Q. -- what the diagnosis was? 25 A. If he diagnosed something, no, I don't</p>

<p style="text-align: right;">98</p> <p>1 remember him actually saying, oh, this is a 2 diagnosis. I mean, we had pretty thorough 3 discussions on how to combat the pain and how to 4 deal with it why it's happening and stuff like that 5 but not -- I don't remember a diagnosis, no. 6 Q. Okay. Were you given any instructions to 7 do like at-home exercises over and above kind of 8 what you were doing at Advanced Spine and Rehab? 9 A. Yeah, yes. There is leg exercises with a 10 stretching like stretch bands that they have that I 11 do and stretches. 12 Q. And those stretches were for your lower 13 back specifically? 14 A. Yes. And I still do them. 15 Q. How often did they tell you to do your 16 home exercises? 17 A. I do it three times a week myself just to 18 keep a consistent like routine, but I don't remember 19 them telling me specifically. He just said if you 20 want to really attack this problem, you have to stay 21 vigilant on it. So that's what I've done. 22 Q. And you've done these home exercises 23 three times a week since you started treating? 24 A. Approximately, yes. But that's just me 25 doing it myself. That's not the doctor appointment</p>	<p style="text-align: right;">100</p> <p>1 Q. Okay. So you had radiation in your legs. 2 What kind of feeling would you get? 3 A. It was kind of a shooting pain down my 4 left thigh to maybe my knee, and it happened only a 5 couple times where it was like this is -- this is 6 shooting pain down my leg. What the heck is going 7 on. They tried to describe that as the radiating 8 thing I think is what you are talking about like a 9 shooting pain. 10 Q. Yeah, the other term sometimes they use 11 is a little bit more medical. It's called 12 radiculopathy. Have you ever heard that term? 13 A. No. 14 Q. Okay. So it was just a shooting pain. 15 Did you ever experience any like tingling or 16 numbness or anything like that down your legs? 17 A. Not necessarily tingling -- okay. This 18 is kind of hard to describe, but when the pain like 19 starts to set in, I'll notice I'll start to kind of 20 hunch forward. So my posture is all messed up and 21 that's like a good indication of it's affecting me 22 more than just trying to deal with the pain. So 23 I'll do what they've told me to do at that point. 24 Q. Do you know -- you said it only happened 25 a couple of times. Do you know approximately when</p>
<p style="text-align: right;">99</p> <p>1 or anything. 2 Q. So the doctor didn't order you to do it 3 that often. He just said do them if you want to and 4 you have decided to do them? 5 A. Well, he suggested obviously if I have 6 pain this is how you combat it was his suggestion. 7 Q. Okay. Did you ever keep like a pain 8 journal or anything like that where you wrote down 9 kind of your symptoms for the day and what your pain 10 level was? 11 A. You know, when I would go to his -- to 12 Dr. Janda's they would have like a questionnaire I 13 would fill out every time, but I wouldn't keep my 14 own journal like at my home or anything like that, 15 but there was something kind of like that with those 16 medical records, if that makes sense. 17 Q. Yeah, so you would fill out paperwork. 18 It would talk about kind of where you are feeling 19 pain and what type of pain you are feeling every 20 time you went to Janda's? 21 A. 100 percent, yes. 22 Q. Did you ever feel maybe it might have 23 been described this way. Any type of radiating pain 24 that went down your legs? 25 A. Yes.</p>	<p style="text-align: right;">101</p> <p>1 you experienced that shooting pain down your left 2 leg? 3 A. It was early in the appointments to 4 Dr. Muir. I want to say very early in that stage. 5 Q. Okay. Did Dr. Muir ever change his 6 treatment process based on the fact that you were 7 telling him you were experiencing radiating pain 8 that shooting pain? 9 A. Well, I don't remember him saying 10 radiating, but I told him that I was experiencing 11 like kind of a shooting pain and it would travel a 12 little bit down my leg, and that was just me 13 bringing it up. He never brought it up to me. I 14 never said radiating. 15 So I don't even know if we're talking 16 about the same thing, but a couple of times there 17 was a weird shooting pain down to maybe my knee, but 18 that was only literally twice maybe and it was early 19 on with Dr. Muir. 20 Q. Okay. 21 A. But I've had nothing like that since the 22 radiofrequency ablation. 23 Q. And is that from the first radiofrequency 24 ablation back in April of 2020? 25 A. Yes. The shooting pain hasn't happened</p>

<p style="text-align: right;">102</p> <p>1 yet.</p> <p>2 Q. And you think it's early on in the</p> <p>3 appointments with Dr. Muir, but you don't really</p> <p>4 know exactly when you experienced that shooting</p> <p>5 pain?</p> <p>6 A. I mean, dates, no. I don't know date</p> <p>7 exactly, but yeah, it was early in those</p> <p>8 appointments for sure.</p> <p>9 Q. Was it before that second accident?</p> <p>10 A. Before the second.</p> <p>11 Q. I'm using it as kind of like a marker in</p> <p>12 time, right?</p> <p>13 A. Yeah, yeah.</p> <p>14 Q. It's easier to remember stuff it's before</p> <p>15 that event, but I don't know when, but I can narrow</p> <p>16 it down.</p> <p>17 This accident was in July of 2020 and the</p> <p>18 second accident was about three months later in</p> <p>19 October.</p> <p>20 A. Okay.</p> <p>21 Q. Did you experience that shooting pain in</p> <p>22 that three-month time period, or was it only after</p> <p>23 the second accident?</p> <p>24 A. I truly don't know if it was after the</p> <p>25 second accident. I just know that it was for sure</p>	<p style="text-align: right;">104</p> <p>1 back, or down your shoulders into your arms your</p> <p>2 upper extremities and neck?</p> <p>3 A. Yes.</p> <p>4 Q. And that's usually referred to as</p> <p>5 radiculopathy, radiation, numbness, tingling those</p> <p>6 kind of things like that's how it is described.</p> <p>7 That's why I asked the question that way.</p> <p>8 A. Yeah, I honestly don't know if we're</p> <p>9 talking about the same thing. I think I might not</p> <p>10 have had what you are saying. I just know it was</p> <p>11 shooting pain down my one thigh a couple of</p> <p>12 different times.</p> <p>13 Q. You're not sure if Dr. Muir ever</p> <p>14 categorized that as radiculopathy or radiation, but</p> <p>15 you did tell him about the shooting pain?</p> <p>16 A. Yes.</p> <p>17 MR. MARTINEZ: Again I'm looking through</p> <p>18 my notes because conversationally we jump around to</p> <p>19 certain things so sometimes it's not in the order</p> <p>20 that we have it in the outline. So making sure I</p> <p>21 have covered all of my bases.</p> <p>22 THE WITNESS: I appreciate the</p> <p>23 thoroughness.</p> <p>24 BY MR. MARTINEZ:</p> <p>25 Q. Now, you mentioned that when you went to</p>
<p style="text-align: right;">103</p> <p>1 early on. I think it was even before I had the</p> <p>2 radio ablations, but it was probably during the</p> <p>3 injections you were talking about that maybe fixed</p> <p>4 that radiating pain or the shooting pain because it</p> <p>5 only happened, like I said twice, and very early on.</p> <p>6 So it kind of had to have been during</p> <p>7 that time, right, I would assume. Sorry, I'm not</p> <p>8 trying to be rude, but I would assume that.</p> <p>9 Q. Understood.</p> <p>10 A. Yeah.</p> <p>11 Q. I didn't see anything about radiating</p> <p>12 pain or shooting pain or anything like that, and</p> <p>13 that's the term that the doctor would use. I didn't</p> <p>14 see anything like that in the records.</p> <p>15 A. Yeah, like I said that was me telling</p> <p>16 him. It wasn't like he did oh this is what is</p> <p>17 happening. That was me trying to describe in my</p> <p>18 laymen's terms to him what the pain I'm feeling, and</p> <p>19 like I said, it might not have been the radiating</p> <p>20 thing you are talking about. Just like a sharp</p> <p>21 shooting pain down by leg. So I don't even know if</p> <p>22 we're talking about the same thing.</p> <p>23 Q. Typically, the pain radiation or</p> <p>24 radiating pain or radiculopathy is used for symptoms</p> <p>25 that move either down your legs, if it's in your</p>	<p style="text-align: right;">105</p> <p>1 Dr. Janda every time you would fill out paperwork</p> <p>2 that had like pain levels and pain locations and</p> <p>3 stuff like that; right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Did you do the same thing with Dr. Muir</p> <p>6 every time you saw him?</p> <p>7 A. You know what it wasn't in any way the</p> <p>8 same kind of form. I don't remember that at all.</p> <p>9 It was more just we would talk. You know, when I</p> <p>10 first got there they would like maybe his assistant</p> <p>11 or somebody would log me in on a laptop or whatever</p> <p>12 and then he would come in and we'd talk. Unless it</p> <p>13 was the actual, you know, scheduled treatments, then</p> <p>14 I would just go in and they'd put me under the</p> <p>15 whatever I'd get the injections or whatever they</p> <p>16 would stick in my back.</p> <p>17 Q. So every one of your treatment -- or your</p> <p>18 appointments for every one of your appointments with</p> <p>19 Dr. Muir you showed up at the office in person?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. But sometimes his assistant would</p> <p>22 come in and put you on like something like this like</p> <p>23 a zoom or a video?</p> <p>24 A. No, no. She would just log me in. It</p> <p>25 was like however they did their paperwork. I don't</p>

<p style="text-align: right;">106</p> <p>1 know. It was like her laptop. She would just log 2 me in. It wasn't a video call with him or anything. 3 Q. And that paperwork you would fill out it 4 would have like pain levels and pain locations and 5 stuff like that? 6 A. Not with -- with Dr. Janda, yes, when I 7 would get there, there would be that kind of form, 8 but with Dr. Muir, no. Not that I remember. I 9 didn't fill out forms like that with him, no. 10 Q. Do you ever remember reporting your pain 11 levels to Dr. Muir? 12 A. Yeah, but it wasn't the same type of form 13 is what I'm saying that I remember. 14 Q. Did you fill out a form or did you just 15 tell him what it was? 16 A. I remember specifically the form with 17 Dr. Janda the chiropractor, and I obviously conveyed 18 my pain levels with Dr. Muir, but I don't 19 specifically remember the actual chart. 20 Q. Okay. That's fair. Approximately how 21 many times did you see Dr. Muir? 22 A. A handful of times I think four or five. 23 I truly don't know the exact number of how many 24 times off the top of my head. 25 Q. Maybe that was a bad question. Let me</p>	<p style="text-align: right;">108</p> <p>1 A. I don't believe so. I might have 2 canceled one just on the same type of transportation 3 issue, but it was never on, oh, this isn't important 4 enough to go or anything like that. 5 Q. Now, did you get any -- I know there is 6 and I'll tell you I can represent to you that in 7 your medical records it indicates there is quite a 8 bit of imaging. That's the X-rays, the CT scans and 9 I believe there is a couple sets of MRIs. 10 A. Okay. 11 Q. Now, did anybody ever review the results 12 of those imaging tests with you? 13 A. I mean, I remember seeing the imaging 14 tests and I'm sure they went over them with me. 15 Yeah, I don't see why they would not have talked 16 about them. I don't remember specifics about it, 17 no. 18 Q. Okay. That's fine. 19 A. I remember seeing the pictures that the 20 imaging, but I don't remember the actual 21 conversations about them. 22 Q. Okay. Other than the injections and the 23 radiofrequency ablations from Dr. Muir, did he 24 prescribe you any pain medication? 25 A. No.</p>
<p style="text-align: right;">107</p> <p>1 back that up. How many times -- how many 2 appointments did you attend with Dr. Muir's office? 3 A. I don't remember exactly how many 4 appointments there were, sir. I apologize. 5 Q. No, that's fine. 6 A. It was a handful though. There was a 7 few. 8 Q. Got you. I mean, it looks to me like 9 there is -- I mean, there is certainly more than 10. 10 A. Wow, okay. 11 Q. I mean, there were only a couple before 12 the second motor vehicle accident. I see one, two 13 maybe four -- I see four appointments with Dr. Muir 14 before the second accident, and then after the 15 second accident there are a lot more treatments. 16 There is more than ten that I can see right now. 17 Does that sound right? 18 A. I don't have the paperwork right in front 19 of me, so I'm not going to -- it sounds right. 20 Q. No, that's fair and I'm not asking you to 21 confirm what I'm looking at. 22 A. I don't remember. I know that there was 23 quite a few appointments. 24 Q. Okay. Now, did you have any appointments 25 scheduled with Dr. Muir that you ended up canceling?</p>	<p style="text-align: right;">109</p> <p>1 Q. Did you take any pain medication during 2 this process at any point even if it's over the 3 counter? 4 A. I'm currently in recovery so I try to 5 stay away from any kind of pills or any of that. 6 Q. Okay. And I think in your records it 7 indicates that are you still taking methadone? 8 A. Yes, like I said I'm in recovery, but I 9 have changed my life a million percent from the 10 hecticness it used to be. So yes, I'm still in 11 recovery now, and I probably will be the rest of my 12 life. 13 Q. Good for you. Good for you. 14 A. Thank you. 15 Q. Now, when did you start taking the 16 methadone, do you remember? 17 A. I've been on methadone a couple of times. 18 This isn't the first time I've been on it, but I 19 don't remember the exact date. I have records. I 20 can produce those records if you need them. I don't 21 remember the exact date though. 22 Q. No, that's fine and I have the medical 23 records. 24 A. Yes. 25 Q. Mostly the reason why I'm asking is</p>

<p style="text-align: right;">110</p> <p>1 methadone is sometimes used as a pain medication. 2 A. Okay. 3 Q. So when -- I guess, the better way to ask 4 the question. I can understand that you might have 5 been on and off methadone while you are working on 6 your recovery, right, and I understand that process. 7 A. Yes. 8 Q. You've been on methadone consistently 9 since prior to this accident; right? 10 A. Yes. 11 Q. Okay. How far before this accident July 12 of 2020 were you on methadone consistently, if you 13 remember? 14 A. I truly don't remember the date and I'm 15 not trying to be vague. I don't. I'm very serious 16 about my recovery, but I don't remember the exact 17 date. 18 Q. Okay. But you were on methadone at the 19 time of this accident? 20 A. Yeah, I've been on methadone for a -- 21 yes. 22 Q. Okay. So you've been on methadone for at 23 least, it looks like, two and a half years now? 24 A. Sounds about right, yep. 25 Q. Okay. Were you prescribed any pain</p>	<p style="text-align: right;">112</p> <p>1 Dr. Muir's office? 2 A. Yes. 3 Q. And what procedure did he want you to do 4 potentially if you were going to come back? 5 A. He didn't suggest any specific things. I 6 just know what obviously has worked in the past and 7 I remember was those two -- those two specific 8 appointments when the pain was so bad and it 9 eradicated the pain. 10 Q. So Dr. Muir didn't say I recommend you go 11 through with another radiofrequency ablation if the 12 pain returns he never recommended that to you? 13 A. He obviously recommended future 14 treatments if there is a need, do you see what I'm 15 saying, but he didn't recommend anything, oh, hey in 16 two years you need to do this. No, nothing like 17 that ever happened, you know. 18 He's not trying to get my business in the 19 future in any weird way. If the pain returns, they 20 extended their services obviously. 21 Q. Okay. So it was an open-ended kind of 22 like, hey, if your pain comes back contact us and 23 we'll see what you need? 24 A. Yeah. 25 Q. But he never told you like, hey, every 12</p>
<p style="text-align: right;">111</p> <p>1 medications by any of your providers whether that be 2 the hospital, whether that be Dr. Muir, Dr. Janda 3 anybody? Has anybody prescribed you any prescribed 4 pain medications? 5 A. No. Other than the Demerol when I went 6 to Henderson hospital, I refused. I don't take meds 7 like that. I would rather try to deal with the pain 8 in other ways like what they've taught me, you know, 9 what the doctors have told me to do. That's just 10 what I chose to do. 11 Q. Okay. Now, it's going to sound like a 12 bit of a repeat question, but I promise you it's 13 not. 14 Have you been recommended to have any 15 future or further treatment or surgeries at this 16 time? Have you gotten a recommendation like, hey, 17 go do this procedure or you should do this 18 procedure? 19 A. The only thing that was ever said to me 20 was if the pain returns, you know how to contact us 21 and this is what should be done because it's 22 obviously worked in the past, but other than that, 23 no. 24 Q. And when you are referring to like you 25 know how to contact us, is that referring to</p>	<p style="text-align: right;">113</p> <p>1 months come back and get another radiofrequency 2 ablation and we'll run a special? 3 A. Absolutely not. That would be kind of 4 nice, but no, but no. 5 Q. And I joke a little bit with that one, 6 but he didn't specifically tell you like every 12 7 months come back and get another radiofrequency 8 ablation? 9 A. You know what, he did talk to me a little 10 bit about what other people have needed the 11 frequency of like I don't know if it's like an 12 average of people or whatever, and he said that I 13 was very lucky to last a year in between the first 14 and second one, if that makes any sense, and I 15 myself was pushing it, you know, and he has told me 16 not to do that. Don't try to like just deal with 17 the pain, if that makes any sense, but I wouldn't 18 take that as him trying to be oh, yeah, contact us. 19 He's not -- it wasn't anything nefarious, but yeah, 20 if that makes sense. 21 Q. So he didn't specifically tell you like 22 we'll do it -- like I said, we're going to do this 23 procedure 12 months and you're going to need it 24 forever? 25 A. It was specifically if there is a</p>

<p style="text-align: right;">114</p> <p>1 problem, contact us. If the pain returns if you 2 can't combat the pain with what I've learned from -- 3 he doesn't know about all the little exercises I 4 learn from the chiropractor. I didn't talk about 5 that specifically, but if those things don't work 6 obviously contact us. 7 Q. Okay. So it's just kind of like a come 8 back when you need it? 9 A. Yeah. That's how I took it. 10 Q. Was there anything recommended by any of 11 your treatment providers any of your doctors that 12 you didn't want to try? 13 A. No, I was pretty open to that -- I mean, 14 that's what they do. So I didn't like refuse to -- 15 I didn't refuse their advice if that's what you 16 mean. 17 Q. Yeah, that was kind of the question. 18 Like if they recommended you do it, you were like, 19 no, I'm not doing that? 20 A. No, I didn't refuse any of their advice 21 anything they said or recommended. I tried to 22 follow to the best I could, you know. 23 Q. Okay. And then did any of your doctors 24 ever tell you or actually did anybody ever tell you 25 that you needed to stop treating?</p>	<p style="text-align: right;">116</p> <p>1 could so I have had counselors in the past, but not 2 specifically like that, you know what I mean. 3 Q. So you haven't seen a psychologist or a 4 psychiatrist to talk about any mental health issue 5 or psychological conditions? 6 A. No. 7 Q. And the counselors you refer to, you said 8 while you were incarcerated, are those just like -- 9 what kind of counselors are they, do you know? 10 A. Like treatment counselors like drug 11 counselors things that they provide for you to try 12 to better yourself, you know, combatting the 13 problems that was obviously there. 14 Q. Were all of those counselors that you saw 15 while you were incarcerated related to substance 16 abuse? 17 A. Yeah, yes. 18 Q. Did any of your doctors ever tell you 19 that you have a permanent disability? 20 A. No. 21 Q. Did you take any -- I think I already 22 asked this. But when was the last time that you 23 took any medication for your symptoms? 24 A. I don't take any medication other than 25 methadone.</p>
<p style="text-align: right;">115</p> <p>1 A. No. 2 Q. Did anybody ever tell you that there is 3 not enough money and that you couldn't get more 4 treatment? 5 A. No, not at all. 6 Q. Did anybody ever tell you what the policy 7 limits were for my client's insurance in this case? 8 A. I thought it was that they had a million 9 dollar policy, but that's all I have ever heard of 10 it. 11 Q. Okay. 12 A. And I'm not -- I don't know. That was 13 hearsay. I don't know if that's true. I haven't 14 looked up anything or I don't know about insurance 15 stuff. 16 Q. Okay. Has anybody ever diagnosed you 17 with depression? 18 A. No, not diagnosed with depression, no, 19 not that I remember. 20 Q. Have you ever treated with like a 21 psychologist or a psychiatrist for depression? 22 A. You know, not for depression. I had 23 counselors in the past when I was incarcerated not 24 to bring that back up, but once there was a problem 25 in my life, I tried to deal with it the best way I</p>	<p style="text-align: right;">117</p> <p>1 Q. Okay. So then it would have been the 2 Demerol essentially that you got at the hospital? 3 A. Yeah, just that one -- yep. 4 Q. Are you claiming any continuing injuries 5 that are ongoing? 6 A. I don't know how to classify it as 7 ongoing or not. It's just I have to wear a back 8 brace at work just to try to fight this. You know, 9 I don't go to the gym anymore. I have kind of lost 10 that hobby, and that's just me trying to make sure 11 that I don't have to get this procedure done again, 12 you know. 13 I think I'm doing everything I can to 14 make sure that it doesn't pop up again, but I think 15 that possibility is always there. I don't know how 16 else to answer that, you know. 17 Q. Okay. You said you don't go to the gym 18 anymore. How often did you go to the gym before 19 this accident? 20 A. I used to go quite regularly. I used to 21 enjoy working out, lifting weights specifically. 22 Q. Which gym did you go to? 23 A. I have weights myself. So I like to work 24 out a lot myself, but I have had 24 Hour Fitness, I 25 don't anymore, but that was back in the past.</p>

<p style="text-align: right;">118</p> <p>1 Q. When was the last time you had a 24 Hour 2 Fitness membership? 3 A. It's been years. 4 Q. Okay. 5 A. Like I said I have weights. 6 Q. You haven't gone since this incident? 7 A. Yes. I have my own weights, if that 8 makes sense. 9 Q. How often did you work out either like 10 you said going to the park and exercising or lifting 11 weights at home, how often did you exercise before 12 this accident? 13 A. I would say pretty regularly I'd try to 14 stay on it. Multiple times a week usually four days 15 a week I would work out. 16 Q. And how much do you work out now? 17 A. Now, all I do now is whatever the doctor 18 my chiropractor told me to. That's what I focus on 19 now three days a week. 20 Q. So that's the home stretches and 21 exercises and stuff like that? 22 A. Yeah, yep. 23 Q. Okay. So safe to say essentially you 24 have dropped maybe one day a week in exercise after 25 this accident as compared to before?</p>	<p style="text-align: right;">120</p> <p>1 A. Not how I used to. It's not the same 2 heavy weight at all, but like I said three times a 3 week I try to -- I try to keep my regimen going, if 4 that makes sense. It's not heavy weight anymore, 5 but it's still working out. Does that make sense? 6 Q. So is it more body weight or are you 7 using any weights at all? 8 A. Resistant bands. 9 Q. Okay. Do you have any other limitations 10 other than the exercise kind of change in your 11 regimen? Any other limitations that you have now as 12 a result of what you are claiming is our accident 13 not the second one, our accident that you can't do 14 today that you could do before? 15 A. I mean, aside from working out and my 16 change in job, I'm not going to try to start a 17 painting business again by any means. You know, I 18 like my job now is a good fit. It's not going to 19 overexert me, you know. 20 Q. Okay. And you like your new job better 21 than painting? 22 A. I don't know if I like it better than 23 painting. I wouldn't say that necessarily. The 24 money was way better in painting, but I get along 25 with who I work with, so that's all right.</p>
<p style="text-align: right;">119</p> <p>1 A. No. I mean, it's changed completely. I 2 used to lift weights. I don't lift weights anymore 3 at all. I don't think I would dare dead lift 4 anything now, but I do still work out just what 5 they've taught me like the stretches and 6 specifically how to strengthen the stabilizer 7 muscles, I think they call it, in my lower back and 8 the ones that I'm not usually using, I guess. 9 Q. Okay. They're real good for dead lifts. 10 Now, when you lifted weights before -- it's a weird 11 question because it's kind of subjective -- did you 12 lift heavy? Like how heavy were the weights that 13 you were lifting before? 14 A. I maxed out on my bench was 350, and 15 that's really my maximum was 350 on bench, if that 16 helps. 17 Q. How much do you weigh? 18 A. I right now I believe I weigh right 19 around 200. 20 Q. How tall are you? 21 A. 6 foot 1. 22 Q. 350 is a respectable number. 23 A. Yeah. Thank you. 24 Q. Have you tried to lift weights at all now 25 or you just haven't been trying?</p>	<p style="text-align: right;">121</p> <p>1 Q. So there is not really any other 2 limitations other than the exercise regimen change? 3 A. Yeah, I would say. 4 Q. Does anything hurt as you sit here today? 5 A. Today is pretty good. No. 6 Q. I guess, I can kind of ask this question 7 now that we've talked a little bit. 8 The only time that you have any pain in 9 your lower back is if you overexert yourself? 10 A. Yes, sir. 11 Q. Okay. And you do your best not to do 12 that? 13 A. I try my best, yeah. 14 Q. You are doing your stretches your stretch 15 band exercises and all that stuff and you are 16 wearing a back brace if you are going to lift 17 anything at work. So you are taking the precautions 18 to not overexert? 19 A. To the best of my ability, yes, sir. 20 Q. Is there -- and this is kind of a 21 different way to ask the question, but is there 22 anything that you did before the accident that you 23 can't do now at all? 24 A. I would be lying if I said I can't do 25 anything now. I can do everything. It's just I</p>

<p style="text-align: right;">122</p> <p>1 have to -- I have to decide how much pain I'm going 2 to deal with with what I chose to do. That's really 3 the only change, you know, but I can pretty much do 4 whatever I need to do to survive. It's just going 5 to hurt, I guess you could say, if that makes any 6 sense on how to answer that question. 7 Q. And it wouldn't be everything that you 8 are doing hurts. It's just at the times where you 9 overexert yourself that's where the pain might come 10 in? 11 A. Well, I wouldn't say it's going to come 12 and go right away, but if I overexert myself the 13 pain starts to creep back in and stay, so yeah. 14 Q. What kinds of levels of pain do you get 15 to on that zero to 10 scale when you overexert 16 yourself? 17 A. Oh, maybe a 4, 5. It hasn't got to a 10 18 since the last procedure -- 19 Q. Okay. 20 A. -- you know. God willing it won't again. 21 We're all crossing our fingers for that. 22 Q. Is there anything that you did before the 23 accident that when you do it now if you do it it 24 always ends up in pain? 25 A. You know what, I'm pretty careful</p>	<p style="text-align: right;">124</p> <p>1 that. 2 Q. I mean, you haven't tried to go back to 3 painting or anything like that, right, and you're 4 not making a wage loss claim here? 5 A. I'm not making a wage loss claim, no. 6 Q. Okay. Did your pain or injuries keep you 7 from doing like daily home chores like taking out 8 the trash or cleaning dishes or anything like that? 9 A. No, it just comes to overexerting myself 10 and lifting anything heavy. 11 Q. Have you done any home improvements to 12 your house or anything like that since the accident? 13 A. I live in an apartment, so no. Sorry, 14 no. 15 Q. Have you done any travel since the 16 accident? 17 A. Yes. Sadly, my wife's mom died and we 18 flew to Chicago and back for the funeral. 19 Q. Do you remember when that was? 20 A. I'm so bad with dates. It was -- I don't 21 remember the exact date, but it was a couple three 22 months ago. 23 Q. Okay. So it was like late last year? 24 A. Yeah. 25 Q. Late 2022. Have you been to any</p>
<p style="text-align: right;">123</p> <p>1 honestly. I try my best to, you know, follow 2 through with what they taught me I learned and what 3 works. So I try not to overexert myself, but it 4 does happen. It can happen. 5 Q. Okay. Does your pain or did your pain or 6 injury effect your social life? 7 A. I mean, I had different friends back then 8 than I do now, I guess you could say, but I wouldn't 9 necessarily say it's because of the accident. I 10 changed my life, you know, so that has more to do 11 with it than anything else. 12 Q. So I have to say that the pain or 13 injuries that you incurred as a result of the 14 accident didn't really have any impact on your 15 social life? 16 A. Not my social life I wouldn't say. 17 Q. Okay. And did the pain or injuries that 18 you sustained in this accident effect your home life 19 in any way? 20 A. I mean, not to sound like I'm whining, 21 but my paychecks were better when I had a painting 22 business and I know that I stopped because of COVID, 23 but if I could paint again, you know, obviously we 24 all try to get more money. It's just what it is in 25 life. So I would say I would have gone back to</p>	<p style="text-align: right;">125</p> <p>1 amusement parks since the accident? 2 A. No. I wasn't big on those before, but 3 no. 4 Q. What activities and like hobbies do you 5 have now? Like what do you like to do in your spare 6 time? 7 A. I mean nothing really anymore truthfully. 8 My hobby -- like my spare time I like to lift 9 weights. That's what I did. I enjoyed that. So 10 when it comes to like a hobby or anything, that's 11 pretty much that was it, you know. 12 Q. Is there anything else in your daily life 13 that this accident had an effect on that you can 14 think of? 15 A. Not off the top of my head, no. 16 Q. Do you have any social media accounts? 17 A. I do have old ones that I can't remember 18 the password to. MySpace or Facebook too, but no, 19 not that are current by any means. 20 Q. Did you post on my social media about the 21 accident or your injuries or your pain or 22 treatments? 23 A. Oh, no. These were years ago, sir. I 24 haven't had social media in a while, so no. 25 Q. I can tell you are older because you</p>

<p style="text-align: right;">126</p> <p>1 mentioned MySpace?</p> <p>2 A. Yeah, right.</p> <p>3 Q. That doesn't exist. Kind of been</p> <p>4 overrun.</p> <p>5 A. Yeah.</p> <p>6 Q. All right. I've got some concluding</p> <p>7 questions here that I'm going to run through, and</p> <p>8 then I'll turn it over to your attorney if he has</p> <p>9 any questions for you.</p> <p>10 A. Okay.</p> <p>11 Q. When was the last time prior to this</p> <p>12 accident that you treated with any healthcare</p> <p>13 provider for muscular or skeletal pain or injuries</p> <p>14 in your back?</p> <p>15 A. Prior to this accident?</p> <p>16 Q. Yeah.</p> <p>17 A. None.</p> <p>18 Q. Okay. And when was the last time since</p> <p>19 this, but before today so since July of 2020, but</p> <p>20 before today when was the last treatment you</p> <p>21 received for any of your pain or injuries if you</p> <p>22 remember?</p> <p>23 A. I believe it was the last treatment I had</p> <p>24 was the radiofrequency ablation I believe.</p> <p>25 Q. And the records indicate that you had a</p>	<p style="text-align: right;">128</p> <p>1 Q. And did I give you a fair opportunity to</p> <p>2 answer all of my questions?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And is there anything else that you'd</p> <p>5 like to add before I turn it over to your attorney</p> <p>6 and then we ultimately go off the record?</p> <p>7 A. I just want to thank you guys for your</p> <p>8 time everybody involved, and I appreciate your work</p> <p>9 in this. So other than that, no.</p> <p>10 Q. And then you understand that you are</p> <p>11 under oath during the entirety of your deposition</p> <p>12 meaning that you are subject to the penalties of</p> <p>13 perjury under the laws of the state of Nevada?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. And before I turn it over to</p> <p>16 Charles --</p> <p>17 MR. MARTINEZ: Charles, do you have any</p> <p>18 questions?</p> <p>19 MR. JACKSON: I do not have any</p> <p>20 questions.</p> <p>21 MR. MARTINEZ: All right. Then I will</p> <p>22 thank everybody for their time today. Mr. Moss, I</p> <p>23 appreciate you sitting down with me. I know it's</p> <p>24 been about two and a half hours solid. So I</p> <p>25 appreciate you powering through and us getting it</p>
<p style="text-align: right;">127</p> <p>1 couple of follow-ups with Dr. Muir after that?</p> <p>2 A. That was just -- that was a follow-up to</p> <p>3 talk about where my pain level was since the</p> <p>4 procedure, and then the last one was to get a back</p> <p>5 brace so that I could -- for at work.</p> <p>6 Q. Did any of your treatment providers ever</p> <p>7 ask you if you had prior experiences with pain in</p> <p>8 your lower back?</p> <p>9 A. I'm sure they asked me if I had prior</p> <p>10 pain or anything like that just regular questions,</p> <p>11 but I didn't.</p> <p>12 Q. All right. So some concluding questions</p> <p>13 that are just general related to the deposition,</p> <p>14 okay.</p> <p>15 Has everything that you've testified to</p> <p>16 today been true and accurate to the best of your</p> <p>17 knowledge?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And did you understand all of my</p> <p>20 questions that you provided answers to?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And did I adequately clarify any</p> <p>23 questions that you were unsure about before you</p> <p>24 provided your answer?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">129</p> <p>1 done, and I appreciate you being forthcoming with</p> <p>2 your answers.</p> <p>3 Usually you have the opportunity, if</p> <p>4 you'd like -- Kelly is obviously creating that</p> <p>5 written transcript. You have the opportunity if</p> <p>6 you'd like to review the transcript before it's</p> <p>7 finalized and sign off on it or you can waive your</p> <p>8 right to review it and sign. That's something you</p> <p>9 can discuss with your attorney. I don't know if</p> <p>10 you've already previously discussed it, but if you</p> <p>11 have that opportunity and you decide to make any</p> <p>12 changes to the transcript, I'll just let you know</p> <p>13 that any substantive change you made to the</p> <p>14 transcript like change a yes to a no or a red to a</p> <p>15 green would be an example, right, if you were</p> <p>16 talking about a light.</p> <p>17 If you make any substantiative changes, I</p> <p>18 have the opportunity to comment on that at the time</p> <p>19 of trial. Do you understand that?</p> <p>20 THE WITNESS: Yeah, that makes sense.</p> <p>21 MR. MARTINEZ: Okay. Then I think we are</p> <p>22 done for the day.</p> <p>23 MR. JACKSON: It sounds like we'll waive</p> <p>24 and I'll have an E-transcript please.</p> <p>25 MR. MARTINEZ: Just electronic for us.</p>

130

1 THE REPORTER: Is it okay to go off,
 2 guys?
 3 MR. MARTINEZ: Yes, we are good to go
 4 off.
 5 (Proceedings recessed at
 6 4:06 p.m.)
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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF NEVADA)
 4) ss
 5 COUNTY OF CLARK)
 6
 7 I, Kelly R. Rexroat, a duly certified court
 8 reporter licensed in and for the State of Nevada, do
 9 hereby certify:
 10 That I reported the taking of the proceedings
 11 at the time and place aforesaid;
 12
 13 That I thereafter transcribed my shorthand
 14 notes into typewriting and that the typewritten
 15 transcript of said proceedings is a complete, true
 16 and accurate record of the proceedings to the best
 17 of my ability.
 18
 19 I further certify that I am not a relative,
 20 employee or independent contractor of counsel of any
 21 of the parties; nor a relative, employee or
 22 independent contractor of the parties involved in
 23 said action; nor a person financially interested in
 24 the action; nor do I have any other relationship
 25 with any of the parties or with counsel of any of
 the parties involved in the action that may
 reasonably cause my impartiality to be questioned.
 IN WITNESS WHEREOF, I have hereunto set my
 hand in the County of Clark, State of Nevada, this
 20th day of February 2023.
Kelly R. Rexroat
 Kelly R. Rexroat, CCR 977, RPR

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OASIS
REPORTING SERVICES

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EXHIBIT “2”



MEDICAL RECORDS REVIEW

Patient: Jared Moss

Date of Injury: 7/9/2020

Type of injury: Ped vs Auto

Date of review: 7/5/2021

Time involved in review/report: 5 hrs.

Medical Records

1. Henderson Hospital
2. Shadow Emergency Physicians
3. Desert Radiologist
4. Advanced Spine & Rehabilitation
5. William Muir, MD
6. Pueblo Medical Imaging
7. Anesthesia and Intensive Care
8. Community Ambulance
9. Sunrise Hospital
10. Fremont Emergency Services
11. Radiology Specialists

1. Henderson Hospital

7/9/2020: ER Visit

Chief Complaint: S/p fall. Right buttock pain, swelling

History of Present Illness: The patient presents with complaints of right buttock pain status post fall backwards after being hit by a car. He also reports low back pain that gradually started after he fell. He states that the car had been stopped and then started to go to make a left-hand turn and hit him in the intersection. He said that the car hit his hands and he fell backwards onto his buttock and back. He denies hitting his head. He has been ambulatory all day but stated that he really only noticed pain in the buttock when he got into the family members car and noticed that there was a bunch of swelling as well.

Exam: Mild to moderate diffuse mid to lower lumbar tenderness. Normal, painless ROM of both hips and knees although with extremes of flexion there is worsening of his low back pain complaints. Large hematoma affecting the right buttock with minimal overlying superficial abrasion. No tenderness of the hands or wrists. No motor or sensory deficits noted.

CT Abdomen/Pelvis: Soft tissue hematoma of the right posterior buttock, superficial to the muscle in the subcutaneous tissues, measuring 2.7 x 6.0 x 12.0 cm in dimension

CT Lumbar Spine: Unremarkable

Impression: Pedestrian injured in traffic accident. Lumbar contusion. Traumatic hematoma of buttock

Plan: Rx Ibuprofen, APAP. D/c home

Medical bills were reviewed and \$25,864.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.

2. Shadow Emergency Physicians

7/9/2020: Emergency Evaluation & Management \$1335

Provider: Dr. Martin

Medical bills were reviewed and \$1,335.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.

3. Desert Radiologist

7/9/2020: CT Lumbar Spine \$556

Unremarkable

7/9/2020: CT Abdomen and Pelvis \$1048

Soft tissue hematoma of the right posterior buttock, superficial to the muscle in the subcutaneous tissues, measuring 2.7 x 6.0 x 12.0 cm in dimension

No acute traumatic injury identified within the peritoneal cavity or retroperitoneum

Medical bills were reviewed and \$1,604.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.

4. Advanced Spine & Rehabilitation

Treatment Dates: 7/10/2020-1/6/2021 (31 Sessions)

7/10/2020: Initial Report

Chief Complaints: Low back pain, Right buttock/hip pain, Right knee pain, Sleeplessness

History of Injury: The patient was a pedestrian and a marked crosswalk and an intersection when a driver of a full-size van failed to yield and struck the patient, knocking him to the ground. He was unable to get out of the way of the Van and reports landing on his right side. He states the offending driver fled the scene. The patient presented to the ER for evaluation where he underwent CTs. He presents today with lower back pain as well as right knee pain and right buttock pain currently rated 8/10.

Past Medical History: Noncontributory

Medications: Methadone

Exam: Notable difficulty with prolonged sitting. Transition from a seated position was guarded. Palpation revealed spasms and marked tenderness along the lumbar paraspinal musculature bilaterally. Marked tenderness at the lower lumbar facets and SI joints, greater on the right. ROM significantly reduced in the lumbar spine. Positive standing Kemp's test, Sitting Kemp's, Farfan Torsion and Compression, SI Compression, Hibb's on the right. Large hematoma with associated swelling in the right hip buttock region with marked tenderness in the posterior hip. Positive tenderness in the posterior aspect of the right knee. ROM within normal limits.

10/5/2020: Reports gradual overall improvement of his right hip. He does have some continued lower back pain and tightness and is scheduled for injections tomorrow. The patient received 31 sessions of chiropractic treatment with the last session on 1/6/21. At that time the patient did have hypertonicity in the lumbar musculature and the current radiating pain was 0-3/10 with overall improvement of 90%.

10/28/2020: Patient reports he was struck by a car on 10/22/2020. He was transported to sunrise Hospital and hospitalized due to TBI symptomatology including blunt head trauma and loss of consciousness. He reports no increased symptomatology in regards to his chief complaints related to the MVA versus pedestrian collision from 7/9/20.

12/2/2020: Patient reports overall 70% improvement of his low back pain since starting treatment. He does feel that his pain is starting to increase him that his injection response is starting to wear off. Current pain 3-5/10. He reports increased pain with prolonged sitting and daily activities. He does report his right buttock/hip pain and sleeplessness have resolved.

1/6/2021: Final Report

Patient reports 90% overall improvement of his low back pain complaints since beginning treatment. Current pain intensity radiating over the past week is 0-3/10. He does continue to have slightly increased pain and/or symptoms with travel, 9/6/2021

rotation, lifting, walking and standing.

Exam: Hypertonicity in the lower lumbar musculature with mild tenderness. ROM was within normal limits.

Medical bills were reviewed and \$7,262.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.

5. William Muir, MD

7/23/2020: Initial Visit

Chief Complaints: Low back pain

History of Injury: On 7/9/2020, the patient was a pedestrian crossing a marked crosswalk at the intersection of Maryland and Wigwam, when a driver of a vehicle failed to yield, hitting and knocking the patient to the ground. He was evaluated in the ER.

Medical History: None

Past Surgical History: None

Lumbar Exam: ROM-flexion 100%, extension 90%, lateral flexion 100% all with pain. Sensation and strength intact and full. Mild to moderate tenderness in the lumbar paraspinals and right buttock and SI joint and moderate muscle tightness

Impression: Sprain/strain with possible additional injuries, Right buttock contusion/hematoma

Plan: Refer for MRI if pain persists

8/10/2020: Followup Visit

Presents for a follow-up via telemedicine. Reports he continues to attend therapy with noted benefit as his overall pain has decreased. He is no longer having the sharp pains and is now only having that of a intermittent discomfort depending on his activity.

Plan: Continue therapy as beneficial

9/9/2020: Followup Visit

Telemedicine follow up. Overall condition remains the same. He does take methadone chronically but despite medications still feels the low back pain.

Plan: Refer for MRI lumbar spine

9/16/2020: Followup Visit

Presents for follow-up and for review of his recent lumbar spine MRI. He reports he continues to attend therapy with noted temporary benefit however his overall progress has somewhat plateaued and he continues to experience low back pain.

MRI: Facet hypertrophy and disc height narrowing L4-S1

Plan: Candidate for bilateral L4-S1 facet injections

10/6/2020: Procedure: Bilateral L4-S1 Facet Injections

Pre-Procedure Pain: 3/10

Post-Procedure Pain: 0/10

1/12/2021: Followup Visit

Follow-up via telemedicine and status post bilateral L4-S1 facet injections which occurred on 10/6/2020. The patient reports up until 2 weeks ago he had what he described as 100% pain relief with only some mild tightness. Over the last 1-2 weeks he has noted a slight and progressive return of pain.

Subsequent injuries (new since problem for which being seen):

Ped vs auto in late 10/2020. Suffered head injury. Denies injury to low back or increase of symptoms

Plan: Candidate for bilateral L3, L4, L5 MBB for consideration of an RFA

1/19/2021: Procedure: Bilateral L3, L4, L5 MBB

Pre-Procedure Pain: 3/10

Post-Procedure Pain: 2-3/10

2/3/2021: Followup Visit

Telemedicine followup and s/p bilateral L3, L4, L5 MBB from 1/19/2021. The patient reports again 100% pain relief with the injections.

Plan: Candidate for RFA if pain returns. No if no return of pain likely would be at MMI

3/3/2021: Followup Visit

Telemedicine followup. Reports that he has continued to remain pain free since his lumbar MBB, although has noted some return of the "tightness" and "stiffness" in his low back of which usually precedes the return of pain. He does admit that he currently he is in school and does sit for long periods of time after which he will notice more tightness, but with activity will improve and nearly resolve. Discussed HEP and stretching as well as breaks from a seated position.

Plan: Candidate for RFA if pain returns. No if no return of pain likely would be at MMI

3/31/2021: Followup Visit

Telemedicine follow up. Reports that the very positive therapeutic response from the January medial branch block injection has now worn off. He is miserable with his low back pain and wishes to discuss options and in particular radiofrequency ablation which he has researched online.

Plan: Candidate for bilateral L3, L4, L5 RFA

4/6/2021: Procedure: Bilateral L3, L4, L5 RFA**4/21/2021: Followup Visit**

Telemedicine followup s/p bilateral L3, L4, L5 RFA which took place on 4/6/2021. The patient reports he is doing very well and has already noted complete relief of his low back pain and symptoms.

Plan: If no return of pain or symptoms at next visit, would be at MMI

5/19/2021: Followup Visit

Telemedicine followup. Continues to do very well since his RFA and has not noted any return of pain/

Plan: At MMI

Medical bills were reviewed and \$59,791.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.

6. Pueblo Medical Imaging**7/3/2020: Xray Right Knee \$150**

Unremarkable

9/12/2020: MRI Lumbar Spine (No billing)

L1-2: Unremarkable

L2-3: Unremarkable

L3-4: Unremarkable

L4-5: Bilateral facet hypertrophy

L5-S1: Disc height narrowing

Medical bills were reviewed and \$150.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.

7. Anesthesia and Intensive Care**10/6/2020: Anesthesia Coverage \$1750**

Procedure: Bilateral L4-S1 Facet Injections

1/19/2021: Anesthesia Coverage (No billing)

Procedure: Bilateral L3, L4, L5 MBB

4/6/2021: Anesthesia Coverage \$1750

Procedure: Bilateral L3, L4, L5 RFA

Medical bills (Incomplete) were reviewed and \$3,500.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.

8. Community Ambulance

10/17/2020: EMS Transport to Sunrise Hospital \$1266.60

Narrative: 39-year-old male involved in an auto vs pedestrian accident. Upon arrival patient was found sitting upright and appeared to be in distress. The patient's girlfriend states that the patient was struck by a sedan with its 305 off while the patient was on the side of the road. The car fled the scene after the accident. Per the patient's girlfriend he was launched in the air and fell head first into the asphalt and was not alert for approximately 30 seconds. He was initially found to be alert and oriented x3 with a GCS of 14. The patient however was noted to be sluggish to respond to simple questions but was able to once given a painful stimuli. Patient chief complaint of pain is to his head and he does not remember the accident. Denies abdominal pain, visual changes, nausea vomiting. Patient showed no acute changes in route to sunrise and was stable in transport.

Exam: Patient's head showed a contusion to his right occipital region with abrasion, no active bleeding. Abrasion to the right eyebrow and right cheek. Small abrasion to the left knee. Back was unremarkable.

9. Sunrise Hospital

Admission: 10/17/2020-10/19/2020 \$117469

10/17/2020: Admission/ER Note

Chief Complaint: Patient arrived by EMS with head pain, neck pain, extremity pain

History of Present Illness: 39-year-old male presents to the ED in c-collar with face pain, right shoulder pain, left knee pain, abdominal pain, left toe/foot pain that began today status post auto versus speed. Patient was struck during a hit and run an unknown speed with positive LOC.

Exam: Awake, alert. Abrasion to right side of the face. Scalp hematoma with laceration. Pupils equal and reactive. Immobilized in a C-collar. Abdominal diffuse tenderness. Back atraumatic. Abrasion to right shoulder. Abrasion to left knee. Abrasion to left toe. No motor or sensory deficits noted.

Imaging:

CT Cervical Spine: No evidence of acute injury

CT Facial Bones: No acute facial bone fractures

CT Brain: No evidence of acute intracranial hemorrhage

CT Thorax: No evidence of acute traumatic injury in the chest

CT Abdomen and Pelvis: No acute traumatic injury in the abdomen or pelvis

Xray Right Shoulder: No acute injury

Chest xray: Unremarkable

Xray Femur Bilateral: Unremarkable

Xray Tib-Fib Right: Unremarkable

Xray Hands Bilateral: No acute injury

Impression: Altered Mental Status, Abrasion, Contusion

Plan: Admit

10/19/2020: Discharge Note

39-year-old male with unknown past medical history presented on 10/17/2020 after being hit by a motor vehicle. Currently patient is alert and oriented x1-2, poor historian and not answering questions appropriately therefore HPI obtained by ER provider. It was reported that the patient was hit by a motor vehicle while crossing the road. Per EMS, the patient is taking methadone. There was no other information reported. Patient was admitted and monitored. No fracture seen on x-ray. Patient now more alert and awake. Able to work with PT and has been cleared for home.

Discharge Diagnosis: Altered mental status, Motor vehicle accident, injury. head contusion. Polysubstance abuse

10. Fremont Emergency Services

10/17/2020: Critical Care Evaluation and Management \$1899

Provider: Brett Michael Hansen, MD

11. Radiology Specialists

10/17/2020: CT Cervical Spine \$189

No evidence of acute injury

10/17/2020: CT Facial Bones \$174

No acute facial bone fractures

10/17/2020: CT Brain \$156

No evidence of acute intracranial hemorrhage

10/17/2020: CT Thorax \$212

No evidence of acute traumatic injury in the chest

10/17/2020: CT Abdomen and Pelvis \$271

No acute traumatic injury in the abdomen or pelvis

10/17/2020: Xray Right Shoulder \$39

No acute injury

10/17/2020: Chest xray \$29

Unremarkable

10/17/2020: Xray Femur Bilateral \$39

Unremarkable

10/17/2020: Xray Tib-Fib Right \$29

Unremarkable

10/17/2020: Xray Hands Bilateral \$30

No acute injury

Summary

On 7/9/20 the patient was a pedestrian walking in a marked crosswalk at an intersection when a driver of a full-size van struck the patient impacting his hands, knocking him backwards to the ground landing on his back and buttocks.. The patient indicated he was unable to get out of the way of the van and after being struck landed on his right side. The patient was taken to **Henderson Hospital Emergency Room**. His chief complaints were right buttocks pain and swelling. On examination the patient had diffuse lower lumbar tenderness and a large hematoma over the right buttocks with minimal overlying superficial abrasion. Neurologically the patient was intact. A CT scan was obtained of the pelvis showing a soft tissue hematoma in the right posterior buttocks. A CT scan of the lumbar spine was taken as well. The patient was provided ibuprofen, aspirin, and was discharged to home.

The patient was evaluated at **Advanced Spine and Rehabilitation** on 7/10/20 with chief complaints of low back, right buttocks/hip, right knee pain. The patient also complained of difficulty sleeping. Initial examination was done which was abnormal regarding the lumbar spine joining significantly reduced lumbar range of motion, **Marked tenderness to the lower lumbar facets**, and a large hematoma with associated swelling in the right buttocks, as well as tenderness to the posterior aspect of the right knee. However the right knee range of motion was normal. The patient received 31 sessions of chiropractic treatment with the final report on 1/6/21. At that time the patient had been doing very well since his lumbar injection and was discharged from chiropractic treatment.

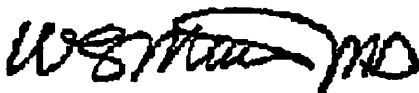
The patient was referred to evaluated by **William Muir M.D.**, Orthopedic Spine Surgeon, on 7/23/20 with chief complaint of low back pain. On examination the patient had painful lumbar range of motion with mild to moderate tenderness in the paraspinal lumbar muscles. The patient also complained of **sharp pains which are consistent with lumbar facet mediated pain**. A lumbar MRI scan was ordered and done on 9/12/20. The lumbar **MRI scan of the lumbar spine at Pueblo Medical Imaging** which was essentially fairly unremarkable with disc height narrowing at L5-S1 and bilateral facet hypertrophy at L4-5. The patient continued with his therapy however had somewhat plateaued. After discussing options the patient chose to proceed with the option of bilateral L4 to S1 facet injections. The patient's preinjection pain level is 3/10 and post level 0/10 which was diagnostic and very therapeutic. The patient returned three months later reporting that he had **100% pain relief** with only some mild tightness however recently the low back pain was returning. He also reported another pedestrian versus auto injury in October in which he suffered a head injury but denied any injury to the low back nor any increase of his lumbar symptoms. Subsequently in January 2021 the patient underwent bilateral L3, L4, L5 medial branch block injection which again provided 100% relief of pain from the injection. By March 2021 the patient noted some return of

lumbar symptomatology. By the end of March the positive benefit of the injection had worn off. On 4/6/21 the patient underwent bilateral radiofrequency ablations for the L4 to S1 levels. At follow-up, 15 days later, the patient noted complete relief of his low back pain and symptoms. The patient followed up again on 5/19/21 still reporting complete relief of his lumbar symptoms from the radiofrequency ablation. The patient was instructed to return for follow-up as needed.

As referenced above, on 10/7/20 the patient was involved in **another pedestrian versus automobile accident**. **Community Ambulance** reported to the scene and the patient appeared to be in distress. His girlfriend indicates that he was struck by another vehicle which resulting in the patient being launched in the air and following head first into the asphalt. The patient was not alert for approximately 30 seconds. The patient was found to be sluggish in response to simple questions. The patient's chief complaint was pain in the head. The patient was found to have a contusion to the right occipital region within the abrasion as well as an abrasion in the right eyebrow and right cheek. The patient was taken to **Sunrise Hospital** with chief complaints of head, neck, and extremity pain. On examination the patient was found to have an abrasion in the right side of his face, scalp hematoma, and laceration. *The patient was assessed as having no trauma to the low back.* CT scans were obtained of the cervical, face, brain, thorax, and abdomen all showing no acute traumatic injuries visible on CT scan. Impression was status post MVA with altered mental status, abrasion, and contusion. The patient was admitted to the hospital and discharged two days later. The patient's discharge diagnosis was motor vehicle accident with resulting altered mental status and head contusion. *There is no evidence that the patient sustained an exacerbation of low back pain neither in the medical records reviewed nor from the patient pertaining to the 10/7/20 accident.*

Due to the pedestrian versus automobile accident on 7/9/20 the patient sustained injury to his **lower lumbar facets**. The patient's symptoms included sharp pain with movements which is consistent with facet mediated pain. The patient underwent 2 lumbar injections that provided 100% relief of symptoms temporarily. The patient subsequently underwent radiofrequency ablation approximately 3 months ago which resulted in at least a temporary resolution of symptoms. The treatment rendered subsequent to the 7/9/20 MVA was reasonable, customary, and directly related to the injury. There are no prior medical records or history of the patient having lower lumbar facet mediated symptoms prior to the 7/9/20 injury. The patient did sustain an additional injury on 10/7/20 however the medical records are clear that this did not result in an exacerbation or new lumbar symptomatology. Due to the chronicity of the lumbar spine most likely the patient's low back pain will return and he most likely will benefit from future medical visits, therapy for acute exacerbations, imaging to rule out other new pathology, and repeat radiofrequency ablations. The need for such treatment is directly related to the 7/9/20 injury. The treatment of radiofrequency ablation is not considered to be a permanent treatment and there is a possibility that the patient's lumbar facet injury will resolve with time and not require future treatments.

These opinions are stated to a reasonable degree of medical probability and are based upon my evaluations of the patient and the medical records that I have reviewed. Opinions may change based upon the medical records or additional information.



William S. Muir, M.D.
Orthopedic Spine Surgeon
Diplomate, American Board of Orthopedic Surgeons
Fellow, American Academy of Orthopedic Surgeons



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Spine Surgery



Additional MEDICAL RECORDS REVIEW

Patient: Jared Moss
Date of Injury: 7/9/2020
Type of injury: Ped vs Auto
Date of review: 7/6/2022
Time involved in review/report: 30min

Medical Records

1. William Muir, MD

1. William Muir, MD

5/19/2021: Followup Visit

The patient presents for a follow-up via telemedicine status post bilateral L3, L4, L5 RFA's which took place on 4/6/2021. The patient reports he is doing very well and has already noted complete relief of his low back pain and symptoms. Plan: S/p bilateral L3, L4, L5 RFA-continue to monitor response. If no return of pain or symptoms at next visit, would be at MMI

11/22/2021: Followup Visit

The patient presents for a telemedicine followup visit. The patient does continue to do very well from the radiofrequency ablation, however notes that after eight hours prolonged sitting his back bothersome for a couple hours. Plan: Continue to monitor response to RFA

12/21/2021: Followup Visit

The patient presents for a followup via telemedicine. Since his last visit he reports overall continued improvement. He has noted that the discomfort he was having with any prolonged sitting at work has improved with the use of a lumbar support. At this point he is very happy with his overall progress as he reports minimal to no pain. Plan: At MMI although at risk for acute exacerbations of which may require additional/repeat treatment

Since the last since the last testing since the last testing 123 testing 123 testing 123 testing

Summary

Since the last LCP, the patient has been seen 7 times. The positive benefit of the RFA wore off and a repeat bilateral L4-S1 RFA was done on 5/17/22. At follow up on 6/2/22, the patient reported 100% improvement. Most likely 9-0008

continue to require RFA's in the future. If they become no longer beneficial, most likely he would be a candidate for a two level fusion.

These opinions are stated to a reasonable degree of medical probability and are based upon my examinations of the patient and the medical records that I have reviewed. Opinions may change based upon the medical records or additional information.

A handwritten signature in black ink, appearing to read "W.S. Muir MD". The signature is stylized with a large, sweeping initial "W" and a distinct "MD" at the end.

William S. Muir, M.D.
Orthopedic Spine Surgeon
Diplomate, American Board of Orthopedic Surgeons
Fellow, American Academy of Orthopedic Surgeons

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EXHIBIT “3”

Comprehensive Medical Examination

Patient: Jared Moss

Date of Service: October 7, 2022

Date of Birth:

Date of Incident: July 9, 2020

I was asked to perform an examination and review the medical records of Jared Moss as they relate to the incident of 7/9/20.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. He states he was walking in a crosswalk and a plumbing van struck him on the left side, causing him to land on his butt and back. He denies any loss of consciousness, and he did not require any emergency care or transportation to the hospital by ambulance. He reports he had immediate pain in his lower back and hands. Currently, he has ongoing low back pain which does not radiate. He rates this pain at 4-5/10, and describes it as a deep-pressure and tightness. He has treated with PT, heat, ice, TENS, massage, medications, exercise, chiropractic care, and lower back injections. The pain is worse with over-exertion or repetitive motions. The pain is better with ablations, rest, and stretching. The pain limits him. His providers have not recommended any spine surgery for him. He denies any prior symptoms, and denies any prior accidents. He reports a subsequent MVA but does not know the date, and states it only injured his head and did not affect his lower back.

Past Surgical history: denies

Past Medical History: denies

Allergies: PCN, amoxicillin

Current Medications: denies

Social history: he works in shipping/receiving, at time of the accident he was a painter, he admits to smoking

Family history: denies

Review of systems: negative in detail

Medical Time Line:

Pre-Incident Medical Records:

2/14/16 Spring Valley Hospital – ER – chest pain, SOB for 1 day, PMH hepatitis C, methamphetamine abuse, has HA, fall 2 weeks ago landing on coccyx
CXR
xrays coccyx – no fracture

1/6/19 Desert Springs Hospital – ER – fevers, chills, PMH cirrhosis
9/22/19 Henderson Hospital – ER – abdominal/groin pain, inguinal hernia

Incident

7/9/20 MVA – Traffic Accident Report – front right bumper of V1 struck P1’s left side causing him to fall in travel lane, declined medical transport, V1 Econoline, non-motorist Jared Moss

Post-Incident Medical Records:

7/9/20 Henderson Hospital – ER – s/p fall backwards after being hit by car, on methadone therapy, LBP and right buttock pain, started gradually after being knocked over by car today, car hit his hands and he fell backwards onto his buttock and back, did not hit head, hands bothering him, denies weakness or n/t, exam neck normal, mid to lower lumbar tenderness, neuro normal, smoker, high risk substance abuse current methamphetamines,
CT lumbar spine – mild scoliosis, unremarkable
CT abdomen/pelvis – right buttock soft tissue hematoma

7/10/20 chiro – initial report, LBP, right buttocks/hip, right knee, pedestrian in crosswalk, van struck him, knocking him to ground, landed on right side, heavy smoker

7/13/20 chiro

7/15/20 chiro – lumbar, right hip, right knee, right buttock contusion

7/17/20 chiro

7/23/20 Dr. Muir – LBP, pedestrian, hit by van, no radiation, neuro normal

7/24/20 chiro

7/27/20 chiro

7/30/20 xrays right knee - unremarkable

8/4/20 chiro

8/5/20 chiro

8/7/20 chiro

8/10/20 Dr. Muir – telemed f/u, pain decreased with therapy

8/12/20 chiro

8/14/20 chiro

8/17/20 chiro

8/19/20 chiro

8/21/20 chiro

8/24/20 chiro

8/26/20 chiro

8/31/20 chiro

9/2/20 chiro

9/9/20 Dr. Muir – telemed f/u, takes methadone chronically but still feels LBP, no radiation, smoker, not employed, neuro normal

9/12/20 MRI lumbar spine –
T12-L1 unremarkable
L1-2 unremarkable
L2-3 unremarkable
L3-4 unremarkable
L4-5 FJ, LF
L5-S1 unremarkable

9/16/20 chiro

10/5/20 chiro

10/6/20 Dr. Muir – bilateral L4-S1 facet injections, pain from 3 to 0/10

10/7/20	chiro
10/14/20	chiro
10/17/20	MVA vs pedestrian
10/17/20	Ambulance – PMH heroin use history, taking methadone, struck by sedan, car fled, LOC, pain to head, right occipital contusion, facial abrasions
10/17/20	Sunrise Hospital – ER – via EMS, head, neck, extremity pain, pedestrian, pain in head, face, abdomen, right UE and left LE, LOC, right shoulder and left knee, s/p hit and run, patient on methadone xrays bilateral femur – no injury CXR CT thorax – in acute traumatic injury CT cervical spine – unremarkable CT brain – unremarkable xrays hands – retained metallic BB pellet CT facial bones – unremarkable CT abdomen/pelvis xrays right shoulder – unremarkable xrays right tib/fib - unremarkable
10/28/20	chiro – hit by car on 10/22/20, transported to Sunrise Hospital for TBI for head trauma and LOC, no increase in symptomatology, lumbar and right hip
11/25/20	chiro
12/2/20	chiro
12/7/20	chiro
12/30/20	chiro
1/6/21	chiro – final report – LBP 90% overall improvement since beginning of treatment, 0-3/10
1/12/21	Dr. Muir – telemed, s/p facet injections on 10/6/20, had 100% relief until 2 weeks ago
1/19/21	Dr. Muir – bilateral L3-5 MBB, pain from 3 to 2-3/10
2/3/21	Dr. Muir – telemed, 100% relief after injections
3/3/21	Dr. Muir – telemed, return of tightness and stiffness in lower back
3/31/21	Dr. Muir – telemed, LBP, wants RFA
4/6/21	Dr. Muir – bilateral L3-5 RFA
4/21/21	Dr. Muir – telemed, doing well with complete relief
5/19/21	Dr. Muir – doing well with relief of pain
7/5/21	Dr. Muir – reviewed records, injury to lumbar facets, had 2 lumbar injections with 100% relief, had additional injury on 10/7/20 which did not exacerbate lumbar symptoms, future care with future RFA, pain management, chiro, future imaging
7/23/21	Henderson Hospital – ER – referral from primary care doctor he saw today, left sided chest pain for one week, left lower chest without radiation, pain went to back, taking methadone, PMH hepatitis C, cirrhosis, neuro normal
11/22/21	Dr. Muir – telemed, doing well, after 8 hours of sitting back bothers him CXR
8/31/21	Dr. Sood – abdominal pain, no medications regularly
9/16/21	Henderson Hospital – endoscopy
11/22/21	Dr. Muir – telemed, doing well from RFA
12/21/21	Dr. Muir – telemed, doing well
5/2/22	Dr. Muir – LBP increased
5/17/22	Dr. Muir – bilateral L3-5 RFA

6/2/22 Dr. Muir – telemed f/u, continued relief of LBP, no more medications, able to return to normal activities with minimal discomfort
6/30/22 Dr. Muir – telemed, minimal LBP
7/6/22 Dr. Muir – life care plan, future care required and related
7/14/22 Dr. Muir – telemed, ongoing relief of LBP
8/10/22 Michael Walters – had Sean Tomesco yielded right of way to Jared Moss, this collision would not have occurred

Photos:

Right buttocks contusion

Imaging Studies:

7/9/20 CT lumbar spine – mild degenerative changes, L5-S1 disc narrowing with endplate changes, L4-5 endplate changes
7/9/20 CT abdomen/pelvis
7/30/20 xrays right knee
9/12/20 MRI lumbar spine – mild narrowing L5-S1 with endplate changes
7/23/21 CXR

Physical Examination:

General: The patient is awake, alert, oriented. The patient has intact recent and remote memory and is oriented to time, place and person. The patient has normal mood and affect. The patient is without any distress and has normal stature.

Musculoskeletal examination: The patient walks a normal gait, and is able to raise on the toes and heels, and balance.

Lumbar spine: The patient has no tenderness to light touch on the lumbar paraspinal areas. There is a normal range of motion of the lumbar spine, and no discomfort with movements.

Cervical spine: The patient has no tenderness to light touch in the cervical and thoracic areas. There is no limitation of motion of the cervical spine and no discomfort with movement.

Neurovascular examination: Lower extremities demonstrates 5/5 motor strength in the lower extremities. Sensation is intact to light touch throughout the bilateral lower extremities. Deep tendon reflexes are 0 and symmetrical in the lower extremities. There is no evidence of clonus. There is a negative straight-leg raise bilaterally.

Upper extremities demonstrate 5/5 motor strength in the bilateral upper extremities. Sensation is intact to light touch throughout the bilateral upper extremities. Deep tendon reflexes are 0 and symmetrical in the upper extremities without a Hoffmann's reflex.

Assessment / Opinions / Future Care:

All of my opinions below are based on my training, clinical teaching practice and the medical literature. I am currently a Professor of Orthopaedic Surgery and Neurosurgery at the USC Spine Center. My opinions are also based on a reasonable medical probability, however, are preliminary and subject to change based on future records/documents supplemented and reviewed. I am reviewing these records and performing an examination for evaluation purposes only. There is no doctor-patient relationship.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. He states he was walking in a crosswalk and a plumbing van struck him on the left side, causing him to land on his butt and back. He denies any loss of consciousness, and he did not require any emergency care or transportation to the hospital by ambulance. According to the records, he sought evaluation in the emergency room after the incident, with the records documenting pain in the lower back and right buttock, without radiation of the pain. He had a bruise on his buttocks. He had CT scans of the lumbar spine and abdomen and pelvis, which did not show any injuries. He started chiropractic treatments on 7/10/20, with documentation of lower back pain, right hip and buttocks pain, and right knee pain. He continued chiropractic care for about 3 months. On 9/12/20 he had an MRI of the lumbar spine, which did not show any injuries. On 10/6/20, he had lumbar facet injections.

He was involved in another accident, where he was hit by a vehicle as a pedestrian, on 10/17/20. He required ambulance transportation to the hospital, where he had a loss of consciousness and head injuries. He had CT scans of the cervical spine, thorax, abdomen, pelvis, facial bones, and radiographs of the chest, bilateral femurs, hands, right shoulder, and right lower leg. He re-started chiropractic care on 10/28/20, and continued further treatments for about 2 months, where he was 90% improved.

On 1/19/21 he had more lumbar facet injections, and on 4/6/21 he had facet ablations. On 5/17/22, he had more lumbar facet ablations.

I have some any pre-accident records. He is on methadone for prior methamphetamine abuse, and had a prior fall in 2016. He has hepatitis C with liver cirrhosis, and is a smoker.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. There is no identified structural injury to the lumbar spine from the incident on any of the post-accident radiological studies. He had a soft tissue buttock contusion and a possible lumbar strain from the incident, which would warrant a reasonable amount of conservative soft tissue treatments. I would relate the need for the initial medical evaluations, the initial radiological studies of the spine, and the initial chiropractic treatments, to be associated with the incident. After allowing for a reasonable period of time for these strains to resolve, I could no longer relate any further medical care, to be linked to the incident. After the completion of about 3 months of chiropractic treatments in October 2020, I do not relate the need for any further medical treatments for the spine, to be linked to the incident of 7/9/20. I do not relate the spinal injections nor the lumbar facet ablations, to be linked to the MVA, as the structures injected or ablated, were not injured or altered by the incident. I would relate the conservative care, with the exception of the facet injections, up to the subsequent accident in October 2020, to be connected to the incident of 7/9/20. I do not relate any ongoing subjective reports of spine symptoms, nor any future medical care for the spine, to be causally linked to the MVA of 7/9/20.

I would like to see more recent medical records, all of the imaging studies, and more detailed records prior to the incident, if they exist. I reserve the right to alter my opinions if more information is provided to me.

Sincerely,



Jeffrey C. Wang, MD
Chief, Orthopaedic Spine Service
Co-Director USC Spine Center
Professor of Orthopaedic Surgery and Neurosurgery
USC Spine Center

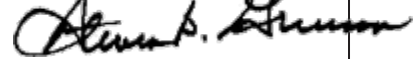
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EXHIBIT “3”

EXHIBIT “3”



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*Attorneys for Defendants Sean Edward Tomesco
and Second Opinion Plumbing, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

JARED MOSS, individually,

Plaintiff,

vs.

SEAN EDWARD TOMESCO, individually;
SECOND OPINION PLUMBING, LLC., a
domestic limited liability company; DOES I
through X, inclusive; ROE CORPORATIONS XI
through XX, inclusive,

Defendants.

Case No.: A-21-840372-C

Dept. No.: 20

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S TRIAL BRIEF NO. 1 TO
PRECLUDE EVIDENCE OR TESTIMONY
REGARDING PLAINTIFF'S SECOND
ACCIDENT**

Defendants SEAN EDWARD TOMESCO and SECOND OPINION PLUMBING, LLC., by and through their counsel of record, M. Caleb Meyer, Esq., Renee M. Finch, Esq., Steven G. Knauss, Esq., and Cheryl C. Bradford, Esq., of the law firm MESSNER REEVES LLP, hereby submits this Opposition to Plaintiff's Trial Brief No. 1 seeking to preclude evidence or testimony regarding Plaintiff's second accident.

This Opposition is based upon the following memorandum of points and authorities, all pleadings and papers on file herein, and any oral argument this Court may allow at a hearing on this matter.



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arises out of a motor vehicle vs. pedestrian accident that occurred on July 9, 2020, as Plaintiff was walking in a marked crosswalk across Maryland Parkway at the Wigwam Avenue intersection. At the same time, Defendant Tomesco, driving a 2004 Ford Econoline Utility van owned by Defendant Second Opinion Plumbing, had begun to make a left turn onto southbound Maryland Parkway from Wigwam Avenue. Seeing a collision was imminent, Plaintiff put his hands/arms out and when the front of Defendant Tomesco's van impacted Plaintiff, it pushed him backwards, causing him to fall backwards onto the street, where he alleges injury to his buttocks, lumbar spine, and right knee. Thereafter, Plaintiff walked home.

Approximately 90 days later, on October 17, 2020, Plaintiff, as a pedestrian, was again struck by an automobile. In Plaintiff's own testimony at deposition, he describes a far more severe accident than the one with Defendant Tomesco. In Plaintiff's second accident, he was hit from behind, clipping his legs, and flipping him up into the air before impacting the ground. Plaintiff stated he believed he was in a coma for 2 days after this second accident.¹ The driver fled the scene and Plaintiff was unable to make a claim for any injuries that may have resulted from that accident. Accordingly, Plaintiff now seeks to have evidence of that accident excluded.

II. LEGAL ARGUMENT

A. PLAINTIFF'S TRIAL BRIEF SHOULD HAVE BEEN SUBMITTED AS A MOTION IN LIMINE

The Nevada Supreme Court has tacitly approved the use of Motions in Limine to be within the preview of the District Court's discretionary power concerning rulings on the admissibility of evidence. *State ex. rel Dept. of Highway v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 551 P.2d 1095 (1976). "The usual purpose of motions in limine," however, "is to preclude the presentation of evidence deemed inadmissible and prejudicial by the moving party." *Kelly v. New West Federal Savings*, 49 Cal. App. 4th 659, 669-670 (1996). When used for this purpose, the procedure serves the interests of justice.

Here, Plaintiff, after failing to submit this issue as a Motion in Limine, filed this EDCR 7.27 Trial Brief in an attempt to ambush the Defendants on the eve of trial. Plaintiff has been aware of

¹ See Excerpt of Plaintiff's Deposition Transcript, at 21:14-22:14, attached as **Exhibit A**.

Plaintiff's second accident, as well as Defendant's theory of the case, and the expert's reliance of the evidence at issue long before the Motion in Limine deadline. Plaintiff had more than ample time to brief this issue as a motion in limine which would have allowed the Defendants time to properly rebut the issue. Foregoing the motion in limine and filing this issue as a trial brief causes substantial prejudice to the Defendants by limiting their response time and forcing the Defendants to face the loss of one of their primary defenses less than one week before trial. Because Plaintiff failed to move in limine to preclude such evidence, this issue should not be granted at this time.

B. THERE IS NO BASIS TO EXCLUDE RELEVANT, ADMISSIBLE EVIDENCE

"[A]ll relevant evidence is admissible" and relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." See NRS 48.025 and NRS 48.015. Pursuant to NRS 48.035, relevant evidence can be excluded only if "its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury."

The Nevada Supreme court defines "unfair prejudice" under NRS 48.035 as an appeal to "the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to evaluate evidence." *Krause Inc. v. Little*, 117 Nev. 929, 935 (Nev. 2001). "By requiring the prejudicial effect of evidence to 'substantially outweigh' its probative value, NRS 48.035 [strongly favors] admissibility." *Id.*

The evidence Plaintiff seeks to exclude at the eve of trial—by ambush, essentially—is certainly relevant. The evidence of Plaintiff's second accident, as well as the injuries, treatment, and general damages he endured as a result are critical issues for the jury to decide. Expert opinions in this case have been formed and reported upon based on the documentation in those records from Plaintiff's second accident.

Plaintiff claims in his Trial Brief that there is no logical or rational connection between Plaintiff's second accident and his lumbar spine injury. However, this ignores the logical consequences of such a significant and traumatic accident that occurred in the middle of his treatment plan for the first accident. Plaintiff will be asking the jury to compensate him for physical and mental pain, suffering, anguish, disability, and loss of enjoyment of life. It is impossible to assess those damages without any

context for Plaintiff's lumbar spine complaints and treatment, without also providing factual details about the second accident.

Further, the jury should be given the opportunity to evaluate the significance of the second accident, which has been opined upon in the formation of expert opinion. This evidence is also more probative than prejudicial. In *Robinson v. Enterprise*, 107 Nev. 135 (1991), the Nevada Supreme Court recognized "[t]he jury should be given the opportunity to judge for themselves the witness's credibility in light of the relationship between the parties, the witness's motive for testifying, or any matter which would tend to influence the testimony given by a witness." *Id.* (internal citations omitted). Counsel is allowed to argue any reasonable inferences from the evidence the parties have presented at trial. During closing argument, trial counsel enjoys wide latitude in arguing facts and drawing inferences from the evidence." See *Jain v. McFarland*, 109 Nev. 465, 476 (Nev. 1993).

Critically, Dr. Wang discusses the second accident in his report:

[Plaintiff] was involved in another accident, where he was hit by a vehicle as a pedestrian, on 10/17/20. He required ambulance transportation to the hospital, where he had a loss of consciousness and head injuries. He had CT scans of the cervical spine, thorax, abdomen, pelvis, facial bones, and radiographs of the chest, bilateral femurs, hands, right shoulder, and right lower leg. He re-started chiropractic care on 10/28/20, and continued further treatments for about 2 months, where he was 90% improved.

Therefore, Dr. Wang can testify about these remarks from his report and the basis for each.

Plaintiff is seeking to preclude relevant, admissible, and significant evidence. The issues of prejudice argued in the underlying Trial Brief can be better described as issues of weight. The jury can decide for themselves the weight or significance of any pre-existing and subsequent injurious event, as well as the significance of Plaintiff's prior pain as it relates to pain and suffering damages. To attempt to remove the fact of Plaintiff's second, substantial pedestrian accident from this case would be just as confusing, misleading, and unjust as it would be to attempt to redact from the medical record references to the low back pain Plaintiff alleged after the subject accident: they would deny the Defendant any chance at a fair trial.

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1 **III. CONCLUSION**

2 As such, Defendant asks Plaintiff's Trial Brief No. 1 be denied in its entirety.

3 DATED this 19th day of March, 2024.

4 **MESSNER REEVES LLP**

5 /s/ *Steven Knauss*
6 M. CALEB MEYER, ESQ.
7 Nevada Bar No. 13379
8 RENEE M. FINCH, ESQ.
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10 STEVEN G. KNAUSS, ESQ.
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15 Las Vegas, Nevada 89148
16 *Attorneys for Defendants Sean Edward Tomesco*
17 *and Second Opinion Plumbing, LLC*

1 **CERTIFICATE OF SERVICE**

2 On this 19th day of March, 2024, pursuant to Administrative Order 14-2 and Rule 9 of the
3 NEFCR, I caused the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S TRIAL**
4 **BRIEF NO. 1 TO PRECLUDE EVIDENCE OR TESTIMONY REGARDING PLAINTIFF'S**
5 **SECOND ACCIDENT** to be transmitted to the person(s) identified in the E-Service List for this
6 captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark,
7 State of Nevada. A service transmission report reported service as complete and a copy of the service
8 transmission report will be maintained with the document(s) in this office. Parties not identified on
9 the E-Service List were served via U.S. Mail to the following addresses:

10 Alison Braiser, Esq.
11 Betsy C. Jefferis-Aguilar, Esq.
12 HICKS & BRAISIER, PLLC
13 2360 S. Jones Blvd.
14 Las Vegas, Nevada 89146
15 *Attorneys for Plaintiff*

16 /s/ Michael Madden
Employee of MESSNER REEVES LLP



EXHIBIT A

1

DISTRICT COURT

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CLARK COUNTY, NEVADA

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JARED MOSS, individually)

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Plaintiff,)

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vs.)

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Case No. A-21-840372-C

8

SEAN EDWARD TOMESCO,)

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individually; SECOND)

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OPINION PLUMBING, LLC, a)

11

domestic limited)

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liability company; DOES)

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I through X, inclusive;)

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ROE CORPORATIONS XI)

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through XX, inclusive,)

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Defendants.)

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REMOTE DEPOSITION OF JARED MOSS

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Taken on Tuesday, January 31, 2023

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By a Certified Court Reporter

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At 1:30 p.m. PST

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Reported by: Kelly R. Rexroat, CCR 673, RPR, CRR

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Job No. 51809, Firm No. 061F/116F

**OASIS**
REPORTING SERVICES

is now

**LEXITAS**TM

1 APPEARANCES:

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14 Las Vegas, NV 89148

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16 INDEX

17 WITNESS	
18 JARED MOSS	PAGE
19 Examination by Mr. Martinez	3

20 NO EXHIBITS MARKED

21

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24

25

1 Q. Have you ever injured yourself while at
2 work?

3 A. No.

4 Q. Have you ever filed a workers'
5 compensation claim for any injury you sustained
6 while at work?

7 A. No.

8 Q. Have you ever been in any prior auto
9 accidents prior to July 9th of 2020?

10 A. No.

11 Q. All right. Now, the next question is
12 after July 9th of 2020, do you have any subsequent
13 auto accidents?

14 A. I was -- had an auto accident after that
15 that I was in a coma for two days in the hospital.

16 Q. Were you in a motor vehicle or was it --
17 were you a pedestrian?

18 A. No, I was a pedestrian.

19 Q. You said you were in a coma for two days?

20 A. Yes.

21 Q. What parts of your body were injured as a
22 result of that subsequent auto accident?

23 A. Everything that I remember is I woke up
24 in the hospital after the fact obviously. The car
25 hit me from behind, clipped my legs from behind, and



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1 I have a scar on my head from the impact. Like I
2 don't remember.

3 So I can't say what happened. I was
4 knocked out instantly obviously, but from what they
5 told me, I spun around in the air and my head hit
6 the ground.

7 Q. From your understanding of what other
8 people told you about that accident you actually
9 were shot up into the air as a result of getting hit
10 by the car?

11 A. Yes.

12 Q. And then obviously you would have landed
13 on the ground I assume; is that correct?

14 A. Yes.

15 Q. Was anybody there with you?

16 A. My wife was, yes.

17 Q. And this was prior to you guys getting
18 married I assume?

19 A. Yes, I believe it was just prior.

20 Q. Do you know roughly when this subsequent
21 accident happened?

22 A. I don't remember the exact date, no. I
23 should have written it down on this little piece of
24 paper, but I didn't. Sorry about that.

25 Q. No, you are good. Just one little point.



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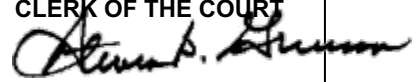
is now



LEXITASTM

EXHIBIT “4”

EXHIBIT “4”



TB
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Nevada Bar No. 10522
BETSY C. JEFFERIS-AGUILAR, ESQ.
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JARED MOSS, individually,

Plaintiff,

vs.

SEAN EDWARD TOMESCO,
individually; SECOND OPINION
PLUMBING, LLC., a domestic limited
liability company; DOES I through X,
inclusive; ROE CORPORATIONS XI
through XX, inclusive,

Defendants.

CASE NO.: A-21-840372-C
DEPT. NO.: 20

PLAINTIFF'S TRIAL BRIEF NO. 2
TO LIMIT TRIAL TESTIMONY OF
DR. WANG

Plaintiff JARED MOSS, by and through his attorneys of record of the law firm HICKS & BRASIER, PLLC, hereby submits Plaintiff's Trial Brief No. 2 to Limit Trial Testimony of Dr. Wang pursuant to EDCR 7.27.

This Trial Brief is made and based upon the attached memorandum of points and authorities, all papers and pleadings on file herein and such oral argument as the court may allow at hearing on this matter.

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1 the need for the initial medical evaluations, the initial radiological studies of the
2 spine, and the initial chiropractic treatments, to be associated with the incident.
3 After allowing for a reasonable period of time for these strains to resolve, I could
4 no longer relate any further medical care, to be linked to the incident. *After the*
5 *completion of about 3 months of chiropractic treatments in October 2020, I do*
6 *not relate the need for any further medical treatments for the spine, to be linked to*
7 *the incident of 7/9/20.* I do not relate the spinal injections nor the lumbar facet
8 ablations, to be linked to the MVA, as the structures injected or ablated, were not
9 injured or altered by the incident. I would relate the conservative care, with the
10 exception of the facet injections, up to the subsequent accident in October 2020,
11 to be connected to the incident of 7/9/20. I do not relate any ongoing subjective
12 reports of spine symptoms, nor any future medical care for the spine, to be
13 causally linked to the MVA of 7/9/20. (emphasis added).²

14 Notably, Dr. Wang does not offer any opinions regarding the following topics:

- 15 1. Whether Jared’s smoking or prior medical history has affected his lower back
16 injury that he sustained from the subject accident.
- 17 2. Whether Jared’s smoking, prior medical history, or prior drug use affects his life
18 expectancy.
- 19 3. Whether the October 17, 2020 (subsequent) accident is related to Jared’s
20 claimed injuries or treatment for the subject collision.³
- 21 4. Whether Jared’s medical bills were usual and customary for the Las Vegas
22 area/community.
- 23 5. Any Discussion of Dr. Muir’s Life Care Plans – including whether the
24 recommended treatment is appropriate or whether the associated costs are usual
25 and customary for the Las Vegas area/community.⁴

26 ² Exhibit 1 at p. 4-5.

27 ³ This is also discussed in Plaintiff’s Trial Brief No. 1.

28 ⁴ Plaintiff does not contest that Dr. Wang may testify that “ongoing spine symptoms” and “future medical care for
the spine” are not “causally linked to the MVA of 7/9/20), as that opinion is contained in his report, but he could not
be permitted to offer any critique of the specific recommendations in Dr. Muir’s Life Care Plans, as he never
discussed them in his report or addendums thereto. See Exhibits 1-4.

6. Any opinions regarding alternative theories of causation related to Jared's ongoing symptoms/medical treatment after October 6, 2020 (the date Dr. Wang cuts off the treatment related to the subject collision).⁵

Dr. Wang is limited to the opinions contained in his report and addendums — thus, his testimony should be precluded as to these topics.

II. ARGUMENT

Pursuant to NRCPP 16.1(a)(2)(B)(i), an expert report must contain a complete statement of all opinions the witness will express, and the basis and reasons for them. Moreover, under NRCPP 26(e)(2), the duty to supplement information extends both to information contained in the report and to information provided through a deposition of the expert. Any additions or other changes to this information must be disclosed by the time the party's disclosures under Rule 16.1(a)(3), 16.2(f), or 16.205(f) are due. Here, Dr. Wang authored an initial report and three addendums.⁶ Because Dr. Wang's reports and addendums are absent as to the topics noted above, Dr. Wang must not be permitted to testify to these items at trial.

IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that during trial, this Court limit Dr. Wang's trial testimony to only those opinions contained in his report and addendums thereto and not to permit testimony regarding the topics list above, as those are outside the scope of his disclosed opinions.

DATED THIS 17th day of March 2024.

HICKS & BRASIER, PLLC

/s/ Betsy C. Jefferis-Aguilar, Esq.
BETSY C. JEFFERIS-AGUILAR, ESQ.
Nevada Bar No. 12980
2630 S. Jones Blvd.
Las Vegas, Nevada 89146
Attorneys for Plaintiff

⁵ See id.

⁶ See Exhibits 1-4, generally.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HICKS & BRASIER, PLLC,
3 and that on this 17th day of March 2024, I served a copy of the foregoing **PLAINTIFF’S**
4 **TRIAL BRIEF NO. 2 TO LIMIT TRIAL TESTIMONY OF DR. WANG** in accordance
5 with Administrative Order 14-2 and Rule 9 of the Nevada Electronic Filing and Conversion
6 Rules (N.E.F.C.R.) by transmitting via the Court’s electronic filing services by the document(s)
7 listed above to the Counsel set forth on the service list below:

8
9 Steven Knauss, Esq.
10 Jason Martinez, Esq.
11 MESSNER REEVES, LLP.
12 8945 W. Russell Road, Suite 300
13 Las Vegas, NV 89148
14 *Attorneys for Defendants*

15 */s/ Danielle Alvarado*
16 An employee of Hicks & Brasier, PLLC
17
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EXHIBIT “1”

Comprehensive Medical Examination

Patient: Jared Moss

Date of Service: October 7, 2022

Date of Birth:

Date of Incident: July 9, 2020

I was asked to perform an examination and review the medical records of Jared Moss as they relate to the incident of 7/9/20.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. He states he was walking in a crosswalk and a plumbing van struck him on the left side, causing him to land on his butt and back. He denies any loss of consciousness, and he did not require any emergency care or transportation to the hospital by ambulance. He reports he had immediate pain in his lower back and hands. Currently, he has ongoing low back pain which does not radiate. He rates this pain at 4-5/10, and describes it as a deep-pressure and tightness. He has treated with PT, heat, ice, TENS, massage, medications, exercise, chiropractic care, and lower back injections. The pain is worse with over-exertion or repetitive motions. The pain is better with ablations, rest, and stretching. The pain limits him. His providers have not recommended any spine surgery for him. He denies any prior symptoms, and denies any prior accidents. He reports a subsequent MVA but does not know the date, and states it only injured his head and did not affect his lower back.

Past Surgical history: denies

Past Medical History: denies

Allergies: PCN, amoxicillin

Current Medications: denies

Social history: he works in shipping/receiving, at time of the accident he was a painter, he admits to smoking

Family history: denies

Review of systems: negative in detail

Medical Time Line:

Pre-Incident Medical Records:

2/14/16 Spring Valley Hospital – ER – chest pain, SOB for 1 day, PMH hepatitis C, methamphetamine abuse, has HA, fall 2 weeks ago landing on coccyx
CXR
xrays coccyx – no fracture

1/6/19 Desert Springs Hospital – ER – fevers, chills, PMH cirrhosis
9/22/19 Henderson Hospital – ER – abdominal/groin pain, inguinal hernia

Incident

7/9/20 MVA – Traffic Accident Report – front right bumper of V1 struck P1’s left side causing him to fall in travel lane, declined medical transport, V1 Econoline, non-motorist Jared Moss

Post-Incident Medical Records:

7/9/20 Henderson Hospital – ER – s/p fall backwards after being hit by car, on methadone therapy, LBP and right buttock pain, started gradually after being knocked over by car today, car hit his hands and he fell backwards onto his buttock and back, did not hit head, hands bothering him, denies weakness or n/t, exam neck normal, mid to lower lumbar tenderness, neuro normal, smoker, high risk substance abuse current methamphetamines,
CT lumbar spine – mild scoliosis, unremarkable
CT abdomen/pelvis – right buttock soft tissue hematoma

7/10/20 chiro – initial report, LBP, right buttocks/hip, right knee, pedestrian in crosswalk, van struck him, knocking him to ground, landed on right side, heavy smoker

7/13/20 chiro

7/15/20 chiro – lumbar, right hip, right knee, right buttock contusion

7/17/20 chiro

7/23/20 Dr. Muir – LBP, pedestrian, hit by van, no radiation, neuro normal

7/24/20 chiro

7/27/20 chiro

7/30/20 xrays right knee - unremarkable

8/4/20 chiro

8/5/20 chiro

8/7/20 chiro

8/10/20 Dr. Muir – telemed f/u, pain decreased with therapy

8/12/20 chiro

8/14/20 chiro

8/17/20 chiro

8/19/20 chiro

8/21/20 chiro

8/24/20 chiro

8/26/20 chiro

8/31/20 chiro

9/2/20 chiro

9/9/20 Dr. Muir – telemed f/u, takes methadone chronically but still feels LBP, no radiation, smoker, not employed, neuro normal

9/12/20 MRI lumbar spine –
T12-L1 unremarkable
L1-2 unremarkable
L2-3 unremarkable
L3-4 unremarkable
L4-5 FJ, LF
L5-S1 unremarkable

9/16/20 chiro

10/5/20 chiro

10/6/20 Dr. Muir – bilateral L4-S1 facet injections, pain from 3 to 0/10

10/7/20	chiro
10/14/20	chiro
10/17/20	MVA vs pedestrian
10/17/20	Ambulance – PMH heroin use history, taking methadone, struck by sedan, car fled, LOC, pain to head, right occipital contusion, facial abrasions
10/17/20	Sunrise Hospital – ER – via EMS, head, neck, extremity pain, pedestrian, pain in head, face, abdomen, right UE and left LE, LOC, right shoulder and left knee, s/p hit and run, patient on methadone xrays bilateral femur – no injury CXR CT thorax – in acute traumatic injury CT cervical spine – unremarkable CT brain – unremarkable xrays hands – retained metallic BB pellet CT facial bones – unremarkable CT abdomen/pelvis xrays right shoulder – unremarkable xrays right tib/fib - unremarkable
10/28/20	chiro – hit by car on 10/22/20, transported to Sunrise Hospital for TBI for head trauma and LOC, no increase in symptomatology, lumbar and right hip
11/25/20	chiro
12/2/20	chiro
12/7/20	chiro
12/30/20	chiro
1/6/21	chiro – final report – LBP 90% overall improvement since beginning of treatment, 0-3/10
1/12/21	Dr. Muir – telemed, s/p facet injections on 10/6/20, had 100% relief until 2 weeks ago
1/19/21	Dr. Muir – bilateral L3-5 MBB, pain from 3 to 2-3/10
2/3/21	Dr. Muir – telemed, 100% relief after injections
3/3/21	Dr. Muir – telemed, return of tightness and stiffness in lower back
3/31/21	Dr. Muir – telemed, LBP, wants RFA
4/6/21	Dr. Muir – bilateral L3-5 RFA
4/21/21	Dr. Muir – telemed, doing well with complete relief
5/19/21	Dr. Muir – doing well with relief of pain
7/5/21	Dr. Muir – reviewed records, injury to lumbar facets, had 2 lumbar injections with 100% relief, had additional injury on 10/7/20 which did not exacerbate lumbar symptoms, future care with future RFA, pain management, chiro, future imaging
7/23/21	Henderson Hospital – ER – referral from primary care doctor he saw today, left sided chest pain for one week, left lower chest without radiation, pain went to back, taking methadone, PMH hepatitis C, cirrhosis, neuro normal
11/22/21	Dr. Muir – telemed, doing well, after 8 hours of sitting back bothers him CXR
8/31/21	Dr. Sood – abdominal pain, no medications regularly
9/16/21	Henderson Hospital – endoscopy
11/22/21	Dr. Muir – telemed, doing well from RFA
12/21/21	Dr. Muir – telemed, doing well
5/2/22	Dr. Muir – LBP increased
5/17/22	Dr. Muir – bilateral L3-5 RFA

6/2/22 Dr. Muir – telemed f/u, continued relief of LBP, no more medications, able to return to normal activities with minimal discomfort
6/30/22 Dr. Muir – telemed, minimal LBP
7/6/22 Dr. Muir – life care plan, future care required and related
7/14/22 Dr. Muir – telemed, ongoing relief of LBP
8/10/22 Michael Walters – had Sean Tomesco yielded right of way to Jared Moss, this collision would not have occurred

Photos:

Right buttocks contusion

Imaging Studies:

7/9/20 CT lumbar spine – mild degenerative changes, L5-S1 disc narrowing with endplate changes, L4-5 endplate changes
7/9/20 CT abdomen/pelvis
7/30/20 xrays right knee
9/12/20 MRI lumbar spine – mild narrowing L5-S1 with endplate changes
7/23/21 CXR

Physical Examination:

General: The patient is awake, alert, oriented. The patient has intact recent and remote memory and is oriented to time, place and person. The patient has normal mood and affect. The patient is without any distress and has normal stature.

Musculoskeletal examination: The patient walks a normal gait, and is able to raise on the toes and heels, and balance.

Lumbar spine: The patient has no tenderness to light touch on the lumbar paraspinal areas. There is a normal range of motion of the lumbar spine, and no discomfort with movements.

Cervical spine: The patient has no tenderness to light touch in the cervical and thoracic areas. There is no limitation of motion of the cervical spine and no discomfort with movement.

Neurovascular examination: Lower extremities demonstrates 5/5 motor strength in the lower extremities. Sensation is intact to light touch throughout the bilateral lower extremities. Deep tendon reflexes are 0 and symmetrical in the lower extremities. There is no evidence of clonus. There is a negative straight-leg raise bilaterally.

Upper extremities demonstrate 5/5 motor strength in the bilateral upper extremities. Sensation is intact to light touch throughout the bilateral upper extremities. Deep tendon reflexes are 0 and symmetrical in the upper extremities without a Hoffmann's reflex.

Assessment / Opinions / Future Care:

All of my opinions below are based on my training, clinical teaching practice and the medical literature. I am currently a Professor of Orthopaedic Surgery and Neurosurgery at the USC Spine Center. My opinions are also based on a reasonable medical probability, however, are preliminary and subject to change based on future records/documents supplemented and reviewed. I am reviewing these records and performing an examination for evaluation purposes only. There is no doctor-patient relationship.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. He states he was walking in a crosswalk and a plumbing van struck him on the left side, causing him to land on his butt and back. He denies any loss of consciousness, and he did not require any emergency care or transportation to the hospital by ambulance. According to the records, he sought evaluation in the emergency room after the incident, with the records documenting pain in the lower back and right buttock, without radiation of the pain. He had a bruise on his buttocks. He had CT scans of the lumbar spine and abdomen and pelvis, which did not show any injuries. He started chiropractic treatments on 7/10/20, with documentation of lower back pain, right hip and buttocks pain, and right knee pain. He continued chiropractic care for about 3 months. On 9/12/20 he had an MRI of the lumbar spine, which did not show any injuries. On 10/6/20, he had lumbar facet injections.

He was involved in another accident, where he was hit by a vehicle as a pedestrian, on 10/17/20. He required ambulance transportation to the hospital, where he had a loss of consciousness and head injuries. He had CT scans of the cervical spine, thorax, abdomen, pelvis, facial bones, and radiographs of the chest, bilateral femurs, hands, right shoulder, and right lower leg. He re-started chiropractic care on 10/28/20, and continued further treatments for about 2 months, where he was 90% improved.

On 1/19/21 he had more lumbar facet injections, and on 4/6/21 he had facet ablations. On 5/17/22, he had more lumbar facet ablations.

I have some any pre-accident records. He is on methadone for prior methamphetamine abuse, and had a prior fall in 2016. He has hepatitis C with liver cirrhosis, and is a smoker.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. There is no identified structural injury to the lumbar spine from the incident on any of the post-accident radiological studies. He had a soft tissue buttock contusion and a possible lumbar strain from the incident, which would warrant a reasonable amount of conservative soft tissue treatments. I would relate the need for the initial medical evaluations, the initial radiological studies of the spine, and the initial chiropractic treatments, to be associated with the incident. After allowing for a reasonable period of time for these strains to resolve, I could no longer relate any further medical care, to be linked to the incident. After the completion of about 3 months of chiropractic treatments in October 2020, I do not relate the need for any further medical treatments for the spine, to be linked to the incident of 7/9/20. I do not relate the spinal injections nor the lumbar facet ablations, to be linked to the MVA, as the structures injected or ablated, were not injured or altered by the incident. I would relate the conservative care, with the exception of the facet injections, up to the subsequent accident in October 2020, to be connected to the incident of 7/9/20. I do not relate any ongoing subjective reports of spine symptoms, nor any future medical care for the spine, to be causally linked to the MVA of 7/9/20.

I would like to see more recent medical records, all of the imaging studies, and more detailed records prior to the incident, if they exist. I reserve the right to alter my opinions if more information is provided to me.

Sincerely,



Jeffrey C. Wang, MD
Chief, Orthopaedic Spine Service
Co-Director USC Spine Center
Professor of Orthopaedic Surgery and Neurosurgery
USC Spine Center

1520 San Pablo St., Suite 2000
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EXHIBIT “2”

Addendum Report

Patient: Jared Moss
Date of Service: December 14, 2022
Date of Birth:
Date of Incident: July 9, 2020

I was asked to review additional medical records of Jared Moss as they relate to the incident of 7/9/20.

New Records Medical Time Line:

1/6/19 abdominal series

3/17/21 CXR

7/23/21 CXR

Assessment / Opinions / Future Care:

All of my opinions below are based on my training, clinical teaching practice and the medical literature. I am currently a Professor of Orthopaedic Surgery and Neurosurgery at the USC Spine Center. My opinions are also based on a reasonable medical probability, however, are preliminary and subject to change based on future records/documents supplemented and reviewed. I am reviewing these additional medical records for evaluation purposes only. There is no doctor-patient relationship.

After reviewing the new records, my initial opinions have not changed. I reserve the right to alter my opinions if more information is provided to me.

Sincerely,



Jeffrey C. Wang, MD
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EXHIBIT “3”

Keck Medical Center of USC

DEPARTMENT OF ORTHOPAEDIC SURGERY

*Keck Hospital of USC
USC Norris Cancer Hospital*

Addendum Report #2

Patient: Jared Moss
Date of Service: February 22, 2023
Date of Birth:
Date of Incident: July 9, 2020

I was asked to list the records reviewed so far on this case. These are the records that I have reviewed on this case.

Records Reviewed:

Listed below:

Sincerely,



Jeffrey C. Wang, MD
Chief, Orthopaedic Spine Service
Co-Director USC Spine Center
Professor of Orthopaedic Surgery and Neurosurgery
USC Spine Center
1520 San Pablo St., Suite 2000
Los Angeles, CA 90033
Office: (323) 442-5303

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1,520 San Pablo Street, Suite 2000, Los Angeles, California 90033 • Tel: 323 442 5860 • Fax: 323 442 6990



1.	Custodian of Records Affidavit, Medical Records and Billing regarding Plaintiff from Advanced Spine and Rehabilitation, dates of service 7/13/20 through 12/30/20	DEF0025- DEF0212
2.	Custodian of Records Affidavit, Medical Records and Billing regarding Plaintiff from Henderson Hospital, dates of service 7/9/20; 7/23/2; 9/16/21	DEF0213- DEF0551
3.	Custodian of Records Affidavit, Medical Records and Billing regarding Plaintiff from Anesthesia and Intensive Care, dates of service 10/6/20	DEF0552- DEF0559
4.	Custodian of Records Affidavit, Medical Records and Billing regarding Plaintiff from William Muir MD, dates of service 7/23/20 through 7/14/22	DEF0560- DEF1164
5.	Custodian of Records Affidavit and Medical Records regarding Plaintiff from Pueblo Medical Imaging, dates of service 7/30/20; 9/12/20	DEF1165- DEF1170

6.	Custodian of Records Affidavit and Billing regarding Plaintiff from Pueblo Medical Imaging, dates of service 7/30/20; 9/12/20	DEF1171-DEF1174
7.	Medical and Billing records from Henderson Hospital provided by Plaintiff	HH00001-HH00079
8.	Medical records from Shadow Emergency Physicians provided by Plaintiff	SER00001
9.	Medical and Billing records from Desert Radiology provided by Plaintiff	DR00001-DR00003
10.	Medical and Billing records from Advanced Spine Rehabilitation provided by Plaintiff	ASR00001-ASR00211
11.	Medical and Billing records from Pueblo Medical Imaging provided by Plaintiff	PMI00001-PMI00018
12.	Medical and Billing records from Dr. William Muir provided by Plaintiff	WM00001-WM00142
13.	Medical and Billing Records from Anesthesia and Intensive Care provided by Plaintiff	AIC00001-AIC00010
14.	Life Care Plan by Dr. William Muir provided by Plaintiff	LCP00001-LCP00028
15.	Imaging from Henderson Hospital regarding Plaintiff <i>*Imaging saved to Sharefile link in Zip folder</i>	DEF1175-DEF1178
16.	Billing and Medical Records regarding Plaintiff from Shadow Emergency Physicians, dates of service 2/14/16 through 7/23/21	DEF1179-DEF1288
17.	Custodian of Records Certification and Imaging regarding Plaintiff from Pueblo Medical Imaging <i>*Imaging saved to Sharefile link in Zip folder</i>	DEF1289-DEF1291
18.	Custodian of Records Declaration and Medical Records regarding Plaintiff from Desert Radiology, dates of service 1/16/19 through 7/23/21	DEF1292-DEF1300
19.	Custodian of Records Declaration and Billing records regarding Plaintiff from Desert Radiology, dates of service 2/14/16 through 7/23/21	DEF1301-DEF1306
20.	Custodian of Records Affidavit and Billing records regarding Plaintiff from Desert Radiology Solutions, dates of service 2/14/16 through 7/23/21	DEF1307-DEF1312
21.	Plaintiff's Complaint	N/A
22.	Defendants' Answer to Plaintiff's Complaint	N/A
23.	State of Nevada Traffic Crash Report dated 07/09/20;	DEF0014-DEF0019
24.	Las Vegas Metropolitan Police Department Voluntary Statement of Jared Scott Moss, dated July 9, 2020	DEF0020
25.	911 Emergency Calls from the date of the incident (two separate calls)	N/A
26.	Plaintiff's Responses to Defendant's Interrogatories	N/A
27.	Plaintiff's Responses to Defendant's First Set of Requests for Admission	N/A
28.	Plaintiff's Responses to Defendant's First Set of Requests for Production	N/A
29.	Defendant Tomesco's Responses to Plaintiff's First Set of Requests for Production	N/A
30.	Defendant Tomesco's Responses to Plaintiff's First Set of Requests for Admission	N/A
31.	Defendant Second Opinion Plumbing's Responses to Plaintiff's First Set of Requests for Admission	N/A

32.	Defendant Second Opinion Plumbing's Responses to Plaintiff's First Set of Requests for Production	N/A
33.	Defendant Second Opinion Plumbing's Responses to Plaintiff's First Set of Interrogatories	N/A
34.	Defendant Second Opinion Plumbing's Responses to Plaintiff's Second Set of Interrogatories	N/A
35.	Plaintiff's Initial Expert Disclosure including CV, Fee Schedule, and Report of William Muir, MD.	N/A
36.	Plaintiff's First Supplemental Expert Disclosure including CV, Fee Schedule, and Report of Trooper Michael J. Walters	N/A

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EXHIBIT “4”

Addendum Report #3

Patient: Jared Moss

Date of Service: February 8, 2024

Date of Birth:

Date of Incident: July 9, 2020

I was asked to review additional medical records of Jared Moss as they relate to the incident of 7/9/20.

New Records Time Line:

8/9/23 Dr. Muir – last seen 7/14/22 with 6 months relief of LBP, pain back to baseline

8/16/23 Dr. Muir – LBP, proceed with RFA

9/5/23 Dr. Muir – bilateral L3-5 RFA

10/3/23 Dr. Muir -

The patient presents for a follow-up status post repeat bilateral L3, L4, L5 medial branch RFA from 9/5/2023. The patient reports 75 to 80% sustained benefit following the most recent procedure. He is very happy with his current results and has resumed all normal activity.

Depositions:

1/31/23 Jared Moss

Works for Sin City Diabetics as shipping receiving manager, lifts, cleans boxes, needs help to lift them, no prior accidents or work injuries, had subsequent accident as a pedestrian and in a coma for 2 days, clipped him from behind, scar on head from impact, does not remember what happened, knocked out immediately, shot up in air and landed on ground, 10/17/20, never located the person who hit him, injury to head and knees, has ongoing LBP, dull pain, does not stop him from doing things, had RFAs, just injured lower back from this accident 7/9/20, retained lawyer immediately, prior conviction of felony for possession, prior misdemeanor, MVA hit by 15 passenger van, crossing and halfway through hit by van, threw him backwards, landed near gutter, hands made contact, possibly hit thigh, not sure if LOC but felt dazed, went home, walked to mom's house, does not remember pain levels prior to 2nd MVA, thinks they were at the same level before and after the 2nd MVA, no longer treating, does not remember when shooting pain started, it was before the 2nd accident, not really sure when asked specifically, was on methadone prior to accidents, in recovery and tries to stay away from pain medications

Assessment / Opinions / Future Care:

All of my opinions below are based on my training, clinical teaching practice and the medical literature. I am currently a Professor of Orthopaedic Surgery and Neurosurgery at the USC Spine Center. My opinions are also based on a reasonable medical probability, however, are preliminary and subject to change based on future records/documents supplemented and reviewed. I am reviewing these additional medical records for evaluation purposes only. There is no doctor-patient relationship.

After reviewing the new records, my initial opinions have not changed. I do not associate this ongoing subjectively reported symptoms, nor any of the ongoing treatments, to be causally related to the events of 7/9/20. I reserve the right to alter my opinions if more information is provided to me.

Sincerely,



Jeffrey C. Wang, MD
Chief, Orthopaedic Spine Service
Co-Director USC Spine Center
Professor of Orthopaedic Surgery and Neurosurgery
USC Spine Center
1520 San Pablo St., Suite 2000
Los Angeles, CA 90033
Office: (323) 442-5303

University of Southern California

1,520 San Pablo Street, Suite 2000, Los Angeles, California 90033 • Tel: 323 442 5860 • Fax: 323 442 6990



EXHIBIT “5”

EXHIBIT “5”



OPPS

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RENEE M. FINCH, ESQ.

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*Attorneys for Defendants Sean Edward Tomesco
and Second Opinion Plumbing, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

JARED MOSS, individually,

Plaintiff,

vs.

SEAN EDWARD TOMESCO, individually;
SECOND OPINION PLUMBING, LLC., a
domestic limited liability company; DOES I
through X, inclusive; ROE CORPORATIONS XI
through XX, inclusive,

Defendants.

Case No.: A-21-840372-C

Dept. No.: 20

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S TRIAL BRIEF NO. 2 TO
LIMIT TRIAL TESTIMONY OF DR.
WANG**

Defendants SEAN EDWARD TOMESCO and SECOND OPINION PLUMBING, LLC., by and through their counsel of record, M. Caleb Meyer, Esq., Renee M. Finch, Esq., Steven G. Knauss, Esq., and Cheryl C. Bradford, Esq., of the law firm MESSNER REEVES LLP, hereby submits this Opposition to Plaintiff's Trial Brief No. 2 seeking to limit the trial testimony of Dr. Jeffrey Wang.

This Opposition is based upon the following memorandum of points and authorities, all pleadings and papers on file herein, and any oral argument this Court may allow at a hearing on this matter.



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arises out of a motor vehicle vs. pedestrian accident that occurred on July 9, 2020, as Plaintiff was walking in a marked crosswalk across Maryland Parkway at the Wigwam Avenue intersection. At the same time, Defendant Tomesco, driving a 2004 Ford Econoline Utility van owned by Defendant Second Opinion Plumbing, had begun to make a left turn onto southbound Maryland Parkway from Wigwam Avenue. Seeing a collision was imminent, Plaintiff put his hands/arms out and when the front of Defendant Tomesco's van impacted Plaintiff, it pushed him backwards, causing him to fall backwards onto the street, where he alleges injury to his buttocks, lumbar spine, and right knee. Thereafter, Plaintiff walked home.

Approximately 90 days later, on October 17, 2020, Plaintiff, as a pedestrian, was again struck by an automobile. In Plaintiff's own testimony at deposition, he describes a far more severe accident than the one with Defendant Tomesco. In Plaintiff's second accident, he was hit from behind, clipping his legs, and flipping him up into the air before impacting the ground. Plaintiff stated he believed he was in a coma for 2 days after this second accident.¹ Plaintiff was transported from the scene with an altered mental status. Plaintiff now alleges \$110,706 in past medical damages and \$1,150,243 for future medical treatment.

Jeffrey Wang M.D. was retained by Defendants to provide testimony regarding Plaintiff's past and future medical treatment. Dr. Wang conducted a Rule 35 examination of Plaintiff as well as record review, after which a report inclusive of his expert opinions was produced during the discovery phase of this case. Plaintiff now seeks to limit Dr. Wang's opinions for a second time.

Interestingly, Plaintiff filed *Motion in Limine No.1* which sought to exclude evidence of Plaintiff's history of smoking as well as unrelated medical history but was denied by this Court.² The underlying Trial Brief No. 2 is essentially a motion for reconsideration of the same issues.

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¹ See Excerpt of Plaintiff's Deposition Transcript, at 21:14-22:14, attached as **Exhibit A**.

² See Notice of Entry of Order Regarding Motions in Limine, on file herein.

II. LEGAL ARGUMENT

A. PLAINTIFF'S TRIAL BRIEF IS AN IMPROPER MOTION FOR RECONSIDERATION

EDCR 2.24 demands that motions to reconsider Orders must be filed within fourteen (14) days. Plaintiffs failed to file a proper Motion for Reconsideration, and instead bring this "Trial Brief" which asks the Court to retract its prior holding. However, the Order of this Court on Plaintiff's Motion in Limine No. 1 is very clear regarding the ruling Defendant can question Plaintiff regarding his smoking and unrelated medical history.

The Nevada Supreme Court has held that a district court may reconsider a prior motion if "substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry and Tile Contractors Assoc. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741 (1997) (emphasis added). Under Nevada law, "[r]econsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Frasure v. United States of America*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003).

Moreover, EDCR 2.24 notes:

(a) No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.

(b) A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the period for filing a notice of appeal from a final order or judgment.

(c) If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

By rule, this Court's Order on Plaintiff's Motion in Limine No. 1 may not be reconsidered or relitigated because Plaintiff's Trial Brief fails to demonstrate any newly discovered evidence, or demonstrate the Court committed clear error, or that the Order was manifestly unjust.

Defendant's retained expert, Dr. Jeffrey Wang, specifically makes note of Plaintiff's smoking history as well as the subsequent pedestrian accident. Dr. Wang's report also makes clear he reviewed

1 the records of Plaintiff's treating providers, wherein Plaintiff's smoking history, prior drug abuse, and
2 the second pedestrian accident were described in detail. Thus, Dr. Wang can provide testimony
3 regarding the records he reviewed, which includes the medical bills associated with Plaintiff's medical
4 treatment and Plaintiff's future life care plan.

5 **III. CONCLUSION**

6 As such, Defendant asks Plaintiff's Trial Brief No. 2 be denied in its entirety.

7 DATED this 19th day of March, 2024.

8 **MESSNER REEVES LLP**

9 /s/ Steven Knauss

10 M. CALEB MEYER, ESQ.
Nevada Bar No. 13379

11 RENEE M. FINCH, ESQ.
Nevada Bar No. 13118

12 STEVEN G. KNAUSS, ESQ.
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14 8945 W. Russell Road, Ste. 300
Las Vegas, Nevada 89148

15 *Attorneys for Defendants Sean Edward Tomesco*
16 *and Second Opinion Plumbing, LLC*

1 **CERTIFICATE OF SERVICE**

2 On this 19th day of March, 2024, pursuant to Administrative Order 14-2 and Rule 9 of the
3 NEFCR, I caused the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S TRIAL**
4 **BRIEF NO. 2 TO LIMIT TRIAL TESTIMONY OF DR. WANG** to be transmitted to the
5 person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the
6 Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report
7 reported service as complete and a copy of the service transmission report will be maintained with
8 the document(s) in this office. Parties not identified on the E-Service List were served via U.S. Mail
9 to the following addresses:

10 Alison Braiser, Esq.
11 Betsy C. Jefferis-Aguilar, Esq.
12 HICKS & BRAISIER, PLLC
13 2360 S. Jones Blvd.
14 Las Vegas, Nevada 89146
15 *Attorneys for Plaintiff*

16 /s/ Michael Madden
17 Employee of MESSNER REEVES LLP
18
19
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EXHIBIT A

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

4

JARED MOSS, individually)

5

Plaintiff,)

6

vs.)

7

Case No. A-21-840372-C

8

SEAN EDWARD TOMESCO,)

9

individually; SECOND)

10

OPINION PLUMBING, LLC, a)

11

domestic limited)

12

liability company; DOES)

13

I through X, inclusive;)

14

ROE CORPORATIONS XI)

15

through XX, inclusive,)

16

Defendants.)

17

18

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REMOTE DEPOSITION OF JARED MOSS

22

Taken on Tuesday, January 31, 2023

23

By a Certified Court Reporter

24

At 1:30 p.m. PST

25

26

27

28

29

Reported by: Kelly R. Rexroat, CCR 673, RPR, CRR

30

Job No. 51809, Firm No. 061F/116F

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APPEARANCES:

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For the Defendants:

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MESSNER REEVES LLP
8945 West Russell Road
Suite 300
Las Vegas, NV 89148

* * * * *

INDEX

WITNESS	
JARED MOSS	PAGE
Examination by Mr. Martinez	3

NO EXHIBITS MARKED

1 Q. Have you ever injured yourself while at
2 work?

3 A. No.

4 Q. Have you ever filed a workers'
5 compensation claim for any injury you sustained
6 while at work?

7 A. No.

8 Q. Have you ever been in any prior auto
9 accidents prior to July 9th of 2020?

10 A. No.

11 Q. All right. Now, the next question is
12 after July 9th of 2020, do you have any subsequent
13 auto accidents?

14 A. I was -- had an auto accident after that
15 that I was in a coma for two days in the hospital.

16 Q. Were you in a motor vehicle or was it --
17 were you a pedestrian?

18 A. No, I was a pedestrian.

19 Q. You said you were in a coma for two days?

20 A. Yes.

21 Q. What parts of your body were injured as a
22 result of that subsequent auto accident?

23 A. Everything that I remember is I woke up
24 in the hospital after the fact obviously. The car
25 hit me from behind, clipped my legs from behind, and



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LEXITASTM

1 I have a scar on my head from the impact. Like I
2 don't remember.

3 So I can't say what happened. I was
4 knocked out instantly obviously, but from what they
5 told me, I spun around in the air and my head hit
6 the ground.

7 Q. From your understanding of what other
8 people told you about that accident you actually
9 were shot up into the air as a result of getting hit
10 by the car?

11 A. Yes.

12 Q. And then obviously you would have landed
13 on the ground I assume; is that correct?

14 A. Yes.

15 Q. Was anybody there with you?

16 A. My wife was, yes.

17 Q. And this was prior to you guys getting
18 married I assume?

19 A. Yes, I believe it was just prior.

20 Q. Do you know roughly when this subsequent
21 accident happened?

22 A. I don't remember the exact date, no. I
23 should have written it down on this little piece of
24 paper, but I didn't. Sorry about that.

25 Q. No, you are good. Just one little point.



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LEXITASTM

EXHIBIT “6”

EXHIBIT “6”

Jared Moss, Plaintiff(s) vs. Sean Tomesco, Defendant(s)

~~~~~

Supreme Court No.: **89509**

## PARTY INFORMATION

702-655-2346(W)

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**EVENTS & ORDERS OF THE COURT**

[Return to Register of Actions](#)

**EXHIBIT “7”**

**EXHIBIT “7”**



**NJUD**  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JARED MOSS, individually,  
Plaintiff,

vs.

SEAN EDWARD TOMESCO,  
individually; SECOND OPINION  
PLUMBING, LLC., a domestic limited  
liability company; DOES I through X,  
inclusive; ROE CORPORATIONS XI  
through XX, inclusive,  
Defendants.

Case No. A-21-840372-C

DEPT. NO. 20

**NOTICE OF ENTRY OF  
JUDGMENT UPON THE JURY  
VERDICT**

1 PLEASE TAKE NOTICE that this Court entered a *Judgment Upon the*  
2 *Jury Verdict*, in the instant matter on September 19, 2024, attaching a true and  
3 accurate copy to this notice.

4 Dated this 30th day of September 2024.

5 CLAGGETT & SYKES LAW FIRM

6 /s/ Micah S. Echols

7 Micah S. Echols, Esq.

8 David P. Snyder, Esq.

Charles L. Finlayson, Esq.

9 HICKS & BRASIER, PLLC

10 Alison M. Brasier, Esq.

Betsy C. Jefferis-Aguilar, Esq.

11 *Attorneys for Plaintiff*  
12  
13  
14  
15  
16  
17  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of September 2024, I served a true and correct copy of the **NOTICE OF ENTRY OF JUDGMENT UPON THE JURY VERDICT** upon the following persons by the following methods pursuant to NRCP 5(b) and NEFCR 9:

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/s/ Anna Gresl

\_\_\_\_\_  
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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JARED MOSS, individually,

Plaintiff,

v.

SEAN EDWARD TOMESCO,  
individually; SECOND OPINION  
PLUMBING, LLC, a domestic limited  
liability company; DOES I through X,  
inclusive; ROE CORPORATIONS XI  
through XX, inclusive,

Defendants.

Case No. A-21-840372-C

Dept. No. 20

**JUDGMENT UPON THE  
JURY VERDICT**



1 This action came on for trial before the Court and the jury, the Honorable  
2 Eric Johnson, District Court Judge, presiding, and the issues having been duly  
3 tried and the jury having duly rendered its verdict, the Court hereby enters  
4 judgment upon the verdict,<sup>1</sup> as follows:

5 IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Jared Moss  
6 has and recovers against Defendant Sean Edward Tomesco and Defendant  
7 Second Opinion Plumbing, LLC, jointly and severally, the following sums based  
8 upon the jury's verdict:

|    |                                         |                           |
|----|-----------------------------------------|---------------------------|
| 9  | <u>Past</u> medical expenses:           | <b>\$200,000</b>          |
| 10 | <u>Past</u> physical and mental pain,   |                           |
| 11 | suffering, anguish, disability,         |                           |
|    | and loss of enjoyment of life:          | <b>\$200,000</b>          |
| 12 | <u>Future</u> medical expenses:         | <b>\$1,500,000</b>        |
| 13 | <u>Future</u> physical and mental pain, |                           |
| 14 | suffering, anguish, disability,         |                           |
|    | and loss of enjoyment of life:          | <b><u>\$3,100,000</u></b> |
| 15 | <b>SUBTOTAL OF VERDICT:</b>             | <b>\$5,000,000</b>        |

16 Based upon the post-trial proceedings, the Court has evaluated the  
17 evidence and amends the verdict to be consistent with the evidence as follows:

|    |                                       |                    |
|----|---------------------------------------|--------------------|
| 18 | <u>Past</u> medical expenses:         | <b>\$161,545</b>   |
| 19 | <u>Past</u> physical and mental pain, |                    |
| 20 | suffering, anguish, disability,       |                    |
|    | and loss of enjoyment of life:        | <b>\$200,000</b>   |
| 21 | <u>Future</u> medical expenses:       | <b>\$1,500,000</b> |

22 \_\_\_\_\_  
23  
24 <sup>1</sup> The verdict form was filed on March 29, 2024.

**\$3,100,000**

**\$4,961,545**

\$161,545

1,054 days

10.50%

**\$48,981.33**

\$200,000

1,054 days

10.50%

**\$60,641.10**

**\$161,545**

**\$48,981.33**

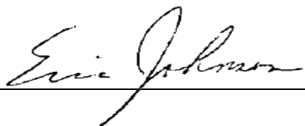
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|                                                                                                                                       |                           |
|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| <u>Past</u> physical and mental pain,<br>suffering, anguish, disability,<br>and loss of enjoyment of life:                            | <b>\$200,000</b>          |
| Prejudgment interest on<br><u>past</u> physical and mental pain,<br>suffering, anguish, disability,<br>and loss of enjoyment of life: | <b>\$60,641.10</b>        |
| <u>Future</u> medical expenses:                                                                                                       | <b>\$1,500,000</b>        |
| <u>Future</u> physical and mental pain,<br>suffering, anguish, disability,<br>and loss of enjoyment of life:                          | <b><u>\$3,100,000</u></b> |
| <b>TOTAL:</b>                                                                                                                         | <b>\$5,071,167.43</b>     |

Therefore, Plaintiff Jared Moss has and recovers a total judgment against Defendant Sean Edward Tomesco and Defendant Second Opinion Plumbing, LLC, jointly and severally, for **\$5,071,167.43**. This total judgment shall accrue post-judgment interest at the adjustable legal rate, which is currently 10.50%, and is a daily amount of approximately \$1,458.83 starting on September 17, 2024 until fully satisfied.<sup>3</sup>

IT IS SO ORDERED.

Dated this 19th day of September, 2024



51D 6F4 82A4 D447  
Eric Johnson  
District Court Judge

---

<sup>3</sup> This post-judgment interest rate may vary every January and every July, as outlined in NRS 17.130 and *Lee v. Ball*, 121 Nev. 391, 116 P.3d 64 (2005).

Submitted by:

**CLAGGETT & SYKES LAW FIRM**

/s/ Micah S. Echols

---

Micah S. Echols, Esq.  
David P. Snyder, Esq.  
Charles L. Finlayson, Esq.

ALISON M. BRASIER, ESQ.  
BETSY C. JEFFERIS-AGUILAR, ESQ.  
**HICKS & BRASIER, PLLC**  
*Attorneys for Plaintiff*

Approved by:

MESSNER REEVES LLP

/s/ Steven G. Knauss

---

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*Attorneys for Defendants*

[*Moss v. Tomesco*, Judgment Upon the Jury Verdict, Case No. A-21-840372-C]

Monday, September 16, 2024 at 13:31:15 Pacific Daylight Time

---

**Subject:** RE: Moss v Tomesco - DRAFT Judgment and DRAFT Order Denying Defendants' Motion for Renewed JMOL/New Trial  
**Date:** Friday, September 13, 2024 at 4:03:44 PM Pacific Daylight Time  
**From:** Steven G. Knauss  
**To:** Micah Echols  
**CC:** Alison M. Brasier, BETSY C. JEFFERIS-AGUILAR ESQ (baguilar@lvattorneys.com), Danielle Alvarado, Anna Gresl, Rhonda Onorato, James Alvarado  
**Attachments:** image001.png

Micah – Please add my e-signature to both the judgment and order, and submit to chambers.  
Thanks,

**STEVEN G. KNAUSS**

Partner

**Messner Reeves LLP**

O: 702.363.5100 E: [sknauss@messner.com](mailto:sknauss@messner.com)

8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

---

**From:** Micah Echols <[Micah@claggettlaw.com](mailto:Micah@claggettlaw.com)>

**Sent:** Wednesday, September 4, 2024 5:57 PM

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**Subject:** Moss v Tomesco - DRAFT Judgment and DRAFT Order Denying Defendants' Motion for Renewed JMOL/New Trial

**[ EXTERNAL EMAIL ]**

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Good evening, here are drafts of the judgment and the order denying Defendants' Renewed JMOL/New Trial. We have calculated interest on the judgment to be entered on Friday this week. If you need more time to review the judgment, let us know, and we can adjust the judgment calculation.

Micah Echols, Esq.

Partner, Appellate Division

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Jared Moss, Plaintiff(s)

CASE NO: A-21-840372-C

7 vs.

DEPT. NO. Department 20

8 Sean Tomesco, 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 Judgment on Jury Verdict was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/19/2024

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**EXHIBIT “8”**

**EXHIBIT “8”**





**MOT**

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*Attorneys for Defendants Sean Edward Tomesco*

*and Second Opinion Plumbing, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JARED MOSS, individually,

Plaintiff,

vs.

SEAN EDWARD TOMESCO, individually;  
SECOND OPINION PLUMBING, LLC, a  
domestic limited liability company; DOES I  
through X, inclusive; ROE CORPORATIONS XI  
through XX, inclusive,

Defendants.

Case No.: A-21-840372-C

Dept. No.: 20

**DEFENDANTS' RENEWED MOTION  
FOR JUDGMENT AS A MATTER OF  
LAW PURSUANT TO NRCP 50(b), AND  
MOTION FOR NEW TRIAL PURSUANT  
TO NRCP 59, OR ALTERNATIVELY FOR  
REMITTITUR**

***HEARING REQUESTED***

Defendants SEAN EDWARD TOMESCO and SECOND OPINION PLUMBING, LLC  
(collectively "Defendants"), by and through their attorneys of record, M. Caleb Meyer, Esq., Renee  
M. Finch, Esq., and Steven G. Knauss, Esq., of the law firm MESSNER REEVES LLP, hereby submits  
this *Renewed Motion for Judgment as a Matter of Law Pursuant to NRCP 50(b), and Motion for New  
Trial Pursuant to NRCP 59, or alternatively for Remittitur* (hereafter "the Motion").

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1 These Motions are based upon the following memorandum of points and authorities, all  
2 pleadings and papers on file with this Court, and any oral argument this Court may entertain at the  
3 hearing on this matter.

4 DATED this 26<sup>th</sup> day of April, 2024.

5 **MESSNER REEVES LLP**

6 /s/ Steven Knauss

7 M. CALEB MEYER, ESQ.

8 Nevada Bar No. 13379

9 RENEE M. FINCH, ESQ.

10 Nevada Bar No. 13118

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15 *Attorneys for Defendants Sean Edward Tomesco*  
16 *and Second Opinion Plumbing, LLC*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case arose from a motor vehicle vs. pedestrian accident that occurred on July 9, 2020, as  
4 Plaintiff JARED MOSS (hereafter “Plaintiff”) was walking in a crosswalk across Maryland Parkway  
5 at the Wigwam Avenue intersection. As he did so, Defendant Tomesco, driving a 2004 Ford  
6 Econoline Utility van owned by Defendant Second Opinion Plumbing, made a left turn from Wigwam  
7 Avenue onto southbound Maryland Parkway, where Plaintiff was walking. Seeing a collision was  
8 imminent, Plaintiff put his hands/arms out and when the front of Defendant Tomesco’s van impacted  
9 Plaintiff, pushing him back, and causing him to fall backwards onto the street, where he initially  
10 alleged injury to his buttocks, lumbar spine, and right knee. Police were not called to the scene, and  
11 shortly after the accident, Plaintiff walked home.

12 At trial, Plaintiff focused entirely on an alleged facet injury to his lumbar spine. Plaintiff  
13 presented two (2) fact witnesses: his mother and wife, neither of whom were present for the accident,  
14 as well as Plaintiff proffering his own testimony of the accident, his injuries, and his treatment.  
15 Plaintiff treated with eight (8) providers, including emergency room physicians, a chiropractor, a pain  
16 management specialist, and imaging. However, only Plaintiff’s pain management physician, Dr.  
17 William Muir testified at trial.

18 Plaintiff did not admit any medical bills at trial, aside from \$7,262.00 for his chiropractic  
19 treatment from Advanced Spine & Rehabilitation. Instead, Plaintiff relied entirely upon a  
20 demonstrative table of medical expenses that totaled \$161,545.00 for all eight (8) providers. Plaintiff  
21 then had Dr. Muir testify that all \$161,545.00 in medical expenses in the demonstrative table were  
22 reasonable, related, usual, and customary. The individual costs for each provider were neither  
23 discussed nor delineated, and Plaintiff did not move the Court to admit his demonstrative table.

24 Furthermore, Plaintiff did not admit any document supporting, or otherwise lay foundation  
25 for, his future treatment recommendations of \$1,539,710. Dr. Muir only proffered testimony that  
26 this amount vaguely includes radio frequency ablations and lumbar fusion surgery. He did not testify  
27 that his recommendations actually included chiropractic care, imaging, anesthesia, surgery center  
28 costs, and post-operative care.

On March 29, 2024, the jury rendered a verdict in favor of Plaintiff in the following amounts:

1. \$200,000.00 for Plaintiff's past medical expenses;
2. \$200,000.00 for Plaintiff's past general damages;
3. \$1,500,000.00 for Plaintiff's future medical expenses;
4. \$3,100,000.00 for Plaintiff's future general damages;

Pending the Court's decision on the instant motion, the jury verdict was not entered.

## **II. NATURE OF MOTIONS**

On Day 4 of the trial, after the Plaintiff rested, but prior to Defendants' presentation of evidence, Defendant moved the Court for a Judgment as a Matter of Law pursuant to NRCP 50(a) as to nearly all of Plaintiff's medical bills (less the \$7,262 in chiropractic bills that were admitted by Plaintiff) and all future treatment recommendations based on Plaintiff's failure to admit either into evidence. After oral argument regarding the same, the Court deferred its decision on the NRCP 50(a) issues raised until full briefing herein could be submitted by both parties.

Furthermore, Defendant also moves the Court for a new trial pursuant to NRCP 59(a)(1) for the jury's manifest disregard of the instructions of the court in (i) awarding Plaintiff more past medical expenses that he even incurred, and (ii) awarding Plaintiff excessive damages appearing to have been given under the influence of passion or prejudice. Plaintiff offered little testimonial evidence of pain and suffering beyond discomfort while treating, as well as general soreness. He had no lost wages claim, or loss of future earnings claim, and neither Plaintiff nor Dr. Muir explicitly testified to, or admitted any evidence of, permanent injury.

The jury's \$3,100,000.00 award for Plaintiff's future general damages lacked any evidentiary support and is substantially excessive given the admitted evidence and testimony. The verdict appears on its face to be the product of passion or prejudice invited by Plaintiff and his counsel. As argued herein, a new trial should be granted for Defendants, or if not, then remittitur should be granted.

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### III. LEGAL STANDARDS

#### A. LEGAL STANDARD FOR MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO NRCP 50(B)

NRCP 50(a)(2) provides that “[m]otions for judgment as a matter of law may be made at the close of the evidence offered by the nonmoving party or at the close of the case.” NRCP 50(b), in part, provides:

If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law.

NRCP 50(b); see also *LaFrieda v. Gilbert*, 135 Nev. 674, 435 P.3d 665 (2019).

Here, the Court deferred its ruling on Defendants’ properly made NRCP 50(a) motion made orally after Plaintiff presented his case in chief. Thus, a renewal of Defendants’ motion under NRCP 50(b) is proper, but still bound by the standards of a NRCP 50(a) motion.

Nevada Rule of Civil Procedure 50(a) provides that, “[i]f during a trial by jury, a party has been fully heard on an issue and on the facts and law a party has failed to prove a sufficient issue for the jury, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.” NRCP 50(a)(1). A judgment as a matter of law is appropriate where any verdict other than the one directed would be wrong as a matter of law. *Sheeketski v. Bortoli*, 86 Nev. 704, 708, 475 P.2d 675, 677 (1970). The standard for judgment as a matter of law under Rule 50 mirrors the standard for summary judgment under Rule 56. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150, 120 S.Ct. 2097 (2000). The inquiry for each is the same. *Id.*

The Nevada Supreme Court has interpreted the rule: “Under NRCP 50(a)(1), the district court may grant a motion for judgment as a matter of law if the opposing party ‘has failed to prove a sufficient issue for the jury,’ so that his claim cannot be maintained under the controlling law.” *Nelson v. Heer*, 123 Nev. 217, 222, 163 P.3d 420, 424 (2007). The Court further clarified that, in order to overcome a motion brought pursuant to NRCP 50(a), “the nonmoving party must have

presented sufficient evidence such that the jury could grant relief to that party.” *Bielar v. Washoe Health Sys., Inc.*, 129 Nev. 459, 471, 306 P.3d 360, 368 (2013)

**B. LEGAL STANDARD FOR GRANTING/DENYING MOTION FOR NEW TRIAL PURSUANT TO NRCP 59**

The decision to grant or deny motion for new trial rests within the sound discretion of trial court, and Supreme Court will not disturb that decision absent palpable abuse. *Edwards Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1035, 923 P.2d 569, 575 (1996). Even if one of the enumerated grounds for a new trial, as set forth in NRCP 59(a) has been established, the established ground must have materially affected the substantial rights of the aggrieved party, in order to warrant a new trial. *Pizarro-Ortega v. Cervantes-Lopez*, 396 P.3d 783, 786 (Nev. 2017). The trial judge's role is to act decisively to prevent any prejudice, thus avoiding a mistrial, a new trial or appeal. *Lioce*, 124 Nev. at 15, 174 P.3d at 979 (“avoiding a mistrial or appeal”).

The present standard for review of a motion for a new trial upon the ground of manifest disregard by the jury of the instructions of the court is whether the trial court or appellate court is able to declare that “had the jurors properly applied the instructions of the court, it would have been impossible for them to reach the verdict which they reached.” *M&R Inv. Co. v. Anzalotti*, 105 Nev. 224, 226, 773 P.2d (1989) (quoting *Weaver Broz. Ltd. V Misskelley*, 98 Nev. 232, 234, 645 P.2d 438, 439 (1982); see also *Van Duzer v. Shosone Coca Cola Bottling Co.*, 103 Nev. 383, 741 P.2d 811 (1987); *Town & Country Elec V. Hawke*, 100 Nev. 701, 692 P.2d 490 (1984). The Court need not determine how the jury reached its conclusion; it need only determine whether it was possible for the jury to do so. *M&R Inv.*, 105 Nev. at 226. Manifest injustice is present when a verdict strikes the mind, at first blush, as manifestly and palpably contrary to the evidence. *Myer v. Swain*, 104 Nev. 595, 598, 763 P.2d 337, 339 (1988).

NRCP 59(a)(1) outlines the basis to obtain a new trial, which reads as follows:

The court may, on motion, grant a new trial on all or some of the issues—and to any party—for any of the following causes or grounds materially affecting the substantial rights of the moving party:

(A) irregularity in the proceedings of the court, jury, master, or adverse party or in any order of the court or master, or any abuse of discretion by which either party was prevented from having a fair trial;

(B) misconduct of the jury or prevailing party;

(C) accident or surprise that ordinary prudence could not have guarded against;

(D) newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial;

(E) manifest disregard by the jury of the instructions of the court;

(F) excessive damages appearing to have been given under the influence of passion or prejudice; or

(G) error in law occurring at the trial and objected to by the party making the motion.

#### IV. LEGAL ARGUMENT

##### A. JUDGMENT AS A MATTER OF LAW IS WARRANTED PURSUANT TO NRCP 50(B)

1. **The Court should grant directed verdict in favor of Defendants as to past medical damages because Plaintiff failed to lay foundation for, or admit any, medical bills, aside from his chiropractor, and instead improperly relied on a demonstrative chart**

The only testimony regarding the reasonableness, relatedness, usual, and customary nature of Plaintiff's medical bills was this testimony offered by Dr. Muir:

Q. Dr. Muir, as part of your expert work in this case, did you review the medical bills and records related to these facilities that I have listed here, Henderson Hospital, Shadow Emergency Physicians, Desert Radiology, Advanced Spine & Rehabilitation, that's Dr. Janda, your office, Pueblo Medical Imaging, and Anesthesia and Intensive Care?

A. I did.

Q. Okay. And the total for all that treatment was \$161,545; correct?

A. Correct.

Q. Okay. Based on your review of the medical records in this case from those different facilities, was all of that treatment reasonable and related to Jared being hit by the van in July of 2020?

A. Yes.

Q. Okay. And is the billing associated with all of that treatment, is that usual and customary for the Las Vegas community?

A. Yes, it is.

Q. Meaning, you didn't see anything that were outliers, crazy high bills?

A. I did not.

See Excerpt of Trial Transcript, Day 3, at 72:15-73:12, attached as **Exhibit A**.

Plaintiff did not move to admit any of the bills that comprises the \$161,545 aggregate he put in his demonstrative table, aside from those from Advanced Spine & Rehabilitation for \$7,262. Dr. Muir did not testify to the amounts for each provider, or state why he had the requisite personal knowledge to state that each of those bills was reasonable or customary. In short, Plaintiff failed to lay any foundation for the jury to award the total amount, or even a partial amount, for each of Plaintiff's providers, and instead gave the jury an all or nothing option.

This issue is compounded by the fact that Defendants' expert witness Dr. Jeffrey Wang testified that only a *partial* amount of Plaintiff's treatment (and the corresponding bills) were necessary:

Q. And what treatment do you believe was necessary as a result of that injury?

A. I think it was reasonable to evaluate him the day of the injury when he went to the emergency room. I think it was reasonable to take the imaging studies that were performed that day. For a soft tissue strain we typically prescribe six to eight weeks of physical therapy or chiropractic care. I think he had about three months, and I think three months would be a reasonable period of time. Then after that the soft tissue strain there's usually no more treatment.

See Excerpt of Trial Transcript, Day 4, at 22:18-23:3, attached as **Exhibit B**.

By Plaintiff failing to admit the bills from each provider, there was no admitted evidence upon which the jury could determine how much, or what proportion of his bills, included the emergency room, the imaging studies, and eight (8) weeks of conservative care.

A party seeking special damages must provide the opposing party with a computation of said damages. See NRCP 16.1(a)(1)(A)(iv); *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 264, 396 P.3d 783, 786 (2017). The same party must also prove he was damaged "and the amount thereof." *Gibellini v. Klindt*, 110 Nev. 1201, 1206, 885 P.2d 540, 543 (1994). Though "the amount of special damages need not be mathematically exact," there must be an "evidentiary basis for determining an amount that is reasonably accurate." *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 737, 192 P.3d 243, 251 (2008); see also *Park Apts, Inc. v. Cisneros*, 137 Nev. 948, 480 P.3d 880 (Nev. App. 2021).



In *Cisneros*, the Court of Appeals of Nevada held that failing to admit medical bills is, by itself, not dispositive as to whether there was sufficient evidence to award special damages. *Cisneros*, 137 Nev. at 948. Instead, the *Cisneros* Court looked at additional factors supporting the medical billing, such as (i) expert testimony supporting each individual provider, and (ii) the lack of any medical evidence by the opposing party refuting the necessity of the costs. Here, both factors are lacking.

First, Plaintiff did not walk Dr. Muir through each provider and state the amount of medical bills for each.<sup>1</sup> Therefore, there was no admitted documentary evidence nor testimonial evidence regarding the amount of each provider. Second, unlike the facts in *Cisneros* Defendant did present expert testimony that the medical bills were not necessary. Plaintiff's failure to admit his medical bills meant the jury lacked the evidence to make a determination about which provider and what amount was reasonable, necessary, usual, and customary, in light of Defendant's evidence disputing Dr. Muir's testimony. Therefore, the only medical bills admitted for the jury to consider, and the only amount of medical bills admitted during the Plaintiff's case in chief, was his chiropractic treatment totaling \$7,262.

Should Plaintiff argue in opposition that his demonstrative chart was either admitted, adopted, or otherwise admissible, and therefore properly considered by the jury, Jury Instruction No. 10 at trial stated:

The lawyers and witnesses have shown you charts and summaries to help explain the facts. ***The charts or summaries themselves, however, are not evidence or proof of any facts.*** Charts and summaries are only as good as the underlying evidence that supports them. You should therefore give them only such weight as you think the underlying evidence deserves.

See Jury Instruction No. 10, on file herein. (emphasis added)

In opening statement, and again during the direct examination of Dr. Muir, and again in closing arguments, Plaintiff showed a demonstrative table with a summary of his medical providers and their corresponding total costs, but failed to admit the actual billing amounts that supported the figures in that table. Consistent with the Jury Instruction No. 10 above, the Nevada Supreme Court

<sup>1</sup> Plaintiff and Dr. Muir relied on a demonstrative chart that was not admitted, and is not evidence to be considered by the jury, per the Court's instructions.

has affirmed the use of demonstrative exhibits but have also stated they are not evidence, but rather testimonial aids. *Hosny v. Hosny*, 528 P.3d 691 (Nev. App. 2022). Therefore it was improper for Plaintiff to use a demonstrative table in his closing argument that included medical bills that were not admitted into the record during the trial.

**2. The Court should grant directed verdict in favor of Defendants as to future medical damages because Plaintiff failed to admit Dr. Muir's life care plan detailing/itemizing nearly 40 years of care**

Similarly, Plaintiff failed to admit either of the life care plans of his medical expert, Dr. Muir. See William Muir Life Care Plans, attached as **Exhibit C**. These plans detail the costs encompassing nearly 40 years of future medical treatment for facet pain/injury, including (i) pain management for yearly radio frequency ablations, (ii) anesthesiologist for the same, (iii) surgical center costs for the same, (iv) chiropractic therapy, (v) x-rays/radiographs, (vi) MRIs, (vii) spine surgeon to perform a lumbar fusion, (viii) surgical assistants for the same, (ix) hospital facility costs, (x) "spinal cord monitoring", and (xi) physical therapy post-operative. In total, there are 13 line items in Dr. Muir's life care plan ranging in cost from \$1,927 to \$638,820.

However, the testimony offered by Dr. Muir only generally stated that his future care plan involved radio frequency ablations and a fusion surgery. None of the other costs or line items in his plans were discussed, nor did Dr. Muir walk through his life care plans, and nor were the plans themselves admitted as evidence for the jury to consider. As stated by Dr. Muir in direct examination, Plaintiff gave the jury two (2), **and only two (2)**, options regarding Plaintiff's future care: (i) \$1.5M for ablations and fusion surgery, or (ii) \$1.2M for just ablations:

Q. And so the number that I've shown to the jury, \$1,539,710, does that include both possibilities, the RFAs for the rest of his life and the potential surgery?

A. Yes, it includes both. So the surgery is put into the life care plan saying that the patient may require, this would be the definitive treatment and this is what it would cost. But more likely than not, he would continue with the radio frequency ablation. So rather than it being \$1.5 million, it's closer to 1.1, \$1.2 million, with the RFAs.

Q. Okay. And if you could tell me just so the jury has the information and they can decide. So the \$1.5 million is radio frequency ablations and surgery. If Jared never got the surgery and just continued to do the RFAs that have been successful, what would that number be for in the life care plan?

A. It's about 1.1 to 1.2, \$1,150,243.

1 See Excerpt of Trial Transcript, Day 3, at 83:17-84:9, attached as **Exhibit D**.

2 Despite specifically referencing the life care plan in the testimony above, neither plan was  
3 ever admitted. In essence, Plaintiff only offered the jury testimonial evidence about the costs of his  
4 future treatment, and he improperly took an all or nothing approach. Dr. Muir proffered no testimony  
5 about future chiropractic care, future physical therapy, future imaging, or the ancillary costs of the  
6 two (2) procedures he recommends, such as surgical center costs, surgical assistant costs, and post-  
7 operative care costs. All of these costs were included in his life care plans, but there was no  
8 testimonial or admitted documentary evidence supporting them.

9 Just as above, this issue is compounded due to Defendants' expert Dr. Wang, who refuted Dr.  
10 Muir's life care plans, and proffered testimony that none of the future treatment was related to the  
11 accident:

12 Q. So, Doctor, is it your opinion that Mr. Moss does not need any of the care  
13 that was listed in Dr. Muir's life care plan?

14 MS. BRASIER: Objection, Your Honor. That's the same thing.

15 THE COURT: Overruled. I'll overrule that.

16 THE WITNESS: The future care that Dr. Muir? Yeah, I don't think that he  
needs that as it relates to the accident.

17 See Excerpt of Trial Transcript, Day 4, at 42:15-23, attached as **Exhibit E**.

18 The jury is the fact finder. The jury could award Plaintiff all, none, or only a portion of his  
19 future medical damages. As Plaintiff did with his past medical damages, he gave the jury simplistic,  
20 all or nothing options without providing evidence of the costs of each procedure or treatment option.  
21 The jury had no evidence upon which it could award only chiropractic treatment, or only 20 years of  
22 ablations, rather than 40, if it so chose. The jury could only assume the costs of an individual ablation  
23 because they were only given testimony that approximately 40 of them costs \$1,150,000. However,  
24 even if they were to make that assumption, they would be unaware that Dr. Muir's \$1,150,000 future  
25 ablation treatment plan includes chiropractic treatment and imaging studies. In other words, *Plaintiff*  
26 *failed to lay the proper foundation for the jury to properly award or apportion any amount of future*  
27 *medical damages.*  
28

Plaintiff's failure to admit Dr. Muir's life care plans, and instead rely solely on his limited testimony, meant the jury had no evidence upon which to discount or reduce the value of said future treatment. Without evidence of the costs of any of the 13 individual line items within Dr. Muir's life care plan, the jury should not have been allowed to consider the aggregate. Therefore, lacking the proper foundation, and failure by Plaintiff to admit Dr. Muir's life care plans into evidence, the jury should not have been allowed to consider or award Plaintiff the value of Dr. Muir's future medical damages.

**B. A NEW TRIAL IS WARRANTED PURSUANT TO NRCP 59(A)**

Under NRCP 59(a)(1), a new trial may be granted in the event of irregularity in the jury proceedings. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 362, 212 P.3d 1068, 1077 (2009). Thus, a court may direct a verdict in the moving party's favor or grant a new trial if, as a matter of law, the jury could not have reached the conclusion that it reached. *Fox v. Cusick*, 91 Nev. 218, 220, 533 P.2d 466, 467 (1975).

Under NRCP 59(a) three independent grounds exist for granting a new trial in this instance. First, the jury disregarded the Court's instructions in awarding Plaintiff \$200,000 in past medical damages, when no evidence (either admitted at trial or even disclosed in litigation) supports this amount, and thus constitutes a ground for granting a new trial under NRCP 59(a)(1)(E). Second, the excessive award of \$3,100,000 in future general damages appears calculated to punish Defendants and not reasonably related to the pain and suffering testified to by the Plaintiff and his witnesses, which is a ground for new trial under NRCP 59(a)(1)(F). And third, Defendants were improperly barred from presenting evidence of the details of Plaintiff's second, more significant vehicle vs. pedestrian accident despite Plaintiff's expert unambiguously opening the door to such evidence which is a ground for new trial under NRCP 59(a)(1)(G).

**1. The jury award of \$200,000 for past medical damages was unsupported by the evidence**

As Defendants' argued above, Plaintiff failed to admit past medical bills beyond his \$7,262 in chiropractic treatment from Advanced Spine & Rehabilitation. However, even if the jury considered the aggregate of Plaintiff's past medical damages in his demonstrative table at trial, that

total was only \$161,545.00. There was no evidence, and no exhibits, presented to the jury, at any point in the trial, that showed Plaintiff incurred \$200,000 in past medical damages.

An award of damages must be “supported by substantial evidence.” *Brown v. Slyman*, 534 P.3d 134 (Nev. 2023); see also *Wyeth v. Rowatt*, 126 Nev. 446, 470, 244 P.3d 765, 782 (2010). Furthermore, a court may disturb a jury’s award of damages when it is clearly wrong based on all the evidence presented. *Soper v. Means*, 111 Nev. 1290, 1294, 903 P.2d 222, 224 (1995); see also *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 308, 212 P.3d 318, 324 (2009).

In other words, at best, the jury fabricated nearly \$40,000 in past medical damages and awarded it to Plaintiff, or at worst, awarded him nearly \$193,000 in past medical damages unsupported by any admitted evidence. Plaintiff presented no evidence at all, much less substantial evidence, supporting the \$200,000 the jury awarded in past medical damages.

**2. The jury award of \$3,100,000 for future general damages appears to have been the result of passion or prejudice, and not reasoned decision making**

A new trial is warranted in this matter because the jury’s award of future general damages is so unfathomably excessive that it is necessarily the result of passion or prejudice, given the absence of evidence of general damages, including no wage loss claims, no future wage loss claims, no loss of future earning capacity claims, no claims of permanent injury, no significant life impact, and he still works out 3 times per week.

Damages are legally excessive when the amount of awarded damages is clearly disproportionate to the evidentiary basis for those damages. *Bongiovi v. Sullivan*, 122 Nev. 556, 578, 138 P.3d 433, 449 (2006). Compensatory damages should be awarded for the harm incurred and not to punish the defendant. *New Hampshire Ins. Co. v. Gruhn*, 99 Nev. 771, 773, 670 P.2d 941, 942 (1983).

Here, the jury concluded that the Plaintiff suffered a lumbar facet injury that had no objective presentation. He had no bruising to his lumbar spine; no swelling; and there were no traumatic presentations in any imaging/scans. The jury then disregarded testimony of Defendants’ expert that Plaintiff received facet joint injections where none even existed due to Plaintiff’s unique spinal column. Nevada statute fixes the ratio of compensatory damages to punitive damages at 3 times the

compensatory damages or a maximum of \$300,000. NRS 42.005. While no such limitation specifically exists for compensatory damages, they must bear a rational relationship to the evidentiary basis supporting the damages. Here, they do not. Because the pain and suffering damages awarded to Plaintiff do not bear a rational relationship to the evidence presented regarding Plaintiff's pain and suffering, a new trial as to damages is warranted.

**3. Defendant's were barred from presenting evidence of Plaintiff's 2<sup>nd</sup> vehicle vs. pedestrian accident even though the door was opened by Plaintiff's expert**

Based on a trial brief filed one (1) week prior to the start of trial, the Court disallowed evidence Plaintiff was in a 2<sup>nd</sup>, and more severe motor vehicle vs. pedestrian accident 90 days after the subject accident, wherein he was again hit by a car, clipping his legs, flipping him up into the air before impacting the ground, and ultimately putting Plaintiff into a coma for 2 days. Defendants maintain this trial brief was an untimely motion in limine that forced a shortened timeline of opposition and subsequent hearing that was prejudicial to Defendants. Nonetheless, the Court ordered that Defendants were not allowed to discuss Plaintiff's second accident subject to the door being opened. See Minutes from Hearing on 3/20/2024, on file herein.

However, at trial, under cross-examination, Plaintiff's medical expert, Dr. Muir opened the door to the 2<sup>nd</sup> accident by stating that when Plaintiff hit his head in the 2<sup>nd</sup> accident, he could have worsened his back pain or had a new back injury:

Q. Okay. And then two weeks after your injections, you're aware that Mr. Moss was in a second car accident; correct?

A. We talked about it, yes.

Q. How were you aware of that accident?

A. The patient told us when he came back in January, on that visit we're talking about, he mentioned that he had another accident, that he suffered head injury, and denied injuring the low back or increase in symptoms in the low back.

Q. Did you review any records from that second car accident?

A. At that time as the treating physician, no.

Q. Did you review records later when you did your review?

A. I have, yeah.

1 Q. Why did you review those records?

2 A. Because they could be pertinent. They could be important. *When he hit the*  
 3 *head, he could have worsened his back pain or had a new back injury*, which  
 4 would have been important to know and could cloud the distinction of  
 afterwards are we treating him because of that car accident or are we treating  
 him from the prior accident or a combination.

5 See Excerpt of Trial Transcript, Day 3, at 155:6-156:4, attached as **Exhibit F**.

6 However, the Court denied Defendants' attempt to open the door to the 2<sup>nd</sup> accident  
 7 immediately after the exchange above. By admitting Plaintiff's 2<sup>nd</sup> accident could have worsened his  
 8 back pain, Plaintiff's expert unequivocally opened the door to elicit testimony about the details of the  
 9 2<sup>nd</sup> accident, and it was improper for the Court to deny Defendants' the right to do so. The 2<sup>nd</sup> accident  
 10 was a factual event that happened in the middle of Plaintiff's treatment after the subject accident. The  
 11 2<sup>nd</sup> accident impacted his ability to attend conservative care appointments. Defendants' retained  
 12 medical expert is not required in order to (i) discuss a factual event that caused concussive injuries to  
 13 Plaintiff, or (ii) discuss how such an event could have caused, or why it could not have caused, injuries  
 14 (or exacerbation of injuries) to Plaintiff.

15 Furthermore, the 2<sup>nd</sup> accident caused additional general damages which were not addressed  
 16 by Plaintiff at trial. At best, the general damages after the 2<sup>nd</sup> accident were comingled with the  
 17 subject accident, which were not apportioned by Plaintiff or the jury. Denying Defendants the right  
 18 to question Plaintiff and his witnesses about the 2<sup>nd</sup> accident was an error in law pursuant to NRCP  
 19 59(a)(1)(G), and a new trial should be award on this ground as well.

20 **C. REMITTITUR IS WARRANTED AND SHOULD BE GRANTED AS AN ALTERNATIVE TO A NEW TRIAL**

21 An order of remittitur is reviewed for an abuse of discretion. See *Harris v. Zee*, 87 Nev. 309,  
 22 311, 486 P.2d 490, 491 (1971). The Nevada Supreme Court accords deference to the point of view of  
 23 the trial judge since they had the opportunity to weigh evidence and evaluate the credibility of  
 24 witnesses. *Id.* at 311, 486 P.2d at 491–92. There is no essential difference between the procedures  
 25 appropriate for remittitur and additur. The court upon appropriate motion should first determine  
 26 whether the damages are clearly excessive and, if so, whether the case would be a proper one for  
 27 granting a motion for a new trial limited to damages. If both conditions exist, the court in its discretion  
 28 may issue an order granting the motion for a new trial, unless the plaintiff consents to remittitur set



1 by the court, within the time it allows. *Drummond v. Mid-W. Growers Co-op. Corp.*, 91 Nev. 698,  
2 712, 542 P.2d 198, 208 (1975).

3 Nevada courts have the power to condition an order for a new trial on acceptance of remittitur.  
4 NRCP 59(a)(6); *Harris v. Zee*, 87 Nev. 309, 311, 486 P.2d 490, 491 (1971); *Hotel Riviera, Inc. v.*  
5 *Short*, 80 Nev. 505, 396 P.2d 855 (1964); *Brownfield v. Wollworth Co.*, 69 Nev. 294, 297, 251 P.2d  
6 589 (1952). *Lee v. Ball*, 121 Nev. 391, 394, 116 P.3d 64, 66 (2005). Just like additur, the test for  
7 remittitur has two prongs: (1) whether the damages are clearly excessive, and (2) ***whether the case***  
8 ***would be a proper one for granting a motion for a new trial limited to damages.*** *Drummond v. Mid-*  
9 *W. Growers Co-op. Corp.*, 91 Nev. 698, 712, 542 P.2d 198, 208 (1975). “If both prongs are met, then  
10 the district court has ***discretion*** to grant a new trial, unless the plaintiff consents to the court's  
11 remittitur. *Id.* (emphasis added).

12 The application of remittitur and post-trial remedy’s interplay with the rules and requirements  
13 for a new trial are fully apparent in this case. Defendants are entitled to remittitur in this case because  
14 the jury disregarded the Court’s instructions and returned a verdict that is so excessive as to shock  
15 the judicial conscience of this Court.

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1 **V. CONCLUSION**

2 As argued above, multiple grounds exist to grant Defendants' NRCP 50(b) Motion for  
3 Judgment as a Matter of Law regarding Plaintiff's past medical damages as well as his future medical  
4 damages. Moreover, multiple grounds exist to grant Defendants a new trial. The jury's award appears  
5 on its face to be made with a manifest disregard of the instructions of this Court and as a result of  
6 passion and prejudice. Therefore, Defendants respectfully asks this Court to grant their Motion for  
7 Judgment as a Matter of Law, and their Motion for a New Trial, or in the alternative to grant remittitur.

8 DATED this 26<sup>th</sup> day of April, 2024.

9 **MESSNER REEVES LLP**

10 /s/ Steven Knauss  
11 M. CALEB MEYER, ESQ.  
12 Nevada Bar No. 13379  
13 RENEE M. FINCH, ESQ.  
14 Nevada Bar No. 13118  
15 STEVEN G. KNAUSS, ESQ.  
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17 8945 W. Russell Road, Ste. 300  
18 Las Vegas, Nevada 89148  
19 *Attorneys for Defendants Sean Edward Tomesco*  
20 *and Second Opinion Plumbing, LLC*  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

On this 26<sup>th</sup> day of April, 2024, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO NRCP 50(b), AND MOTION FOR NEW TRIAL PURSUANT TO NRCP 59, OR ALTERNATIVELY FOR REMITTITUR** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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/s/ James Alvarado  
Employee of MESSNER REEVES LLP

**EXHIBIT “A”**

**EXHIBIT “A”**

**In the Matter Of:**

**JARED MOSS**

**VS**

**SEAN EDWARD TOMESCO**

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**JURY TRIAL DAY 3**

*March 27, 2024*

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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

|                        |   |                        |
|------------------------|---|------------------------|
| JARED MOSS,            | ) |                        |
| individually,          | ) |                        |
| Plaintiff,             | ) | CASE NO. A-21-840372-C |
|                        | ) | DEPT. NO. 20           |
| vs.                    | ) |                        |
|                        | ) |                        |
| SEAN EDWARD TOMESCO,   | ) |                        |
| INDIVIDUALLY; SECOND   | ) |                        |
| OPINION PLUMBING, LLC, | ) |                        |
| A DOMESTIC LIMITED     | ) |                        |
| LIABILITY COMPANY;     | ) |                        |
| DOES I THROUGH X,      | ) |                        |
| INCLUSIVE; ROE         | ) |                        |
| CORPORATIONS IX        | ) |                        |
| THROUGH XX, INCLUSIVE, | ) |                        |
|                        | ) |                        |
| Defendants.            | ) |                        |

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BEFORE THE HONORABLE ERIC JOHNSON

WEDNESDAY, MARCH 27, 2024,

RECORDER'S TRANSCRIPT OF PROCEEDING:

JURY TRIAL DAY 3

APPEARANCES:

For the Plaintiff: ALISON BRASIER, ESQ.  
BETSY C. JEFFERIS-AGUILAR, ESQ.

For the Defendants: STEVEN KNAUSS, ESQ.  
CHERYL BRADFORD, ESQ.

Recorded by: Angie Calvillo, Court Recorder

Transcribed by: Kimberly A. Farkas, RPR, NV CCR No. 741

1 Consensus Guidelines as far as the diagnosis and  
2 treatment for Jared's facet injuries?

3 A. No, nothing.

4 MS. BRASIER: Okay. Your Honor, I'm just  
5 going to publish the summary of the medical bills that  
6 I used in my opening. I don't believe Mr. Knauss has  
7 an objection to that.

8 MR. KNAUSS: No objection.

9 MS. BRASIER: Just a demonstrative.

10 THE COURT: Just a demonstrative? You're not  
11 introducing it into evidence?

12 MS. BRASIER: No, Your Honor.

13 THE COURT: All right. Go ahead.

14 BY MS. BRASIER:

15 Q. Dr. Muir, as part of your expert work in this  
16 case, did you review the medical bills and records  
17 related to these facilities that I have listed here,  
18 Henderson Hospital, Shadow Emergency Physicians, Desert  
19 Radiology, Advanced Spine & Rehabilitation, that's  
20 Dr. Janda, your office, Pueblo Medical Imaging, and  
21 Anesthesia and Intensive Care?

22 A. I did.

23 Q. Okay. And the total for all that treatment  
24 was \$161,545; correct?

25 A. Correct.

1 Q. Okay. Based on your review of the medical  
2 records in this case from those different facilities,  
3 was all of that treatment reasonable and related to  
4 Jared being hit by the van in July of 2020?

5 A. Yes.

6 Q. Okay. And is the billing associated with all  
7 of that treatment, is that usual and customary for the  
8 Las Vegas community?

9 A. Yes, it is.

10 Q. Meaning, you didn't see anything that were  
11 outliers, crazy high bills?

12 A. I did not.

13 Q. Okay. Thank you. And in your review of the  
14 records, was there anything in there that you thought,  
15 hey, it might be some other reason that he needed to  
16 get any of this treatment?

17 A. No.

18 MS. BRASIER: Okay. Your Honor, may we have  
19 a quick side bar?

20 THE COURT: Sure.

21 (The following proceedings were held outside  
22 the presence of the jury.)

23 MS. BRASIER: I'm at a good kind of  
24 transition point so I was just wondering if it would be  
25 appropriate --

**EXHIBIT “B”**

**EXHIBIT “B”**



**In the Matter Of:**

**JARED MOSS**

**VS**

**SEAN EDWARD TOMESCO**

---

**JURY TRIAL DAY 4**

*March 29, 2024*

---



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

|                        |   |                        |
|------------------------|---|------------------------|
| JARED MOSS,            | ) |                        |
| individually,          | ) |                        |
| Plaintiff,             | ) | CASE NO. A-21-840372-C |
|                        | ) | DEPT. NO. 20           |
| vs.                    | ) |                        |
|                        | ) |                        |
| SEAN EDWARD TOMESCO,   | ) |                        |
| INDIVIDUALLY; SECOND   | ) |                        |
| OPINION PLUMBING, LLC, | ) |                        |
| A DOMESTIC LIMITED     | ) |                        |
| LIABILITY COMPANY;     | ) |                        |
| DOES I THROUGH X,      | ) |                        |
| INCLUSIVE; ROE         | ) |                        |
| CORPORATIONS IX        | ) |                        |
| THROUGH XX, INCLUSIVE, | ) |                        |
|                        | ) |                        |
| Defendants.            | ) |                        |

---

BEFORE THE HONORABLE ERIC JOHNSON

FRIDAY, MARCH 29, 2024,

RECORDER'S TRANSCRIPT OF PROCEEDING:

JURY TRIAL DAY 4

APPEARANCES:

For the Plaintiff: ALISON BRASIER, ESQ.  
BETSY C. JEFFERIS-AGUILAR, ESQ.

For the Defendants: STEVEN KNAUSS, ESQ.  
CHERYL BRADFORD, ESQ.

Recorded by: Angie Calvillo, Court Recorder

Transcribed by: Kimberly A. Farkas, RPR, NV CCR No. 741

1 So I had the history that I took from Mr. Moss. I had  
2 the physical exam. And I had all the records that were  
3 available to me at the time.

4 Q. And did you have imaging?

5 A. Is it okay if I refer to my report?

6 Q. Yes.

7 A. Yes.

8 Q. Okay. Let's discuss your opinions. With  
9 respect to the lumbar spine, did you form any opinions  
10 as to whether there was any acute injury to Mr. Moss?

11 A. Yes.

12 Q. Okay. And what is your opinion?

13 A. Well, based on the records that I reviewed, I  
14 didn't see any structural injury on any of the imaging  
15 studies. It's often common times when you get an  
16 incident like this, you can strain the muscles. So I  
17 believe that, at most, there was a soft tissue strain.

18 Q. And what treatment do you believe was  
19 necessary as a result of that injury?

20 A. I think it was reasonable to evaluate him the  
21 day of the injury when he went to the emergency room.  
22 I think it was reasonable to take the imaging studies  
23 that were performed that day. For a soft tissue strain  
24 we typically prescribe six to eight weeks of physical  
25 therapy or chiropractic care. I think he had about

1 three months, and I think three months would be a  
2 reasonable period of time. Then after that the soft  
3 tissue strain there's usually no more treatment.

4 Q. Okay. Did you take into consideration  
5 Mr. Moss' reported symptoms and his history as what  
6 we've been talking about as his injury when you  
7 formulated that opinion?

8 A. Yes.

9 Q. Okay. Did you take into consideration  
10 Mr. Moss' examinations by Dr. Janda of Advanced Spine  
11 and Rehabilitation?

12 A. Yes.

13 Q. Did you take into consideration Mr. Moss'  
14 examinations by Dr. Muir?

15 A. Yes.

16 Q. And did you take into consideration Mr. Moss'  
17 diagnostic scans, including the CT scan from  
18 Henderson Hospital and the MRI that Dr. Muir ordered?

19 A. Yes.

20 Q. On Wednesday Dr. Muir provided hours of  
21 testimony. He's an orthopaedic surgeon that now has a  
22 pain management practice. He relied heavily on some  
23 pain management standards promulgated by the ASRA that  
24 were referred to as the gold standard.

25 Have you ever heard of such a standard?

**EXHIBIT “C”**

**EXHIBIT “C”**



653 N Town Center Drive, Suite 210  
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Spine Surgery



## **MEDICAL RECORDS REVIEW**

**Patient:** Jared Moss  
**Date of Injury:** 7/9/2020  
**Type of injury:** Ped vs Auto  
**Date of review:** 7/5/2021  
**Time involved in review/report:** 5 hrs.

### **Medical Records**

1. Henderson Hospital
2. Shadow Emergency Physicians
3. Desert Radiologist
4. Advanced Spine & Rehabilitation
5. William Muir, MD
6. Pueblo Medical Imaging
7. Anesthesia and Intensive Care
8. Community Ambulance
9. Sunrise Hospital
10. Fremont Emergency Services
11. Radiology Specialists

### **1. Henderson Hospital**

**7/9/2020: ER Visit**

**Chief Complaint:** S/p fall. Right buttock pain, swelling

**History of Present Illness:** The patient presents with complaints of right buttock pain status post fall backwards after being hit by a car. He also reports low back pain that gradually started after he fell. He states that the car had been stopped and then started to go to make a left-hand turn and hit him in the intersection. He said that the car hit his hands and he fell backwards onto his buttock and back. He denies hitting his head. He has been ambulatory all day but stated that he really only noticed pain in the buttock when he got into the family members car and noticed that there was a bunch of swelling as well.

**Exam:** Mild to moderate diffuse mid to lower lumbar tenderness. Normal, painless ROM of both hips and knees although with extremes of flexion there is worsening of his low back pain complaints. Large hematoma affecting the right buttock with minimal overlying superficial abrasion. No tenderness of the hands or wrists. No motor or sensory deficits noted.

**CT Abdomen/Pelvis:** Soft tissue hematoma of the right posterior buttock, superficial to the muscle in the subcutaneous tissues, measuring 2.7 x 6.0 x 12.0 cm in dimension

**CT Lumbar Spine:** Unremarkable

**Impression:** Pedestrian injured in traffic accident. Lumbar contusion. Traumatic hematoma of buttock

**Plan:** Rx Ibuprofen, APAP. D/c home

*Medical bills were reviewed and \$25,864.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **2. Shadow Emergency Physicians**

### **7/9/2020: Emergency Evaluation & Management \$1335**

Provider: Dr. Martin

*Medical bills were reviewed and \$1,335.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **3. Desert Radiologist**

### **7/9/2020: CT Lumbar Spine \$556**

Unremarkable

### **7/9/2020: CT Abdomen and Pelvis \$1048**

Soft tissue hematoma of the right posterior buttock, superficial to the muscle in the subcutaneous tissues, measuring 2.7 x 6.0 x 12.0 cm in dimension

No acute traumatic injury identified within the peritoneal cavity or retroperitoneum

*Medical bills were reviewed and \$1,604.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **4. Advanced Spine & Rehabilitation**

**Treatment Dates: 7/10/2020-1/6/2021 (31 Sessions)**

### **7/10/2020: Initial Report**

**Chief Complaints:** Low back pain, Right buttock/hip pain, Right knee pain, Sleeplessness

**History of Injury:** The patient was a pedestrian and a marked crosswalk and an intersection when a driver of a full-size van failed to yield and struck the patient, knocking him to the ground. He was unable to get out of the way of the Van and reports landing on his right side. He states the offending driver fled the scene. The patient presented to the ER for evaluation where he underwent CTs. He presents today with lower back pain as well as right knee pain and right buttock pain currently rated 8/10.

**Past Medical History:** Noncontributory

**Medications:** Methadone

**Exam:** Notable difficulty with prolonged sitting. Transition from a seated position was guarded. Palpation revealed spasms and marked tenderness along the lumbar paraspinal musculature bilaterally. Marked tenderness at the lower lumbar facets and SI joints, greater on the right. ROM significantly reduced in the lumbar spine. Positive standing Kemp's test, Sitting Kemp's, Farfan Torsion and Compression, SI Compression, Hibb's on the right. Large hematoma with associated swelling in the right hip buttock region with marked tenderness in the posterior hip. Positive tenderness in the posterior aspect of the right knee. ROM within normal limits.

**10/5/2020:** Reports gradual overall improvement of his right hip. He does have some continued lower back pain and tightness and is scheduled for injections tomorrow. The patient received 31 sessions of chiropractic treatment with the last session on 1/6/21. At that time the patient did have hypertonicity in the lumbar musculature and the current radiating pain was 0-3/10 with overall improvement of 90%.

**10/28/2020:** Patient reports he was struck by a car on 10/22/2020. He was transported to sunrise Hospital and hospitalized due to TBI symptomatology including blunt head trauma and loss of consciousness. He reports no increased symptomatology in regards to his chief complaints related to the MVA versus pedestrian collision from 7/9/20.

**12/2/2020:** Patient reports overall 70% improvement of his low back pain since starting treatment. He does feel that his pain is starting to increase him that his injection response is starting to wear off. Current pain 3-5/10. He reports increased pain with prolonged sitting and daily activities. He does report his right buttock/hip pain and sleeplessness have resolved.

### **1/6/2021: Final Report**

Patient reports 90% overall improvement of his low back pain complaints since beginning treatment. Current pain intensity radiating over the past week is 0-3/10. He does continue to have slightly increased pain and/or symptoms with travel, work,

rotation, lifting, walking and standing.

**Exam:** Hypertonicity in the lower lumbar musculature with mild tenderness. ROM was within normal limits.

*Medical bills were reviewed and \$7,262.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **5. William Muir, MD**

### **7/23/2020: Initial Visit**

**Chief Complaints:** Low back pain

**History of Injury:** On 7/9/2020, the patient was a pedestrian crossing a marked crosswalk at the intersection of Maryland and Wigwam, when a driver of a vehicle failed to yield, hitting and knocking the patient to the ground. He was evaluated in the ER.

**Medical History:** None

**Past Surgical History:** None

**Lumbar Exam:** ROM-flexion 100%, extension 90%, lateral flexion 100% all with pain. Sensation and strength intact and full. Mild to moderate tenderness in the lumbar paraspinals and right buttock and SI joint and moderate muscle tightness

**Impression:** Sprain/strain with possible additional injuries, Right buttock contusion/hematoma

**Plan:** Refer for MRI if pain persists

### **8/10/2020: Followup Visit**

Presents for a follow-up via telemedicine. Reports he continues to attend therapy with noted benefit as his overall pain has decreased. He is no longer having the sharp pains and is now only having that of a intermittent discomfort depending on his activity.

**Plan:** Continue therapy as beneficial

### **9/9/2020: Followup Visit**

Telemedicine follow up. Overall condition remains the same. He does take methadone chronically but despite medications still feels the low back pain.

**Plan:** Refer for MRI lumbar spine

### **9/16/2020: Followup Visit**

Presents for follow-up and for review of his recent lumbar spine MRI. He reports he continues to attend therapy with noted temporary benefit however his overall progress has somewhat plateaued and he continues to experience low back pain.

**MRI:** Facet hypertrophy and disc height narrowing L4-S1

**Plan:** Candidate for bilateral L4-S1 facet injections

### **10/6/2020: Procedure: Bilateral L4-S1 Facet Injections**

Pre-Procedure Pain: 3/10

Post-Procedure Pain: 0/10

### **1/12/2021: Followup Visit**

Follow-up via telemedicine and status post bilateral L4-S1 facet injections which occurred on 10/6/2020. The patient reports up until 2 weeks ago he had what he described as 100% pain relief with only some mild tightness. Over the last 1-2 weeks he has noted a slight and progressive return of pain.

**Subsequent injuries** (new since problem for which being seen):

Ped vs auto in late 10/2020. Suffered head injury. Denies injury to low back or increase of symptoms

**Plan:** Candidate for bilateral L3, L4, L5 MBB for consideration of an RFA

### **1/19/2021: Procedure: Bilateral L3, L4, L5 MBB**

Pre-Procedure Pain: 3/10

Post-Procedure Pain: 2-3/10

### **2/3/2021: Followup Visit**

Telemedicine followup and s/p bilateral L3, L4, L5 MBB from 1/19/2021. The patient reports again 100% pain relief with the injections.

**Plan:** Candidate for RFA if pain returns. No if no return of pain likely would be at MMI



**3/3/2021: Followup Visit**

Telemedicine followup. Reports that he has continued to remain pain free since his lumbar MBB, although has noted some return of the "tightness" and "stiffness" in his low back of which usually precedes the return of pain. He does admit that he currently he is in school and does sit for long periods of time after which he will notice more tightness, but with activity will improve and nearly resolve. Discussed HEP and stretching as well as breaks from a seated position.

Plan: Candidate for RFA if pain returns. No if no return of pain likely would be at MMI

**3/31/2021: Followup Visit**

Telemedicine follow up. Reports that the very positive therapeutic response from the January medial branch block injection has now worn off. He is miserable with his low back pain and wishes to discuss options and in particular radiofrequency ablation which he has researched online.

Plan: Candidate for bilateral L3, L4, L5 RFA

**4/6/2021: Procedure: Bilateral L3, L4, L5 RFA****4/21/2021: Followup Visit**

Telemedicine followup s/p bilateral L3, L4, L5 RFA which took place on 4/6/2021. The patient reports he is doing very well and has already noted complete relief of his low back pain and symptoms.

Plan: If no return of pain or symptoms at next visit, would be at MMI

**5/19/2021: Followup Visit**

Telemedicine followup. Continues to do very well since his RFA and has not noted any return of pain/

Plan: At MMI

*Medical bills were reviewed and \$59,791.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

**6. Pueblo Medical Imaging****7/3/2020: Xray Right Knee \$150**

Unremarkable

**9/12/2020: MRI Lumbar Spine (No billing)**

L1-2: Unremarkable

L2-3: Unremarkable

L3-4: Unremarkable

L4-5: Bilateral facet hypertrophy

L5-S1: Disc height narrowing

*Medical bills were reviewed and \$150.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

**7. Anesthesia and Intensive Care****10/6/2020: Anesthesia Coverage \$1750**

Procedure: Bilateral L4-S1 Facet Injections

**1/19/2021: Anesthesia Coverage (No billing)**

Procedure: Bilateral L3, L4, L5 MBB

**4/6/2021: Anesthesia Coverage \$1750**

Procedure: Bilateral L3, L4, L5 RFA

*Medical bills (Incomplete) were reviewed and \$3,500.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

**8. Community Ambulance**

#### **10/17/2020: EMS Transport to Sunrise Hospital \$1266.60**

**Narrative:** 39-year-old male involved in an auto vs pedestrian accident. Upon arrival patient was found sitting upright and appeared to be in distress. The patient's girlfriend states that the patient was struck by a sedan with its 305 off while the patient was on the side of the road. The car fled the scene after the accident. Per the patient's girlfriend he was launched in the air and fell head first into the asphalt and was not alert for approximately 30 seconds. He was initially found to be alert and oriented x3 with a GCS of 14. The patient however was noted to be sluggish to respond to simple questions but was able to once given a painful stimuli. Patient chief complaint of pain is to his head and he does not remember the accident. Denies abdominal pain, visual changes, nausea vomiting. Patient showed no acute changes in route to sunrise and was stable in transport.

**Exam:** Patient's head showed a contusion to his right occipital region with abrasion, no active bleeding. Abrasion to the right eyebrow and right cheek. Small abrasion to the left knee. Back was unremarkable.

### **9. Sunrise Hospital**

**Admission: 10/17/2020-10/19/2020 \$117469**

#### **10/17/2020: Admission/ER Note**

**Chief Complaint:** Patient arrived by EMS with head pain, neck pain, extremity pain

**History of Present Illness:** 39-year-old male presents to the ED in c-collar with face pain, right shoulder pain, left knee pain, abdominal pain, left toe/foot pain that began today status post auto versus speed. Patient was struck during a hit and run an unknown speed with positive LOC.

**Exam:** Awake, alert. Abrasion to right side of the face. Scalp hematoma with laceration. Pupils equal and reactive. Immobilized in a C-collar. Abdominal diffuse tenderness. Back atraumatic. Abrasion to right shoulder. Abrasion to left knee. Abrasion to left toe. No motor or sensory deficits noted.

#### **Imaging:**

CT Cervical Spine: No evidence of acute injury

CT Facial Bones: No acute facial bone fractures

CT Brain: No evidence of acute intracranial hemorrhage

CT Thorax: No evidence of acute traumatic injury in the chest

CT Abdomen and Pelvis: No acute traumatic injury in the abdomen or pelvis

Xray Right Shoulder: No acute injury

Chest xray: Unremarkable

Xray Femur Bilateral: Unremarkable

Xray Tib-Fib Right: Unremarkable

Xray Hands Bilateral: No acute injury

Impression: Altered Mental Status, Abrasion, Contusion

Plan: Admit

#### **10/19/2020: Discharge Note**

39-year-old male with unknown past medical history presented on 10/17/2020 after being hit by a motor vehicle. Currently patient is alert and oriented x1-2, poor historian and not answering questions appropriately therefore HPI obtained by ER provider. It was reported that the patient was hit by a motor vehicle while crossing the road. Per EMS, the patient is taking methadone. There was no other information reported. Patient was admitted and monitored. No fracture seen on x-ray. Patient now more alert and awake. Able to work with PT and has been cleared for home.

**Discharge Diagnosis:** Altered mental status, Motor vehicle accident, injury. head contusion. Polysubstance abuse

### **10. Fremont Emergency Services**

**10/17/2020: Critical Care Evaluation and Management \$1899**

Provider: Brett Michael Hansen, MD

### **11. Radiology Specialists**

**10/17/2020: CT Cervical Spine \$189**

No evidence of acute injury

**10/17/2020: CT Facial Bones \$174**

No acute facial bone fractures

**10/17/2020: CT Brain \$156**

No evidence of acute intracranial hemorrhage

**10/17/2020: CT Thorax \$212**

No evidence of acute traumatic injury in the chest

**10/17/2020: CT Abdomen and Pelvis \$271**

No acute traumatic injury in the abdomen or pelvis

**10/17/2020: Xray Right Shoulder \$39**

No acute injury

**10/17/2020: Chest xray \$29**

Unremarkable

**10/17/2020: Xray Femur Bilateral \$39**

Unremarkable

**10/17/2020: Xray Tib-Fib Right \$29**

Unremarkable

**10/17/2020: Xray Hands Bilateral \$30**

No acute injury

## **Summary**

On **7/9/20** the patient was a pedestrian walking in a marked crosswalk at an intersection when a driver of a full-size van struck the patient impacting his hands, knocking him backwards to the ground landing on his back and buttocks.. The patient indicated he was unable to get out of the way of the van and after being struck landed on his right side. The patient was taken to **Henderson Hospital Emergency Room**. His chief complaints were right buttocks pain and swelling. On examination the patient had diffuse lower lumbar tenderness and a large hematoma over the right buttocks with minimal overlying superficial abrasion. Neurologically the patient was intact. A CT scan was obtained of the pelvis showing a soft tissue hematoma in the right posterior buttocks. A CT scan of the lumbar spine was taken as well. The patient was provided ibuprofen, aspirin, and was discharged to home.

The patient was evaluated at **Advanced Spine and Rehabilitation** on 7/10/20 with chief complaints of low back, right buttocks/hip, right knee pain. The patient also complained of difficulty sleeping. Initial examination was done which was abnormal regarding the lumbar spine joining significantly reduced lumbar range of motion, **Marked tenderness to the lower lumbar facets**, and a large hematoma with associated swelling in the right buttocks, as well as tenderness to the posterior aspect of the right knee. However the right knee range of motion was normal. The patient received 31 sessions of chiropractic treatment with the final report on 1/6/21. At that time the patient had been doing very well since his lumbar injection and was discharged from chiropractic treatment.

The patient was referred to evaluated by **William Muir M.D.**, Orthopedic Spine Surgeon, on 7/23/20 with chief complaint of low back pain. On examination the patient had painful lumbar range of motion with mild to moderate tenderness in the paraspinal lumbar muscles. The patient also complained of **sharp pains which are consistent with lumbar facet mediated pain**. A lumbar MRI scan was ordered and done on 9/12/20. The lumbar **MRI scan of the lumbar spine at Pueblo Medical Imaging** which was essentially fairly unremarkable with disc height narrowing at L5-S1 and bilateral facet hypertrophy at L4-5. The patient continued with his therapy however had somewhat plateaued. After discussing options the patient chose to proceed with the option of bilateral L4 to S1 facet injections. The patient's preinjection pain level is 3/10 and post level 0/10 which was diagnostic and very therapeutic. The patient returned three months later reporting that he had **100% pain relief** with only some mild tightness however recently the low back pain was returning. He also reported another pedestrian versus auto injury in October in which he suffered a head injury but denied any injury to the low back nor any increase of his lumbar symptoms. Subsequently in January 2021 the patient underwent bilateral L3, L4, L5 medial branch block injection which again provided 100% relief of pain from the injection. By March 2021 the patient noted some return of

lumbar symptomatology. By the end of March the positive benefit of the injection had worn off. On 4/6/21 the patient underwent bilateral radiofrequency ablations for the L4 to S1 levels. At follow-up, 15 days later, the patient noted complete relief of his low back pain and symptoms. The patient followed up again on 5/19/21 still reporting complete relief of his lumbar symptoms from the radiofrequency ablation. The patient was instructed to return for follow-up as needed.

As referenced above, on 10/7/20 the patient was involved in **another pedestrian versus automobile accident**. **Community Ambulance** reported to the scene and the patient appeared to be in distress. His girlfriend indicates that he was struck by another vehicle which resulting in the patient being launched in the air and following head first into the asphalt. The patient was not alert for approximately 30 seconds. The patient was found to be sluggish in response to simple questions. The patient's chief complaint was pain in the head. The patient was found to have a contusion to the right occipital region within the abrasion as well as an abrasion in the right eyebrow and right cheek. The patient was taken to **Sunrise Hospital** with chief complaints of head, neck, and extremity pain. On examination the patient was found to have an abrasion in the right side of his face, scalp hematoma, and laceration. *The patient was assessed as having no trauma to the low back.* CT scans were obtained of the cervical, face, brain, thorax, and abdomen all showing no acute traumatic injuries visible on CT scan. Impression was status post MVA with altered mental status, abrasion, and contusion. The patient was admitted to the hospital and discharged two days later. The patient's discharge diagnosis was motor vehicle accident with resulting altered mental status and head contusion. *There is no evidence that the patient sustained an exacerbation of low back pain neither in the medical records reviewed nor from the patient pertaining to the 10/7/20 accident.*

Due to the pedestrian versus automobile accident on 7/9/20 the patient sustained injury to his **lower lumbar facets**. The patient's symptoms included sharp pain with movements which is consistent with facet mediated pain. The patient underwent 2 lumbar injections that provided 100% relief of symptoms temporarily. The patient subsequently underwent radiofrequency ablation approximately 3 months ago which resulted in at least a temporary resolution of symptoms. The treatment rendered subsequent to the 7/9/20 MVA was reasonable, customary, and directly related to the injury. There are no prior medical records or history of the patient having lower lumbar facet mediated symptoms prior to the 7/9/20 injury. The patient did sustain an additional injury on 10/7/20 however the medical records are clear that this did not result in an exacerbation or new lumbar symptomatology. Due to the chronicity of the lumbar spine most likely the patient's low back pain will return and he most likely will benefit from future medical visits, therapy for acute exacerbations, imaging to rule out other new pathology, and repeat radiofrequency ablations. The need for such treatment is directly related to the 7/9/20 injury. The treatment of radiofrequency ablation is not considered to be a permanent treatment and there is a possibility that the patient's lumbar facet injury will resolve with time and not require future treatments.

These opinions are stated to a reasonable degree of medical probability and are based upon my evaluations of the patient and the medical records that I have reviewed. Opinions may change based upon the medical records or additional information.



William S. Muir, M.D.  
Orthopedic Spine Surgeon  
Diplomate, American Board of Orthopedic Surgeons  
Fellow, American Academy of Orthopedic Surgeons

## **Life Care Plan**

**Examinee: *Jared Moss***

Date of Birth: 9/1/1981

Date of Injury: 7/9/20

Date of Completion of Report: 7/5/21

Life Expectancy: to 79 years

**Prepared by William S. Muir MD**

Orthopedic Spine Surgeon

**Court Qualified Expert Witness in Life Care Plans**

International Academy of Life Care Planners Member

International Association of Rehabilitation Professionals Member

IARP Forensics Section Member

Fellow American Association of Orthopedic Surgeons

Member North American Spine Society

Member Nevada Orthopedic Surgeons Society

Member Clark County Medical Society

Alpha Omega Alpha Honorary Medical Society

Registered Physical Therapist

## **National Vital Statistics Reports Volume 68, Number 7 June 24, 2019**

### **United States Life Tables,**

by Elizabeth Arias, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics

**Abstract Objectives**—This report presents complete period life tables for the United States by race, Hispanic origin, and sex, based on age-specific death rates in 2017. **Methods**—Data used to prepare the 2017 life tables are 2017 final mortality statistics; July 1, 2017 population estimates based on the 2010 decennial census; and 2017 Medicare data for persons aged 66–99. The methodology used to estimate his leg tomorrow were bare the life tables for the Hispanic population remains unchanged from that developed for the publication of life tables by Hispanic origin for data year 2006. The methodology used to estimate the 2017 life tables for all other groups was first implemented with data year 2008. **Results**—In 2017, the overall expectation of life at birth was 78.6 years, decreasing from 78.7 in 2016. Between 2016 and 2017, life expectancy at birth decreased by 0.1 year for males (76.2 to 76.1) and did not change for females (81.1). Life expectancy at birth decreased by 0.1 year for the white population (78.9 to 78.8) and the non-Hispanic white population (78.6 to 78.5) between 2016 and 2017.

**Page 18 of National Vital Statistics Reports, Vol. 68, No. 7, June 24, 2019**

**Table 5 Life table for males: United States, 2017 Spreadsheet version (page 18)**  
available from:

[https://ftp.cdc.gov/pub/Health\\_Statistics/NCHS/Publications/NVSR/68\\_07/Table05.xlsx](https://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/68_07/Table05.xlsx).

### **Life expectancy:**

**40 years of age male . . . . . 39 years**

**Jared Moss is currently nearly 40 years of age**

**Therefore life expectancy is 79 years of age**

**Expected year of death is 2061**

## ***Estimated Medical Costs***

|                                      |
|--------------------------------------|
| <b>CATEGORIES:</b>                   |
| <b><i>Physician Care</i></b>         |
| <b><i>Ancillary Medical Care</i></b> |
| <b><i>Diagnostic Testing</i></b>     |
| <b><i>Summary of Costs</i></b>       |

**William S. Muir MD**

# Future Medical Needs: Jared Moss Physician Care

**DOB:9/1/81**  
**DOI:7/9/20**

[illegible]



**William S. Muir MD**

## Future Medical Needs: Jared Moss

**DOB: 9/1/81**  
**DOI: 10/18/16**

## Ancillary Medical Care

[illegible]

William S. Muir MD

**Future Medical Needs:**  
**Jared Moss**  
**Diagnostic Testing**

**DOB:9/1/1981**  
**DOI:7/9/20**

| <i><b>Item/Service</b></i>                                                   | Age | Year                                | Frequency           | Purpose               | cost                                                                 | Comment                                              | Source                                                              | LIFETIME COSTS |
|------------------------------------------------------------------------------|-----|-------------------------------------|---------------------|-----------------------|----------------------------------------------------------------------|------------------------------------------------------|---------------------------------------------------------------------|----------------|
| <i><b>Radiographs - Lumbar (AP, lateral, oblique, flexion-extension)</b></i> | 40  | Beginning 2021<br>Ending 2060<br>79 | once every 5 years  | Evaluation            | Per Unit \$247<br>Per year \$49.40                                   | Follow-up and evaluations due to acute exacerbations | William Muir MD<br>spine surgery<br>702-254-3020                    | \$1,927        |
| <i><b>MRI - Lumbar</b></i>                                                   | 40  | Beginning 2021<br>Ending 2060<br>79 | once every 10 years | Evaluation of L-spine | Per Unit \$1,650,\$1,650,<br>\$1,550 respectively.<br>Per year \$162 | Follow-up and evaluations due to acute exacerbations | Las Vegas Radiology, Pueblo Imaging, Desert Radiology Las Vegas, NV | \$6,318        |
|                                                                              |     |                                     |                     |                       |                                                                      |                                                      |                                                                     | <b>\$8,245</b> |
|                                                                              |     |                                     |                     |                       |                                                                      |                                                      |                                                                     |                |
|                                                                              |     |                                     |                     |                       |                                                                      |                                                      |                                                                     |                |

# Summary of Costs

Patient: ***Jared Moss***  
Expected life expectancy: 79

| CATEGORY                      | LIFETIME COST             |
|-------------------------------|---------------------------|
| <i>Physician Care</i>         | \$464,958                 |
| <i>Ancillary Medical Care</i> | \$677,040                 |
| <i>Diagnostics</i>            | \$8,245                   |
| <b>TOTAL LIFETIME COSTS</b>   | <b><i>\$1,150,243</i></b> |
|                               |                           |
|                               |                           |
|                               |                           |

**EXHIBIT “D”**

**EXHIBIT “D”**

**In the Matter Of:**

**JARED MOSS**

**VS**

**SEAN EDWARD TOMESCO**

---

**JURY TRIAL DAY 3**

*March 27, 2024*

---



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

|                        |   |                        |
|------------------------|---|------------------------|
| JARED MOSS,            | ) |                        |
| individually,          | ) |                        |
| Plaintiff,             | ) | CASE NO. A-21-840372-C |
|                        | ) | DEPT. NO. 20           |
| vs.                    | ) |                        |
|                        | ) |                        |
| SEAN EDWARD TOMESCO,   | ) |                        |
| INDIVIDUALLY; SECOND   | ) |                        |
| OPINION PLUMBING, LLC, | ) |                        |
| A DOMESTIC LIMITED     | ) |                        |
| LIABILITY COMPANY;     | ) |                        |
| DOES I THROUGH X,      | ) |                        |
| INCLUSIVE; ROE         | ) |                        |
| CORPORATIONS IX        | ) |                        |
| THROUGH XX, INCLUSIVE, | ) |                        |
|                        | ) |                        |
| Defendants.            | ) |                        |

---

BEFORE THE HONORABLE ERIC JOHNSON

WEDNESDAY, MARCH 27, 2024,

RECORDER'S TRANSCRIPT OF PROCEEDING:

JURY TRIAL DAY 3

APPEARANCES:

For the Plaintiff: ALISON BRASIER, ESQ.  
BETSY C. JEFFERIS-AGUILAR, ESQ.

For the Defendants: STEVEN KNAUSS, ESQ.  
CHERYL BRADFORD, ESQ.

Recorded by: Angie Calvillo, Court Recorder

Transcribed by: Kimberly A. Farkas, RPR, NV CCR No. 741

1 that full functionality would come back?

2 A. No. I tell patients it might be optimistic  
3 that probably 75 percent of the pain should be  
4 improved. And that's a 75 percent chance you'll be  
5 happy you had the surgery, 25 percent chance you'll  
6 wish you'd never had the surgery.

7 Q. So surgery is kind of the last option. It's  
8 not something, just because it's quicker, meaning it's  
9 just once, it's kind of last resort that you'd  
10 recommend?

11 A. It is. I mean, the patient does have the  
12 option. If they say, for whatever reason, when radio  
13 frequency wears off, I'd like to have a more definitive  
14 procedure, it would be appropriate to have a lumbar  
15 fusion, but I would try to talk the patient out of  
16 that, especially if they're having successful RFAs.

17 Q. And so the number that I've shown to the  
18 jury, \$1,539,710, does that include both possibilities,  
19 the RFAs for the rest of his life and the potential  
20 surgery?

21 A. Yes, it includes both. So the surgery is put  
22 into the life care plan saying that the patient may  
23 require, this would be the definitive treatment and  
24 this is what it would cost. But more likely than not,  
25 he would continue with the radio frequency ablation.

1 So rather than it being \$1.5 million, it's closer to  
2 1.1, \$1.2 million, with the RFAs.

3 Q. Okay. And if you could tell me just so the  
4 jury has the information and they can decide. So the  
5 \$1.5 million is radio frequency ablations and surgery.  
6 If Jared never got the surgery and just continued to do  
7 the RFAs that have been successful, what would that  
8 number be for in the life care plan?

9 A. It's about 1.1 to 1.2, \$1,150,243.

10 Q. Okay. So that amount is the RFAs only?

11 A. Yes.

12 Q. And the first one is if he had the RFAs and  
13 surgery.

14 And the costs that you've included in the  
15 life care plan to get to these numbers, how did you  
16 come up with those dollar figures?

17 A. There's two-ways to come up with the dollar  
18 figure. Generally, typically, what's done, you go to  
19 government books. And they look at your area and  
20 they'll tell you what the average cost is for that  
21 particular treatment. But that's a distorted cost  
22 because a lot of those are discounted 75 percent or  
23 50 percent because of what they utilize to pay for  
24 that.

25 The other one is to look at community



**EXHIBIT “E”**

**EXHIBIT “E”**

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

|                        |   |                        |
|------------------------|---|------------------------|
| JARED MOSS,            | ) |                        |
| individually,          | ) |                        |
| Plaintiff,             | ) | CASE NO. A-21-840372-C |
|                        | ) | DEPT. NO. 20           |
| vs.                    | ) |                        |
|                        | ) |                        |
| SEAN EDWARD TOMESCO,   | ) |                        |
| INDIVIDUALLY; SECOND   | ) |                        |
| OPINION PLUMBING, LLC, | ) |                        |
| A DOMESTIC LIMITED     | ) |                        |
| LIABILITY COMPANY;     | ) |                        |
| DOES I THROUGH X,      | ) |                        |
| INCLUSIVE; ROE         | ) |                        |
| CORPORATIONS IX        | ) |                        |
| THROUGH XX, INCLUSIVE, | ) |                        |
|                        | ) |                        |
| Defendants.            | ) |                        |

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BEFORE THE HONORABLE ERIC JOHNSON

FRIDAY, MARCH 29, 2024,

RECORDER'S TRANSCRIPT OF PROCEEDING:

JURY TRIAL DAY 4

APPEARANCES:

For the Plaintiff: ALISON BRASIER, ESQ.

BETSY C. JEFFERIS-AGUILAR, ESQ.

For the Defendants: STEVEN KNAUSS, ESQ.

CHERYL BRADFORD, ESQ.

Recorded by: Angie Calvillo, Court Recorder

Transcribed by: Kimberly A. Farkas, RPR, NV CCR No. 741

## INDEX OF WITNESSES

| Witness                | Direct | Cross | Redirect | Recross | Voir Dire |
|------------------------|--------|-------|----------|---------|-----------|
| Jeffery C.<br>Wang, MD | 13     | 43    | 75       | 78      | 54        |
|                        |        | 59    |          |         |           |

## INDEX OF EXHIBITS

| Exhibit               | Admitted |
|-----------------------|----------|
| Defendant's 140 - 147 | 27       |

1 have a nerve burn out.

2 MR. KNAUSS: Rebutting the evidence.

3 THE COURT: Well, I understand he's rebutting  
4 the evidence. He should have been rebutting that from  
5 Dr. Muir's report. If you're telling me that Dr. Muir,  
6 which I assume looking at the life care plan was clear  
7 that he thinks he should get one of these burn out  
8 things about every 12 months, your doctor should have  
9 provided a rebuttal opinion at that time in his report.  
10 So I'll sustain the objection.

11 MS. BRASIER: Thank you, Your Honor.

12 (The following proceedings were held in the  
13 presence of the jury.)

14 BY MS. BRADFORD:

15 Q. So, Doctor, is it your opinion that Mr. Moss  
16 does not need any of the care that was listed in  
17 Dr. Muir's life care plan?

18 MS. BRASIER: Objection, Your Honor. That's  
19 the same thing.

20 THE COURT: Overruled. I'll overrule that.

21 THE WITNESS: The future care that Dr. Muir?  
22 Yeah, I don't think that he needs that as it relates to  
23 the accident.

24 BY MS. BRADFORD:

25 Q. Okay. Doctor, were all your opinions today,

**EXHIBIT “F”**

**EXHIBIT “F”**

**In the Matter Of:**

**JARED MOSS**

**VS**

**SEAN EDWARD TOMESCO**

---

**JURY TRIAL DAY 3**

*March 27, 2024*

---



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

|                        |   |                        |
|------------------------|---|------------------------|
| JARED MOSS,            | ) |                        |
| individually,          | ) |                        |
| Plaintiff,             | ) | CASE NO. A-21-840372-C |
|                        | ) | DEPT. NO. 20           |
| vs.                    | ) |                        |
|                        | ) |                        |
| SEAN EDWARD TOMESCO,   | ) |                        |
| INDIVIDUALLY; SECOND   | ) |                        |
| OPINION PLUMBING, LLC, | ) |                        |
| A DOMESTIC LIMITED     | ) |                        |
| LIABILITY COMPANY;     | ) |                        |
| DOES I THROUGH X,      | ) |                        |
| INCLUSIVE; ROE         | ) |                        |
| CORPORATIONS IX        | ) |                        |
| THROUGH XX, INCLUSIVE, | ) |                        |
|                        | ) |                        |
| Defendants.            | ) |                        |

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BEFORE THE HONORABLE ERIC JOHNSON

WEDNESDAY, MARCH 27, 2024,

RECORDER'S TRANSCRIPT OF PROCEEDING:

JURY TRIAL DAY 3

APPEARANCES:

For the Plaintiff: ALISON BRASIER, ESQ.  
BETSY C. JEFFERIS-AGUILAR, ESQ.

For the Defendants: STEVEN KNAUSS, ESQ.  
CHERYL BRADFORD, ESQ.

Recorded by: Angie Calvillo, Court Recorder

Transcribed by: Kimberly A. Farkas, RPR, NV CCR No. 741

1 worded that badly.

2 So he got the first round of injections from  
3 you. He goes to 0 out of 10 pain; right?

4 A. Immediately he had 0 out of 10 pain. And  
5 then I did not see him until January.

6 Q. Okay. And then two weeks after your  
7 injections, you're aware that Mr. Moss was in a second  
8 car accident; correct?

9 A. We talked about it, yes.

10 Q. How were you aware of that accident?

11 A. The patient told us when he came back in  
12 January, on that visit we're talking about, he  
13 mentioned that he had another accident, that he  
14 suffered head injury, and denied injuring the low back  
15 or increase in symptoms in the low back.

16 Q. Did you review any records from that second  
17 car accident?

18 A. At that time as the treating physician, no.

19 Q. Did you review records later when you did  
20 your review?

21 A. I have, yeah.

22 Q. Why did you review those records?

23 A. Because they could be pertinent. They could  
24 be important. When he hit the head, he could have  
25 worsened his back pain or had a new back injury, which



1 would have been important to know and could cloud the  
2 distinction of afterwards are we treating him because  
3 of that car accident or are we treating him from the  
4 prior accident or a combination.

5 MR. KNAUSS: Your Honor, could I approach,  
6 take a side bar, please?

7 THE COURT: No.

8 MR. KNAUSS: Your Honor, just to make a  
9 record, I believe he's opening the door --

10 THE COURT: I don't want to hear it. You  
11 heard my no.

12 BY MR. KNAUSS:

13 Q. What records did you review about this second  
14 car accident?

15 A. For the report?

16 Q. Yes. Just if it helps, it was from  
17 Sunrise Hospital.

18 A. I'm there.

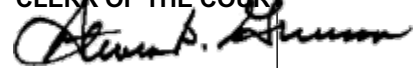
19 Q. Okay.

20 A. Yeah, Sunrise Hospital, Community Ambulance,  
21 my records, and the chiropractor's record.

22 Q. Mr. Moss testified in this trial he hurt his  
23 head in that accident. He had a scar on his head  
24 because of that accident. He felt foggiess for a time  
25 period afterward that.

**EXHIBIT “9”**

**EXHIBIT “9”**



1 **OPPM**

ALISON M. BRASIER, ESQ.

2 Nevada Bar No. 10522

BETSY C. JEFFERIS-AGUILAR, ESQ.

3 Nevada Bar No. 12980

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Nevada Bar No. 15333

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Nevada Bar No. 13685

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12 (702) 655-3763 – Facsimile

micah@claggettlaw.com

13 david@claggettlaw.com

charlie@claggettlaw.com

14 *Attorneys for Plaintiff*

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 JARED MOSS, individually,

18 Plaintiff,

19 vs.

20 SEAN EDWARD TOMESCO,  
individually; SECOND OPINION  
21 PLUMBING, LLC., a domestic limited  
liability company; DOES I through X,  
inclusive; ROE CORPORATIONS XI  
22 through XX, inclusive,

23 Defendants.

Case No. A-21-840372-C

Dept. No. 20

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' RENEWED  
MOTION FOR JUDGMENT AS A  
MATTER OF LAW PURSUANT TO  
NRCP 50(b), AND NRCP 59, OR  
ALTERNATIVELY, FOR  
REMITTITUR**

Hearing Date: July 10, 2024

Hearing Time: 8:30 a.m.

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Plaintiff, Jared Moss (“Plaintiff”), hereby opposes Defendants’ Renewed Motion for Judgment as a Matter of Law Pursuant to NRCP 50(b), and NRCP 59, or Alternatively, for Remittitur. This opposition is based upon the records and pleadings on file herein, the points and authorities attached hereto, and any oral argument that the Court may allow.

## MEMORANDUM OF POINTS AND AUTHORITIES

### INTRODUCTION

This is a personal injury case involving Plaintiff, as a pedestrian in a crosswalk, who was struck by Defendant Sean Tomesco (“Tomesco”), the driver of a 2004 Ford Econoline van while in the course and scope of his employment with Defendant Second Opinion Plumbing, LLC (collectively “Defendants”). Plaintiff filed his complaint against Defendants in August 2021 and litigated the case through trial before a jury, which awarded him the following amounts in the verdict form that was filed on March 29, 2024. *See Exhibit 1.*

|              |                                                                                                 |                           |
|--------------|-------------------------------------------------------------------------------------------------|---------------------------|
| 1.           | Past Medical Expenses:                                                                          | <b>\$200,000</b>          |
| 2.           | Past Physical and Mental Pain, Suffering, Anguish, Disability, and Loss of Enjoyment of Life:   | <b>\$200,000</b>          |
| 3.           | Future Medical Expenses:                                                                        | <b>\$1,500,000</b>        |
| 4.           | Future Physical and Mental Pain, Suffering, Anguish, Disability, and Loss of Enjoyment of Life: | <b><u>\$3,100,000</u></b> |
| <b>TOTAL</b> |                                                                                                 | <b>\$5,000,000</b>        |

The Court has not yet entered judgment on the jury’s verdict. Instead, the Court invited Defendants to file a post-trial motion on the amounts of the jury’s verdict, while staying the entry of judgment on the jury’s verdict.

1 See Jury Trial Day 4, March 29, 2024 (filed on May 13, 2024), at 178-80,  
2 attached as **Exhibit 2**. To expedite these post-trial proceedings, Plaintiff has  
3 prepared a draft judgment, consistent with the jury's verdict, to be entered on  
4 July 10, 2024, which is the hearing date on Defendants' motion. See Draft  
5 Judgment, dated July 10, 2024, attached as **Exhibit 3**.

6 Defendants move this Court for Renewed Motion for Judgment as a  
7 Matter of Law Pursuant to NRCP 50(b), and NRCP 59, or Alternatively, for  
8 Remittitur. For the several reasons outlined below, the Court should DENY  
9 Defendants' motion in its entirety.

10 (1) Since the jury has rendered its verdict in Plaintiff's favor, the law  
11 requires the Court to presume that the jury believed Plaintiff's version of the  
12 evidence. The same presumption favoring Plaintiff applies to Defendants'  
13 motion for judgment as a matter of law under NRCP 50(b).

14 (2) Defendants have not presented a complete statement of the standards  
15 under NRCP 50(b) for this Court to grant judgment as a matter of law. Under  
16 the complete and proper standards, Defendants' renewed arguments fail both  
17 procedurally and substantively.

18 (3) Although Defendants mention portions of the proper standards for a  
19 new trial under NRCP 59(a), they fail to argue or demonstrate that their  
20 substantial rights have been materially affected. Thus, the entirety of  
21 Defendants' new trial arguments, at most, fall under harmless error, as outlined  
22 in NRCP 61.

1           **(4)** As a matter of Nevada law, sufficient evidence supports the jury's  
2 award of Plaintiff's past medical expenses, such that Defendants are not  
3 entitled to a new trial under the NRCP 59(a)(1)(E) standard for manifest  
4 disregard of the jury instructions.

5           **(5)** Defendants did not properly challenge the sufficiency of the evidence  
6 to support the jury's award to Plaintiff for future physical and mental pain,  
7 suffering, anguish, disability, and loss of enjoyment of life. In any event, an  
8 award of pain and suffering is within the exclusive province of the jury and  
9 cannot be disturbed or second-guessed, particularly since Defendants' argument  
10 regarding punishment is not legally supported.

11           **(6)** Contrary to Defendants' argument, Dr. William Muir's trial testimony  
12 confirms that he did not "open the door" for Defendants to offer speculative  
13 argument regarding causation for Plaintiff's back injury as it relates to the  
14 subsequent accident. Defendants' own expert, Dr. Jeffrey Wang, did not relate  
15 any of Plaintiff's injuries caused by Defendants in this case to Plaintiff's  
16 subsequent accident, as this Court previously recognized.

17           **(7)** Defendants have not offered any legal reason for this Court to disturb  
18 the jury's verdict with remittitur, or alternatively, a new trial on damages.  
19 Defendants' mere label of "excessive" damages awarded by the jury is  
20 insufficient to satisfy the remittitur standard. Indeed, Defendants do not even  
21 suggest a remittitur amount. Thus, the Court should reject Defendants' bare  
22 request for remittitur.

1 In summary, the Court should DENY Defendants' Renewed Motion for  
2 Judgment as a Matter of Law Pursuant to NRCP 50(b), and NRCP 59, or  
3 Alternatively, for Remittitur. Defendants have not presented any legal reason  
4 why this Court should disturb the jury's verdict. Defendants' motion requesting  
5 judgment as a matter of law under NRCP 50(b) fails both procedurally and  
6 substantively. Likewise, Defendants' motion requesting a new trial does not  
7 satisfy any of the very difficult standards under NRCP 59(a) and, at most, only  
8 arises to harmless error.

### 9 LEGAL ARGUMENT

#### 10 I. THE LAW REQUIRES THE COURT TO PRESUME THAT 11 THE JURY BELIEVED PLAINTIFF'S VERSION OF THE 12 EVIDENCE.

13 Since the jury has rendered its verdict in Plaintiff's favor, the law  
14 requires the Court to presume that the jury believed his version of the evidence.  
15 *See Powers v. United Servs. Auto. Ass'n*, 114 Nev. 690, 702, 962 P.2d 596, 604  
16 (1998) ("[T]his court must presume that the jury believed evidence favorable to  
17 that prevailing party and drew inferences in that party's favor."); *Yamaha*  
18 *Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (noting that  
19 courts are "not at liberty to weigh the evidence anew, and where conflicting  
20 evidence exists, all favorable inferences must be drawn towards the prevailing  
21 party"); *Countrywide Home Loans v. Thitchener*, 124 Nev. 725, 739, 192 P.3d  
22 243, 252 (2008) (same).

23 Like the summary judgment standard, when ruling upon a motion for  
24 judgment as a matter of law, "[t]he [district] court must view all evidence and

1 inferences in favor of the nonmoving party.” *FGA, Inc. v. Giglio*, 128 Nev. 271,  
2 288, 278 P.3d 490, 500 (2012).

3 Despite these well-established presumptions, Defendants continue to  
4 mischaracterize the jury’s findings favoring Plaintiff as mere allegations. For  
5 example, Defendants use such language to mischaracterize Plaintiff’s injuries,  
6 including “an alleged facet injury to his lumbar spine.” Mot. at 3, line 12  
7 (emphasis added). Defendants also ask this Court to believe their own expert,  
8 Dr. Wang, despite the conflicting nature of his testimony with Plaintiff’s  
9 treating physician and expert, Dr. Muir. *Id.* at 8, 11. However, the law does not  
10 allow Defendants to mischaracterize the jury’s findings as mere allegations, now  
11 that the jury has rendered its verdict in Plaintiff’s favor. The Court should take  
12 this presumption into account, and all inferences in Plaintiff’s favor, when  
13 ruling upon the various contentions in Defendants’ motion.

14  
15 **II. UNDER THE COMPLETE AND PROPER STANDARDS**  
16 **UNDER NRCP 50(b), DEFENDANTS’ RENEWED**  
**ARGUMENTS FOR JUDGMENT AS A MATTER OF LAW**  
**FAIL.**

17 Defendants have not presented a complete statement of the standards  
18 under NRCP 50(b) for this Court to grant judgment as a matter of law. Under  
19 the complete and proper standards, Defendants’ renewed arguments fail both  
20 procedurally and substantively.

21 **1. The Complete and Proper Standards Under NRCP**  
22 **50(b) Are Fatal to Defendants’ Argument for**  
**Judgment as a Matter of Law.**

23 In deciding Defendants’ motion filed under NRCP 50(b), the Court must  
24 apply the same standards that are relevant to NRCP 50(a). *See Nelson v. Heer*,

1 123 Nev. 217, 223, 163 P.3d 420, 424 (2007) (“A renewed motion for judgment as  
2 a matter of law under NRCP 50(b) is subject to the same standard as a motion  
3 filed at the close of evidence under NRCP 50(a).”). So, the standards under  
4 NRCP 50(a) are relevant for the Court to decide Defendants’ NRCP 50(b) motion.

5 NRCP 50(a)(1)(B) conditions the granting of a motion for judgment as a  
6 matter of law on the “controlling law.” The Nevada Supreme Court has  
7 specifically approved this “controlling law” requirement when analyzing  
8 arguments under NRCP 50. “A motion for judgment as a matter of law may be  
9 granted if the opposing party ‘failed to prove a sufficient issue for the jury,’ so  
10 that [the] claim cannot be maintained under the controlling law.” *FGA, Inc. v.*  
11 *Giglio*, 128 Nev. 271, 287-88, 278 P.3d 490, 500 (2012). In other words,  
12 Defendants must come forward with some “controlling law” that entitles them  
13 to judgment as a matter of law.

14 “The entry of a directed verdict by a trial court is proper only if there is  
15 no question of fact remaining to be decided.” *Gordon v. Hurtado*, 91 Nev. 641,  
16 646, 541 P.2d 533, 536 (1975) (citing *Kline v. Robinson*, 83 Nev. 244, 428 P.2d  
17 190 (1967)). “If there is conflicting evidence on a material issue, or if reasonable  
18 persons could draw different inferences from the facts, the question is one of fact  
19 for the jury and not one of law for the court.” *Broussard v. Hill*, 100 Nev. 325,  
20 327, 682 P.2d 1376, 1377 (1984) (citing *Bliss v. DePrang*, 81 Nev. 599, 407 P.2d  
21 726 (1965)). Like the summary judgment standard, when ruling upon a motion  
22 for judgment as a matter of law, “[t]he [district] court must view all evidence  
23  
24



1 and inferences in favor of the nonmoving party.” *Giglio*, 128 Nev. at 288, 278  
2 P.3d at 500.

3 Since a motion filed under NRCP 50(b) simply renews the legal  
4 questions raised by an earlier NRCP 50(a) motion, a party filing an NRCP 50(b)  
5 motion “must make the same arguments in its pre-verdict NRCP 50(a) motion  
6 as it does in its post-verdict NRCP 50(b) motion.” *Zhang v. Barnes*, Dkt. No.  
7 67219, Order Affirming in Part, Reversing in Part and Remanding, 2016 Nev.  
8 Unpub. LEXIS 701, at \*5, 2016 WL 4926325 (Sept. 12, 2016) (unpublished);  
9 NRCP 50(b). A party cannot properly “raise arguments in its post-trial motion  
10 for judgment as a matter of law under Rule 50(b) that it did not raise in its pre-  
11 verdict Rule 50(a) motion.” *Freund v. Nycomed Amersham*, 347 F.3d 752, 761  
12 (9th Cir. 2003); *Murphy v. City of Long Beach*, 914 F.2d 183, 186 (9th Cir. 1990)  
13 (“[Judgment notwithstanding the verdict] is improper if based upon grounds not  
14 alleged in a directed verdict [motion].”) (brackets in original).<sup>1</sup> The Nevada  
15 Supreme Court considers this procedural defect to be fatal. *Zhang*, 2016 Nev.  
16 Unpub. LEXIS 701, at \*6-7 (“[T]he district court should have denied the NRCP  
17 50(b) motion for its procedural defect instead of addressing it on the  
18 merits. . . .”). Therefore, Defendants’ motion simply does not satisfy the very  
19 difficult standards to satisfy NRCP 50(b) for this Court to grant their requested  
20 relief.

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23 <sup>1</sup> See *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) (“We  
24 have previously recognized that federal decisions involving the Federal Rules of  
Civil Procedure provide persuasive authority when this court examines its  
rules.”).

1           **2. By Making an NRCP 50(a) Oral Motion for Directed**  
2           **Verdict Devoid of Any “Controlling Law,”**  
3           **Defendants Have Not Preserved Their Arguments**  
4           **for Judgment as a Matter of Law under NRCP 50(b).**

5           NRCP 50(a) does not specifically allow parties to make an oral motion for  
6           directed verdict. However, Nevada courts customarily allow for such directed  
7           verdict motions to be made orally. *See, e.g., S. Nev. Adult Mental Health Servs. v.*  
8           *Brown*, Dkt. No. 78770, Order of Reversal, 2021 Nev. Unpub. LEXIS 854, at \*4,  
9           2021 WL 5370820 (Nov. 17, 2021) (unpublished). But, the plain language of  
10          NRCP 50(a)(2) must still be followed: “The motion must specify the judgment  
11          sought and the law and facts that entitle the movant to the judgment.”  
12          (emphasis added).

13          On Day 4 of the jury trial, Defendants orally moved for directed verdict.  
14          During this discussion, Defendants did not identify any law to support their  
15          position. *See Exhibit 2*, at 4-9. Later in the day, just prior to closing arguments,  
16          the parties once again discussed Defendants’ oral motion for directed verdict—  
17          in which Defendants again did not identify any law, let alone any “controlling  
18          law” under NRCP 50(a)(1)(B), to support their oral motion for directed verdict.  
19          *Id.* at 104-08. Within this discussion, the Court noted, “I don’t have the case  
20          law here.” *Id.* at 104, line 17. Thus, before reaching the substance of  
21          Defendants’ NRCP 50(b) motion for judgment as a matter of law, the Court  
22          should first consider Defendants’ procedural failure to be fatal to its entire  
23          NRCP 50(b) motion. *See Zhang*, 2016 Nev. Unpub. LEXIS 701, at \*6-7 (“[T]he  
24          district court should have denied the NRCP 50(b) motion for its procedural  
defect instead of addressing it on the merits. . . .”).

1           Additionally, Defendants' NRCP 50(b) motion must be limited in scope to  
2   what Defendants actually argued at the NRCP 50(a) directed verdict stage.  
3   *See Zhang*, 2016 Nev. Unpub. LEXIS 701, at \*5 (explaining that a motion filed  
4   under NRCP 50(b) simply renews the legal questions raised by an earlier NRCP  
5   50(a) motion, such that a party filing an NRCP 50(b) motion "must make the  
6   same arguments in its pre-verdict NRCP 50(a) motion as it does in its post-  
7   verdict NRCP 50(b) motion"); *Freund*, 347 F.3d at 761 (confirming that a party  
8   cannot properly "raise arguments in its post-trial motion for judgment as a  
9   matter of law under Rule 50(b) that it did not raise in its pre-verdict Rule 50(a)  
10   motion"); *Murphy*, 914 F.2d at 186 ("[Judgment notwithstanding the verdict] is  
11   improper if based upon grounds not alleged in a directed verdict [motion].").  
12   Since Defendants did not offer any legal authority to support their motion for  
13   directed verdict, the Court should categorically deny Defendants' motion for  
14   judgment as a matter of law.

15           Within Defendants' oral motion for directed verdict, they only argued  
16   that any award of medical bills from the jury should be based solely upon the  
17   admitted documentary evidence, which they argue was only \$7,262.  
18   *See Exhibit 2*, at 4-9, 104-08. In other words, Defendants completely discounted  
19   Dr. Muir's testimony as irrelevant to supporting Plaintiff's requested medical  
20   expenses. *Id.* at 5. Defendants also argued that the demonstrative chart  
21   outlining Plaintiff's medical expenses was not evidence, such that the jury could  
22   not rely upon it to award his requested medical expenses. *Id.* Defendants finally  
23   argued that Dr. Muir's life care plan had to be admitted into evidence to support  
24

1 Plaintiff's requested future medical expenses. *Id.* at 5-6. Thus, Defendants' post-  
2 trial NRCP 50(b) motion for judgment as a matter of law must be limited to  
3 exactly what Defendants argued at the NRCP 50(a) directed verdict stage.

4 **3. Even if the Court Were to Consider Defendants'**  
5 **Unpreserved Arguments, Defendants Have Not**  
6 **Presented the Court With Any "Controlling Law" to**  
7 **Support Their Arguments for Judgment as a Matter**  
8 **of Law under NRCP 50(b).**

9 **a. Plaintiff's Past and Future Medical Expenses.**

10 In their NRCP 50(b) motion, Defendants argue that the jury could not  
11 award Plaintiff anything beyond the admitted medical bills from Advanced  
12 Spine & Rehabilitation for \$7,262. Mot. at 8. Defendants contrast the testimony  
13 of Dr. Muir, who testified that Plaintiff incurred \$161,545 in past medical  
14 expenses, with Dr. Wang, who testified that only a portion of the medical  
15 expenses were necessary—although Dr. Wang does not offer a specific dollar  
16 amount. *Id.* For the first time, Defendants mention some cases for the general  
17 principle that damages must be supported by evidence. *Id.* However, none of  
18 these cases support Defendants' contention that only admitted medical bills can  
19 support a plaintiff's request for an award of medical expenses.

20 In more detail, Defendants analyze for the first time an unpublished  
21 Nevada Court of Appeals case *Park Apts, Inc. v. Cisneros*, Dkt. No. 79982-COA,  
22 Order of Affirmance, 2021 Nev. App. Unpub. LEXIS 69, 2021 WL 631790 (Feb.  
23 17, 2021) (unpublished). Mot. at 8-9. Importantly, an unpublished order cannot  
24 be the basis for judgment as a matter of law under NRCP 50 because it does not  
provide "controlling law." See NRAP 36(c)(2) ("An unpublished disposition, while  
publicly available, does not establish mandatory precedent except in a

1 subsequent stage of a case in which the unpublished disposition was entered, in  
2 a related case, or in any case for purposes of issue or claim preclusion or to  
3 establish law of the case.”) (emphasis added). Additionally, NRAP 36(c)(3)  
4 directs that, aside from law of the case issues in the same case, “unpublished  
5 dispositions issued by the Court of Appeals may not be cited in any Nevada  
6 court for any purpose.” In any event, *Cisneros* actually supports Plaintiff’s  
7 position.

8 In *Cisneros*, the relevant issue presented mirrors Defendants’ argument:  
9 “Park Apts claims the district court erred when it allowed an expert witness to  
10 testify regarding the amount of Ms. Cisneros’s medical bills, and relied on that  
11 testimony when awarding special damages, when Ms. Cisneros failed to  
12 introduce the medical bills into evidence.” *Id.* at \*4. Before analyzing the issue,  
13 the Court of Appeals responded to the contention: “We disagree.” *Id.* at \*7. In  
14 *Cisneros*, there were only two medical bills at issue which were not admitted  
15 into evidence, even though the plaintiff’s treating physician and expert,  
16 Dr. Grabow, testified about the bills. *Id.* at \*8. In rejecting the defense  
17 argument, which is similar to Defendants’ argument here, the Court of Appeals  
18 held that an award of medical expenses can be based upon expert testimony,  
19 even when the actual medical bills are not admitted into evidence. *Id.* The Court  
20 of Appeals’ holding was based upon its own summary of *Pizarro-Ortega v.*  
21 *Cervantes-Lopez*, 133 Nev. 261, 266-68, 396 P.3d 783, 788-89 (2017): “where a  
22 medical expert was permitted to testify regarding the reasonableness of past  
23 expenses based on another witness’s report, and to provide an estimate of  
24

1 reasonable future medical expenses based on personal knowledge.” *Id.* The  
2 Court of Appeals reasoned that Dr. Grabow had personal knowledge of the  
3 plaintiff’s past medical expenses and was familiar with the billing practices for  
4 the procedures that plaintiff received, which resulted in a range of associated  
5 costs. *Id.* at \*8-9. Dr. Grabow also testified that his charges were reasonable  
6 and customary. *Id.* at \*10. Ultimately, the Court of Appeals held that “Dr.  
7 Grabow’s testimony is evidence,” and due to his personal knowledge and  
8 expertise, the district court’s award of medical expenses was proper, even  
9 though the actual medical bills were not admitted into evidence. *Id.* at \*10-11.

10 In their motion, Defendants avoid these key holdings of *Cisneros* and  
11 instead argue that the Court of Appeals’ holding required both (1) expert  
12 testimony supporting each provider and (2) the expert medical testimony must  
13 be uncontested. Mot. at 9. However, these two points were not preconditions  
14 for the district court to award medical expenses in *Cisneros*. Rather, they were  
15 just observations from the Court of Appeals to confirm that the district court did  
16 not abuse its discretion in awarding medical expenses to the plaintiff. *Cisneros*,  
17 2021 Nev. App. Unpub. LEXIS 69, at \*10-11. Thus, Defendants have not  
18 presented the Court with any “controlling law” to support their request for  
19 judgment as a matter of law. Instead, they have offered only an unpublished  
20 Court of Appeals case, *Cisneros*, that actually supports Plaintiff’s position.

21 In the instant case, after outlining his qualifications, Dr. Muir testified  
22 about his role as both Plaintiff’s treating physician and expert witness. See Jury  
23 Trial Day 3, March 27, 2024 (filed on May 13, 2024), at 16-21, attached as  
24

1 **Exhibit 4.** Dr. Muir explained that he reviewed all of Plaintiff's medical  
2 records relevant to this case to prepare his expert report. *Id.* at 18. Dr. Muir  
3 opined that Plaintiff has painful facet joints, often called facet syndrome, after  
4 being struck by Defendants' van on July 9, 2020. *Id.* at 21. During Dr. Muir's  
5 testimony, he referred to the demonstrative exhibit shown to the jury, which  
6 also contains handwritten notations that are consistent with his expert  
7 testimony. *Id.* at 23; *see* Chart of Medical Expenses, attached as **Exhibit 5**.  
8 This chart outlined that Plaintiff incurred \$161,545 in past medical specials and  
9 an estimated \$1,539,710 in future medical expenses. *Id.* Dr. Muir also testified  
10 that the \$1,539,710 figure was based upon Plaintiff receiving both radio  
11 frequency ablations (RFAs) and surgery, while just receiving RFAs would be the  
12 reduced amount of \$1,150,243. *Id.*; **Exhibit 4**, at 83-84. With regard to  
13 Plaintiff's past medical treatment and expenses, Plaintiff's counsel began  
14 directing Dr. Muir to the binder of Plaintiff's voluminous medical records.  
15 **Exhibit 4**, at 45, 48, 49. After admitting the Advanced Spine & Rehabilitation  
16 records were admitted into evidence, Plaintiff's counsel and Dr. Muir switched  
17 to the demonstrative chart because, as Dr. Muir expressed, the chart is "[l]ess  
18 bulky." *Id.* at 49. In Dr. Muir's continuing testimony, he discussed Plaintiff's  
19 medical treatment and again referred to the demonstrative chart of medical  
20 expenses. *Id.* at 72. The Court and counsel briefly confirmed that there was no  
21 objection to showing the chart to the jury, given that the chart was just a  
22 demonstrative and not being introduced into evidence. *Id.*

1           Following an extensive discussion of Plaintiff's treatment, Dr. Muir then  
2 explained that he reviewed the medical bills and records from Plaintiff's several  
3 providers, including Henderson Hospital, Shadow Emergency Physicians,  
4 Desert Radiology, Advanced Spine & Rehabilitation (Dr. Janda), Dr. Muir's own  
5 office, Pueblo Medical Imaging, and Anesthesia and Intensive Care. *Id.* at 72.  
6 Dr. Muir confirmed the total \$161,545 amount, which was itemized in the  
7 demonstrative chart. *Id.*; **Exhibit 5**. Dr. Muir further opined that all the past  
8 medical expenses were reasonable and related to Plaintiff being hit by the van  
9 in July 2020 and are usual and customary. **Exhibit 4**, at 73.

10           Dr. Muir then switched the focus of his testimony to Plaintiff's future  
11 medical expenses/life care plan. *Id.* at 77. Dr. Muir started explaining the  
12 factors that go into preparing a life care plan and how to include future medical  
13 expenses. *Id.* at 77-79. Dr. Muir explained that since the life care plan was  
14 prepared in July 2021, Plaintiff was two years closer to his life expectancy of 79.  
15 *Id.* at 79-80. Dr. Muir then began discussing the future care that Plaintiff  
16 would need, given his injuries. *Id.* at 81-83. While the jury was viewing the  
17 demonstrative chart, Dr. Muir testified that the \$1,539,710 amount for  
18 Plaintiff's life care plan includes both RFAs and surgery. *Id.* at 83. Dr. Muir  
19 clarified that Plaintiff's life care plan would be reduced to \$1,150,243 for the  
20 same future treatment with RFAs, but without surgery. *Id.* at 84-85. Plaintiff  
21 reemphasizes that these differing amounts for Plaintiff's life care plan were  
22 reflected in the demonstrative chart. **Exhibit 5**. Dr. Muir further testified that  
23 the future life care was based upon reasonable and customary amounts for  
24



1 medical treatment that Plaintiff had already received and customary in the Las  
2 Vegas community. **Exhibit 4**, at 85-86.

3 After Dr. Muir's cross-examination and redirect, the jury asked several  
4 questions, including Dr. Muir's confirmation that Plaintiff will live an expected  
5 37 years into the future. *Id.* at 187.

6 Therefore, even if the Court were to reach the substance of *Cisneros*,  
7 Plaintiff satisfies the standard, given that Dr. Muir's testimony is evidence.

8 **b. Plaintiff's Demonstrative Chart of Medical Expenses.**

9 In their motion, Defendants next argue that Plaintiff's demonstrative  
10 chart of medical expenses could not be considered by the jury since the chart  
11 was not actually admitted as evidence. Mot. at 9-10. For their contention,  
12 Defendants rely upon Jury Instruction No. 10, which informs the jury that  
13 charts and summaries are not evidence. However, this jury instruction does not  
14 completely discount the jury's reliance on such charts and summaries. *See* Jury  
15 Instruction No. 10, attached as **Exhibit 6**. Defendants further rely upon the  
16 unpublished Nevada Court of Appeals case *Hosny v. Hosny*, Dkt. No 82388-COA,  
17 Order of Reversal and Remand, 2022 Nev. App. Unpub. LEXIS 576 (Dec. 22,  
18 2022) (unpublished). As outlined, NRAP 36(c)(2) and NRAP 36(c)(3) prohibit  
19 *Hosny* from qualifying as "controlling law" under the NRCP 50(a) directed  
20 verdict and NRCP 50(b) judgment as a matter of law standards, such that the  
21 Court should deny Defendants' motion as a matter of procedure. *Zhang*, 2016  
22 Nev. Unpub. LEXIS 701, at \*6-7 ("[T]he district court should have denied the  
23 NRCP 50(b) motion for its procedural defect instead of addressing it on the  
24

merits. . .”). Even if the Court were to reach the merits of *Hosny*, it does not justify the relief that Defendants are seeking.

In *Hosny*, the Court of Appeals was critical of two demonstrative exhibits that were admitted into evidence in a divorce case in which the expert witness prepared the demonstrative exhibits but ***did not*** testify at trial. Ultimately, the Court of Appeals held that the district court abused its discretion in admitting demonstrative exhibits into evidence, which apparently had mathematical errors, without the supporting expert testimony for the exhibits. *Hosny*, 2022 Nev. App. Unpub. LEXIS 576, at \*10.

Of course, the facts of the instant case present just the opposite of the factual scenario in *Hosny*. Dr. Muir ***did*** testify at trial and laid the foundation for Plaintiff’s demonstrative chart of medical expenses. Yet, the demonstrative chart was ***not*** admitted as evidence. So, *Hosny* is completely inapposite and cannot form the basis for the “controlling law” requirement in NRCP 50(a)(1)(B) for this Court to grant judgment as a matter of law.

**4. Under Nevada Law, Expert Testimony Is Sufficient to Support the Jury’s Award of Plaintiff’s Past and Future Medical Expenses.**

“Evidence” is defined as “[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence of an alleged fact. . . .” *Black’s Law Dictionary*, 673 (10th ed. 2014). As noted in *Cisneros*, the Nevada Supreme Court held in *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 266-68, 396 P.3d 783, 788-89 (2017) that a medical expert was permitted to testify regarding the reasonableness of past expenses based on

1 another witness' report, and to provide an estimate of reasonable future medical  
2 expenses based on personal knowledge.

3 More recently, the Nevada Supreme Court again commented on this  
4 same issue in *Pizarro-Ortega* in *Taylor v. Brill*, 139 Nev. \_\_\_, 539 P.3d 1188  
5 (2023). In *Taylor*, the Supreme Court observed that the plaintiff's retained  
6 expert "clearly testified that the medical services Taylor received were  
7 reasonable and necessary and were caused by the perforations that arose from  
8 [the defendant's] surgical procedure." *Id.* at \_\_\_, 539 P.3d at 1193. Notably,  
9 "[t]he district court excluded the bulk of the evidence Taylor sought to admit in  
10 support of her special damages claim—including medical bills, testimony from  
11 health care industry witnesses about those bills, and testimony from Taylor  
12 herself, who had worked in the medical billing industry with both physicians  
13 and hospitals for over two decades." *Id.* at \_\_\_, 539 P.3d at 1193-94. Ultimately,  
14 the district court concluded that expert testimony was required to support the  
15 reasonable and customary nature of medical charges. *Id.* at \_\_\_, 539 P.3d at  
16 1194. The Supreme Court held that the district court erroneously relied upon  
17 *Curti v. Franceschi*, 60 Nev. 422, 428, 111 P.2d 53, 56 (1941), which held that  
18 the testimony of a treating physician was sufficient to support plaintiff's  
19 medical expenses. Commenting on *Curti*, the Supreme Court explained that it  
20 "does not stand for the proposition that evidence of the reasonableness of the  
21 damages sought *can only be proven by* an expert witness or physician." *Id.* at  
22 \_\_\_, 539 P.3d at 1194 (italics in original). Of course, *Taylor* and *Curti* support  
23 the holdings in both *Cisneros* and *Pizarro-Ortega* that expert testimony alone is  
24

1 evidence and sufficient to support a request for medical expenses. However,  
2 *Taylor* allowed other evidence to satisfy such proof, including “the CFO of the  
3 charging hospital, a health care billing representative, and a health care  
4 customer service billing manager—all of whom would have testified regarding  
5 the charges for the medical treatment provided to Taylor.” *Id.* Indeed, the  
6 Supreme Court even held that the plaintiff herself could testify about the  
7 medical charges because she had “experience working in the medical billing  
8 industry for over two decades.” *Id.* Therefore, under Nevada law, Dr. Muir’s  
9 testimony is sufficient to support the jury’s award of Plaintiff’s past and future  
10 medical expenses.

11 **5. Nevada Law Also Does Not Require Demonstrative**  
12 **Exhibits to Be Admitted as Evidence, Particularly**  
**When Supported by Expert Testimony.**

13 As noted, *Hosny* presented an opposite factual scenario compared to the  
14 instant case and, therefore, does not control the outcome of Defendants’  
15 argument in this case. In cases involving expert testimony commenting on  
16 demonstrative charts, as in the instant case, the Nevada Supreme Court has  
17 specifically allowed such a presentation at trial. For example, NRS 50.285(2)  
18 specifically states, “If of a type reasonably relied upon by experts in forming  
19 opinions or inferences upon the subject, the facts or data need not be  
20 admissible in evidence.” (emphasis added). Citing NRS 50.285(2), the Nevada  
21 Supreme Court confirmed that “experts may, and commonly do, rely on hearsay  
22 when making expert opinions.” *In re Guardianship of the Person and Estate of*  
23 *Rubin*, 137 Nev. \_\_\_, \_\_\_, 491 P.3d 1, 5 (2021); *see also Rudin v. State*, 120 Nev.  
24 121, 136, 86 P.3d 572, 582 (2004) (citing NRS 50.285(2) with approval and

1 allowing a testifying expert to consult with other experts, retrieve information  
2 from the Internet, and observe other crime scenes). Thus, the fact that  
3 Plaintiff's demonstrative chart of medical expenses was not admitted as  
4 evidence does not change the evidentiary value of Dr. Muir's testimony and  
5 other evidence that supports the jury's award of past and future medical  
6 expenses to Plaintiff.

7 Defendants further argue that Jury Instruction 10 (*see Exhibit 6*)  
8 somehow prohibited the jury from relying upon any of the information contained  
9 within Plaintiff's demonstrative chart. *See Exhibit 5*. However, Jury  
10 Instruction 10 is based upon the language within NRS 52.275, which states as  
11 follows:

12 1. The contents of voluminous writings, recordings or  
13 photographs which cannot conveniently be examined in court may  
be presented in the form of a chart, summary or calculation.

14 2. The originals shall be made available for examination  
15 or copying, or both, by other parties at a reasonable time and  
place. The judge may order that the originals be produced in court.

16 The record reflects that the entirety of Plaintiff's medical records were available  
17 in binders in the courtroom, and Plaintiff's counsel began admitting the first of  
18 Plaintiff's medical records. **Exhibit 4**, at 45, 48, 49. However, Dr. Muir  
19 commented that the demonstrative chart is "[l]ess bulky." *Id.* at 49. This case  
20 presents the precise situation when summaries under NRS 52.275 should be  
21 used.

22 In *Pandelis Construction Co. v. Jones-Viking Association*, 103 Nev. 129,  
23 131, 734 P.2d 1236, 1237 (1987), the Nevada Supreme Court first recounted  
24

1 that “the [district] court admitted certain summaries of financial documents but  
2 said they were admitted not as evidence, but only as statements of the builder’s  
3 position.” Relying favorably upon NRS 52.275, the Supreme Court noted that  
4 contents of “‘voluminous writings’ may be presented ‘in the form of a chart,  
5 summary or calculation’ if the writings themselves ‘cannot conveniently be  
6 examined in court.’” *Id.* After addressing the scope of the admission of the  
7 summaries, the Supreme Court next concluded that “any technical distinction is  
8 of no practical importance in this instance. The [district] court allowed the  
9 builder’s witness to present testimony to the same effect as the contents of the  
10 summaries, and he weighed that testimony as evidence in reaching his decision.”  
11 *Id.* Thus, the admissibility of the summaries themselves did not affect the  
12 outcome, given that there was supporting testimony, which standing alone was  
13 sufficient to support the district court’s decision. In the end, the Supreme Court  
14 concluded that “[t]here was no prejudice; it follows that there can be no reversal.”  
15 *Id.* (citing NRCP 61 (Harmless Error)).

16 Therefore, the fact that Plaintiff presented a demonstrative chart at trial,  
17 which was not admitted as evidence, does not change the outcome of the jury’s  
18 award of past and future medical expenses to Plaintiff. Rather, NRS 50.285(2)  
19 and NRS 52.275, along with the commenting caselaw, squarely support  
20 Plaintiff’s position.

1           **6. Once Again, Defendants Offer No “Controlling Law”**  
2           **that Plaintiff Somehow Had an Obligation to**  
3           **Challenge His Own Evidence of Future Medical**  
4           **Expenses.**

5           Without any supporting authority, Defendants next contend that Plaintiff  
6           had an obligation to detach a portion of Dr. Muir’s expert report outlining  
7           Plaintiff’s future medical expenses to give the jury an opportunity to scrutinize  
8           and potentially deduct certain categories of requested future medical expenses.  
9           Defendants’ bare argument fails to satisfy the NRCP 50(a)(1)(B) standard to  
10          present “controlling law” at both the NRCP 50(a) and the NRCP 50(b) stages of  
11          the case. Additionally, the complete absence of any supporting law gives this  
12          Court authority to reject Defendants’ argument based upon EDCR 2.20(c):

13                 A party filing a motion must also serve and file with it a  
14                 memorandum of points and authorities in support of each ground  
15                 thereof. The absence of such memorandum may be construed as  
16                 an admission that the motion is not meritorious, as cause for its  
17                 denial or as a waiver of all grounds not so supported.

18          Thus, the Court should first consider Defendants’ argument as unpreserved and  
19          waived. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130  
20          P.3d 1280, 1288 n.38 (2006) (noting that it is a party’s responsibility to present  
21          cogent arguments supported by relevant authority).

22          On the merits of Defendants’ argument, if they wanted the itemized chart  
23          of Plaintiff’s future damages admitted into evidence—**to support their own**  
24          **position**—they could have made an offer of proof or offered the chart into  
evidence. *See Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669,  
688, 191 P.3d 1138, 1150-51 (2008) (“Offers of proof are intended to (1) fully  
disclose to the court and opposing counsel the nature of evidence offered for

admission, but rejected, and (2) preserve the record for appellate review. But, as we have noted before, “[a]n offer of proof obviously is not a proper substitute for the tender of evidence which has never been presented and ruled upon.”) (citing *Southern Pac. Transp. Co. v. Fitzgerald*, 94 Nev. 245, 246, 579 P.2d 1251, 1252 (1978)). Additionally, offers of proof cannot be mere argument of counsel. *Id.* at 688-89, 191 P.3d at 1151 (“[C]ounsel’s statement to the district court was no more than counsel’s speculation as to what the circulators might aver; thus, it did not constitute a proper offer of proof. Offers of proof must be specific and definite; counsel’s mere conjecture as to what the evidence might reveal does not suffice.”). Since Defendants did not offer any evidence or make an offer of proof, they cannot now complain that Plaintiff somehow had an obligation to support Defendants’ position. Ultimately, Defendants could have made their points in the cross-examination of Dr. Muir but failed to do so. *See, e.g., Robinson v. G.G.C., Inc.*, 107 Nev. 135, 143, 808 P.2d 522, 527 (1991) (outlining the constitutional right of cross-examination in both criminal and civil cases). Therefore, the Court should reject Defendants’ argument regarding the presentation of Dr. Muir’s itemized chart of Plaintiff’s future medical expenses on both procedural and substantive grounds.

**III. DEFENDANTS FAIL TO ARGUE OR DEMONSTRATE THAT THEIR SUBSTANTIAL RIGHTS HAVE BEEN MATERIALLY AFFECTED FOR A NEW TRIAL UNDER NRCP 59(a).**

Although Defendants mention portions of the proper standards for a new trial under NRCP 59(a), they fail to argue or demonstrate that their substantial rights have been materially affected. According to NRCP 59(a)(1), “[t]he court



1 may, on motion, grant a new trial on all or some of the issues—and to any  
2 party—for any of the following causes or grounds **materially affecting the**  
3 **substantial rights of the moving party.** . . .” (emphasis added). Thus, it is not  
4 enough for Defendants to argue some violation of the seven grounds for a new  
5 trial in NRCP 59(a)(1)(A)-(G). Rather, Defendants must satisfy both parts of the  
6 rule to obtain a new trial. *See Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261,  
7 263-64, 396 P.3d 783, 786 (2017) (“[E]ven if one of NRCP 59(a)’s new-trial  
8 grounds has been established, the established ground must have ‘materially  
9 affect[ed] the substantial rights of [the] aggrieved party’ to warrant a new  
10 trial.”). Since Defendants do not argue or demonstrate that their substantial  
11 rights have been materially affected, they cannot obtain a new trial.

12 The Court must consider Defendants’ failure as, at most, harmless error  
13 under NRCP 61 (emphasis added):

14 Unless justice requires otherwise, no error in admitting or  
15 excluding evidence—or any other error by the court or a party—is  
16 ground for granting a new trial, for setting aside a verdict, or for  
17 vacating, modifying, or otherwise disturbing a judgment or order.  
At every stage of the proceeding, **the court must disregard all**  
**errors and defects that do not affect any party’s substantial**  
**rights.**

18 This standard means that Defendants must convince this Court that “it could be  
19 reasonably assumed that if it were not for the alleged errors, a different result  
20 might reasonably have been expected.” *Beattie v. Thomas*, 99 Nev. 579, 586,  
21 668 P.2d 268, 273 (1983). The Court “do[es] not presume prejudice from the  
22 occurrence of error in a civil case.” *Boyd v. Pernicano*, 79 Nev. 356, 359, 385  
23 P.2d 342, 343 (1963); *Cook v. Sunrise Hosp. & Med. Ctr., LLC*, 124 Nev. 997,  
24

1 1006, 194 P.3d 1214, 1219 (2008) (confirming that the appealing party must  
2 establish “by providing record evidence . . . that, but for the error, a different  
3 result might have been reached”). The decision to grant or deny a motion for a  
4 new trial is within this Court’s sound discretion. *Krause Inc. v. Little*, 117 Nev.  
5 929, 933, 34 P.3d 566, 569 (2001). It is well-established that the “trial court [is]  
6 obliged to use great caution in the exercise of its power to set aside a jury  
7 verdict” pursuant to NRCP 59(a). *Fox v. Cusick*, 91 Nev. 218, 220, 533 P.2d 466,  
8 467 (1975). Under these exacting standards, Defendants are simply not entitled  
9 to a new trial. *See Wyeth v. Rowatt*, 126 Nev. 446, 476, 244 P.3d 765, 785-86  
10 (2010) (“A jury’s verdict should be salvaged, when possible, to avoid a new  
11 trial.”)

12 **IV. DEFENDANTS ARE NOT ENTITLED TO A NEW TRIAL**  
13 **UNDER THE NRCP 59(a)(1)(E) STANDARD FOR**  
14 **MANIFEST DISREGARD OF THE JURY INSTRUCTIONS.**

15 As a matter of Nevada law, sufficient evidence supports the jury’s award  
16 of Plaintiff’s past medical expenses, such that Defendants are not entitled to a  
17 new trial under the NRCP 59(a)(1)(E) standard for manifest disregard of the  
18 jury instructions. Defendants’ motion argues that the jury manifestly  
19 disregarded the jury instructions. Mot. at 12-13. However, Defendants do not  
20 identify which specific jury instructions the jury may have disregarded. As such,  
21 Plaintiff cannot adequately respond to Defendants’ unsupported argument, as a  
22 matter of due process. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878,  
23 879 (2007) (concluding that procedural due process “requires notice and an  
24 opportunity to be heard”). In stark contrast to Defendants’ unsupported  
argument, Nevada law presumes that a jury followed the instructions given to it

1 by the Court. *W. Techs., Inc. v. All-Am. Golf Ctr., Inc.*, 122 Nev. 869, 875, 139  
2 P.3d 858, 862 (2006). This procedural failure alone prohibits the Court from  
3 granting Defendants any new trial relief. *See* EDCR 2.20(c); *Edwards*, 122 Nev.  
4 at 330 n.38, 130 P.3d at 1288 n.38.

5 Additionally, Defendants had to object to the jury's verdict "before the  
6 jury was discharged" to preserve their manifest disregard of the jury  
7 instructions argument. *See Cramer v. Peavy*, 116 Nev. 575, 583, 3 P.3d 665, 670  
8 (2000) ("[T]o preserve the issue for appeal, [the plaintiff] was required to object  
9 to the verdict before the jury was discharged. The trial court would then have  
10 had the opportunity to consider whether it was impossible for the jury to return  
11 a defense verdict as a matter of law, and if so, the matter could have been  
12 returned to the jury with additional instructions."). This additional procedural  
13 failure similarly prevents the Court from granting a new trial to Defendants.

14 Even if this Court were to reach the merits of Defendants' argument, to  
15 satisfy the NRCP 59(a)(1)(E) standard for manifest disregard of the jury  
16 instructions, Defendants must prove that "the jurors could not have reached the  
17 verdict that they reached if they had properly applied the court's  
18 instruction[s]. . . ." *Taylor v. Silva*, 96 Nev. 738, 740, 615 P.2d 970, 971 (1980);  
19 *M & R Inv. Co. v. Anzalotti*, 105 Nev. 224, 226, 773 P.2d 729, 730 (1989) (The  
20 standard for review on a motion for a new trial upon the ground of manifest  
21 disregard by the jury of the instructions of the court is whether this Court can  
22 declare that "had the jurors properly applied the instructions of the court, it  
23 would have been impossible for them to reach the verdict which they reached.").  
24

1 This Court need not determine how the jury reached its conclusion; it need only  
2 determine whether it was possible for the jury to do so. *Id.* at 226, 773 P.2d at  
3 731. Notably, this analysis is an individual inquiry based upon the specifically  
4 challenged jury instruction. *Taylor*, 96 Nev. at 740, 615 P.2d at 971. Yet,  
5 Defendants have failed to articulate such an argument because they do not  
6 identify which jury instructions they believe that the jury manifestly  
7 disregarded.

8 Although Defendants present their argument under NRCP 59(a)(1)(E) for  
9 manifest disregard of the jury instructions, they instead ask this Court to  
10 address an unpreserved challenge to the sufficiency of the evidence that they  
11 never made as an NRCP 50(a) directed verdict motion. *See Price v. Sinnott*, 85  
12 Nev. 600, 607, 460 P.2d 837, 841 (1969) (“A party may not gamble on the jury’s  
13 verdict and then later, when displeased with the verdict, challenge the  
14 sufficiency of the evidence to support it.”). Thus, the Court should reject  
15 Defendants’ challenge to the sufficiency of the evidence to support the jury’s  
16 award of past medical expenses to Plaintiff as unpreserved and waived.

17 Even if the Court were to reach the merits of Defendants’ argument, they  
18 essentially argue that the jury could not award \$200,000 as past medical  
19 expenses when Dr. Muir testified that the amount for such medical expenses  
20 was \$161,545. Mot. at 13. However, Defendants fail to recall that Dr. Muir’s  
21 calculations for Plaintiff’s past and future medical expenses were done more  
22 than two years prior to the calculations being presented at trial. **Exhibit 4**, at  
23 79-80. That is, some of Plaintiff’s future medical expenses at the time of trial  
24

would have been accurately treated as past medical expenses, given the shift in time. While the amount of Plaintiff's past medical expenses increased, the amount of his future medical expenses similarly decreased. Instead of \$161,545 in past medical expenses, the jury awarded Plaintiff \$200,000, which is an increase of \$38,455. *Compare Exhibits 1 & 5.* Likewise, instead of \$1,539,710 in future medical expenses, the jury awarded Plaintiff \$1,500,000, which is a decrease of \$39,710. *Id.* Thus, it appears that the jury simply shifted these very similar amounts of damages based upon the evidence and a juror's own question about the shifting time. **Exhibit 4**, at 187. As Plaintiff has outlined, Defendants waived the substance of this issue. However, if the Court reaches the substance of their argument, Plaintiff has prepared a draft alternative judgment that shifts these amounts back. *See* Draft Alternative Judgment, dated July 10, 2024, attached as **Exhibit 7**. In the end, Defendants have failed to demonstrate that the jury manifestly disregarded the jury instructions and failed to demonstrate that Defendants are entitled to a new trial.

**V. DEFENDANTS DID NOT PROPERLY CHALLENGE THE SUFFICIENCY OF THE EVIDENCE TO SUPPORT THE JURY'S AWARD TO PLAINTIFF FOR FUTURE PHYSICAL AND MENTAL PAIN, SUFFERING, ANGUISH, DISABILITY, AND LOSS OF ENJOYMENT OF LIFE.**

Defendants did not properly challenge the sufficiency of the evidence to support the jury's award to Plaintiff for future physical and mental pain, suffering, anguish, disability, and loss of enjoyment of life. In any event, an award of pain and suffering is within the exclusive province of the jury and cannot be disturbed or second-guessed, particularly since Defendants' argument regarding punishment is not legally supported.

1 In their motion, Defendants offer a cursory argument that the jury's  
2 \$3,100,000 award to Plaintiff for future physical and mental pain, suffering,  
3 anguish, disability, and loss of enjoyment of life was excessive. Mot. at 13-14.  
4 Once again, it is clear that Defendants are attempting to make an unpreserved  
5 challenge to the sufficiency of the evidence, which this Court should reject.  
6 See *Price*, 85 Nev. at 607, 460 P.2d at 841 ("A party may not gamble on the  
7 jury's verdict and then later, when displeased with the verdict, challenge the  
8 sufficiency of the evidence to support it.").

9 For their argument, Defendants rely upon *Bongioli v. Sullivan*, 122 Nev.  
10 556, 577, 138 P.3d 433, 448 (2006) and the stated principle that the Nevada  
11 Supreme Court "will affirm an award of compensatory damages unless the  
12 award is so excessive that it appears to have been given under the influence of  
13 passion or prejudice." Importantly, in *Bongioli* the general damages for 'loss of  
14 reputation, shame, mortification and hurt feelings' arose out of an underlying  
15 defamation claim, which are distinct from the pain and suffering damages the  
16 jury awarded to Plaintiff in the instant case. Defendants further rely on *New*  
17 *Hampshire Ins. Co. v. Gruhn*, 99 Nev. 771, 773, 670 P.2d 941, 942-43 (1983) for  
18 the notion that compensatory damages should not be used to punish the  
19 defendant. Notably, the discussion in *Gruhn* is not remarkable. The Nevada  
20 Supreme Court contrasted compensatory and punitive damages to clarify that  
21 punitive damages do not compensate a plaintiff but rather punish a defendant.  
22 Since this case does not involve punitive damages, the entire holding of *Gruhn*  
23 is irrelevant. Similarly, the Court should reject Defendants' unsupported  
24

1 argument that since NRS 42.005 contains a cap on punitive damages, there  
2 should be a similar cap on compensatory damages, particularly in light of the  
3 Nevada caselaw outlined below.

4 In their argument, Defendants do not mention Jury Instruction No. 18,  
5 which instructed the jury to award Plaintiff damages for past and future  
6 physical and mental pain, suffering, anguish, disability, and loss of enjoyment  
7 of life. See Jury Instruction No. 18, attached as **Exhibit 8**. Likewise, Jury  
8 Instruction No. 21 instructed the jury that there is no fixed standard for the  
9 amount of pain and suffering damages. See Jury Instruction No. 21, attached  
10 as **Exhibit 9**. Rather, Jury Instruction No. 21 states, “You must use your  
11 judgment to decide upon a reasonable amount based on the evidence and your  
12 common sense.” *Id.* The jury is presumed to have followed these instructions,  
13 as a matter of Nevada law. See *W. Techs.*, 122 Nev. at 875, 139 P.3d at 862.

14 Unlike Defendants’ cited authorities, Nevada caselaw discussing pain  
15 and suffering damages does not allow the Court to second-guess the jury’s  
16 subjective award of such damages. See *Stackiewicz v. Nissan Motor Corp.*, 100  
17 Nev. 443, 454-55, 686 P.2d 925, 932 (1984) (“The elements of pain and suffering  
18 are wholly subjective. It can hardly be denied that, because of their very nature,  
19 a determination of their monetary compensation falls peculiarly within the  
20 province of the jury. . . . We may not invade the province of the fact-finder by  
21 arbitrarily substituting a monetary judgment in a specific sum felt to be more  
22 suitable.”); [Courts] may not invade the province of the fact-finder by arbitrarily  
23 substituting a monetary judgment in a specific sum felt to be more suitable.”);  
24

1 *Beccard v. Nevada Nat'l Bank*, 99 Nev. 63, 66 n.3 657 P.2d 1154, 1156 n.3 (1983)  
2 (explaining that the mere fact that a verdict is large is not in itself “conclusive  
3 that it is the result of passion or prejudice”); *Automatic Merchandisers, Inc. v.*  
4 *Ward*, 98 Nev. 282, 284-85, 646 P.2d 553, 555 (1982) (courts do not substitute  
5 their own judgment for the trier of fact on the issue of damages). Defendants’  
6 bare arguments to the contrary do not have any weight. *See Jain v. McFarland*,  
7 109 Nev. 465, 475-76, 851 P.2d 450, 457 (1993) (“Arguments of counsel are not  
8 evidence and do not establish the facts of the case.”). This Court cannot presume  
9 that there was error in the jury’s verdict or that it was the result of “passion or  
10 prejudice.” *Allen v. Webb*, 87 Nev. 261, 266, 485 P.2d 677, 679 (1971) (explaining  
11 that courts do not disturb jury’s verdicts “despite suspicions and doubts based  
12 upon conflicting evidence”); *Sheehan & Sheehan v. Nelson Malley & Co.*, 121  
13 Nev. 481, 487, 117 P.3d 219, 223 (2005) (the role of determining witness  
14 credibility belongs to the fact finder, and courts will not direct that certain  
15 witnesses should or should not be believed).

16 During trial, Plaintiff, among others, testified about his pain and  
17 suffering, as defined by Jury Instruction No. 18. For example, Plaintiff testified  
18 about the treatment he received from Dr. Janda, which did not alleviate his low  
19 back pain. *See* Jury Trial Day 2, March 26, 2024 (filed on May 13, 2024), at 95-  
20 96, attached as **Exhibit 10**. Because Plaintiff was still feeling pain, Dr. Janda  
21 referred him to Dr. Muir. *Id.* at 97. With Dr. Muir, Plaintiff received facet  
22 injections, which provided some relief for a short time but the pain returned. *Id.*  
23 at 98. Upon Dr. Muir’s recommendation, Plaintiff then received a nerve block,  
24



1 but after some initial relief, the pain returned. *Id.* at 104. Plaintiff then  
2 received RFAs, which involved “burning the nerves out of my back and my  
3 spine.” *Id.* at 105. The recovery from the RFAs was very difficult for Plaintiff.  
4 He testified that just taking a shower burns, and during the healing time he  
5 would be “bedridden or on the couch.” *Id.* at 105. Like Plaintiff’s other  
6 treatment, the RFAs provided some initial relief, but the pain returned. *Id.* at  
7 106. Plaintiff testified that bending or lifting things made him feel “fragile  
8 again and everything hurts.” *Id.* at 107. Plaintiff returned to Dr. Muir for  
9 additional RFAs to get some relief from the pain, until it returned again. *Id.* at  
10 108. Plaintiff further testified that he intended to continue to get future RFAs  
11 to manage the pain. *Id.* at 108-09. Because of his addictions, Plaintiff  
12 explained that if he took pain medication, it would “literally destroy [his] life.”  
13 *Id.* at 109. Plaintiff also explained to the jury that he had to wear a back brace.  
14 *Id.* at 109-110. Just working for 45 minutes as a custodian caused Plaintiff to  
15 “drop[] to one knee straight back, even with my back brace on. . . .” *Id.* at 111.

16 In Dr. Muir’s testimony, he testified that Plaintiff would need pain  
17 treatment for 39 years from the date of the expert report or 37 years from the  
18 time of trial. **Exhibit 4**, at 79-80. To the extent that Plaintiff’s future medical  
19 expenses and accompanying pain was subjective, Dr. Muir’s expert testimony  
20 satisfied the requirement to support such injuries with expert testimony.  
21 *See Krause Inc. v. Little*, 117 Nev. 929, 938, 34 P.3d 566, 572 (2001). Thus, the  
22 Court should refuse to disturb the jury’s reasonable award of future pain and  
23  
24

1 suffering damages, which is ultimately a function of the jury alone. *See Johnson*  
2 *v. Brown*, 75 Nev. 437, 447, 345 P.2d 754, 759 (1959).

3 **VI. CONTRARY TO DEFENDANTS' ARGUMENT, DR.**  
4 **WILLIAM MUIR'S TRIAL TESTIMONY CONFIRMS THAT**  
5 **HE DID NOT "OPEN THE DOOR" FOR DEFENDANTS TO**  
6 **OFFER SPECULATIVE ARGUMENT REGARDING**  
7 **CAUSATION FOR PLAINTIFF'S BACK INJURY AS IT**  
8 **RELATES TO THE SUBSEQUENT ACCIDENT.**

9 Contrary to Defendants' argument, Dr. William Muir's trial testimony  
10 confirms that he did not "open the door" for Defendants to offer speculative  
11 argument regarding causation for Plaintiff's back injury as it relates to the  
12 subsequent accident. Defendants' own expert, Dr. Jeffrey Wang, did not relate  
13 any of Plaintiff's injuries caused by Defendants in this case to Plaintiff's  
14 subsequent accident, as this Court previously recognized.

15 In their motion, Defendants argue that they should get a new trial based  
16 upon their claimed inability to discuss before the jury Plaintiff's second,  
17 unrelated accident. Mot. at 14-15. However, Defendants do not specifically  
18 discuss what information they wanted to present at trial but were prohibited  
19 from presenting. While Defendants' motion contains a list of speculative  
20 theories they wanted to discuss, they do not identify any record evidence where  
21 they either offered this evidence or made an offer of proof. *See Miller*, 124 Nev.  
22 at 688, 191 P.3d at 1150-51 ("Offers of proof are intended to (1) fully disclose to  
23 the court and opposing counsel the nature of evidence offered for admission, but  
24 rejected, and (2) preserve the record for appellate review. But, as we have noted  
before, '[a]n offer of proof obviously is not a proper substitute for the tender of  
evidence which has never been presented and ruled upon.'"). Thus, Plaintiff is

1 unsure what actual evidence Defendants wanted to introduce. Importantly,  
2 Defendants rely upon their own cross-examination of Dr. Muir to claim that the  
3 door was opened for them to discuss some unknown evidence about Plaintiff's  
4 second accident. However, Defendants do not cite any authority that would  
5 allow them to "open the door" themselves to the evidence they claim they  
6 wanted to present to the jury. *See* EDCR 2.20(c); *Edwards*, 122 Nev. at 330 n.38,  
7 130 P.3d at 1288 n.38.

8 Typically, an opposing party must open the door to introduce excluded  
9 evidence. *See, e.g., Jezdik v. State*, 121 Nev. 129, 138, 110 P.3d 1058, 1064  
10 (2005) (discussing that a defendant's "false statements on direct examination  
11 trigger or 'open the door' to the curative admissibility of specific contradiction  
12 evidence"). Otherwise, a party could benefit its own position by discussing  
13 prohibited topics in an effort to open the door to its own excluded evidence, as  
14 Defendants attempt to do in this case. The Court should reject such a  
15 proposition.

16 As noted in Plaintiff's Trial Brief No. 1, Defendants' own expert, Dr.  
17 Wang, could not opine that Plaintiff's second accident exacerbated Plaintiff's  
18 low back injuries caused by Defendants. *See* Plaintiff's Trial Brief No. 1  
19 Regarding His Unrelated Subsequent Accident on October 17, 2020 (filed on  
20 March 17, 2024), attached as **Exhibit 11**. Thus, Defendants never had any  
21 "evidence" to present to the jury. Indeed, *Williams v. Eighth Judicial District*  
22 *Court of Nevada*, 127 Nev. 518, 532, 262 P.3d 360, 369 (2011) specifically  
23 prohibits speculation from defense experts on causation: "[A]n expert for the  
24

1 defense is precluded from engaging in speculation or conjecture with respect to  
2 possible causes.” More recently, the Nevada Supreme Court cited *Williams* with  
3 approval and confirmed that “unless it is readily apparent to a layperson, a  
4 defendant seeking to introduce evidence of a prior injury generally must  
5 produce expert testimony demonstrating the relationship between the prior  
6 injury and the injury complained of, and why it is relevant to a fact of  
7 consequence.” *FGA, Inc. v. Giglio*, 128 Nev. 271, 284, 278 P.3d 490, 498 (2012).  
8 Since Defendants admittedly do not have any expert testimony to support their  
9 speculative causation theories, the Court did not err in its rulings on Plaintiff’s  
10 second accident.

11 Finally, Defendants cannot demonstrate any “grounds materially  
12 affecting the[ir] substantial rights” to satisfy NRCP 59(a)(1) for a new trial since  
13 Defendants ***did*** discuss Plaintiff’s second accident during trial—beyond just the  
14 quoted portion in Defendants’ motion. For example, during Dr. Muir’s cross-  
15 examination, Defendants discussed Plaintiff’s second accident at length.  
16 **Exhibit 4**, at 115-118, 155-161. In a discussion outside the jury’s presence, the  
17 Court confirmed that none of Dr. Muir’s testimony opened the door for  
18 Defendants to offer some unknown evidence about Plaintiff’s second accident.  
19 *Id.* at 163-165. Additionally, Defendants were allowed to admit the Sunrise  
20 Hospital records into evidence, which involved Plaintiff’s second accident where  
21 he hurt his head. *Id.* at 166. Defendants’ counsel discussed these records with  
22 Dr. Muir during trial. *Id.* at 169-172. Notably, Defendants did not proffer any  
23 other medical records or evidence beyond the Sunrise Hospital records.  
24

1 Defendants also asked Plaintiff about his second accident during their cross-  
2 examination. **Exhibit 10**, at 116-117, 122-125. Therefore, Defendants have  
3 failed to demonstrate any error with regard to Plaintiff's second accident.

4 **VII. DEFENDANTS HAVE NOT OFFERED ANY LEGAL**  
5 **REASON FOR THIS COURT TO DISTURB THE JURY'S**  
6 **VERDICT WITH REMITTITUR, OR ALTERNATIVELY, A**  
7 **NEW TRIAL ON DAMAGES.**

8 Defendants have not offered any legal reason for this Court to disturb the  
9 jury's verdict with remittitur, or alternatively, a new trial on damages.  
10 Defendants' mere label of "excessive" damages awarded by the jury is  
11 insufficient to satisfy the remittitur standard. Indeed, Defendants do not even  
12 suggest a remittitur amount. Thus, the Court should reject Defendants' bare  
13 request for remittitur.

14 Defendants' motion finally asks this Court to grant remittitur. Mot. at  
15 15-16. Notably, Defendants have not successfully presented any legal  
16 arguments to support their label that Plaintiff's damages were supposedly  
17 "excessive." Of course, such general arguments cannot serve to disturb the  
18 jury's verdict, either for a new trial or for remittitur. *See Jain v. McFarland*,  
19 109 Nev. 465, 475-76, 851 P.2d 450, 457 (1993) ("Arguments of counsel are not  
20 evidence and do not establish the facts of the case."). This Court cannot presume  
21 that there was error in the jury's verdict or that it was the result of "passion or  
22 prejudice." *Allen v. Webb*, 87 Nev. 261, 266, 485 P.2d 677, 679 (1971)  
23 (explaining that courts do not disturb jury's verdicts "despite suspicions and  
24 doubts based upon conflicting evidence"); *Sheehan & Sheehan v. Nelson Malley*  
& Co., 121 Nev. 481, 487, 117 P.3d 219, 223 (2005) (the role of determining

1 witness credibility belongs to the fact finder, and courts will not direct that  
2 certain witnesses should or should not be believed). Moreover, Defendants  
3 mistakenly believe that there must be some mathematical relationship between  
4 general damages and special damages, even though pain and suffering damages  
5 are exclusively within the province of the jury. *See Stackiewicz v. Nissan Motor*  
6 *Corp.*, 100 Nev. 443, 454–455, 686 P.2d 925, 932 (1984) (“[Courts] may not  
7 invade the province of the fact-finder by arbitrarily substituting a monetary  
8 judgment in a specific sum felt to be more suitable.”); *Automatic Merchandisers,*  
9 *Inc. v. Ward*, 98 Nev. 282, 284-85, 646 P.2d 553, 555 (1982) (courts do not  
10 substitute their own judgment for the trier of fact on the issue of damages).  
11 This Court must also presume that the jury properly followed the instructions  
12 given to them. *See Krause Inc. v. Little*, 117 Nev. 929, 937, 34 P.3d 566, 571  
13 (2001). Further, the jury had discretion to consider evidence related to  
14 causation and damages as it deemed appropriate. *See Quintero v. McDonald*,  
15 116 Nev. 1181, 1184, 14 P.3d 522, 524 (2000) (“The credibility of witnesses and  
16 the weight to be given their testimony is within the sole province of the trier of  
17 fact.”). Therefore, the Court should reject Defendants’ alternative request for  
18 remittitur.

## CONCLUSION

In summary, the Court should DENY Defendants' Renewed Motion for Judgment as a Matter of Law Pursuant to NRCP 50(b), and NRCP 59, or Alternatively, for Remittitur. Defendants have not presented any legal reason why this Court should disturb the jury's verdict. Defendants' motion requesting judgment as a matter of law under NRCP 50(b) fails both procedurally and substantively. Likewise, Defendants' motion requesting a new trial does not satisfy any of the very difficult standards under NRCP 59(a) and, at most, only arises to harmless error.

Dated this 31st day of May 2024.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

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Nevada Bar No. 12980

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of May 2024, I served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO NRCP 50(b), AND NRCP 59, OR ALTERNATIVELY, FOR REMITTITUR** upon the following persons by the following methods pursuant to NRCP 5(b) and NEFCR 9:

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*Attorneys for Defendants*

/s/ Anna Gresl

---

Anna Gresl, an employee of  
CLAGGETT & SYKES LAW FIRM



**EXHIBIT 1**

**EXHIBIT 1**

MAR 29 2024

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BY *Kathryn L. McDowell*  
KATHRYN L. MCDOWELL, DEPUTY

JARED MOSS, individually

Plaintiff,

vs.

SEAN EDWARD TOMESCO, individually;  
SECOND OPINION PLUMBING, LLC, a  
domestic limited liability company; DOES I  
through X, inclusive; ROE CORPORATIONS  
XI through XX, inclusive,

Defendants.

CASE NO.: A-21-840372-C  
DEPT. NO.: 20

**VERDICT FORM**

A-21-840372-C  
VER  
Verdict  
5073731



Defendants Sean Tomesco and Second Opinion Plumbing, LLC have stipulated that they owed a duty to Plaintiff to operate a vehicle Defendant Tomesco was driving in a safe manner and breached that duty to Plaintiff by striking the Plaintiff with the vehicle in a cross-walk. We, the jury, in the above-entitled action, find the following answers to the questions submitted to us:

**QUESTION 1: WE FIND THE DEFENDANTS TOMESCO'S AND SECOND OPINION PLUMBING'S NEGLIGENCE TO BE THE PROXIMATE CAUSE OF THE FOLLOWING DAMAGES TO PLAINTIFF :**

Past Medical Expenses for Jared Moss \$ 200,000.00

Past physical and mental pain, suffering, anguish, disability, and loss of enjoyment of life suffered by Jared Moss: \$ 200,000.00

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Future Medical Expenses for Jared Moss: \$ 1,500,000.00

Future physical and mental pain, suffering,  
anguish, disability, and loss of enjoyment  
of life Jared Moss will suffer: \$ 3,100,000.00

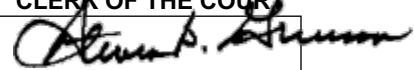
TOTAL AWARD: \$ 5,000,000.00

DATED this 29 day of March, 2024.

  
FOREPERSON

**EXHIBIT 2**

**EXHIBIT 2**



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

|                        |   |                        |
|------------------------|---|------------------------|
| JARED MOSS,            | ) |                        |
| individually,          | ) |                        |
| Plaintiff,             | ) | CASE NO. A-21-840372-C |
|                        | ) | DEPT. NO. 20           |
| vs.                    | ) |                        |
|                        | ) |                        |
| SEAN EDWARD TOMESCO,   | ) |                        |
| INDIVIDUALLY; SECOND   | ) |                        |
| OPINION PLUMBING, LLC, | ) |                        |
| A DOMESTIC LIMITED     | ) |                        |
| LIABILITY COMPANY;     | ) |                        |
| DOES I THROUGH X,      | ) |                        |
| INCLUSIVE; ROE         | ) |                        |
| CORPORATIONS IX        | ) |                        |
| THROUGH XX, INCLUSIVE, | ) |                        |
|                        | ) |                        |
| Defendants.            | ) |                        |

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BEFORE THE HONORABLE ERIC JOHNSON

FRIDAY, MARCH 29, 2024,

RECORDER'S TRANSCRIPT OF PROCEEDING:

JURY TRIAL DAY 4

APPEARANCES:

For the Plaintiff: ALISON BRASIER, ESQ.  
BETSY C. JEFFERIS-AGUILAR, ESQ.

For the Defendants: STEVEN KNAUSS, ESQ.  
CHERYL BRADFORD, ESQ.

Recorded by: Angie Calvillo, Court Recorder

Transcribed by: Kimberly A. Farkas, RPR, NV CCR No. 741

## INDEX OF WITNESSES

| Witness                | Direct | Cross | Redirect | Recross | Voir Dire |
|------------------------|--------|-------|----------|---------|-----------|
| Jeffery C.<br>Wang, MD | 13     | 43    | 75       | 78      | 54        |
|                        |        | 59    |          |         |           |

## INDEX OF EXHIBITS

| Exhibit               | Admitted |
|-----------------------|----------|
| Defendant's 140 - 147 | 27       |

1 MS. BRASIER: Okay. Our position is I never  
2 had to show the defendant my PowerPoint before.

3 THE COURT: You know, I've done a bunch of  
4 trials -- I mean --

5 MS. BRASIER: Well --

6 THE COURT: Usually they don't have a problem  
7 with it because I'm not sure what zinger you've got  
8 there that --

9 MS. BRASIER: Well, I don't have a zinger. I  
10 just --

11 THE COURT: -- that you would think you'd get  
12 an advantage on.

13 MS. BRASIER: Yeah.

14 THE COURT: My general compromise for that is  
15 we'll take a break. And how many pages is it?

16 MS. BRASIER: I think it's, like, 40  
17 something.

18 THE COURT: We'll take a break and you can  
19 take a look through the PowerPoint at that time and see  
20 if there's something that concerns you. All right.

21 And then next one.

22 MR. KNAUSS: The large issue is defendant  
23 brings a motion pursuant to NRCP 50(a). Plaintiff has  
24 failed to admit evidence to the jury of medical bills  
25 beyond \$7,262 for Advanced Spine. We ask the Court to

1 strike and preclude plaintiff from black-boarding all  
2 past medical bills in closing other than  
3 Advanced Spine, which the only ones admitted is  
4 Plaintiff's Exhibit 4, if my notes are correct.

5 Dr. Muir was asked to testify about  
6 reasonable and necessary as well as usual and  
7 customary, but no bills were admitted so there are no  
8 bills for the injury to consider beyond the ones for  
9 Advanced Spine. Plaintiff had the burden of proving  
10 those bills. Plaintiff has rested and there is no  
11 evidentiary basis for the jury is to award past medical  
12 bills aside from Advanced Spine.

13 If the jury cannot look in those binders,  
14 they can't find those numbers, they can't award damages  
15 for those past meds because there's no way for them to  
16 calculate the amounts for those bills.

17 Plaintiff used a demonstrative chart, but  
18 that is not evidence. It is hearsay. The jury cannot  
19 consider it. And the testimony of bills is just  
20 hearsay. Plaintiff needed to admit those bills as best  
21 evidence.

22 Similarly, with the life care plan,  
23 Your Honor, plaintiff did not move to admit Dr. Muir's  
24 life care plan. He testified about \$1.5 million. It  
25 was in that demonstrative. But there's no admitted



1 evidence that tells the jury the formula for that  
2 value. He testified to RFAs and a fusion surgery, but  
3 there's no admitted evidence that breaks down these  
4 costs. There's no admitted evidence at all about the  
5 life care plan.

6 The jury is the finder of fact. They can  
7 decide to give the plaintiff chiro and RFAs or only the  
8 RFAs and the fusion or not. They have no evidence to  
9 make that determination. It's the plaintiff's burden  
10 to prove the contents of the life care plan to the  
11 jury.

12 \$1.5 million is a nebulous estimate and the  
13 jury has to idea what that \$1.5 million is for because  
14 they don't know the cost of each procedure. What if  
15 they wanted to give plaintiff 10 years of RFAs instead  
16 of 38? Plaintiff admitted no evidence for them to make  
17 that decision. We ask the Court to strike these  
18 futures from being considered by the jury.

19 THE COURT: Okay. Plaintiff.

20 MS. BRASIER: Dr. Muir testified on direct  
21 examination, and I believe maybe also on redirect, that  
22 he reviewed all of the bills that we are submitting to  
23 the injury related to the medical treatment. He  
24 testified that he reviewed all those bills, along with  
25 the records, that they were all reasonable, customary,

1 and related to this incident.

2 That's enough for the jury to consider. The  
3 jury doesn't need the actual medical bills as exhibits.  
4 They can consider Dr. Muir's sworn testimony. That  
5 testimony was given to a reasonable degree of medical  
6 probability.

7 Same thing with the life care plan. I'm  
8 actually surprised they would be asking the life care  
9 plan be admitted as an exhibit. Expert reports and the  
10 life care plan as part of an expert report are almost  
11 universally considered hearsay.

12 Dr. Muir testified to them, and, again, it's  
13 competent testimony. He testified what composed the  
14 life care plan. He talked about the \$1.1 million was  
15 for annual rhizotomies, along with the physician visits  
16 and the anesthesia and the surgery center that goes  
17 along with it. And then he talked about that the  
18 \$1.5 million was in the -- was including for the  
19 possibility of the fusion surgery. Again, it was  
20 competent testimony that was given to a reasonable  
21 degree of medical testimony [sic]. He also testified  
22 the bills and the charges in the life care plan were  
23 reasonable, customary, and related to this incident.  
24 That's all competent evidence for the jury to consider  
25 in making their decision.

1           THE COURT: Okay. I think you've got an  
2 interesting point there. I'll be frank, I haven't ever  
3 had a case where they didn't actually introduce the  
4 medical bills. I haven't researched that particular  
5 issue. I wish you had raised -- asked to do it at the  
6 argument on Wednesday and I could have had yesterday to  
7 take a look at this. I'm not going to hold things up  
8 while I take a look at it now. I'm going to -- I  
9 either -- I can deny it now with the right for you to  
10 bring it up after the close of the arguments for me to  
11 at that point consider or I can hold it, take it under  
12 advisement, whichever you'd prefer.

13           MR. KNAUSS: Hold it please, Your Honor.

14           THE COURT: Okay. All right. You're free to  
15 certainly argue those points in your closing. And,  
16 again, I sort of wondered about the same thing so I'm  
17 not in the slightest minimizing your argument. But I,  
18 like I said, obviously, that's a whole crux of the case  
19 we're talking about here so I'm not willing to make a  
20 call on that without taking some time to look at it.

21           MR. KNAUSS: Yeah, the critical part is how  
22 do they just -- they have no way of knowing how much  
23 does an RFA cost, how much does a fusion surgery cost.

24           THE COURT: And, like I said, I'm not arguing  
25 with you. That thought passed through my -- my mind,

1 too. So I'm just saying that I've got a jury here and  
2 I want to get the trial going.

3 MR. KNAUSS: Just because it dovetails on  
4 that, another reason we're bringing it up now is  
5 Dr. Wang is going to take the stand. We don't want the  
6 opportunity to be given to plaintiff to now try to  
7 present and wedge in those bills through our expert.  
8 Ironically, there already is an order from trial brief  
9 last week filed by plaintiff that limits him anyway,  
10 that he can't speak about usual and customary bills,  
11 but we don't want to have that opportunity given to the  
12 plaintiff and that's why we wanted to raise it now. We  
13 would object to any attempt by plaintiff to do so,  
14 wedge in those bills through Dr. Wang.

15 THE COURT: I mean, I don't know what his  
16 testimony is going to be, but we'll see. You know,  
17 I'll certainly --

18 MR. KNAUSS: Okay.

19 THE COURT: If they try to get something in,  
20 I'll have to look at the context, but if you think it's  
21 for that reason, we'll deal with it.

22 MR. KNAUSS: I understand. Thank you,  
23 Your Honor.

24 THE COURT: I assume your doctor is here?

25 MR. KNAUSS: Which brings me to the very

1 just for opening. I will get that to you also.

2 THE COURT: Okay.

3 (Whereupon, a recess was taken.)

4 THE COURT: Equipment all work?

5 MS. BRASIER: Yes. So far.

6 THE COURT: You going to be doing any  
7 equipment?

8 MR. KNAUSS: The ELMO.

9 THE COURT: Okay. All right. That's safer.

10 MS. BRASIER: Don't jinx me.

11 THE COURT: Okay. Anything else before we  
12 bring in the jury?

13 MR. KNAUSS: Decision on the Rule 50 motion?

14 THE COURT: I'm not going to make that --  
15 actually, we'll get a verdict back and then I'll let  
16 you brief that because I'm just not prepared to make a  
17 decision on it. I don't have the case law here.  
18 Arguably, evidence is submitted because the doctor  
19 testified he looked at the records and assessed --  
20 added them up and assessed their value. Is that  
21 enough, I don't know.

22 MR. KNAUSS: Okay. So I have an objection to  
23 her slides. It has aggregate totals of bills.

24 THE COURT: Well, I mean, to the degree the  
25 doctor referred to it -- again, I'm not saying you're

1 wrong with your objection, but for the purposes of  
2 moving this forward, we're going to -- we're going  
3 forward on that basis.

4 MR. KNAUSS: I have a practical question.

5 THE COURT: Okay.

6 MR. KNAUSS: How does the injury know what  
7 Henderson Hospital cost?

8 MS. BRASIER: Because it says  
9 Henderson Hospital as a line item.

10 MR. KNAUSS: As a demonstrative piece of  
11 evidence.

12 THE COURT: It's a demonstrative piece, you  
13 know --

14 MR. KNAUSS: And the instructions --

15 THE COURT: The doctor did testify, if I  
16 remember correctly, and I'm not -- again, the jury --  
17 if you remember differently, you can say it to the  
18 jury. The doctor testified as to each one of those  
19 amounts. That's what the bills were from  
20 Henderson Hospital, the bills from Advanced Spine Care.  
21 And he looked at them and those that were for care  
22 related to this incident that were reasonable and  
23 necessary. So that's her basis for evidence. You can  
24 bring up --

25 MR. KNAUSS: But it's not evidence,

1 Your Honor. It's not.

2 THE COURT: Yes, it is evidence. It's  
3 testimony. You didn't object to it. So to the degree  
4 you want to say that it's hearsay, you should have  
5 objected to it at that point in time it was hearsay.

6 MR. KNAUSS: His testimony did not say the  
7 amounts. He just said reasonable and customary. Then  
8 we have an aggregate that says that's the amount.

9 MS. BRASIER: I had the chart up when the  
10 doctor was on the stand and said, Dr. Muir, did you  
11 review the bills from each of these facilities and are  
12 the totals listed here, the amounts, did it total 161,  
13 whatever the exact amount is, yes. So he looked at it  
14 that was being presented to the jury in the form of a  
15 summary.

16 THE COURT: I'll be honest. I've got some  
17 concerns -- I have not some concerns -- I have serious  
18 concerns with it, but I'd have to go back and review  
19 the testimony at this point in time. The jury -- we'll  
20 go back and take a look at it at that time and think  
21 about whether it's sufficient for the issue to have  
22 gone to the jury. If not, it may be a new trial or it  
23 may be a verdict, directed verdict in the end. But  
24 we're going to do the closings now.

25 MR. KNAUSS: Okay. I need to make just a

1 record about the future --

2 THE COURT: Sure.

3 MR. KNAUSS: -- because this is important.

4 THE COURT: No, I agree with you. It's  
5 important.

6 MR. KNAUSS: How on earth can a jury decide  
7 which treatment in a future care plan is appropriate or  
8 inappropriate. They can't do it. They literally don't  
9 have the evidence in front of them to say, well, I  
10 think a fusion surgery is appropriate. Well, what if  
11 someone else says, I think 3R phase is appropriate, I  
12 think just chiropractor is appropriate. There's  
13 literally no evidence for them to say. As the finder  
14 of fact, they can't make a decision. They could not  
15 resolve that. it's on them to put that evidence in  
16 front of them. They didn't do it. They're putting it  
17 all or nothing. That is so prejudicial to defendants,  
18 Your Honor. You're saying all or nothing, give a  
19 million and a half or nothing.

20 THE COURT: I'm not necessarily saying you're  
21 wrong, but I'm not necessarily at this point in time  
22 prepared to say you are right. And so you've preserved  
23 it. And you may be right in the end. As I said, I've  
24 got -- I had some significant concerns and when I heard  
25 that you were wanting to have a issue to raise with the



1 Court this morning, I had a gut feeling that that was  
2 probably what we were about to talk about. I guess I  
3 should have gone with the gut and looked at this more  
4 in depth yesterday, but I didn't.

5 And so I want to -- I want to get this to the  
6 jury. I want them to reach a verdict. Who knows.  
7 They may reach a verdict that makes all of this  
8 unnecessary.

9 MR. KNAUSS: Understood, Your Honor.

10 THE COURT: So we'll proceed on that basis.  
11 I assume you still want me to remind them that  
12 demonstrative evidence is not admitted into evidence?

13 MR. KNAUSS: Please, Your Honor.

14 THE COURT: They can only rely on it for  
15 purposes of what the testimony of the witness was?

16 MR. KNAUSS: I would, Your Honor.

17 THE COURT: Okay. And with that, bring them  
18 in.

19 THE MARSHAL: All rise for the jury.

20 (The following proceedings were held in the  
21 presence of the jury.)

22 THE COURT: All right. Parties stipulate to  
23 the presence of the jury panel?

24 MS. BRASIER: Yes, Your Honor.

25 MR. KNAUSS: Yes, Your Honor.

1 since coming onto the bench had any issue with somebody  
2 saying they didn't want to discuss a verdict with  
3 people bothering them about it.

4 If you do have the time, I would really  
5 appreciate it if you would go back to the deliberation  
6 room for just a couple minutes. I would like to come  
7 back and personally thank you for your time. If you  
8 don't have the time, I understand. You can head out  
9 and go back to your lives with our thanks and  
10 appreciation. If you do have a couple minutes, I'd  
11 appreciate a chance to come back, thank you for your  
12 time, and see if there was anything we could have done  
13 better to improve the experience for you in terms of  
14 your time here as a juror.

15 So if you would follow the marshal back and  
16 either head out with our thanks or I'll be there in  
17 just a couple minutes.

18 (The following proceedings were held outside  
19 the presence of the jury.)

20 THE COURT: Okay. Because, obviously, the  
21 crux of the case was the damages and the jury verdict  
22 obviously keeps those issues in play, I would like to  
23 have briefing from both sides on the issue that you've  
24 raised relating to the amount, for right now, we'll  
25 just say the amount of evidence that was introduced in

1 this case.

2 Also I can see maybe a couple other issues  
3 from the jury's verdict in view of the same sort of  
4 issue that you raised. How long would you like to  
5 have? I assume you're sort of the lead one, I assume,  
6 protesting so how long would you like to have?

7 MR. KNAUSS: I have another trial that starts  
8 in about two weeks so maybe if you can give me at least  
9 30 days.

10 THE COURT: That's fine with me.

11 Do you oppose that?

12 MS. BRASIER: I don't oppose it. I guess,  
13 just logistically or practically, is the Court wanting  
14 us to stay entering judgment on the verdict?

15 THE COURT: Yeah, I'm going to stay entering  
16 a judgment on the verdict.

17 MS. BRASIER: Then what would 30 days be? I  
18 have trials coming up, too.

19 MR. KNAUSS: Is 28 days the rule, Your Honor?

20 THE COURT: I understand.

21 THE COURT CLERK: It's around the 1st of May,  
22 3rd of May.

23 THE COURT: 28 days would be probably  
24 April 26th. April 26 work for you?

25 MR. KNAUSS: That works, Your Honor.

1 THE COURT: And then two weeks for you?

2 MS. BRASIER: So May something? That should  
3 work. My brain is a little dead right now. What's the  
4 date? Sorry, Your Honor.

5 THE COURT CLERK: May 10th.

6 MS. BRASIER: We'll make that work. And if  
7 there's some issue, I'll raise it before the Court.

8 THE DEFENDANT: April 26th, you said?

9 THE COURT: Yes, sir.

10 And you want a week for a reply?

11 MR. KNAUSS: Yes, please.

12 THE COURT: All right. One week then for a  
13 reply. And let's set it on calendar for the following  
14 Wednesday.

15 I'm here?

16 THE COURT CLERK: So far. That may change.  
17 May 22nd. Are you going to be here so far?

18 THE COURT: Yep.

19 MS. BRASIER: What's the date, Your Honor?

20 THE COURT CLERK: Defense's brief will be due  
21 April 26th. Plaintiff's response is due May 10th.  
22 Defense's reply is May 17th. And the hearing will be  
23 May 22nd at 8:30.

24 THE COURT: All right. Interesting verdict,  
25 but they obviously gave it some thought and reached it

**EXHIBIT 3**

**EXHIBIT 3**

1 **JGJV**

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14 *Attorneys for Plaintiff*

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 JARED MOSS, individually,

Case No. A-21-840372-C

18 Plaintiff,

Dept. No. 20

19 v.

**JUDGMENT UPON THE  
JURY VERDICT**

20 SEAN EDWARD TOMESCO,

individually; SECOND OPINION

21 PLUMBING, LLC, a domestic limited

liability company; DOES I through X,

22 inclusive; ROE CORPORATIONS XI

through XX, inclusive,

23 Defendants.

1 This action came on for trial before the Court and the jury, the Honorable  
2 Eric Johnson, District Court Judge, presiding, and the issues having been duly  
3 tried and the jury having duly rendered its verdict, the Court hereby enters  
4 judgment upon the verdict,<sup>1</sup> as follows:

5 IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Jared Moss  
6 has and recovers against Defendant Sean Edward Tomesco and Defendant  
7 Second Opinion Plumbing, LLC, jointly and severally, the following sums:

8 Past medical expenses: **\$200,000**

9 Past physical and mental pain,  
10 suffering, anguish, disability,  
and loss of enjoyment of life: **\$200,000**

11 Future medical expenses: **\$1,500,000**

12 Future physical and mental pain,  
13 suffering, anguish, disability,  
and loss of enjoyment of life: **\$3,100,000**

14 **SUBTOTAL OF VERDICT: \$5,000,000**

15 IT IS FURTHER ORDERED AND ADJUDGED that the past damages  
16 awarded to Plaintiff Jared Moss shall bear prejudgment interest in accordance  
17 with NRS 17.130 and *Lee v. Ball*, 121 Nev. 391, 116 P.3d 64 (2005) at the current  
18 legal rate of 10.50% from the date of the service of the summons and complaint  
19 on October 29, 2021<sup>2</sup> as follows:

20  
21  
22  
23 <sup>1</sup> The verdict form was filed on March 29, 2024.

24 <sup>2</sup> The affidavit of service was filed on November 5, 2021.

|   |                                                                                                            |                    |
|---|------------------------------------------------------------------------------------------------------------|--------------------|
| 1 | <u>Past</u> medical expenses:                                                                              | \$200,000          |
| 2 | 10/29/2021 through 07/10/2024:                                                                             | 986 days           |
| 3 | Rate:                                                                                                      | <u>10.50%</u>      |
| 4 | <b>Prejudgment Interest:</b>                                                                               | <b>\$56,728.77</b> |
| 5 | <u>Past</u> physical and mental pain,<br>suffering, anguish, disability,<br>and loss of enjoyment of life: | \$200,000          |
| 6 | 10/29/2021 through 07/10/2024:                                                                             | 986 days           |
| 7 | Rate:                                                                                                      | <u>10.50%</u>      |
| 8 | <b>Prejudgment Interest:</b>                                                                               | <b>\$56,728.77</b> |

8           **SUBTOTAL OF PREJUDGMENT INTEREST: \$113,457.54**

9           In summary, Plaintiff Jared Moss has and recovers against Defendant  
10 Sean Edward Tomesco and Defendant Second Opinion Plumbing, LLC, jointly  
11 and severally, the following sums:

|    |                                                                                                                                       |                       |
|----|---------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 12 | <u>Past</u> medical expenses:                                                                                                         | <b>\$200,000</b>      |
| 13 | Prejudgment interest on<br><u>past</u> medical expenses:                                                                              | <b>\$56,728.77</b>    |
| 14 | <u>Past</u> physical and mental pain,<br>suffering, anguish, disability,<br>and loss of enjoyment of life:                            | <b>\$200,000</b>      |
| 15 | Prejudgment interest on<br><u>past</u> physical and mental pain,<br>suffering, anguish, disability,<br>and loss of enjoyment of life: | <b>\$56,728.77</b>    |
| 16 | <u>Future</u> medical expenses:                                                                                                       | <b>\$1,500,000</b>    |
| 17 | <u>Future</u> physical and mental pain,<br>suffering, anguish, disability,<br>and loss of enjoyment of life:                          | <b>\$3,100,000</b>    |
| 18 | <b>TOTAL:</b>                                                                                                                         | <b>\$5,113,457.54</b> |



1           Therefore, Plaintiff Jared Moss has and recovers a total judgment against  
2 Defendant Sean Edward Tomesco and Defendant Second Opinion Plumbing, LLC,  
3 jointly and severally, for **\$5,113,457.54**. This total judgment shall accrue post-  
4 judgment interest at the adjustable legal rate, which is currently 10.50%, and is  
5 a daily amount of approximately \$1,470.99 starting on July 11, 2024 until fully  
6 satisfied.<sup>3</sup>

7           IT IS SO ORDERED.

8  
9  
10 Submitted by:

11 **CLAGGETT & SYKES LAW FIRM**

12 /s/ Micah S. Echols

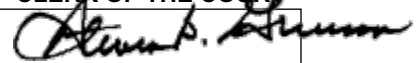
13 \_\_\_\_\_  
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15 ALISON M. BRASIER, ESQ.  
16 BETSY C. JEFFERIS-AGUILAR, ESQ.  
**HICKS & BRASIER, PLLC**  
*Attorneys for Plaintiff*

17  
18  
19  
20  
21  
22  
23 \_\_\_\_\_  
24 <sup>3</sup> This post-judgment interest rate may vary every January and every July, as  
outlined in NRS 17.130 and *Lee v. Ball*, 121 Nev. 391, 116 P.3d 64 (2005).

**EXHIBIT 4**

**EXHIBIT 4**



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

|                        |   |                        |
|------------------------|---|------------------------|
| JARED MOSS,            | ) |                        |
| individually,          | ) |                        |
| Plaintiff,             | ) | CASE NO. A-21-840372-C |
|                        | ) | DEPT. NO. 20           |
| vs.                    | ) |                        |
|                        | ) |                        |
| SEAN EDWARD TOMESCO,   | ) |                        |
| INDIVIDUALLY; SECOND   | ) |                        |
| OPINION PLUMBING, LLC, | ) |                        |
| A DOMESTIC LIMITED     | ) |                        |
| LIABILITY COMPANY;     | ) |                        |
| DOES I THROUGH X,      | ) |                        |
| INCLUSIVE; ROE         | ) |                        |
| CORPORATIONS IX        | ) |                        |
| THROUGH XX, INCLUSIVE, | ) |                        |
|                        | ) |                        |
| Defendants.            | ) |                        |

---

BEFORE THE HONORABLE ERIC JOHNSON

WEDNESDAY, MARCH 27, 2024,

RECORDER'S TRANSCRIPT OF PROCEEDING:

JURY TRIAL DAY 3

APPEARANCES:

For the Plaintiff: ALISON BRASIER, ESQ.  
BETSY C. JEFFERIS-AGUILAR, ESQ.

For the Defendants: STEVEN KNAUSS, ESQ.  
CHERYL BRADFORD, ESQ.

Recorded by: Angie Calvillo, Court Recorder

Transcribed by: Kimberly A. Farkas, RPR, NV CCR No. 741

## INDEX OF WITNESSES

| Witness               | Direct | Cross | Redirect | Recross | Voir Dire |
|-----------------------|--------|-------|----------|---------|-----------|
| Bradley<br>Welch, DDS | 5      | 10    | 14       |         |           |
| William<br>Muir, MD   | 16     | 90    | 183      |         |           |

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|-----------------|----------|
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| Defendants' 105 | 126      |
| Defendants' 109 | 141      |
| Defendants' 139 | 166      |

1 THE WITNESS: Excuse me.

2 THE COURT: Sure. Take your time and get set  
3 up.

4 THE WITNESS: All right. I'm ready.

5 DIRECT EXAMINATION OF WILLIAM MUIR, MD

6 BY MS. BRASIER:

7 Q. Okay. Good morning, Dr. Muir.

8 A. Good morning.

9 Q. Can you just explain to the jury, can you  
10 give them your background, your education, what you do  
11 now with your practice?

12 A. Certainly. I graduated from Brigham Young  
13 University in 1975. And in 1977 I completed a master's  
14 program at Stanford University in physical therapy. I  
15 came to Las Vegas and practiced physical therapy for a  
16 few years. If you know of Kelly Hawkins, it's one of  
17 the therapy practices in town, I started that practice  
18 as William Muir Physical Therapy.

19 I then went to medical school at the  
20 University of Nevada Medical School in Reno. When I  
21 completed my MD, I then went to Phoenix for an  
22 internship and residency program, which is five years,  
23 in orthopaedic surgery.

24 Upon completion of that, I went to  
25 North Carolina and completed a spine fellowship, which

1 is studying under experts in the spine. When I  
2 finished my spine fellowship, I went to Salt Lake City  
3 where I practiced at the Intermountain Spine Institute,  
4 the largest group in the Rocky Mountains at that time.  
5 I practiced there for 14 years doing spine surgery.

6 Also in my fellowship I was trained to do  
7 interventional injections because there was no such  
8 thing as board certified pain management doctors back  
9 then. And so I continued to do injections on a weekly  
10 basis, but predominantly orthopaedic spine surgery of  
11 both the neck and the low back. I moved here in 2005.

12 Since 2008, I've been at Summerlin Hospital.  
13 I've been the chief of orthopaedic surgery and the  
14 chief of spine surgery since about 2011 at Summerlin  
15 Hospital. So I'm in charge of the spine docs and the  
16 other orthopaedic surgeons and their credentialing and  
17 any concerns at the Summerlin Hospital.

18 My practice has been orthopaedic spine  
19 surgery. I stopped doing surgery about two years ago  
20 due to medical reasons. I continue to do  
21 interventional injections. In the last two years I've  
22 hired two pain management doctors and so our practice  
23 is predominantly pain management at this time.

24 Q. Okay. So it sounds like both your education,  
25 your experience, is multi-layered. You started out

1 with physical therapy, did spine surgery for a long  
2 time, and now your focus is more on the pain  
3 management?

4 A. That's correct.

5 Q. Okay. The types, like facet injections,  
6 RFAs, things like what happened in Jared's case?

7 A. Yes.

8 Q. Okay. Great. And in this case you're both  
9 Jared's treating doctor; correct, and then you were  
10 also hired to prepare a report about his future needs  
11 medically; correct?

12 A. Yes. And to review the medical records and  
13 provide a report regarding that.

14 Q. Okay. And can you, I guess, talk about the  
15 distinction between your responsibilities or your role  
16 as Jared's treating doctor versus an expert who's going  
17 to look at the needs in the future and kind of look at  
18 the case as a whole?

19 A. Yes. As a treating physician, you typically  
20 don't gather all the medical records that may be  
21 relevant to that particular patient. You evaluate the  
22 patient. You obtain what you feel is relevant. And  
23 then you proceed to treat that patient and make  
24 opinions based upon the information that you have.

25 As an expert, it goes beyond just treating

1 the patient. It includes reviewing all the pertinent  
2 medical records and providing opinions regarding those  
3 records and opinions regarding what caused the  
4 patient's particular problems.

5 Q. And as Jared's treating physician, even  
6 though you're also acting as an expert, you have a  
7 doctor/patient relationship with him; correct?

8 A. I do. We continue to.

9 Q. And that also brings with it your ethical  
10 obligations, the Hippocratic oath. Potentially your  
11 license is involved because you're responsible for  
12 treating this patient, and if you do so incorrectly,  
13 that can have ramifications; correct?

14 A. Yes, it could.

15 Q. And that's different if you're just brought  
16 in as an expert to look at records and write a report.  
17 Not the same consequences; correct?

18 A. Correct.

19 Q. Okay. So different from the doctor who's  
20 hired by the defense to come in; he wouldn't have those  
21 potential same consequences in this case?

22 A. Correct.

23 Q. Okay. We heard a little bit about that Jared  
24 treated with you on a medical attorney lien?

25 A. I believe so, yes.



1           Q.    Okay.  And can you explain to the jury what  
2   that is and whether or not that affects how you treat  
3   the patient?

4           A.    It does not affect how we treat the patient  
5   generally.  Most patients that we have seen that are  
6   involved in car accidents are treated under a lien,  
7   which means it's a promissory note to pay for the  
8   treatments once there's settlement in that particular  
9   case.  And in that way they can, if they have access  
10  elsewhere, they don't have to pay high co-pays, and it  
11  decreases their initial out-of-pocket costs.

12          Q.    And I think you said in the very beginning,  
13  but do you treat patients on a lien any differently  
14  than you would anyone else?

15          A.    Yes.  In fact, I have not seen the billing on  
16  this and so I'm assuming it's a lien, but I have not  
17  seen the billing.

18          Q.    Okay.  But it doesn't change what you're  
19  going to do for the patient?

20          A.    No, it does not.

21          Q.    Okay.  Great.  And just to get this out of  
22  the way, too, you're being paid for your time because  
23  you had to take today out of your practice and you've  
24  taken time to review medical records.  So we're paying  
25  you for that additional work; correct?

1           A.    Yes.  It's half day, about \$6,000, which is  
2   customary for a spine surgeon.

3           Q.    Okay.  And that's because you basically have  
4   had to clear your day out and you can't see patients?

5           A.    That's right.

6           Q.    And is that influencing your testimony at all  
7   today?

8           A.    It is not.

9           Q.    Okay.  Thank you.

10                  So you mentioned when we were talking about  
11   your role as an expert that you reviewed all the  
12   medical records related to this case; correct?

13           A.    Yes, they were provided to me.

14           Q.    Okay.  And based on your review of the  
15   medical records and your care and treatment of Jared,  
16   did you come up with a diagnosis for what was causing  
17   his pain symptoms?

18           A.    Yes.  His pain symptoms are from painful  
19   facet joints, which is often called facet syndrome.

20           Q.    Okay.  And do you have any opinions about  
21   what caused that facet syndrome?

22           A.    Yes.  When he was struck by that van on, I  
23   believe it was, July 9th, 2020.

24           Q.    And how common or uncommon is it to see facet  
25   injuries following a car accident, particularly a

1 pedestrian versus car accident?

2 A. Yeah. In car accidents and most accidents  
3 the most common diagnosis is a sprain or strain. If  
4 you have that, that will go away within three or four  
5 months whether it's treated or not, typically.

6 And the most common cause of pain that  
7 persists beyond three months, the first one would be  
8 related to the disc, the second one to the joint. So  
9 the joint is the second most common. Facet mediated  
10 pain from car accidents is the second most common cause  
11 of pain related to car accidents. In fact, the  
12 injections into the facet joint is the second most  
13 common procedure that's done by pain management doctors  
14 in the United States.

15 Q. And what you've just told the jury, is that  
16 based on the research in the literature in addition to  
17 your experience doing this every day?

18 A. Yes.

19 Q. Okay. Before we get in too much, I just  
20 wanted to -- I talked to the jury during openings  
21 yesterday --

22 THE COURT: Hold on. What is this?

23 MS. BRASIER: This is the summary that I  
24 showed in my opening statement.

25 THE COURT: Hold on. Take it off the screen

1 while we're talking about this.

2 MS. BRASIER: All right. Sorry.

3 THE COURT: I assume you've got a copy of it?

4 MR. KNAUSS: We do.

5 THE COURT: What are you using this for?

6 MS. BRASIER: Just to have him go through. I  
7 mean, I could hand write it also, but this is just the  
8 Guidelines.

9 THE COURT: So this is just a demonstrative?

10 MS. BRASIER: Yes, Your Honor.

11 THE COURT: All right. Ladies and gentlemen,  
12 during a trial expert witnesses and possibly other  
13 witnesses may show you materials to help explain  
14 testimony or other evidence in the case. These  
15 materials are typically referred to as demonstrative  
16 exhibits. While they are shown to you during the  
17 trial, they have not been admitted into evidence. You  
18 will not be able to review them during your  
19 deliberations because they, themselves, are not  
20 evidence and do not prove any facts. You may, however,  
21 consider the testimony given in connection with these  
22 demonstrative exhibits.

23 All right. Go ahead.

24 MS. BRASIER: Thank you, Your Honor.

25

1 BY MS. BRASIER:

2 Q. Dr. Muir, yesterday during opening statements  
3 I told the jury about the ASRA Consensus Guidelines.

4 Are you familiar with those?

5 A. I am. That's the most extensive guidance  
6 that are -- have been published for 30 years. And they  
7 were published in 2020.

8 Q. Okay. And I gave the jury a brief overview  
9 of how those Consensus Guidelines came into being, but  
10 maybe you can expound a little bit on that.

11 A. Certainly. This is headed by Dr. Cohen,  
12 who's at Johns Hopkins and has a lot of research. And  
13 he brought together 10 different societies, such as the  
14 Spine Intervention Society, which is -- I'm a member.  
15 All pain management doctors are members. So he brought  
16 societies together that deal with facet mediated pain.  
17 And they looked at nearly 350 articles that relate to  
18 this, and they came up with a consensus of diagnoses,  
19 how it's diagnosed, and their recommendations for  
20 treatment.

21 Q. And in order to make it into the  
22 Consensus Guidelines, what's your understanding of how  
23 much agreement they had to have?

24 A. They had to have general consensus with the  
25 vast majority to accept a consensus.

1           Q.    Okay.  And these Consensus Guidelines, is  
2   this, essentially, I guess, for lack of a better term,  
3   like the bible for pain management doctors on how you  
4   would diagnose and treat a facet injury?

5           A.    They are.

6           Q.    Okay.  And I told the jury yesterday that  
7   RFAs were the gold standard for treatment if you had a  
8   facet injury.  Is that accurate?

9           A.    Yes.  If it -- if someone doesn't respond to  
10  conservative care, which typically may include  
11  medications, chiropractic or physical therapy or  
12  injections, then the gold standard is the radio  
13  frequency ablation.

14          Q.    And I'm going to go through each one of  
15  these, the parts of the Consensus Guidelines, with you  
16  in a minute.  But I think maybe to lay a little bit of  
17  foundation, we could give the jury some explanation  
18  about the anatomy of the spine.  I did my attorney best  
19  yesterday to give them a primer, but I figure you might  
20  be a little bit better at that than I am.

21                So there's a spine model there in front of  
22  you, if that's helpful for you.

23          A.    Certainly.

24                THE WITNESS:  Judge, may I stand closer to  
25  the jury if I speak loudly?

1 THE COURT: Sure. See the red line on the  
2 floor?

3 THE WITNESS: I won't cross it.

4 THE COURT: Okay.

5 MS. BRASIER: And let me know if you can't  
6 hear him.

7 THE COURT: And you guys can move wherever  
8 you want to see.

9 MR. KNAUSS: Thank you, Your Honor.

10 BY MS. BRASIER:

11 Q. So, Dr. Muir, I gave the jury kind of a  
12 general overview of the spine and focusing on the facet  
13 joints, since that's what we're going to be talking  
14 about. But can you just give them an explanation of  
15 the areas of the spine that you think are relevant or  
16 important for them to know so that they can understand  
17 the information in this case?

18 A. Yes. You can have facet mediated pain. It's  
19 common in all the areas of the spine, but what we are  
20 concentrating on is the lumbar spine, which is in gray.  
21 So, basically, you have five discs, which are shock  
22 absorbers. If they're damaged, they could cause pain.  
23 And that's common. And then where the joints, bones  
24 come together, you see a little motion there, right  
25 there and right there, the two bones come together,

1 they form like a knuckle joint on each side of the  
2 spine. So there's one here. There's one here.

3 And the facet joint, what this does, it shows  
4 the soft tissue. So what surrounds the tissues that  
5 are sensitive to pain that surround -- that are  
6 involved in a joint would be a capsule that it's  
7 enveloped, it covers the joint, and it has nerves. So  
8 if that capsule is damaged, then you have facet  
9 mediated pain.

10 There's also inside lining the joint what's  
11 called synovial tissue. It makes synovium, which is  
12 fluid. You probably know the fluid that's in the knee.  
13 So things would move more easily without rubbing so  
14 much. And that synovium will often have an infolding  
15 from the side similar to what, if you think of a  
16 meniscus of the knee. And that's innervated as well.  
17 So if that tissue is damaged, you have facet mediated  
18 pain.

19 Also what's not unusual in facet mediated  
20 pain is called subchondral fractures. Below the  
21 cartilage you can get small, little fractures. And  
22 that's another source of facet mediated pain.

23 With the disc, usually if you bend forward,  
24 that's going to compress the discs and usually that's  
25 more painful. With the facet joints, if you compress



1 the joints backwards or back and rotate, that will  
2 exacerbate the pain, typically.

3 Q. And the facet joints allow for movement in  
4 the spine; correct?

5 A. They do, movement and stability.

6 Q. Okay. And can you explain to the jury how  
7 the -- how the nerve roots and the medial branch nerves  
8 also play into the facet joints?

9 A. Certainly. What you're seeing in yellow are  
10 the major nerves that will, in the lumbar spine, will  
11 go down, down the leg. And that's not what we're  
12 talking about. But where this nerve comes off the  
13 spinal cord there is a dorsal branch, branch that comes  
14 out from the back. And each facet joint is innervated  
15 by two of those, one from the nerve at the level of the  
16 joint and one off of the nerve that's at the level  
17 above. Those are called medial branch nerves.

18 Q. And if you have an injury to your facet  
19 joint, is that going to affect how you're able to move  
20 or if you experience symptoms when you're moving?

21 A. It does. It typically does. Often with  
22 certain movements patients will get a sharp, stabbing  
23 type of pain. Typically with any type of extension and  
24 rotation, it often makes it worse. So at times the  
25 patients can be pretty comfortable. I've had facet

1 mediated pain myself. And you feel slight pain, but  
2 when you move a certain way, it's like a jabbing type  
3 of sharp pain.

4 Q. So facet mediated pain like you just  
5 explained, it can come and go depending on movement or  
6 positioning?

7 A. Yes. And so we particularly pay attention to  
8 the pain levels, the highest pain levels, as opposed --  
9 well, we pay attention to the average pain levels, but  
10 particularly the higher. Because sometimes with facets  
11 you can just be standing there and say, oh, gosh, I  
12 feel great. And you move a certain way, and you have  
13 significant pain in the patient.

14 Q. Thank you, Doctor. I want to go through the  
15 Consensus Guidelines now. But if you feel like that  
16 spine model would help as we go along, feel free to  
17 pick it up and use it.

18 A. Should I sit down?

19 Q. Yeah, I think that would be good. Thank you.

20 A. Okay.

21 Q. All right. So the Consensus Guidelines, I  
22 kind of put it into five, I guess, parts that I thought  
23 were relevant to this case. Well, not relevant to this  
24 case. Relevant to any diagnosis and treatment of facet  
25 injuries. So I just wanted to go through them with

1 you, have you explain them, but also make sure I'm not  
2 missing something or misrepresenting something to the  
3 jury.

4 A. Sure. And I think there's probably eight  
5 that are relevant to this case.

6 Q. Okay. So when we get to where you think I'm  
7 missing something, let's add it in. And what I have on  
8 the screen, it should be on your TV as well if you  
9 needed to see it; okay.

10 So the place where I was starting was with  
11 conservative treatment. So if you think -- if you  
12 think that there's a facet injury or probably with all  
13 cases you might start with conservative treatment; is  
14 that a fair statement?

15 A. Yes. And the third question is whether PT or  
16 conservative care, chiropractor treatment, is indicated  
17 and for how long.

18 Q. And why do you start out with conservative  
19 treatment even if you think it might be a facet injury?

20 A. Sure. You want to treat something the least  
21 invasive possible. So if someone is responding to a  
22 simple treatment, you just keep going with that. But  
23 if they don't respond to that next treatment, then you  
24 give the patient the option of saying, well, in  
25 addition to what you're receiving now, we can do this

1 as another option. So on one spectrum it's like a  
2 teeter-totter, where you have the conservative care and  
3 the more invasive. You want to do the most  
4 conservative care, but you want to provide the patient  
5 with the most relief and so you have to consider the  
6 pros and cons of both of them.

7 Q. Okay. And why is it -- well, let me just  
8 make sure I'm representing it right. Do you want to  
9 try the conservative treatment for about three months,  
10 assuming you don't have something, you know, a spinal  
11 cord injury or something like that?

12 A. Yes. And I think if you talk to 10 doctors,  
13 they'd probably give you 10 variations to that. In  
14 fact, the answer, the consensus, they came up with is  
15 try it for three months, which we did with Jason,  
16 before you do an injection. But on that particular  
17 question they said that the current literature really  
18 doesn't support that completely. So saying, yes, three  
19 months, but it can vary somewhat.

20 Q. And I think you said it before, but if you  
21 just have a sprain/strain, a muscle type of soft tissue  
22 injury, should that resolve within about three months?

23 A. Within three months, four months at the most.  
24 I think everybody can hurt the back at one point and it  
25 gets better. Often that's a -- a sprain/strain is a

1 soft tissue, typically.

2 Q. Okay. And why do you do -- if you are  
3 thinking someone might have a facet injury and they're  
4 going through more invasive procedures, why would you  
5 continue doing the physical therapy or chiropractic  
6 work?

7 A. Well, the chiropractic cannot only -- or  
8 physical therapy not only can provide some relief, it  
9 can be beneficial as far as exercising. As you  
10 strengthen the muscles around the damaged level,  
11 tissue, then that can take some of the strain and that  
12 can be helpful.

13 Q. Okay. The next part that I had listed  
14 here -- and tell me if you put something else, if you  
15 think something else needs to go there. The second one  
16 I put was that you would use some kind of imaging, MRI  
17 or CT, to rule out other causes aside from potentially  
18 a facet mediated pain; is that accurate?

19 A. Yes. Typically, we get imaging to make sure  
20 that there's nothing horrible, like a fracture,  
21 dislocation. Last time in my office that I've seen a  
22 fractured facet has been probably more than 15 years,  
23 but we still get some films to make sure that's not the  
24 case. But we do first start off with some x-rays. And  
25 if the patient is not improving or if they plateau,

1 then after a period of time we'll get further imaging  
2 such as an MRI scan or a CAT scan.

3 Q. And if it's a facet injury, why are we using  
4 the MRI or CT to rule out other causes of pain? Why  
5 can't we just see the facet injury on an MRI?

6 A. And that's the second question, the  
7 Consensus, they addressed, whether radiographic  
8 findings that we use, if we're able to identify a  
9 painful facet. And the general answer is, no, you  
10 can't. And why can't you? Because the damage is  
11 more -- it's small enough that it's not going to show  
12 up on an MRI scan or a CT scan. Does it mean that  
13 there's really nothing there, this is a mystical injury  
14 because we can't see it on the MRI scan? No. There's  
15 what's called the SPECT scan, which is when you inject  
16 a radio isotope. Think of like uranium but it's not  
17 uranium, but it's along that line. It will accumulate  
18 in areas where there's increased vascularization, where  
19 there's damage. It's often used for diagnosis for  
20 cancer. It's not for spine because we don't need to  
21 inject a radio isotope. Nobody really wants that  
22 uranium type of chemical in their body because it can  
23 cause cancers and other problems.

24 So as the -- does a facet -- can you make the  
25 diagnosis on a SPECT scan? Yes. But we don't use

1 that. Can you make a diagnosis from what's called  
2 histological studies, that's cellular studies?  
3 Absolutely. But you need some tissue to do that and we  
4 don't take a little piece of the capsule. You don't  
5 take a little synovium. We don't drill into the little  
6 bone to see if there's a fracture.

7 So it's absolutely been documented in the  
8 literature that when you have facet mediated pain,  
9 you'll have -- you'll have histological changes and  
10 typically a SPECT scan -- but we can't -- it doesn't  
11 make sense to do that clinically.

12 So we get an MRI scan and a CAT scan to see  
13 if there's other type of problems, particularly disc  
14 type of problems, but you cannot -- you don't make the  
15 diagnosis from the MRI or CAT scan.

16 Q. Okay. So if I'm understanding correctly,  
17 there are really invasive, more almost --

18 A. Diagnostic studies.

19 Q. -- dangerous ways that you could, if you  
20 really wanted to, you know, do that. Radiographically,  
21 you could do it, but the risks or the dangers to the  
22 patient really doesn't justify it?

23 A. Correct. And there's other means how we can  
24 make the diagnosis without utilizing those SPECT scan  
25 or taking tissue out and looking at it.

1           Q.    Okay.  So the Consensus Guidelines say that  
2  MRI or CT is not for diagnosing a facet injury;  
3  correct?

4           A.    Yes.  It's -- there's no association, or weak  
5  at best.

6           Q.    Okay.  And so if the doctor on the defense  
7  side says, well, I know it's not a facet injury because  
8  I don't see -- I don't see it on the MRI, that wouldn't  
9  be in accordance with the Guidelines?

10          A.    Right.  That's smoke and mirrors.  That's --  
11  someone would know that you don't make the diagnosis  
12  from an MRI scan.  You would not expect to see changes  
13  on the MRI scan if you have facet mediated pain.

14          Q.    All right.  Moving on to -- well, let me --  
15  I'll let you direct it a little bit better than maybe  
16  me.

17                   What do you think is the next important step  
18  according to the Consensus Guidelines?

19          A.    Well, let's jump to the first question.  The  
20  first question is, is there anything in the history and  
21  physical examination.  History meaning tell me about  
22  what the problems you're having.  The physical  
23  examination is doing the actual examination.  Can you  
24  identify facet pain from that.  And the consensus is  
25  there's no association for the diagnosis of facet pain.



1 There's nothing that you can hang your hat on saying,  
2 okay, you have a facet problem.

3 There are things we look at and things that  
4 the patient tells us. If they say there's kind of a  
5 sharp, stabbing pain, you think of facet, but you  
6 cannot make the diagnosis. They've done studies on  
7 that. You cannot make the diagnosis just on that.

8 There are ones where patients say, well, I'm  
9 doing fine, but I move a certain way and I get this  
10 jabbing pain. It sounds like facet, but you can't make  
11 the diagnosis from that. Anything else in the history  
12 you cannot make the diagnosis. You fall on your  
13 buttocks and you compress that facet point like Jason  
14 [sic] did.

15 Q. Jared?

16 A. Jared. Sorry.

17 Q. It's okay. It's a J.

18 A. Like Jared did, but you can't make the  
19 diagnosis. I land on my buttocks and I compress my  
20 spine. So there's nothing in the consensus that says,  
21 oh, you have that, then you have facet.

22 How about physical examination. As I said,  
23 when you bend forward, it's more the disc. When you  
24 bend backwards, it's more the joint. And there are  
25 some tests that are often used by the chiropractors,

1 such as Kemp's. And there's some others that will  
2 compress or rotate the joint to see if that elicits  
3 pain. If it does, you're thinking, wow, this could be  
4 a facet. But it's been shown in the literature just  
5 because you have that positive finding, you cannot make  
6 the diagnosis.

7 So the consensus, their first question, the  
8 consensus was from the history, the physical  
9 examination, you cannot make the diagnosis. You can  
10 say, I think it's a facet joint, but you cannot make  
11 the diagnosis that it's facet mediated pain.

12 Q. So do you have to keep doing these other --  
13 it might be a clue, but you've got to do other steps to  
14 confirm the diagnosis?

15 A. Yes. And that's one of the reasons we get an  
16 MRI scan if it's not getting better just to make sure  
17 it's not a disc problem or a nerve. Typically, you  
18 have a nerve problem in the low back, you're going to  
19 have pain, numbness, or sensory motor changes down the  
20 leg. So if someone says, wow, this patient didn't  
21 have -- had a normal neurological examination, well,  
22 you expect that with facet. Now, if someone had an  
23 impingement on the nerve or irritation to the nerve,  
24 then you expect some positive findings on the  
25 neurological exam. But if someone says, oh, the MRI

1 scan is normal, you can't have facet, the neurological  
2 examination is normal so it's not facet, that's smoke  
3 and mirrors. Because if you have facet mediated pain  
4 and nothing else, you shouldn't have any positive  
5 findings on those.

6 Q. Okay. So if I was going to add physical exam  
7 and history, would I put it as the No. 1 on this list?

8 A. Yes. No. 2 would be radiographic -- well,  
9 No. 2 is the third question, conservative care. And  
10 that's they're saying three months, plus or minus, for  
11 treatment.

12 No. 2 is the radiological findings. And  
13 there's no evidence, they say, for a bone scan,  
14 CT scan, or MRI scan to make the diagnosis. Again, yes  
15 for a SPECT scan where you inject the radio isotopes,  
16 but there's better ways to make the diagnosis.

17 Q. Okay. So let's talk about the ways that you  
18 actually make the diagnosis. Facet injection, is that  
19 one of them?

20 A. Yes, the facet injection. And there's two  
21 types of facet injections that can be done. And this  
22 addressed both and saying which is the best. The  
23 consensus was both types injections in the literature  
24 shows that if you have a positive finding of 50 percent  
25 or more reduction of pain immediately, that that is how

1 you make the diagnosis of facet mediated pain. Or if  
2 there's an increase, what they call satisfaction,  
3 meaning that if a patient said, gosh, for three or four  
4 weeks I had great relief from that injection, well,  
5 then that's enough to make the diagnosis that it's  
6 facet mediated pain. Now, the difference between the  
7 two injections, one is inside the joint between the two  
8 bones.

9 Q. And what's that one called, just so we know?

10 A. Intra-articular. Intra means between.  
11 Articular, between the articulating surfaces.

12 And the consensus shown, which has shown,  
13 well, the consensus in the literature shows that that  
14 type injection provides a better therapeutic response  
15 than the other one, but the other injection is better  
16 for the diagnosis. The other injection is you don't  
17 inject within the joint, but you inject the little  
18 nerve, the medial branch. So it's called medial branch  
19 block. You block that nerve where the pain signals  
20 from that joint would go through and up to the brain.  
21 You block that little nerve. And if you get 50 percent  
22 reduction of pain or significant patient satisfaction,  
23 improvement, afterwards, then that's considered  
24 diagnostic.

25 Q. So the first type you described was the facet

1 injection. And then the second type you described was  
2 the medial branch block; correct?

3 A. Both facet injections. One's intra-articular  
4 and one's medial branch block.

5 Q. Okay. Thank you for the clarification.

6 Can you explain to the jury, if we have not  
7 experienced this before, getting these facet  
8 injections, is this something that you just do in your  
9 patient exam room or how do these take place?

10 A. Yeah. It's a simple procedure if it's  
11 done -- and a very safe procedure if it's done under  
12 what's called fluoroscopy. That's like a movie camera  
13 x-ray machine. More than 90 percent of the time you're  
14 going to miss the structure if you didn't have that  
15 guidance. So we have a screen, and we look at  
16 different angles.

17 So you put the needle in a ways. You line it  
18 up first so your needle is going to line up right  
19 towards that structure. Then you put the needle in a  
20 little bit. And then you check a couple angles to see  
21 if it's heading for that structure. Then you continue  
22 to get into that structure.

23 And then once in the structure it's an easy  
24 procedure using the fluoroscope. So it's done in a  
25 surgical center, not in -- not in your examining room.

1 Q. And is the patient under anesthesia during  
2 these injections?

3 A. Depends on what part of the country you're  
4 from.

5 Q. Okay. What about here in Las Vegas?

6 A. Las Vegas, the vast majority will use  
7 sedation. I've had injection into the facet without  
8 sedation and it was extremely painful, much more than I  
9 thought it was going to be. And then I've had several  
10 with sedation, which is much more humane.

11 Q. Okay. So do most of your patients opt to do  
12 it under sedation?

13 A. Yes. Like our injections yesterday, Tuesday,  
14 there was one patient that chose not to have sedation.  
15 The rest chose to have sedation.

16 Q. All right. So we've got the two types of  
17 facet injections. So if you get a positive effect from  
18 the intra-articular facet injections and the medial  
19 branch injection, are those your two -- okay, we got  
20 the two confirms that it's a facet problem?

21 A. Yes. Even with one, you do. As I mentioned,  
22 the medial branch block has shown it doesn't help  
23 therapeutically, as well as the intra-articular. So  
24 routinely I do an intra-articular first because I've  
25 had many patients, you do one injection, settles down

1 the inflammation because it's just more inflammation in  
2 the joint, and that's all they need. If the pain  
3 persists, then we'll do a medial branch block, which is  
4 more diagnostic. And by having the two injections, it  
5 increases the chance of having success with the radio  
6 frequency ablation.

7 Before this consensus, what we used to use  
8 was the SIS, Intervention Society, their guidelines.  
9 And that society was in this 2020, but 15 years ago  
10 they said do two injections so you're more sure that  
11 the radio frequency ablation is going to be enough.  
12 The new consensus says you can do one medial branch  
13 block before you do a radio frequency ablation.

14 Q. I'm going to update my chart here. I'm going  
15 to put IA for -- because it's actually intra-articular  
16 facet injections.

17 A. MBB, medial branch block.

18 Q. And the intra-articular facet injection is a  
19 therapeutic, also helps diagnostically; correct?

20 A. Yes. But less therapeutic than the medial  
21 branch. And that's, again, in the consensus.

22 Q. Okay. So once you've had a positive  
23 intra-articular facet injection and a positive response  
24 from the medial branch block, radio frequency ablation  
25 or RFAs are the gold standard for how you would treat

1     that injury?

2           A.     Yes, they are.

3           Q.     Can you explain to the jury what an RFA is  
4     and how you actually go about performing that?

5           A.     As I mentioned, in the joint it's innervated  
6     by the nerve above and the nerve below. So I place a  
7     special needle that's hooked to a machine the same  
8     place where you do a medial branch block, right on that  
9     medial branch nerve. And the temperature is brought up  
10    to 80 degrees centigrade. And so that is sufficient --  
11    for 30 seconds. And that's sufficient to burn that  
12    nerve.

13                   So, essentially, you're destroying that  
14    little nerve that goes into the joint. Unfortunately,  
15    it grows back again. But that's what you're doing is  
16    destroying that little -- the nerves that go into the  
17    joint so there's no pain signals that go up to the  
18    brain.

19           Q.     Okay. And for an RFA to be successful or to  
20    be the appropriate, I guess, treatment or, you know,  
21    hey, we got it right, how long would you expect to have  
22    pain relief?

23           A.     Well, the consensus would say you have a  
24    minimum of three months of pain relief, which typically  
25    means 50 percent or more relief. They've done two



1 studies where they took a large number of patients that  
2 had facet injections -- sorry -- radio frequency  
3 ablations, and they followed them to see how long they  
4 had benefit. One study came up with eight months. One  
5 study came up with nine months.

6 Now, it's also been documented in the  
7 literature that radio frequency ablation has helped for  
8 two years, and I've certainly had patients that it's  
9 helped for a couple years. But it's typically around  
10 one year.

11 Q. So -- all right. So, actually, according to  
12 the Consensus Guidelines, as long as you have three  
13 months at 50 percent relief, that's considered  
14 successful?

15 A. Yes.

16 Q. And once -- if you have a patient who has a  
17 successful RFA, is it safe to do another one when the  
18 pain returns?

19 A. Yes, it's common. I have two of my sons are  
20 pain management specialists, MDs, one in Reno, one in  
21 St. George. And they're in large clinics. And they  
22 have patients that have come in for more than 10 years.  
23 And RFAs really haven't been that popular until about  
24 20 years ago, 10 to 20 years ago. And so that's not  
25 unusual.

1           But it's common in our clinic that patients  
2     have successful radio frequency ablations if their  
3     problem was a year to two years without improvement,  
4     those are the patients that are typically coming back  
5     for radio frequency ablations.

6           Q.    And once you've had a successful RFA and then  
7     you've had a second one, do you tend to -- as a  
8     clinician, do you form an opinion about, like, I think  
9     this is kind of their frequency pattern, how long is  
10    this going to last for them, or how do you figure that  
11    out?

12          A.    Jared has a frequency pattern of about a  
13    year, which is common, of the two that he had. And he  
14    had a third one in September. So his have been about a  
15    year.

16          Q.    Okay. And I think you said before that's  
17    kind of the average?

18          A.    Yes.

19          Q.    Okay. All right. Let's start talking about  
20    the treatment that happened in this case. And, Doctor,  
21    behind you there should be a binder that says  
22    "Plaintiff's Proposed Exhibits." I'm going to ask you  
23    to refer to those on some occasions. But if you also  
24    have the answer based on your file, you can feel free  
25    to look at that also.

1           A.     Okay.  Thank you.

2           Q.     So Jared reported or went to the  
3     emergency room the day -- the day of the accident with  
4     the van.  What were the exam findings or what was  
5     significant, if anything, about the exam findings of  
6     that first day in the emergency room.

7           A.     His chief complaint was buttocks pain and  
8     swelling.  He had a large hematoma, collection of  
9     blood, in the buttocks that was seen also on the CT  
10    scan.  And so he's very tender.

11                   And then he had lumbar, lower lumbar  
12    tenderness.  And I didn't mention this.  One of the  
13    things you can do in the exam, if you're tender over  
14    the facets, it shows in the literature that there's an  
15    association with facet mediated pain.  But just because  
16    you're tender over the facets doesn't mean -- you can't  
17    use that as your definitive diagnosis.

18                   And he had overlying superficial abrasion,  
19    CT, again, showed the soft tissue hematoma.  After that  
20    he was given some ibuprofen, aspirin, discharged to  
21    home.

22           Q.     Okay.  And was it significant to you at all  
23    that there was no objective findings on the CT scan  
24    that they did at the emergency room?  Now knowing -- I  
25    guess now that we've fast forward and we know it was a

1 facet injury, does that make sense to you?

2 A. It fits perfectly, yes. Now, on his, it was  
3 either the MRI scan or the CAT scan, he has some mild  
4 degenerative changes on the L4-5 level. I would say  
5 all of you, except maybe the fellow in the first row on  
6 the right, if you had MRI scans, you'd have some at  
7 least mild degenerative changes in the -- I'm assuming  
8 you're younger -- but mild degenerative changes in the  
9 facet joint. And you get to my age, then you have  
10 significant. It doesn't mean you hurt. It just means  
11 you're more prone to injury.

12 Q. Okay. Can you explain that a little bit? If  
13 you have degeneration, why does that make you more  
14 prone to injury?

15 A. Let's say you had a degenerative right knee  
16 like I do, and I was tackled by a football player. And  
17 he tackled me on my knees. Most likely the knee that's  
18 going to be damaged, not always, but most likely, it's  
19 the one that has a little bit of degeneration because  
20 it's not -- it's not as stable. It's not as strong as  
21 the normal, the normal joint.

22 Q. It doesn't mean it's painful; correct?

23 A. No. No.

24 Q. And the fact he had the large hematoma on his  
25 right hip/butt area, was that significant to you?

1           A.    Looking back, it was because it means that --  
2   most people that have facet, they land on the buttocks  
3   and they compress their facet joint and they have facet  
4   mediated pain, most of them are not going to have the  
5   collection of blood in the buttocks. But to have that  
6   collection, typically it's a pretty significant blow,  
7   which would mean, translate to, pretty significant  
8   compression on the disc joints.

9           Q.    Okay. I'm going to ask you because we're  
10   going to use the exhibits now, if you could turn  
11   around. I think it might be right behind you standing  
12   up on the countertop behind you.

13          A.    Is it okay if I use my own notes?

14          Q.    Just for the record, you have to refer to  
15   the --

16          A.    Which binder?

17                THE COURT CLERK: The one standing up.

18                THE WITNESS: The one standing up?

19                MR. KNAUSS: It's just the one binder. Does  
20   that one say "Plaintiff's Proposed" on the front?

21                THE WITNESS: "Plaintiff's Trial Exhibits."

22                THE COURT: Yes.

23   BY MS. BRASIER:

24          Q.    Okay. Dr. Muir, do you mind looking at  
25   Plaintiff's Proposed Exhibit No. 4. Those are bills

1 and records from Advanced Spine & Rehabilitation, and  
2 let me know if those are records that you reviewed as  
3 part of your expert work to come to your conclusions in  
4 this case?

5 A. They were.

6 MS. BRASIER: Okay. Your Honor, at this  
7 time, I'd like to offer Plaintiff's Proposed  
8 Exhibit No. 4 into evidence.

9 THE COURT: Any objection to 4?

10 MR. KNAUSS: No objection, Your Honor.

11 THE COURT: All right. 4 will be admitted  
12 into evidence.

13 (Plaintiff's Exhibit 4 was admitted into  
14 evidence.)

15 BY MS. BRASIER:

16 Q. Dr. Muir, if it's easier for you to use your  
17 chart versus the exhibit binder, I'm going to go by  
18 dates of treatment so either way.

19 A. Less bulky. Okay.

20 Q. So the first record I'm going to talk to you  
21 about, Dr. Muir, from Advanced Spine & Rehabilitation,  
22 that's Dr. Janda's office. Are you familiar with  
23 Dr. Janda and Advanced Spine & Rehabilitation?

24 A. I am.

25 Q. Okay. And do you commonly have patients that

1 are being treated with Dr. Janda?

2 A. Occasionally.

3 Q. Okay. And any concerns about the treatment  
4 that's given at Advanced Spine & Rehabilitation?

5 A. No. He's well respected in the community,  
6 and the treatment was appropriate.

7 Q. Okay. Fantastic. All right. So this is the  
8 first date that Jared went to Advanced Spine. That's  
9 on July 10th of 2020. That's the day --

10 THE COURT: What page?

11 MS. BRASIER: I apologize, Your Honor. It's  
12 Exhibit 4 on page 106 is what I'm publishing.

13 THE COURT: All right.

14 BY MS. BRASIER:

15 Q. This is the day Jared was hit by the van,  
16 that first date of treatment.

17 What were his complaints when he first went  
18 to see Dr. Janda that day after?

19 A. His chief complaints were low back pain,  
20 right buttocks/hip pain, right knee pain, and  
21 sleeplessness.

22 Q. Okay. And I just -- I also want to look --  
23 there were some photos that were taken of the hematoma  
24 at Dr. Janda's office. I'm going to publish from  
25 Exhibit 4, 108 and 109. I just want to -- I'll just

1 put those up on the screen.

2 Dr. Muir, do you recall seeing those photos  
3 of that hematoma?

4 A. Yes.

5 Q. And that's the day after this; correct?

6 A. Correct.

7 MS. BRASIER: And now publishing from  
8 Exhibit 4, page 110.

9 BY MS. BRASIER:

10 Q. And it looks like that very first day  
11 Dr. Janda was already suspecting that it might be facet  
12 mediated pain.

13 Do you see that there under the Clinical  
14 Impressions?

15 A. I do.

16 Q. Okay. And is that consistent with kind of  
17 what you explained earlier, that you don't have a  
18 confirmed diagnosis, but it's starting you on the path  
19 to think that might be what's causing the problem?

20 A. Yes. He documented that patient had marked  
21 lower lumbar facet tenderness, which, again, is  
22 consistent with facet mediated pain. But you can't  
23 hang your hat on just any physical finding or  
24 complaint. But it makes one suspicious, more  
25 suspicious, of that. He had a positive Kemp's test.



1 Where he had the patient stand up and rotate the back,  
2 that's for the joints, to see if it's facet mediated  
3 pain. That was positive. Positive sitting, the same  
4 but having rotate back and twist.

5 The Farfan torsion and compression. Torsion  
6 is when the patient lies down, face down, and you  
7 stabilize the -- you stabilize the thoracic area here,  
8 and then you rotate here compressing the joints.

9 The Farfan compression is patient is lying on  
10 their back. You bring up the legs and you essentially  
11 compress the joints. All those were positive that were  
12 consistent with facet mediated pain. But according to  
13 the consensus, that's still not sufficient to prove  
14 that this is facet mediated pain, but it makes you more  
15 suspicious of that.

16 Q. Okay. So you're not going to jump to an RFA  
17 straight from this, but it's the first, kind of, clue  
18 that you have about what might be going on?

19 A. Yes.

20 Q. Okay. All right. According to the records,  
21 the first time that Jared was seen at your office was  
22 on July 23rd of 2020. So we're talking about two weeks  
23 after he was hit by the van.

24 Is that consistent with your file?

25 A. Yes.

1           Q.    Okay.  And at that time it looked like the  
2    recommendation was for Jared to continue with physical  
3    therapy two weeks after.  Why would you -- if you're  
4    already suspecting or Dr. Janda is suspecting it might  
5    be facet mediated, why are you recommending or your  
6    office recommending that he just keep doing the  
7    physical therapy?

8           A.    As stated here, he had noticed some  
9    improvement with the chiropractic treatment.  So that's  
10   very conservative care.  He's improving.  No need to do  
11   anything else because he's improving, and this is very  
12   soon after the injury.

13          Q.    Okay.  So kind of like what you said before  
14   with the Consensus Guidelines, you want to give some  
15   time to see if it's really just a sprain/strain, it  
16   might just resolve in a few months; correct?

17          A.    Correct.  Or you can have a facet problem  
18   with these positive findings, and it could be a facet  
19   pain that's a minor problem that resolves in a few  
20   months.

21          Q.    Okay.  So, again, you're kind of wanting to  
22   be as conservative as possible because you don't want  
23   to jump into this invasive stuff that might happen?

24          A.    Yes.  You want to treat the most conservative  
25   way that gives them the most relief, especially at the

1 beginning.

2 Q. Okay. And when Jared first presented to your  
3 office, did he inform you that he was taking methadone  
4 as a method for rehabilitation treatment?

5 A. Yes, he did initially.

6 Q. Okay. And can you explain for the jury if  
7 you have a patient like Jared who's receiving this  
8 long-term methadone treatment, both how it might affect  
9 your treatment plan or recommendations and does that  
10 affect the patient's -- does it just numb his body up?

11 A. In our clinic we don't follow patients long  
12 term for methadone so we're certainly not -- I'm  
13 certainly not an expert in that. In fact, I had a  
14 misconception that recently I learned -- and I talked  
15 to a couple of my providers, and one knew it and one  
16 did not. But the -- with the methadone, if you have --  
17 if you're on these fast-acting opioid or opioid-like  
18 medicines, and often those are the drug ones or  
19 prescription, they tend to hit you faster and you get  
20 more of a high from those. With methadone it's more of  
21 a calm, persistent medicine. And so if one is  
22 dependent on or addicted to narcotics, prescription or  
23 street-wise, either way, methadone is a fairly common  
24 medicine to give them because they're pretty stable on  
25 that. And typically if you're on methadone, they're

1 not going to abuse that and add other opioids on top of  
2 that.

3 But a misconception, which I brought an  
4 article from the Annals of Internal Medicine with me,  
5 that one of the misconceptions is that if you're on  
6 methadone, that's going to help you with chronic pain.  
7 It does not. Even in my notes here, I said, well, he's  
8 on methadone, but he's still having a lot of pain.  
9 Looking back, I had the misconception that methadone  
10 helps a little bit with pain on a chronic basis. Two  
11 reasons. One is tolerance, one is hyperalgesia. But  
12 it does not help with chronic pain. So if he had  
13 chronic pain, the methadone would not be helping him.

14 Q. And the fact that Jared was on long-term  
15 methadone, does that affect your treatment plan other  
16 than not prescribing pain medicine?

17 A. No. The big thing is you don't give pain  
18 medicine on top of the methadone so we have to rely on  
19 interventional treatment and time.

20 Q. Thank you. Looks like by September your  
21 office was recommending Jared go to get an MRI of his  
22 low back. I have the September 9th, 2020 record.

23 A. Yes. That note says the condition remains  
24 the same. So his average pain level, highest pain  
25 level is at 5 out of 10, was the same as it was the

1 week before. He was no longer improving. And by that  
2 time it was about two months, beyond two months.

3 Q. Okay. And, again, why, if the clues were  
4 starting to form that it was a facet injury, why send  
5 him out for the MRI?

6 A. We have to rule out other problems. Because  
7 even though -- even though he had all these -- had  
8 symptoms and some tenderness that are consistent with  
9 facet mediated pain, you cannot make a diagnosis. So  
10 it could be a disc problem or it could be a facet and  
11 disc problem. Disc problem meaning some damage to that  
12 disc where there's a herniation or torn disc. And  
13 herniation or torn disc will show up on an MRI scan  
14 typically.

15 So you need to rule out those other findings.

16 Q. It looks like the next time he returned to  
17 your office about a week later after the MRIs, he was  
18 recommended to get the intra-articular facet injection.  
19 Can you explain why it progressed to that point?

20 A. Certainly. When he returned again, his  
21 progress still had plateaued. His average pain level  
22 was the same. His high pain level was the same. So at  
23 that time we give options. Jared, you can continue the  
24 way you're doing, give it time, a little more  
25 conservative care, or we could do an injection that may

1 provide some relief and also confirm or rule out our  
2 suspicion.

3 MS. BRASIER: And I'm going to publish for  
4 the jury Exhibit 4. It's page 42, and it's the  
5 October 5th record from Advanced Spine.

6 BY MS. BRASIER:

7 Q. And it looks like when he went there on  
8 October 5th, he indicated that his lower back pain and  
9 tightness continue, and he was scheduled for the lumbar  
10 spine injection tomorrow.

11 Is that accurate with your understanding of  
12 the timeline?

13 A. Yes, that's consistent with my note.

14 MS. BRASIER: Okay. I'm going to actually  
15 start putting some dates up for the jury so that they  
16 can visualize it a little bit better.

17 BY MS. BRASIER:

18 Q. So it looks like he's at Advanced Spine the  
19 day before the injection still complaining of pain;  
20 correct?

21 A. Correct.

22 Q. Okay. And if that day before he was saying,  
23 I'm feeling totally better, he may not have gone  
24 through with the injection?

25 A. We wouldn't have done an injection. In fact,

1 the pre-injection pain level was 3 out of 10, but  
2 that's his average pain. That's when the patient comes  
3 in and right before the injection say, where is your  
4 pain now? And then about a half hour after the  
5 injection you ask what the pain was after the  
6 injection.

7 THE COURT: Are you good with where she  
8 placed the --

9 MR. KNAUSS: If she can move it back just  
10 slightly, Your Honor.

11 MS. BRASIER: Sure. Is that okay for the  
12 recording?

13 THE COURT CLERK: Yes.

14 THE COURT: Is that any better?

15 MR. KNAUSS: Slightly.

16 THE COURT: Maybe turn it a little bit.

17 MS. BRASIER: We were trying to keep it out  
18 of the way of the cameras.

19 THE COURT: Okay.

20 BY MS. BRASIER:

21 Q. Okay. So we know the van hit happened on  
22 July 9th. What was the date of the intra-articular  
23 facet injection?

24 A. 10/6/2020, so three days short of three  
25 months.

1 Q. Okay. So if this was a sprain/strain injury,  
2 would you have expected the symptoms to have resolved  
3 by 10/6 of '20, three months after the hit?

4 A. Yes.

5 Q. Okay. So is that another clue to you as  
6 you're trying to put the pieces of puzzle together that  
7 this is more than a sprain/strain?

8 A. Yes. If you're seeing patients after three  
9 months, four months, five months, it's not a  
10 sprain/strain. Maybe they had a sprain/strain. That  
11 resolved, and there's something else going on, which  
12 typically is either disc or facet.

13 Q. And so you performed the injection on 10/6 of  
14 '20. And what were the results of that injection? Was  
15 it successful?

16 A. It was. The pain went from 3 out of 10 down  
17 to 0 out of 10 when he left the office, which was an  
18 intra-articular injection, which is diagnostic, but  
19 typically more therapeutic, not always, than a medial  
20 branch block. So we have the diagnosis now that he has  
21 facet mediated pain at L4-5 and L5-S1.

22 Q. So you said L4-5?

23 A. And L5-S1.

24 Q. And maybe you could explain to the jury. I  
25 didn't go down to the S when I was explaining. What



1 does the S stand for?

2 A. The sacrum. So the joint, the last joint, is  
3 made up of -- you see the orange and green? So the L5  
4 portion is the green. The S1 portion is -- the orange  
5 portion, is the S1. So the bottom level is L5-S1. The  
6 next level up is 4-5 because it's the bone articulating  
7 between the 4th and 5th nerve root.

8 Q. Okay. Thank you. And how long -- you said  
9 sometimes these intra-articular facet injections can  
10 give a therapeutic -- can give some relief to the  
11 patient in addition to helping with the diagnosis. How  
12 long did this, the first intra-articular facet  
13 injection, help Jared?

14 A. Well, he came back -- let's see. Am I  
15 missing something? 10/6. I have a note on  
16 January 12th, which is two months afterwards. And he  
17 said he had 100 percent relief up until about two weeks  
18 before that when he started getting some tightness and  
19 started getting some pain coming back, but still  
20 relatively mild with average of 2 out of 10 and highest  
21 was 3 out of 10. So he was still doing quite well at  
22 two months.

23 Q. Okay. So that did really help out  
24 therapeutically, at least in the relatively short term?

25 A. It did. On that note, the pain was coming

1 back and options were given. And then we talked about  
2 a medial branch block injection at that time.

3 Q. As part of your review of the records, did  
4 you review a record from Sunrise Hospital where Jared  
5 had gone after a second accident?

6 A. I did. That's when he had the head injury  
7 and no worsening of his back.

8 Q. Okay. And there's a notation in the  
9 Sunrise Hospital record that Jared was not reporting  
10 back pain. Does that concern you at all or is it  
11 inconsistent with what you would expect to see?

12 A. My understanding is he landed on his head and  
13 he was worried about his head so that's what he  
14 complained about.

15 Q. Okay. And he got two months or at least two  
16 months relief from this injection so the benefits of  
17 the injection were probably still helping him?

18 A. Yes.

19 Q. Okay. There's also been some discussion  
20 after this first injection that Jared had missed some  
21 appointments with Dr. Janda doing PT. Would that have  
22 made his condition worse if he missed some PT  
23 appointments after this injection in October?

24 A. Most likely, not.

25 Q. Okay. Can you explain why not?

1           A.     We do conservative care, physical therapy,  
2     I'm a physical therapist there. I was 150th in the  
3     state and technically a physical therapist. And you  
4     see these people get better. You kind of wonder is it  
5     the treatment or is it just they're getting better  
6     despite it. Granted, it can make them relax the  
7     muscles, make them feel better, and do some exercises.  
8     That's a whole different discussion, does therapy and  
9     chiropractic really work. If you talk to therapists  
10    and chiropractors, they would say, sure, it works  
11    great. But the literature would say it probably helps.  
12    But there's really not strong, strong literature saying  
13    this absolutely helps. So if you miss a few  
14    treatments, it most likely not going to make any  
15    difference.

16           MR. KNAUSS: Okay. All right. And it looks  
17    like Jared stopped treating at Advanced Spine in  
18    January of 2021. And so I'm going to publish for the  
19    jury Exhibit 4, page 18. That's the final report from  
20    Dr. Janda's office.

21    BY MS. BRASIER:

22           Q.     And it looks like on that visit he was  
23    reporting some relief potentially from the facet  
24    injection, but that he was still having pain; is that  
25    accurate?

1           A.     90 percent improvement. Essentially, his  
2 pain was 0 out of 10 and up to 3 out of 10.

3           Q.     And on the last page -- or maybe it's not the  
4 second -- as far as the exhibits go, it's Exhibit 4  
5 pages 20 and 21. Looks like -- I'm trying to put the  
6 two things so you can see.

7                     At the bottom Dr. Janda is indicating there's  
8 any complicating factors or co-morbidities related to  
9 Jared's treatment. He has motor vehicle versus  
10 pedestrian collision, multiple impact collision, and  
11 sleeplessness. Did he make any indication when he  
12 discharged Jared that he thought one of the  
13 complicating factors is that Jared had missed too many  
14 appointments and so it was affecting his pain?

15          A.     No.

16          Q.     Okay. And on page 21 of Exhibit 4 looks like  
17 Dr. Janda is giving some recommendations. What were  
18 the different treatment options there under No. 2 that  
19 he was recommending that Jared could do?

20          A.     Just to live with the residual pain, see how  
21 you do. Second one, pain management consultation,  
22 which is what we were doing. And orthopaedic surgical  
23 follow-up, which is us. The two hats, I've done  
24 injections for 30 years and I've been an orthopaedic  
25 spine surgeon for more than 30 years.

1           Q.    Okay.  And looks like right above that  
2   Dr. Janda was indicating he did not feel Jared was at a  
3   level of pre-accident status or that he will be there  
4   in the foreseeable future.

5                   Do you see that there?

6           A.    Yes.

7           Q.    Okay.  So looks like Jared was not pain free  
8   or out of the woods once he stopped with Dr. Janda; is  
9   that a fair assessment?

10          A.    Yes, it is.

11          Q.    Okay.  You eventually did a medial branch  
12   block, the MBB, on Jared?

13          A.    I did.

14          Q.    What was the date of that?

15          A.    That was January 19th, 2021.

16          Q.    And what were the results of that medial  
17   branch block?

18          A.    The medial branch block was to the L3-4/5  
19   nerves.  Now, you may say, why are you doing the L3?  I  
20   thought we were talking about 4-5 and 5-1.  The 4-5  
21   gets its innervation from the third nerve coming down  
22   and the fourth nerve at that same level.  So the  
23   blocking the third and fourth medial branch block is  
24   for the 4-5.  And then the 5-1 level, the 5-1 is  
25   talking about the bone 5 with the S1 sacral.  It gets

1 the innervation at the level of 5, but also at the 4  
2 level. Some people get confused and say, why are you  
3 doing a different level. That is the level for 4-5 and  
4 5-1.

5 Q. What were the results of the medial branch  
6 blocks in January?

7 A. Well, initially he had -- initially, meaning  
8 when we talk to him before he leaves the office, his  
9 pain really didn't drop any, barely, if anything. So  
10 you might say, well, this is not diagnostic. Yet, we  
11 have to consider how he responded to that injection.

12 Q. And what was the -- when you say how he  
13 responded, what was his response to that injection?

14 A. Came back on 2/3/21.

15 Q. So about two weeks later?

16 A. Yeah. And he had a 100 percent relief with  
17 the injection. So that's called patient satisfaction.  
18 And that can be used also for consideration of a radio  
19 frequency ablation.

20 And then he came back 3/3/23 [sic], another  
21 month later, six weeks, seven weeks, after the  
22 injection, and still had zero pain, no pain, for --  
23 high pain -- low pain was 0. He's having some  
24 tightness and stiffness, he felt, starting to come  
25 back, but he had -- he had no pain at that time.

1           Q.    So would you still consider that a successful  
2    injection even though when he was still there at your  
3    office he said it didn't affect his pain?

4           A.    Yes.  When you get that significant  
5    improvement in symptoms, then that would be the  
6    injection did inject the painful levels.

7           Q.    And so at that point, now that you -- I mean,  
8    you said you got the diagnosis with the first  
9    injection, but you did the medial branch block to  
10   confirm it.  Now are we headed towards the RFA?

11          A.    Yes.  And, you know, it had been cleaner if  
12   that second injection went from 3 out of 10 down to  
13   zero, like it did the first time.  So it kind of  
14   muddies the water a little bit.  But you have to look  
15   at how the patient did after the first injection, two  
16   months of great relief.  How they did with the second  
17   injection, two or three months of great relief.  So  
18   just looking at his reaction to the injection, it means  
19   it's reasonable to go ahead with the radio frequency  
20   ablation.

21                But in addition to that, the first injection,  
22   the pain went from 3 down to 0 so that's diagnostic.  
23   So we have immediate diagnosis, great therapeutic  
24   response.  Second one did not have the diagnostic  
25   response immediately, but had great therapeutic

1 response. So when you put that all together, it's  
2 reasonable to proceed with the radio frequency ablation  
3 if the patient is not getting better.

4 Q. So you've got to look at the whole picture;  
5 right?

6 A. Yeah.

7 Q. Okay. So if we were, you know, watching a  
8 video and we paused it right in the middle, that  
9 wouldn't be fair. You've got to watch the whole video,  
10 see the whole picture, to see what's going on?

11 A. Yes. And could I be wrong? Yeah, I could be  
12 wrong saying the radio frequency ablation is a good  
13 treatment for you. But based on his symptoms and exam,  
14 together with the responses to the injections and that  
15 immediate response to the one, according to the  
16 consensus, that's reasonable to recommend a radio  
17 frequency ablation.

18 Q. When did you perform the first radio  
19 frequency ablation?

20 A. 4/6/21, so about three months after the  
21 medial branch block.

22 Q. What was Jared's response to that first radio  
23 frequency ablation?

24 A. With the radio frequency ablation you don't  
25 look at the pain right afterwards because you had a



1 pretty painful procedure. The needles are much bigger  
2 and you burned that nerve so usually a little sore  
3 afterwards. So for the follow-up, first follow-up was  
4 on 5 -- let's see. Am I skipping one? I am.

5 First follow-up on 4/21. So this was a  
6 couple weeks after the radio frequency ablation. And  
7 usually it kicks in a couple weeks, week to one month,  
8 it kicks in. And when he returned there, his average  
9 current pain was 0 out of 10, average pain 0 out of 10,  
10 highest pain 0 out of 10, lowest pain 0 out of 10. He  
11 was doing great with complete relief of his back pain  
12 and his symptoms.

13 Q. Okay. So when you have -- I kind of  
14 explained it like sometimes when we're trying to figure  
15 out -- Doctors are trying to figure out the source of  
16 the pain, you're kind of a detective trying to put the  
17 pieces of the puzzle together.

18 A. It is.

19 Q. So we've got the first injection?

20 A. And the proof is in the pudding.

21 Q. And tell me what you mean by that?

22 A. Well, whether I'm right or not recommending  
23 that is how you respond to that treatment. If someone  
24 has a great response to that treatment, that's the  
25 proof that what you thought was the problem is the

1 problem.

2 Q. And Jared testified yesterday that after the  
3 radio frequency ablation he had about two or three days  
4 of kind of downtime where he was feeling sore from the  
5 actual procedure. Is that normal?

6 A. As expected.

7 Q. And what is that -- I guess, that residual,  
8 post-procedure pain, where is that coming from? What  
9 does it feel like to a patient?

10 A. It varies. It can be just pain from the  
11 nerve being cut, those nerves being cauterized, burned.  
12 It can be from the large needle poking through the  
13 muscles and the skin, combination of those. Some  
14 people get like a flare, what's called a sunburn  
15 feeling, in that area.

16 Q. Okay. So it's not something to be concerned  
17 about; that's normal after the procedure?

18 A. It would be expected.

19 Q. Okay. And when did Jared return to you for a  
20 second radio frequency ablation?

21 A. About a year later.

22 Q. I have 5/17 of 2022 as the next procedure.  
23 Does that jive with your records?

24 A. Yes, it does.

25 Q. And so about a year later. Again, you said

1 that's on average with what you would expect?

2 A. Yes, that's -- eight, nine months. The  
3 literature says the amount could be anywhere from a  
4 couple weeks to a couple years.

5 Q. And what was the date of -- sorry. Did I cut  
6 you off?

7 A. No. I was just saying so, typically, we tell  
8 a patient that if, most likely, if it's going to be  
9 helpful, that they'll have relief for about a year.

10 Q. Okay. And then I think you mentioned it  
11 earlier, but when did he return to you for the third  
12 RFA?

13 A. I believe it's in September of this last  
14 year. And he said he was doing well until two, three  
15 months before that time. So there's a little delay  
16 when he came back to when we actually did a procedure.  
17 So about a year almost to the date on both of them.

18 Q. Okay. And I have the date of that last  
19 procedure as September 5th of last year; is that  
20 accurate?

21 A. That is.

22 Q. Okay. When is the last time that Jared was  
23 seen at your office?

24 A. September 3rd.

25 Q. Oh, I --

1 A. Sorry. October 3rd, 2023.

2 Q. So how was he feeling -- so that was about a  
3 month after the procedure. How was he feeling?

4 A. 75 to 80 percent sustained benefit. He was  
5 able to resume all of his normal activities. Pain  
6 scales, all the pain scales were 1 out of 10, which is  
7 very, very mild. You know, you feel something there,  
8 but it doesn't stop you and you're fine.

9 Q. Okay. So a third successful RFA?

10 A. Yes. And now his extension is 100 percent,  
11 where it was a little bit limited before. Minimum  
12 tightness in his back. So at that time we said, come  
13 back when the RFA wears off.

14 Q. And so we're about going on seven months  
15 after that RFA. So would you, based on your  
16 experience, would you expect to see Jared probably  
17 sometime later this year?

18 A. Yes.

19 Q. So just going back to those  
20 Consensus Guidelines. Now that we have gone through  
21 Jared's treatment and that you've had an opportunity to  
22 look at all the records, I know you said the difference  
23 when you're treating versus an expert, an expert you  
24 might look at other records that you didn't have  
25 before, anything that didn't follow the

1 Consensus Guidelines as far as the diagnosis and  
2 treatment for Jared's facet injuries?

3 A. No, nothing.

4 MS. BRASIER: Okay. Your Honor, I'm just  
5 going to publish the summary of the medical bills that  
6 I used in my opening. I don't believe Mr. Knauss has  
7 an objection to that.

8 MR. KNAUSS: No objection.

9 MS. BRASIER: Just a demonstrative.

10 THE COURT: Just a demonstrative? You're not  
11 introducing it into evidence?

12 MS. BRASIER: No, Your Honor.

13 THE COURT: All right. Go ahead.

14 BY MS. BRASIER:

15 Q. Dr. Muir, as part of your expert work in this  
16 case, did you review the medical bills and records  
17 related to these facilities that I have listed here,  
18 Henderson Hospital, Shadow Emergency Physicians, Desert  
19 Radiology, Advanced Spine & Rehabilitation, that's  
20 Dr. Janda, your office, Pueblo Medical Imaging, and  
21 Anesthesia and Intensive Care?

22 A. I did.

23 Q. Okay. And the total for all that treatment  
24 was \$161,545; correct?

25 A. Correct.

1 Q. Okay. Based on your review of the medical  
2 records in this case from those different facilities,  
3 was all of that treatment reasonable and related to  
4 Jared being hit by the van in July of 2020?

5 A. Yes.

6 Q. Okay. And is the billing associated with all  
7 of that treatment, is that usual and customary for the  
8 Las Vegas community?

9 A. Yes, it is.

10 Q. Meaning, you didn't see anything that were  
11 outliers, crazy high bills?

12 A. I did not.

13 Q. Okay. Thank you. And in your review of the  
14 records, was there anything in there that you thought,  
15 hey, it might be some other reason that he needed to  
16 get any of this treatment?

17 A. No.

18 MS. BRASIER: Okay. Your Honor, may we have  
19 a quick side bar?

20 THE COURT: Sure.

21 (The following proceedings were held outside  
22 the presence of the jury.)

23 MS. BRASIER: I'm at a good kind of  
24 transition point so I was just wondering if it would be  
25 appropriate --

1 THE COURT: That is your transition to the  
2 life care plan?

3 MS. BRASIER: Yes.

4 THE COURT: That's what I was waiting for was  
5 to get through the past and then --

6 MS. BRASIER: Yeah. And then I'm going to  
7 talk about different opinions that Dr. Wang had and why  
8 they're wrong so if the Court was inclined to take a  
9 break.

10 THE COURT: We were right about the time.

11 MS. BRASIER: I was looking.

12 THE COURT: I thought, let's just get through  
13 the past, and then I assumed you were going to go  
14 through the life care plan. So this is probably a good  
15 time to take a break. I assume you don't disagree?

16 MR. KNAUSS: No objection.

17 MS. BRASIER: Okay. Thank you. Your Honor.  
18 (The following proceedings were held in the  
19 presence of the jury.)

20 THE COURT: All right. We've been going at  
21 it for just about a little over an hour and a half.  
22 This is probably a good time for us to take a break.  
23 Let's see. It's about 1:10. Let's get back in action  
24 at 1:25. We'll take a 15-minute break, give you a  
25 chance to stretch a little bit, go to the restroom.

1           While you're out there, do not talk to each  
2 other about the case or with anyone who has anything to  
3 do with it. Do not talk with anyone else about the  
4 case or about anyone who has anything to do with it.  
5 Anyone else includes members of your family, your  
6 employer, your friends. You may tell them you're a  
7 juror in a civil case, but do not tell them anything  
8 else about it. Do not let anyone talk to you about the  
9 case or about anyone that has anything to do with it.  
10 If someone should try to talk to you, please report it  
11 to me immediately by contacting the marshal. Do not  
12 read any news stories or articles or listen to any  
13 radio or television reports about the case or about  
14 anyone that has anything to do with it. Do not visit  
15 the scene of any events mentioned during the trial or  
16 undertake any investigation, experimentation or  
17 research on your own including the use of social media  
18 to in any way discuss the case or the use of the  
19 internet or other reference materials to do any  
20 investigation or research. And do not begin to form or  
21 express any opinion on any subject connected with this  
22 case until it's finally submitted to you.

23           I'll see you back in just a few.

24           THE MARSHAL: All rise for the jury.

25           (The following proceedings were held outside



1 the presence of the jury.)

2 THE COURT: Okay. Anything we need to  
3 discuss before everyone else takes their break?

4 MS. BRASIER: No, Your Honor.

5 MR. KNAUSS: No, Your Honor.

6 THE COURT: All right. You need to use the  
7 restroom at all, Doctor?

8 THE WITNESS: I do. I know where it is.

9 THE COURT: You know where it is back there?

10 THE WITNESS: I was going to use this one  
11 unless you want me to use that one?

12 THE COURT: We're going to have the jurors  
13 all out there.

14 THE WITNESS: I can use this one.

15 THE COURT: Do you mind showing him where it  
16 is.

17 (Whereupon, a recess was taken.)

18 THE COURT: All right. Anything before we  
19 bring them in?

20 MS. BRASIER: No, Your Honor.

21 MR. KNAUSS: No, Your Honor.

22 THE COURT: Okay. Go ahead and bring them  
23 in.

24 THE MARSHAL: All rise for the jury.

25 (The following proceedings were held in the

1                   presence of the jury.)

2                   THE COURT: All right. Parties stipulate to  
3 the presence of the jury panel?

4                   MS. BRASIER: Yes, Your Honor.

5                   MR. KNAUSS: Yes, Your Honor.

6                   THE COURT: Okay. Whenever you're ready,  
7 continue.

8                   MS. BRASIER: Thank you, Your Honor.

9 BY MS. BRASIER:

10           Q. All right. Dr. Muir, so we've covered  
11 Jared's past treatment. Let's talk about the life care  
12 plan that you prepared for his future treatment. So  
13 can you explain to the jury what the life care plan is  
14 and your method for creating a life care plan?

15           A. A life care plan is after reviewing medical  
16 records and typically performing a physical examination  
17 of the patient to come up with a plan of treatments  
18 that most likely the patient would benefit in the  
19 future.

20           Q. Okay. And how do you do that? You don't  
21 have a crystal ball. How do you know how long to do it  
22 for, what amounts to put in there?

23           A. Basically, generally, there's two types of  
24 people that do life care plans. Mainly, it's done by  
25 nurses. And then the other group is some physicians.

1 The ones that are nurses or life care planners, they go  
2 to one course on life care plans and then they take a  
3 test and they pass that, they're a life care planner.  
4 And typically it's going to take a few months to do  
5 that.

6 The -- what was your question again, sorry?

7 Q. That's okay. How do you figure out what to  
8 put in the life care plan and where do you get the  
9 costs to put in there?

10 A. I know where I was going there.

11 Q. Sorry.

12 A. If it's a -- I'll get a call from a nurse  
13 that's doing a life care plan. If I'm the treating  
14 physician, they'll say, what's the problem? If the  
15 patient has a diagnosis, how often do you think you'll  
16 see him based upon what you know about the patient,  
17 what type of treatments would they need in the future,  
18 most likely, and what treatments would they benefit  
19 from.

20 And being a physician that has done life care  
21 plans since about 2006, I had the benefit of not only  
22 the records, but of having the physical training in  
23 this particular patient, following him for several  
24 years. And so that's a little bit of background of the  
25 life care plan.

1 Q. And how do you decide how -- again, we don't  
2 have a crystal ball. How do you figure out how far  
3 into the future to make the life care plan?

4 A. Well, it's done typically -- in a life care  
5 planners community, I'm a member of the life care plan  
6 association, is that we will rely on the government  
7 tables how long a patient will live. It doesn't -- it  
8 takes all things into consideration. On average, if  
9 the patient is this age, how long are they expected to  
10 live. And then we use that for consideration of how  
11 long the potential treatment.

12 Now, if a patient has chronic back pain,  
13 meaning back pain for a year to two that does not  
14 improve, then the literature would say most likely  
15 that's going to continue and not go away.

16 Q. So that's where you know -- if they've got it  
17 for one or two years, it's most likely going to  
18 continue into the future. That's where you know, hey,  
19 the life care plan should be for the rest of the life  
20 expectancy?

21 A. Yes.

22 Q. And in this case, what's Jared's life  
23 expectancy?

24 A. This was done in July 2021. 79 years, so  
25 about 77 now.

1           Q.     Okay. And why don't we go through and if you  
2 can explain to the jury what is, based on your  
3 experience and your treatment of Jared and what the  
4 literature says, what are your recommendations for the  
5 treatment that he's going to need in the future?

6           THE COURT: Excuse me. The last thing you  
7 said, Doctor, in reference to life expectancy, it was  
8 79 a couple years ago so it's 77 now?

9           THE WITNESS: No. I'm sorry if I said that.

10          MS. BRASIER: Thank you, Your Honor.

11          THE WITNESS: His life expectancy is still  
12 79.

13          THE COURT: He's two years closer to that.

14          THE WITNESS: He's two years closer to that.

15          THE COURT: I was just like --

16          THE WITNESS: Rather than 39 years, his life  
17 expectancy is 37 more years.

18          MS. BRASIER: Thank you for clarifying that.

19          THE COURT: I was, like, I guess I'm missing  
20 something.

21          THE WITNESS: I guess someone is awake.

22          THE COURT: Barely. I'm sorry, counsel.

23          MS. BRASIER: It's okay. I appreciate the  
24 clarification.

25

1 BY MS. BRASIER:

2 Q. What do you anticipate Jared will need into  
3 the future?

4 A. Typically, it's broken down into physician  
5 care, ancillary care, diagnostic care, medication care.  
6 I did not include the methadone because he was on that  
7 before, and then any surgery.

8 Q. Okay. And so what kind of procedures are  
9 included in the life care plan for Jared?

10 A. Under physician care I have frequency every,  
11 it says, twice a year with a pain management doctor  
12 following him. And that's before and after. It's been  
13 more like six to seven per year so it's a conservative  
14 number.

15 Q. Actually, let me take a few steps back. I  
16 might put some things into context.

17 Is the life care plan indicating that it's  
18 more likely than not that Jared will need these RFAs on  
19 average once a year for the rest of his life?

20 A. Yes. The definitive treatment if the radio  
21 frequency ablations don't work or they stop working,  
22 that can happen, is do you live with it and have  
23 conservative care or you have surgery, which is a  
24 fusion. So before we had RFAs, Jared would have had a  
25 lumbar fusion, most likely.

1 Q. And why wouldn't we just jump to the fusion  
2 surgery and not keep doing things every single year?

3 A. Because the RFA is so minimally invasive  
4 compared to the surgery, which would be to open up,  
5 take all the muscles out, take a lot of bone off, put  
6 cages in where the spine is, create a fusion. And just  
7 the surgery itself does cause some destruction of  
8 tissue that can be permanent. And it puts more stress  
9 on the adjacent level, and that may break down and may  
10 have to have additional surgery or painful hardware or  
11 infection. So it's a much, much bigger procedure.

12 Radio frequency ablation would be like  
13 walking to the door and a lumbar fusion would be like  
14 walking a block or two from here. It's much more  
15 invasive.

16 Q. Okay. And when you have the RFAs and they're  
17 successful, the expectation or the literature would  
18 show that the functionality improves. A patient  
19 basically goes to a hundred percent of normal; correct,  
20 if it's successful?

21 A. A successful one is considered 50 percent  
22 improvement or more.

23 Q. Okay. Sorry, did I interrupt you?

24 A. No.

25 Q. And with a fusion surgery, would you expect

1 that full functionality would come back?

2 A. No. I tell patients it might be optimistic  
3 that probably 75 percent of the pain should be  
4 improved. And that's a 75 percent chance you'll be  
5 happy you had the surgery, 25 percent chance you'll  
6 wish you'd never had the surgery.

7 Q. So surgery is kind of the last option. It's  
8 not something, just because it's quicker, meaning it's  
9 just once, it's kind of last resort that you'd  
10 recommend?

11 A. It is. I mean, the patient does have the  
12 option. If they say, for whatever reason, when radio  
13 frequency wears off, I'd like to have a more definitive  
14 procedure, it would be appropriate to have a lumbar  
15 fusion, but I would try to talk the patient out of  
16 that, especially if they're having successful RFAs.

17 Q. And so the number that I've shown to the  
18 jury, \$1,539,710, does that include both possibilities,  
19 the RFAs for the rest of his life and the potential  
20 surgery?

21 A. Yes, it includes both. So the surgery is put  
22 into the life care plan saying that the patient may  
23 require, this would be the definitive treatment and  
24 this is what it would cost. But more likely than not,  
25 he would continue with the radio frequency ablation.



1 So rather than it being \$1.5 million, it's closer to  
2 1.1, \$1.2 million, with the RFAs.

3 Q. Okay. And if you could tell me just so the  
4 jury has the information and they can decide. So the  
5 \$1.5 million is radio frequency ablations and surgery.  
6 If Jared never got the surgery and just continued to do  
7 the RFAs that have been successful, what would that  
8 number be for in the life care plan?

9 A. It's about 1.1 to 1.2, \$1,150,243.

10 Q. Okay. So that amount is the RFAs only?

11 A. Yes.

12 Q. And the first one is if he had the RFAs and  
13 surgery.

14 And the costs that you've included in the  
15 life care plan to get to these numbers, how did you  
16 come up with those dollar figures?

17 A. There's two-ways to come up with the dollar  
18 figure. Generally, typically, what's done, you go to  
19 government books. And they look at your area and  
20 they'll tell you what the average cost is for that  
21 particular treatment. But that's a distorted cost  
22 because a lot of those are discounted 75 percent or  
23 50 percent because of what they utilize to pay for  
24 that.

25 The other one is to look at community

1 charges, what's typical in your community for  
2 particular treatments. And that's much more of a  
3 realistic figure. In a life care planner, in a journal  
4 about 15 years ago when talking about life care plans,  
5 it says the goal of a life care plan is to put a figure  
6 down that it would be what it would cost you if you  
7 walked into Pueblo Medical Imaging and said, I want a  
8 lumbar MRI scan and they said, okay, this is what it  
9 costs. That's the ideal way.

10 And I've done life care plans and reviewed  
11 medical records long enough that I have a very good  
12 sense of what community charges are. Do I know within  
13 the 1 or 2 percent? No, but it's much closer than if  
14 you use the books that are available just to see what  
15 certain costs would be because those are often  
16 discounted in those books.

17 Q. Okay. And the costs that you include in  
18 Jared's life care plan, did you --

19 (Interruption by telephone)

20 THE WITNESS: Sorry. Sounded like Siri or  
21 something. Sorry.

22 BY MS. BRASIER:

23 Q. The cost that you use in Jared's life care  
24 plan, is that based on what it's cost him already to  
25 get these similar procedures?

1           A.     That's taken into consideration, yes.

2           Q.     Okay. And these are the costs that -- these  
3 are the amounts that it would cost him if he was to  
4 continue to get these treatments here in Las Vegas;  
5 correct?

6           A.     Yes.

7           Q.     Okay. And so are these numbers based on your  
8 experience and your opinion usual and customary for the  
9 Las Vegas community?

10          A.     They are.

11          Q.     Okay. Okay. I want to go through, just  
12 quickly because we've covered some of this already, but  
13 some statements there were made during our opening  
14 statements yesterday about Jared's injuries. And I  
15 want to see if you agree or disagree with them.

16                 We covered some of them already so we don't  
17 need to necessarily spend a ton of time on a lot of  
18 them. But one of the statements was that Jared has had  
19 excessive treatment for injuries that can't be proven.

20                 Would you agree or disagree with that  
21 statement?

22          A.     No. The treatments are reasonable and  
23 customary because of the limitations and pain that he  
24 had to improve his function and to improve the pain.  
25 Imaginary, absolutely not. The diagnosis has

1 absolutely been made according to the  
2 Consensus Guidelines by two injections, plus he's had  
3 radio frequency ablations three times, and all have  
4 been successful. And so to have that type of evidence  
5 and then for the Dr. Wang in his summary not even to  
6 say the word facet just seems unconscionable. I  
7 just -- it makes no sense to me.

8 Q. Okay. Another statement that was made  
9 yesterday was that Jared had procedures long after his  
10 low back injury had resolved.

11 Do the records support that?

12 A. No, it never resolved. It improved with  
13 different treatments. When Dr. Wang examined Jared, he  
14 examined him four months after radio frequency ablation  
15 when he's feeling 100 percent.

16 Q. Okay. And then another statement, we kind of  
17 went over this earlier, was that he had a failed medial  
18 branch block. Was that a failed medial branch block?

19 A. If you look just after the -- again, you had  
20 intra-articular. You had a medial branch block and  
21 then three radio frequency ablations. The first one  
22 was very diagnostic. And in the consensus in the  
23 details, it says it goes down to zero, that's even  
24 greater chance that he's going to -- that it's going to  
25 be reasonable to do radio frequency ablation.

1           The second one immediately it was not  
2     diagnostic. The pain stayed the same. But within a  
3     couple weeks and for a couple months the patient  
4     essentially had 100 percent relief from that injection.  
5     So that falls under the patient satisfaction category.  
6     And that makes it a successful injection.

7           So we have three out of four things saying it  
8     is reasonable to do radio frequency ablation. Was it?  
9     Was I wrong in doing that and suggesting that? Did it  
10    not help him? Absolutely helped him nearly 100 percent  
11    on all these occasions, which absolutely proves that  
12    it's facet mediated pain. And it's unbelievable to me  
13    that in the final paragraph of what the patient's  
14    problem is there's not the word facet in there.

15        Q. And then finally one of the last things that  
16    was said was that the injuries and the damages that  
17    Jared is claiming are from being hit by the van in July  
18    defy common sense. It sounds like we have  
19    Consensus Guidelines that might contradict that, but  
20    what do you think?

21        A. I'd say if he didn't say it was facet, it  
22    defies common sense. It's scientific evidence and  
23    scientific proof.

24        Q. And in your experiences with Jared over the  
25    past three, three and a half, years since he started

1 treating with your office, is there anything that he's  
2 ever said, done, reported to you that would make you  
3 question his truthfulness or his reporting to your  
4 office?

5 A. No. And when he came in, we did what's  
6 called -- we did a psychological test, a  
7 Waddell's test, where you test certain things and the  
8 patient is not aware that you're testing them. And if  
9 someone is faking, malingering, if they have -- if they  
10 have excessive reaction to pain, overreaction to pain,  
11 that typically will come out on a Waddell's test that's  
12 5 points, 0 being completely normal. And he was  
13 completely normal. And within just observing him in  
14 the clinic, he's very straightforward.

15 Q. Okay. And, Dr. Muir, have all of your  
16 opinions today been given to a reasonable degree of  
17 medical probability, meaning, more likely than not what  
18 you're saying has been true?

19 A. Yes. Unless I said anything was defined as a  
20 possibility.

21 MS. BRASIER: Thank you, Doctor. I'll pass  
22 the witness.

23 THE COURT: All right. Cross-examination.

24 MR. KNAUSS: Thank you, Your Honor.

25 THE COURT: Take your time getting set up.

1 CROSS-EXAMINATION OF WILLIAM MUIR, MD

2 THE COURT: Are you going to want that board?

3 MR. KNAUSS: I will not.

4 THE COURT: Why don't we move that then.

5 BY MR. KNAUSS:

6 Q. Thank you for being here today, Dr. Muir.

7 A. You're welcome.

8 Q. Do you have an extensive amount of experience  
9 with medicolegal cases?

10 A. I do.

11 Q. You often testify on behalf of individuals  
12 making personal injury claims?

13 A. I do. Most of them are my patients.

14 Q. And how many times would you estimate you've  
15 given sworn testimony under oath?

16 A. In the 30 years I've been here, I've been to  
17 trial more than 30 times, maybe close to 40.

18 Q. But in 2019 you testified on 27 occasions;  
19 would that be about right?

20 A. I don't keep track of that, but I frequently  
21 do medical records review, especially in the last few  
22 years, so, yes.

23 Q. Not medical reviews. I'm talking about  
24 testifying, sworn statements under oath.

25 A. I don't recall, but that would not surprise

1 me.

2 Q. In 2020, it was 25 times?

3 A. Yes, about once every two weeks.

4 THE COURT: Counsel, are you talking both  
5 deposition and trial?

6 MR. KNAUSS: Just sworn testimony. For both,  
7 Your Honor.

8 THE COURT: Okay. I just wasn't clear what  
9 you were shooting for.

10 BY MR. KNAUSS:

11 Q. I think it was earlier in your testimony that  
12 you've been paid about \$6,000 for your attendance here  
13 today?

14 A. Yes.

15 Q. You didn't do this for free?

16 A. Did not.

17 Q. Do any doctors do this kind of thing for  
18 free?

19 A. No, not that I know of.

20 Q. You went to -- forgive me if I'm inaccurate  
21 here, but you attended medical school or you went to  
22 Phoenix in North Carolina for two different kinds of  
23 medical schools?

24 A. No. I went to medical school at the  
25 University of Nevada School of Medicine in Reno and



1 graduated there in '86. Then I went to Phoenix for my  
2 five-year orthopaedic residency program, which included  
3 the first year as a, just a general program.

4 Q. So your residency -- sorry. I didn't mean to  
5 interrupt.

6 A. Yeah, that's fine.

7 Q. Your residency was in Arizona?

8 A. Yes.

9 Q. And then what was in North Carolina?

10 A. My spine fellowship.

11 Q. And did you feel that the knowledge of the  
12 spine was different in Arizona versus North Carolina?

13 A. Not that I recall.

14 Q. Okay. Was there anything about human anatomy  
15 that was different in different states?

16 A. Not that I recall.

17 Q. We're not aliens here in Nevada even though  
18 you went to medical school in other states?

19 A. That's correct.

20 Q. All right. Doctor, before you treat a  
21 patient for the first time it's important for you to  
22 obtain a history of the patient's symptoms and  
23 conditions; is that correct?

24 A. Correct.

25 Q. Or their complaints rather?

1 A. Yes.

2 Q. Okay. And the history is -- typically,  
3 that's something you get from the patient at the time  
4 you're examining them; is that correct?

5 A. Correct.

6 Q. And this includes questions about the onset  
7 of the patient's conditions, the persistency of the  
8 condition, the conditions over time, and whether  
9 similar conditions have existed in the past; right?

10 A. Yes.

11 Q. Now, this information that the patient's  
12 providing you, it's inherently subjective; right?

13 A. Yes.

14 Q. And I want to talk about subjective versus  
15 objective because we're going to be using those words a  
16 lot; okay?

17 A. Okay.

18 Q. What is a subjective test and what is an  
19 objective test?

20 A. A subjective test is something, for example,  
21 the patient tells you. It's a history. Well, it's  
22 easier to define it as an objective test is a  
23 particular test to determine a certain diagnosis or a  
24 certain problem.

25 Q. All right. So the subjective is what they

1 tell you, the patient tells you?

2 A. That's right.

3 Q. And would you agree that the objective test,  
4 that's something you can verify; right?

5 A. That's what we test for.

6 Q. And maybe if I use an example, I can make  
7 things a little clearer. If I said to you, Doctor, I  
8 feel nauseous, I feel incredibly nauseous, what is  
9 that, subjective or objective?

10 A. Subjective.

11 Q. And why is it subjective?

12 A. Because it's what you're telling me. I'm not  
13 testing that.

14 Q. You can't see my nausea; right?

15 A. Typically, unless I'm looking at your face  
16 sometimes, but, no.

17 Q. But that's a good point. If you saw my face  
18 and it was turning green or excessively pale, would  
19 that be subjective or objective?

20 A. That would be an objective finding.

21 Q. Because you can look at me and verify whether  
22 or not my nausea has corresponding visual symptoms;  
23 right?

24 A. Yes. And that's why looking at you, you  
25 might be able to tell, or find symptoms that are

1 consistent with that.

2 Q. Okay. Would my nausea show up on a CT scan?

3 A. If it's due to a tumor or cancer, yes, but,  
4 no.

5 Q. That tumor or cancer, would that be objective  
6 or subjective?

7 A. That's subjective.

8 Q. So if I just said to you, Doctor, I feel  
9 nauseous, and for sake of this example, you put me in a  
10 CT machine and took a CT, would you see my nausea  
11 anywhere?

12 A. Typically, not.

13 Q. If you put me in an MRI machine, would you  
14 see my nausea anywhere there?

15 A. Typically, not.

16 Q. You would have to just believe me?

17 A. If that's all I had to go by at that point in  
18 time.

19 Q. You would have to just believe me that I was  
20 nauseous?

21 A. I can believe you or not believe you, but  
22 that's the only thing I have to go by at that time  
23 without any testing, without additional information,  
24 would be subjective.

25 Q. Now, Doctor, would you agree with me that

1 pain is a symptom the patients report to you?

2 A. Yes.

3 Q. Now, is pain subjective or objective?

4 A. It's considered subjective.

5 Q. Why?

6 A. It's something that someone is telling you as  
7 opposed to something that's tested.

8 Q. Okay. You can't verify -- if I said, It  
9 hurts here, you can't verify that without going to  
10 objective symptoms?

11 A. You have to give me a specific example.

12 Q. Okay. Again, going back to my nausea.

13 A. This has nothing to do with spine. Okay.

14 Q. If I threw up, is that objective or  
15 subjective?

16 A. It would be objective.

17 Q. But if I said, Doctor, it hurts right here on  
18 my hand --

19 A. That's subjective.

20 Q. That's all I'm telling you. That's all you  
21 have.

22 A. That would be completely subjective.

23 Q. And the pain, if I point to my hand and said,  
24 it hurts right here, that could be associated with a  
25 traumatic particular, a non-traumatic, degenerative,

1 all sorts of things; right?

2 A. Correct.

3 Q. Sometimes do you have patients who report  
4 pain that is not necessarily from an injury?

5 A. Occasionally. Not very often.

6 Q. What would be an example of that?

7 A. Occasionally, a person will at least  
8 exaggerate their pain. I can't remember a patient that  
9 I can say that complained of pain and I felt that  
10 they're lying.

11 Q. If a patient woke up in the morning and said,  
12 I woke up this morning and I feel pain, there's no  
13 injury there, but they feel pain, is that a probable --  
14 do you see that scenario with patients?

15 A. That they just woke up with pain?

16 Q. Um-hum.

17 A. That's typically not in my practice, no.

18 Q. Can a patient report pain from the activities  
19 of daily living?

20 A. Yes, that's possible.

21 Q. You mentioned your knee, you have some issues  
22 with your knee?

23 A. I do.

24 Q. And you can experience pain just throughout  
25 the day. You're not necessarily injured, but you could

1 just do something and it could start hurting?

2 A. Yes. Pain could be for degenerative reasons.  
3 If you took a picture of it, it's very degenerated  
4 compared to the other one.

5 Q. So would you agree that pain itself isolated,  
6 alone, just pain, is not an injury?

7 A. I think we answered that. Pain is  
8 subjective.

9 Q. Is that a yes or no?

10 A. Pain is subjective.

11 Q. But is it an injury?

12 A. Pain is a result, potential result, of an  
13 injury.

14 Q. So it's a symptom from an injury?

15 A. Yes.

16 Q. Pain itself -- if I walked in and I said, I  
17 have a terrible headache, would you say, you're injured  
18 or would you just say, you have a headache?

19 A. Just have a headache maybe, most likely.

20 Q. And as a spine surgeon, pain management  
21 physician, when your patient tells you they're feeling  
22 pain, your goal or one of your goals is to help them  
23 reduce the pain that they're feeling; is that correct?

24 A. Correct.

25 Q. Your goal is to make them feel better;

1 correct?

2 A. And improve their function, yes.

3 Q. In some patients you can identify the source  
4 of that pain. We call those the pain generators; is  
5 that correct?

6 A. Yes. Such as in this case.

7 Q. And can you -- so like this case, you're  
8 saying you can point to, there's the pain generator,  
9 right there, that's where it is?

10 A. I can point right to it, yes, based --  
11 because of the injections that he had and the responses  
12 from the injections.

13 Q. Do you ever have a patient who's reporting  
14 pain that you never identify what the pain generator  
15 is?

16 A. Yes.

17 Q. And when you have that kind of patient,  
18 you're simply treating the pain; right? You never  
19 identified an injury. You didn't identify pain  
20 generator. You're just treating the pain, the symptom?

21 A. Well, I do my due diligence in that it  
22 depends on the degree of symptoms they had, but it's a  
23 significant -- I do my due diligence in the exam and  
24 typically imaging, and then often do injections for  
25 diagnostic purposes and potential therapeutic purposes.



1           Q.    I don't mean to interrupt you, but, again, my  
2 question --

3           A.    I understand your question.

4           Q.    Do you need to me --

5           A.    I think I'm getting into it, if you don't  
6 interrupt me, please. But those patients that I don't  
7 have a diagnosis for, that's occasional. Usually I can  
8 come up with a diagnosis, but on rare occasions, on  
9 occasional occasions, not very often, I have no  
10 diagnosis at all.

11          Q.    Okay. So you actually did answer my  
12 question, which is, you do occasionally have patients  
13 there's no pain generator identified and you're just  
14 treating the pain they're telling you about; correct?

15          A.    You're treating the pain while you're working  
16 up the potential diagnosis.

17          Q.    Doctor, when you treat a patient, you accept  
18 as true what your patient tells you about their  
19 symptoms and conditions; is that true?

20          A.    Typically, yes, unless I have other reasons  
21 not to.

22          Q.    Okay. So you accept as true what they tell  
23 you about their symptoms unless you have other  
24 information to suggest otherwise?

25          A.    Yes.

1 Q. Okay. And if a patient says to you, Doctor,  
2 I'm in pain, you accept that as true?

3 A. Yes. Unless the physical examination  
4 indicates otherwise, yes.

5 Q. You don't go out and perform an independent  
6 investigation of what happened to them to determine --  
7 you just, they're in front of you, they tell you, I'm  
8 in pain, and if you have no other reason to disbelieve  
9 them, you accept what they're telling you as true;  
10 correct?

11 A. What you're talking about is the history, and  
12 that's the first step. But we always go beyond that  
13 first step. But on the history, it's subjective other  
14 than other potential medical records --

15 Q. And I'm sorry, Doctor, I want to keep you  
16 focused. I don't mean to interrupt, but I am just  
17 trying to keep you focused on the veracity, the truth,  
18 of what they're telling you.

19 They tell you, I'm in pain. Unless you have  
20 something that indicates they're lying, you do accept  
21 what they tell you as true; is that correct?

22 A. I do at that very, very first portion of the  
23 history and physical, the history portion, yes.

24 Q. Okay. You accept it as true because your  
25 patient's complaints of pain as a subjective symptom

1 cannot be verified?

2 A. Yes. Pain is subjective.

3 Q. And, therefore, would you agree that to the  
4 extent the information provided to you about your  
5 patient, about the history of their complaints, if what  
6 they're telling you is incomplete or inaccurate, your  
7 opinions could also be inaccurate or incomplete?

8 A. That's correct, especially if we stop at the  
9 history portion.

10 Q. In that regard, then it's critical to the  
11 accuracy for your performance that you receive accurate  
12 and honest information from your patients; is that  
13 correct?

14 A. Typically, that's helpful. Sometimes I can  
15 come up with a diagnosis just from physical examination  
16 or imaging or other invasive testing.

17 Q. In your treatment of the plaintiff, Mr. Moss,  
18 did you accept as true the things he told you about his  
19 medical history and his pain complaints?

20 A. I did.

21 Q. I know you talked about this a little bit  
22 already, but you started out in this case as a treating  
23 physician; correct?

24 A. Correct.

25 Q. Then you were asked to shift your role and

1 provide a life care plan that we looked at up on the  
2 screen that contained opinions and recommendations for  
3 Mr. Moss for the rest of his life based on his low back  
4 pain?

5 A. Based on the information I had, correct.

6 Q. And you were asked to offer those opinions  
7 specifically for this lawsuit; correct?

8 A. Yes.

9 Q. And you prepared two reports; is that  
10 correct? The first was on July 5th of 2021, and then a  
11 second one about a year later on July 6 of 2022.

12 Do you recall drafting two different  
13 recommendations?

14 A. Different recommendations?

15 Q. Yeah, different life care plans. Apologies.

16 A. I don't recall that at this time, the two  
17 life care plans. I have one in front of me. I don't  
18 have the other one in front of me.

19 Q. When you wrote your life care plan, the one  
20 we looked at that was on those screens, did that life  
21 care plan with those recommendations, did you do it  
22 independently?

23 A. I don't know what you mean by --

24 Q. Well, did you do it with the idea that you  
25 were totally unconnected with this case, this patient,

1 these issues? You did it just as an independent person  
2 walking in?

3 A. The life care plans are typically when  
4 there's a lawsuit. And so it would be related to the  
5 reason for the life care plan in that particular  
6 lawsuit, to determine what the patient's costs will be  
7 and potential treatments based upon the injuries  
8 sustained in the lawsuit.

9 Q. I can appreciate that, Doctor. And, I'm  
10 sorry, I don't mean to interrupt, but I am going to  
11 more as an independent person.

12 Were you someone who was brought in solely to  
13 do a life care plan?

14 A. No.

15 Q. Did it already having established a  
16 doctor/patient relationship with Mr. Moss; correct?

17 A. I did.

18 Q. Did you have a personal interest in the  
19 outcome of your life care plan and those opinions  
20 within it?

21 A. The patient has bills whether I do a life  
22 care plan or not.

23 Q. Let me maybe ask this a different way.

24 When I say personal interest, meaning, you  
25 were reviewing and giving a recommendation on a life

1 care plan based on your own treatment you had already  
2 provided; is that correct?

3 A. Based upon the medical records and based on  
4 the treatment I provided, yes, which was appropriate.

5 Q. Were you ever going to say that your  
6 treatment was unrelated because you treated on a lien?

7 A. Pardon?

8 Q. Were you ever going to conclude your  
9 treatment was unrelated to his injuries in this case  
10 because you're treating on a lien?

11 A. No. Lien didn't matter one way or the other.

12 Q. Is it your testimony that you attempted to  
13 document all the evidence that would not support  
14 Mr. Moss sustaining an injury as a result of the  
15 accident in July of 2020?

16 A. Yes, my opinion was it was due to the injury  
17 as opposed to a degenerative condition, ongoing  
18 condition, or something else.

19 Q. Sure. But if there was some other reason or  
20 some other injury that could have occurred, you would  
21 have documented that in your records; correct?

22 A. If there's another, another injury that I  
23 felt altered his symptoms or altered the ultimate  
24 treatment, then I would definitely document it. For  
25 example, in my records I did document that he had

1 additional head trauma, but no back injury with that.

2 Q. Okay. Why didn't that head trauma affect  
3 your review of his symptoms?

4 A. I included it.

5 Q. And you included the head trauma was  
6 unrelated?

7 A. The head trauma was related to the second  
8 accident.

9 Q. And the head trauma in that second accident,  
10 how did you conclude that it was unrelated?

11 A. Based upon the medical records that were  
12 provided to me. And as far as his low back, that it  
13 was unrelated to the bow back because based upon seeing  
14 the patient afterwards and based upon the chiropractic  
15 notes.

16 Q. What was in those records and notes that made  
17 you think that second accident was completely unrelated  
18 to his low back pain?

19 A. Because the pain did not -- was not altered  
20 by it, nor was his examinations.

21 Q. Was there anything in his medical records  
22 affected by that second accident?

23 A. His head, not to the spine though.

24 Q. Was there anything else in his treatment  
25 records that was affected by that second accident?

1           A.     Because of the second accident, the treatment  
2     rendered was related -- unrelated to that accident and  
3     related to the first accident.

4           Q.     I'm sorry. Could you say that again?

5           A.     I said -- I may have said it backwards. I'll  
6     say it this way. The second accident that he had where  
7     he had the head trauma, that was unrelated to the  
8     treatment of his low back based upon the medical  
9     records and our examinations and the chiropractor's  
10    exams and the people that treated him initially.

11          Q.     Now, Doctor, based on what I heard you say  
12    under direct examination, what you talked about today,  
13    when you make your opinions about the cause of an  
14    injury, I need to be clear, cause of an injury, not a  
15    symptom, cause of an injury, you look at a few  
16    different things. Number one, the history of the  
17    patient; right? That's number one?

18          A.     Yes.

19          Q.     You mentioned it's what the patient tells  
20    you. It's what happened; right?

21          A.     That's the first step.

22          Q.     They're telling you, I was in this accident,  
23    this happened to me. And that's important because  
24    that's your history, you mentioned that?

25          A.     Yes.



1 Q. That was number one on your list.

2 And then number two, you do a physical  
3 examination. This is the testing you perform on a  
4 patient, measurements, pain scores?

5 A. Correct.

6 Q. Those are things you can verify? Those are  
7 the objective testing?

8 A. Correct.

9 Q. And then number three, you look at imaging;  
10 right, CT scans, MRIs?

11 A. Correct.

12 Q. Now, a CT scan and MRI, it's a picture taken  
13 in time; right? It's a still frame?

14 A. It is.

15 Q. Now, does that tell you anything about the  
16 injury?

17 A. The MRI scan?

18 Q. Yes.

19 A. It shows us that it was not a discogenic  
20 injury. It rules that out.

21 Q. Sorry, not the symptomatology. Does it tell  
22 you how things happened? Can you look at an MRI or an  
23 x-ray and go, oh, that was a car accident?

24 A. Typically, not.

25 Q. Typically. Is there a time you can look at

1 an MRI and know that was a car accident?

2 A. Yeah. If somebody comes from a car accident,  
3 gets an MRI scan, he's got a fracture, dislocation,  
4 paraplegia, those are all kinds.

5 Q. Maybe I'm asking the question poorly.

6 If I just said -- if I walked up and handed  
7 you a random MRI of my paralegal and said, this is an  
8 MRI, and it showed a fracture, broken bone, could you  
9 know anything about that injury based on the MRI? And,  
10 I'm sorry, the source of the injury. Not -- yes, I  
11 understand you can say, this was a broken bone, but  
12 would you know this was definitely a car accident or a  
13 train accident or he fell on his bike or running at the  
14 gym?

15 A. No.

16 Q. Okay. So I take those three things. You  
17 take the history they give you, their physical  
18 examination, and their imaging?

19 A. Two other things.

20 Q. I'm sorry?

21 A. You're missing two things.

22 Q. What are the two other things?

23 A. If there's any previous medical history  
24 indicating any problems.

25 Q. That's --

1           A.    And the fifth is the responses from  
2   procedures.

3           Q.    Okay.  So --

4           A.    Which is the gold standard in what we're  
5   talking about.

6           Q.    Which I believe is still lumped in with  
7   number one because you mentioned history and you just  
8   said history is number four.  So number one is history?

9           A.    No.  There's a difference between a history  
10   when a patient comes in and says, I've got a headache,  
11   as opposed to a patient where I have medical records  
12   and they've had multiple headaches before or I have  
13   records that they've never had a headache.  That's  
14   different than what you're telling me that you have a  
15   headache.  So the subjective information, the history  
16   that's obtained on the physical examination, the  
17   history is different than the medical record, previous  
18   medical record.

19          Q.    I think you're at risk of going down some  
20   kind of inception because when you look at old history  
21   records, now you're looking at subjective and objective  
22   reporting that's combined in an old medical record and  
23   you're combining it with yours.  But within those old  
24   records are still the same three things, which you are  
25   right about.  You're looking at the history, what they

1 tell you. You're looking at their physical examination  
2 results. And you're looking at the imaging; right?

3 A. And any response to particular treatments.

4 Q. Right. Which would be an objective test.  
5 Part of the physical examination is step two, but I'm  
6 saying the objective component. You have the  
7 subjective component, the objective component, and then  
8 you have imaging. You take those three things or five  
9 things, however you want to label them, you take them  
10 together. And when you do that, you come up with an  
11 expert opinion about what caused the injury; right?

12 A. Yes.

13 Q. And when you take those things, you take the  
14 history, the subjective, the examinations, the  
15 objective, and the imaging, and that's the basis for  
16 your opinion about the event that happened; right?

17 A. Well, no, there's -- the other thing is the  
18 responses to treatments.

19 Q. Right, the responses to treatment would be  
20 verifiable; correct?

21 A. Correct.

22 Q. And that would be objective?

23 A. Correct. You left that out.

24 Q. I don't mean to be putting you in these three  
25 boxes, though I think everything reverts back to

1 subjective, objective, and you have imaging; right?

2 A. Well, imaging is objective. So you have  
3 subjective -- you want to put them in boxes, you put  
4 subjective, objective. Subjective is the patient's  
5 history, and objective are the testing, the imaging,  
6 responses to injections. Then you have previous  
7 medical records that has, like you mentioned, both  
8 subjective and objective.

9 Q. Does anything in the objective testing tell  
10 you about the event that happened?

11 A. No.

12 Q. When you look at a CT scan or an MRI, we've  
13 already touched on this, but nothing in that image  
14 tells you anything about the event that happened;  
15 right?

16 A. Correct. That's correct.

17 Q. And when you perform examinations, when you  
18 even do measurements, you put your hands on a patient,  
19 you do some kind of range of motion testing, nothing  
20 about the examination that you're doing, the objective  
21 testing, is telling you anything about the event that  
22 caused the injury; is that correct?

23 A. Typically, yes.

24 Q. So there's nothing in those objective tests,  
25 the results of those objective tests, that tells you

1 anything about the event that caused the injury;  
2 correct?

3 A. In this particular case, that's correct.

4 Q. If you push on a sore muscle -- if I just  
5 push on your knee, that doesn't tell me anything  
6 about -- and we don't even know how you hurt your knee;  
7 right? It would tell me nothing; is that correct?

8 A. It would tell you nothing about the past  
9 history of that knee if you push on it.

10 Q. So the only thing, the only thing, in the  
11 analysis that you have that tells you about the event  
12 is what the patient tells you?

13 A. Correct. And then if -- if a patient has an  
14 event and they're not seen for six months, then there's  
15 more doubt that something else may have resulted it.  
16 But when you have no medical history of having  
17 problems, have an event, and then seen the same day  
18 with problems, then, yes, typically, his problems is  
19 coming from the event, more likely than not, more  
20 likely than any other reason.

21 Q. Sure. But, to my question, you still don't  
22 know anything about the event itself?

23 A. From what?

24 Q. The event that caused the injury.

25 A. From what?

1           Q.    From the testing you just said. The only way  
2 you know about the event -- I guess I'm asking the  
3 question again, and I don't mean to repeat it.

4                   The only way you know about the event that  
5 caused the symptoms they're complaining of is through  
6 them; is that correct?

7           A.    Yes, unless somebody is observing the injury.

8           Q.    And just tying it together a little bit, what  
9 they tell you is subjective?

10          A.    Yes. That's the subjective component.

11          Q.    So at the end of the day, your opinion about  
12 the event that caused the injury will be no different  
13 than the patient's?

14          A.    The patient's report, yes, because I find no  
15 evidence -- I find it more likely than anything else  
16 that that particular event caused the pain documented  
17 that same day as opposed to any other event.

18          Q.    And I'm tying that back now. In this case --

19          A.    In this case.

20          Q.    -- back to Mr. Moss. Here's my question.

21                   In your opinion about what caused -- I'm  
22 sorry -- in your opinion about what event caused the  
23 injuries to Mr. Moss, but more importantly, the  
24 reemergence of his low back pain is no different than  
25 his version; correct?

1           A.    Could have had some other event, that's  
2 possible.

3           Q.    It's possible it could have been another?  
4 Like what kind of event?

5           A.    Could have had the car accident, felt fine,  
6 and then that same day lifted a desk and had facet  
7 mediated pain. That's possible. It's not as likely,  
8 based upon the medical records.

9           Q.    Could it have been a second accident where he  
10 hit his head?

11          A.    Not in this case because both in my records  
12 and the chiropractic records we did not indicate any  
13 increase or difference in his examination or in his  
14 complaints.

15          Q.    But, again, what you're relying on is his  
16 information to you about the event that caused his  
17 injury; is that correct?

18          A.    Relying on examination, too. So I guess  
19 you're asking could he have hurt his back and it  
20 worsened from that? I don't think so. Is that  
21 possible, yes.

22          Q.    From the second accident?

23          A.    Yes.

24          Q.    Why? How could it be even just possible?

25          A.    Well, anything is possible. You can get hit



1 by an astroid right now. Anything is possible.

2 Q. But looking at the records in this case and  
3 the symptomatology in this case, how could it have been  
4 possible in the second accident he could hurt his low  
5 back?

6 A. The records did not reflect that, neither the  
7 subjective, the pain levels, which are subjective, or  
8 the examinations, which is objective.

9 Q. But that was not my question. My question  
10 is, how is it possible -- because you had stated just  
11 now it was possible he could have hurt his low back in  
12 that second accident. How would it have been possible?

13 A. Well, subjectively, the patient could lie  
14 about it, but objectively, that was not reflected in  
15 his subjective findings, exams.

16 Q. Okay.

17 A. I would expect his pain, his examination, to  
18 change pretty drastically if, or considerably or at  
19 least a little bit, if that accident caused back pain,  
20 but I did not.

21 Q. So let's tie this all together. The only way  
22 that you know, that you know, what event caused his  
23 injury requires you to assume that Mr. Moss is telling  
24 you the truth. That's the only way you know about the  
25 event that caused his low back pain?

1           A.     That's true --

2           Q.     Again, I want to be careful with your answer.  
3     The only way you know about the event that caused his  
4     injury --

5           A.     Well, if you want to throw everything to the  
6     side and just look at that one aspect, yes, he could  
7     have gotten hit by the van and landed on his buttocks,  
8     but he slipped on the sidewalk right afterwards and  
9     landed on his buttocks and that's what caused his pain.  
10    That's possible.

11          Q.     But not in this case; right? We have to  
12    assume -- you're assuming he's telling you the truth;  
13    right, that it was this, the van impact, that caused --  
14    the event that caused all his low back pain; right?

15          A.     Yes.

16          Q.     And even though it's possible there could  
17    have been another event, such as a second accident  
18    where he hits his head, such as lifting a desk that's  
19    in between those two accidents, all those things you're  
20    still relying on Mr. Moss telling you the truth about  
21    the events that caused his injuries; is that correct?

22          A.     That and the examination, which is objective.

23          Q.     So if Mr. Moss was mistaken or  
24    miss-remembering the event, whether he means to or not,  
25    that inaccuracy will be recorded and his patient

1 history would be adopted by you and become your opinion  
2 about the event? Meaning, he said it, you believe it's  
3 true, you put it in your records, it becomes your  
4 opinion?

5 A. Well, he had buttocks and back pain and he  
6 had this massive abrasion and hematoma over his  
7 buttocks. Could somebody have hit him with a baseball  
8 bat? Wouldn't have that pattern. Could he have fallen  
9 from a third-story onto his buttocks in between the  
10 time he had the motor vehicle accident and was seen at  
11 the hospital? That's possible. I don't see it as  
12 likely as the car accident. I see no other event as  
13 likely as the pedestrian/car accident.

14 Q. Sure. But I just want to be sure I'm clear  
15 that your opinion becomes what Mr. Moss tells you and  
16 you assume he's telling you the truth about the event  
17 that caused his injury; correct?

18 A. About the event, yes. I was not there at the  
19 time the van hit him and where he fell down.

20 Q. Okay.

21 A. But his buttocks sure shows it.

22 Q. Okay. So I guess what I'm asking you, in  
23 what way is your opinion about the event that caused  
24 his injury any different from Mr. Moss' reason, the  
25 event from Mr. Moss?

1           How is your opinion about the event that  
2       caused the injury, how is it any different from  
3       Mr. Moss and how could it be?

4           A.    What he's saying is it pushed him back and  
5       hit the buttocks. And, yes, do we have to take his  
6       word on that? Well, yes and no. Because the CAT scan  
7       shows a large hematoma and this bruising on his  
8       buttocks, which is consistent --

9           Q.    We're talking about the facet pain?

10          A.    No. I'm just talking about having back pain,  
11       having that big -- the hematoma gives good objective  
12       information that his story is very consistent with his  
13       finding on the CT scan.

14          Q.    Right. When you say his story, you're  
15       referring to the van impact of our accident in July of  
16       2020; right?

17          A.    Yes, and landing on the buttocks.

18          Q.    Could Mr. Moss have certain motivations for  
19       telling you or withholding certain things about his  
20       history or about the event itself?

21          A.    It's possible. He might not be truthful. I  
22       think, generally, that's going to come out on the  
23       Waddell's test, but it's possible.

24          Q.    Might Mr. Moss also have motivation to give  
25       you select information?

1 A. It's possible.

2 Q. And Mr. Moss might have a motivation to give  
3 you select information particularly when it comes to a  
4 lawsuit?

5 A. It's possible.

6 Q. The day after the accident on July 10th of  
7 2020, and I think you've already talked about this a  
8 little bit on direct, but Mr. Moss underwent a physical  
9 examination at Advanced Spine & Rehabilitation?

10 A. He did.

11 Q. If you could, behind you, Defendants'  
12 Proposed Exhibits, if you grab there's three binders  
13 back there.

14 A. First one?

15 THE COURT: 1, 2, or 3?

16 THE WITNESS: I think it was in this one.

17 BY MR. KNAUSS:

18 Q. Doctor, behind you there are three, Dr. Muir.

19 A. Yes.

20 THE COURT: Are you looking at what she  
21 introduced earlier?

22 MR. KNAUSS: No. I would like him to look at  
23 Defendants' proposed.

24 THE WITNESS: Tell me which one.

25 MR. KNAUSS: Behind you there are three other

1 binders to the right.

2 THE WITNESS: Yes.

3 MR. KNAUSS: If you could grab the first one,  
4 number one, Volume I.

5 THE WITNESS: Which exhibit?

6 BY MR. KNAUSS:

7 Q. Page 108-0011.

8 A. 108 dash?

9 Q. 108-0011.

10 A. All right.

11 Q. And, I'm sorry, you're looking at the  
12 Advanced Spine & Rehabilitation records; correct?

13 A. Yes.

14 Q. Okay. Have you seen those records before?

15 A. I reviewed his records. I believe I saw all  
16 his records. Whether I saw this one, I don't recall at  
17 this time. But if it's in my binder to review, I did  
18 see it.

19 MR. KNAUSS: Your Honor, I move to admit the  
20 Advanced Spine records from Defendants' proposed.

21 THE COURT: Aren't these the exact same thing  
22 that plaintiff introduced?

23 MR. KNAUSS: I'm not a hundred percent sure.  
24 We did a lot of redactions of things so --

25 THE COURT: How should these be different

1 than what plaintiff introduced?

2 MR. KNAUSS: I could be wrong. I believe the  
3 ones that, plaintiff's proposed, I'm not sure when  
4 those were. Are those the ones you were going to put  
5 in?

6 MS. BRASIER: Do you want to have a side bar?

7 MR. KNAUSS: Want to do a side bar?

8 THE COURT: All right. Let's do a side bar.

9 (The following proceedings were held outside  
10 the presence of the jury.)

11 THE COURT: Your colleague is not coming?

12 Okay.

13 MS. BRASIER: I think I can handle it.

14 THE COURT: I just hate to be putting in the  
15 exact same materials.

16 MR. KNAUSS: The only thing I was uncertain  
17 of is I know we've been doing a lot of redactions back  
18 and forth, and we've been agreeing with the redactions.  
19 I just didn't know that the binders back there that she  
20 raised in direct are the exact same ones that we had in  
21 our binders. I was uncertain of it. That's why I  
22 wanted the defendants in.

23 THE COURT: The page you're referring to is  
24 the page she put up on --

25 MR. KNAUSS: We didn't even change the page

1 numbers. What we changed was redactions out of each of  
2 them, and they were small and minor. I just didn't  
3 want an issue where -- I apologize. I just didn't know  
4 the date of the ones that were back here. Meaning,  
5 they could have been the ones that were here last week.  
6 Because of that uncertainty. I wasn't trying to be  
7 redundant. It's more --

8 THE COURT: Like I said, I just don't -- when  
9 I put in two sets unless we know why, what's the  
10 difference.

11 MR. KNAUSS: I just didn't want to be  
12 redundant. I also wanted to be sure that the ones we  
13 had were the redactions that counsel and I both agreed  
14 on. I couldn't say that a hundred percent sure. I  
15 wasn't implying it wasn't. It's more I need to be a  
16 hundred percent sure.

17 THE COURT: You've only put in one. I guess  
18 two sets of this isn't going to make any difference.

19 MR. KNAUSS: I have four.

20 THE COURT: Four? Okay. That I'm not  
21 worrying about because she only put in the  
22 Advanced Spine so I'm not looking at duplication on the  
23 other three.

24 MS. BRASIER: Yeah. I think it's pretty much  
25 duplicative, but it doesn't matter. It's just in a



1 different --

2 MR. KNAUSS: It could be the exact same  
3 thing. I just didn't know.

4 THE COURT: All right. Let's go ahead.  
5 We'll admit Defense 108, I think. All right. You mind  
6 handing this back.

7 (The following proceedings were held in the  
8 presence of the jury.)

9 THE COURT: All right. Any objection to 108?

10 MS. BRASIER: No, Your Honor.

11 THE COURT: All right. We'll go ahead and  
12 admit 108, Defense 108.

13 (Defendants' Exhibit 108 was admitted into  
14 evidence.)

15 MR. KNAUSS: Thank you, Your Honor.

16 BY MR. KNAUSS:

17 Q. Dr. Muir, what did Mr. Moss rate his overall  
18 pain at that initial appointment the day after the  
19 accident?

20 THE COURT: Just so we're on -- what page are  
21 we referring to at this point in time?

22 MR. KNAUSS: Page, I believe it's 0011.

23 THE COURT: Okay.

24 THE WITNESS: 0011?

25

1 BY MR. KNAUSS:

2 Q. Well, there's six pages for the record of  
3 July 10th. And within that record -- I apologize for  
4 making you comb through it for a quick second.

5 A. Okay. I think I have it. Initial report.

6 Q. And the pending question was, how did  
7 Mr. Moss rate his overall pain?

8 A. It's not on that page. Let me look.

9 THE COURT: Are you referring to the third  
10 paragraph on page 11?

11 MR. KNAUSS: I believe so, where it says 8  
12 out of 10 pain. It was already testified to.

13 THE WITNESS: Okay. Thank you. 8 out of 10.

14 BY MR. KNAUSS:

15 Q. Okay. And within that same binder there are  
16 records from Henderson Hospital the day of the  
17 accident, and it would be under 105.

18 A. 105? 0105.

19 Q. 105-0061.

20 A. 105-

21 Q. 0061.

22 A. 0061.

23 THE COURT: What page?

24 MR. KNAUSS: It should be 0061, Your Honor.

25 THE WITNESS: Page 61 of 80.

1 BY MR. KNAUSS:

2 Q. You should be looking at the bottom,  
3 page 105-0016.

4 A. Yes.

5 Q. And the pain score -- and I know these  
6 questions are taking a little bit of time for  
7 evidentiary purposes, but you rated 8 out of 10 at  
8 Advanced Spine the day after the accident.

9 Was that rating consistent with what he did  
10 at Henderson Hospital?

11 A. Yes.

12 Q. And you've seen the Henderson Hospital  
13 records before?

14 A. I have.

15 Q. Did you review them for your expert opinion?

16 A. Yes.

17 MR. KNAUSS: Your Honor, I move to admit the  
18 Defendants' proposed Henderson Hospital records.

19 THE COURT: And that's 105; right?

20 MR. KNAUSS: Correct, Your Honor.

21 THE COURT: Any objection to 105?

22 MS. BRASIER: No objection, Your Honor.

23 THE COURT: All right. 105 will be admitted.

24 (Defendants' Exhibit 105 was admitted into  
25 evidence.)

1 BY MR. KNAUSS:

2 Q. We just had a couple questions about pain  
3 right now, the pain scale. And I want to talk about  
4 that pain scale. Is it something that you use in your  
5 office?

6 A. Yes.

7 Q. How do you describe that pain scale to a  
8 patient who has never heard of it before? How would  
9 you do that?

10 A. 10 being no pain. 10 is the worst you can  
11 take. Now, every provider is going to say it a little  
12 bit differently.

13 Q. So if a patient can't speak they're in so  
14 much pain, what level is that?

15 A. Typically, 10.

16 Q. If they can't -- if they cannot walk they're  
17 in so much pain, what would that typically be?

18 A. 10.

19 Q. Why would a pain score be important for  
20 medical records?

21 A. It shows a pattern. Everybody's pain scale  
22 is different. Your 3 may be my 6 or vice-versa. So it  
23 really varies from patient to patient.

24 And you can't say 8 should have been 7. It's  
25 just a general idea of what the patient thinks their

1 pain is. And the important thing is to see the  
2 pattern, like this 8 out of 10 came down to about a 5  
3 out of 10, and then it plateaued.

4 Q. I think I would agree it sounds like it's one  
5 of the key indicators of progress, of the effectiveness  
6 of treatment?

7 A. That and the physical examination.

8 Q. Would you agree that pain score is one of the  
9 key indicators of progress?

10 A. It's one of the things we look at. Also  
11 function and exam.

12 Q. Sure. Now, how do you report pain scores for  
13 your records?

14 A. I think I just told you.

15 Q. Well, if I looked at one of your records, how  
16 do you report, just write, well, he said 5, so you put  
17 5?

18 A. We ask the patient what's their lowest pain,  
19 what's their highest pain, what's their average pain,  
20 and what their pain is that particular time when  
21 they're seeing the physician to get a little more  
22 information.

23 Q. Yes, you were actually thorough in your pain  
24 scores and it's to your credit. You note their current  
25 score, when they're sitting in the office, you note

1 their average, you ask their lowest, and you ask their  
2 highest?

3 A. Yes. Which is, again, very subjective, but  
4 overall it can be helpful. I mean, if a patient's pain  
5 goes from 5 down to 0, there's a pattern that's very  
6 helpful. If the pain goes from 5 up to 10, that  
7 pattern is helpful.

8 Q. Why don't you just write one number down?  
9 Why not just say 4 out of 10?

10 A. My notes are long. I like a lot of  
11 information.

12 Q. And to your credit, that's a good thing, but  
13 why did you do that?

14 A. Because I think it's more helpful to  
15 understand how the patient is doing and how they were  
16 doing. Especially with facet mediated pain because, as  
17 I mentioned, and my wife would testify to this, she'll  
18 think I have no pain until, all of a sudden, I go  
19 (indicating), but 10 times louder than that. So the  
20 pain can vary depending on movement and what you're  
21 doing.

22 Q. Was the plaintiff's range of motion tested at  
23 his first appointment with the chiropractor?

24 A. I don't recall. I have to look at those  
25 records. What page is that?

1           Q.    It would be within -- actually, hold on.  I  
2    think I have it.

3           A.    I think I have my medical records summary.  
4    Let me see here.  Yes, range of motion was  
5    significantly reduced in lumbar spine.  They didn't  
6    give specifics.  They just said "significantly  
7    reduced."  And this is when he had that hematoma too.

8           Q.    And what does a range of motion test?

9           A.    A range of motion gives us an idea of how  
10   much pain the patient is having.  Again, it can vary.  
11   Some people are stoic and they'll push through the  
12   pain.  And some people, when they first feel pain,  
13   stop.  But, again, we can see a pattern.  And we get  
14   some information.  And this is taking -- taking  
15   information out of -- it's like a puzzle.  You look at  
16   all these different pieces.  But what we're talking  
17   about is taking out one piece and looking at that.

18          Q.    I want to stay looking at that one piece.  
19   And I want to stay looking at range of motion, why  
20   would it vary for different patients.

21          A.    Varies from morning to afternoon, it can.  
22   Some people are very consistent with their range of  
23   motion.  Others are not.  And depends if some people,  
24   it's not applicable here, but if some people are taking  
25   pain medication or some type of medication, that could

1 be better. Some days are better than others. So it's  
2 not -- it's not unusual for range of motion to vary.

3 When he was first seen by the chiropractor  
4 here, he had marked limitation, which he didn't have  
5 after two weeks, and I think that's because the  
6 hematoma is getting better.

7 Q. I'm actually glad you mentioned that because  
8 I want to talk about -- we're looking at the same  
9 thing. There's range of motion significantly reduced.  
10 Do you see that in the records?

11 A. Yeah.

12 Q. What does that mean to have significantly  
13 reduced range of motion?

14 A. That he has a lot of pain, it's very limited.  
15 And if you look at that hematoma, it's about that high  
16 and bigger than my hand, you can see why --

17 Q. Hold on. I don't mean to interrupt. I don't  
18 want to confuse two facts that are stated in this  
19 record, range of motion significantly reduced, with  
20 lumbar pain noted throughout.

21 A. Yes.

22 Q. So that, to me, is saying two things. And if  
23 I'm wrong, please let me know. Range of motion is  
24 significantly reduced, and along with that reduction of  
25 range of motion there is significant pain.



1      Significantly reduced range of motion, that's one part.

2                      And when he does have it, it has "lumbar pain  
3      noted throughout." Is that an accurate statement of  
4      that record?

5              A.      Yes.

6              Q.      Okay. So I want to focus on the former, not  
7      the latter part, because I need to understand what it  
8      means to have significantly reduced range of motion and  
9      how is that significant to your opinions?

10             A.      Well, we're just looking at one, little  
11      factor. And that's -- overall it's not very important  
12      when you look at all the big puzzle and you take one  
13      little piece out. But every little piece of the puzzle  
14      may provide some information. Some may provide some  
15      information. And whether he had significantly range of  
16      motion on that particular day or not wouldn't change my  
17      opinion.

18             Q.      Okay. Had either you or Advanced Spine  
19      treated the plaintiff prior to July 9th of 2020?

20             A.      No.

21             Q.      So neither you nor Advanced Spine had any way  
22      of knowing what the plaintiff's normal range of motion  
23      was prior to the accident; is that correct?

24             A.      Correct.

25             Q.      Neither you nor Advanced Spine knew what

1 Mr. Moss could or couldn't do with his back in terms of  
2 range of motion; right?

3 A. Correct. But after injection we had great  
4 relief. All of a sudden, he had better range of  
5 motion.

6 Q. But I'm focused on whether or not you or  
7 Advanced Spine could know the condition of his spine in  
8 the days, weeks, or months prior to the accident?

9 A. Correct. No.

10 Q. Is it possible that what you and  
11 Advanced Spine reported with your range of motion tests  
12 was his normal range of motion, not talking about pain,  
13 just talking about the range of motion?

14 A. I believe it was unlikely because after an  
15 injection -- he had increased range of motion right  
16 after the injection. And so most likely that is closer  
17 to his full range.

18 Q. Is the pain that's associated with that range  
19 of motion, is that subjective?

20 A. It is.

21 Q. So you're just relying on him telling you  
22 truthfully he feels pain when he turns and flexes his  
23 back?

24 A. It is.

25 Q. And the pain that he was experiencing in his

1 lumbar, in his low back, could you see it?

2 A. Could I see his face? I don't recall.

3 Q. No. Could you see his pain?

4 A. Pain is not something you see unless you see  
5 one's face or how their body is responding to  
6 something, but it is a subjective complaint.

7 Q. You could not see the subjective complaint of  
8 pain; correct?

9 A. I don't recall at this time.

10 Q. The CT scan of Mr. Moss' back taken at  
11 Henderson Hospital, you've testified about that. Do  
12 you recall it?

13 A. I do.

14 Q. Okay. What were the abnormalities that you  
15 noted in the CT scan of Mr. Moss' low back?

16 A. Right posterior buttocks superficial muscle  
17 and subcutaneous tissues.

18 Q. That's his abdomen. That's not his low back?

19 A. That's in his pelvis. And that's showing --  
20 that's showing his --

21 Q. Hold on. Maybe let's clarify.

22 How many CTs were taken of Mr. Moss the day  
23 of the accident?

24 A. Two. He had one of the pelvis and he had one  
25 of the lumbar spine. And lumbar spine was essentially

1 unremarkable.

2 Q. That's the one I want to focus on for a  
3 second.

4 A. Unremarkable.

5 Q. Were there any fractures or dislocations?

6 A. No.

7 Q. Was there any abnormal vertebral spacing?

8 A. No.

9 Q. What is vertebral spacing?

10 A. Well, there's some increased vertebral  
11 spacing at L5-S1 showing that he had some degenerative  
12 discs at L5-S1.

13 Q. Is that noted in these CT records?

14 A. It's in the MRI scan. I think they just  
15 missed it in the CT.

16 Q. You think Henderson Hospital got it wrong on  
17 the CT scan?

18 A. Yes, on the 5-1, they did. It did show up on  
19 the CT as well.

20 Q. So the doctors got the CT scan wrong?

21 A. The radiologist that read it, as far as the  
22 L5-S1 in the CT scan, he omitted putting in that  
23 there's a decreased space at the L5-S1 level disc.

24 Q. How does vertebral space -- what is the  
25 vertebral space?

1           A.     It's the space between the end plates of the  
2 bone. Let me show you.

3           Q.     Sure. And maybe as you're answering. How is  
4 it different or is it the same thing as a facet?

5           A.     Facets really don't have much to do with this  
6 other than if you have decreased disc, it's going to  
7 change the position of the facets a little bit.

8           Q.     So I guess, Doctor, maybe we don't --  
9 maybe --

10          A.     Can I answer your question?

11                 MR. KNAUSS: Your Honor --

12                 THE COURT: Hold on. You asked him. Let  
13 him -- this shouldn't take long?

14                 THE WITNESS: Won't take long.

15                 THE COURT: All right. Let's get the answer  
16 and then we'll move to the next question.

17                 THE WITNESS: Vertebral spacing is the space  
18 between one bone and the other bone, in other words,  
19 the height of the disc.

20                 THE COURT: All right.

21 BY MR. KNAUSS:

22           Q.     And I guess the question I have is vertebral  
23 spacing at all related to this accident and this injury  
24 in his low back?

25           A.     Unrelated, other than potentially it would

1 make him more prone to injury.

2 Q. In what way? How does that -- how do you  
3 correlate that?

4 A. Well, I answered it, but may have missed it.  
5 Lack of vertebral space, when you have the facet  
6 joints, the bones coming together and there's less --  
7 there's two bones. If the disc height is less, then  
8 the orientation will change a little bit.

9 Q. So your opinion is that the radiologist at  
10 Henderson Hospital missed a part of the CT scan that  
11 shows the vertebral spacing was reduced; correct?

12 A. Correct.

13 Q. And that could have been -- it increased his  
14 likelihood of injury? That's your expert opinion?

15 A. To a small degree.

16 Q. Would you agree the CT scan also showed no  
17 spondylitic changes?

18 A. Yeah. We're talking about other things  
19 completely. Yes.

20 Q. Just want to be thorough. What are  
21 spondylitic changes?

22 A. Well, we can talk about 50 things --

23 THE COURT: Doctor, just respond to the  
24 question.

25 THE WITNESS: Sorry. Go ahead.

1 BY MR. KNAUSS:

2 Q. What are spondylitic changes?

3 A. When there's slippage, one bone over the  
4 other bone, which can be degenerative or it can be due  
5 to abnormality in the pars articularis.

6 Q. Was there spinal canal stenosis?

7 A. No.

8 Q. What is that?

9 A. Narrowing of the canal.

10 Q. How does that typically occur?

11 A. With aging.

12 Q. Were there any disc bulges?

13 A. No.

14 Q. Were there any disc herniations?

15 A. No.

16 Q. Was the tissue normal?

17 A. Tissue, what tissue?

18 Q. Was there a note in the CT scan about the  
19 tissue?

20 A. Oh, there's abnormalities in the buttocks on  
21 that CT scan.

22 Q. Not that scan. I mean the lumbar CT scan.  
23 Was there any notation of a tissue issue? Didn't mean  
24 to rhyme that.

25 A. As expected, no.

1 Q. Were there any lesions?

2 A. No, which is consistent with facet.

3 Q. So there's no fractures. There's normal  
4 alignment. The soft tissue is normal. Is that all  
5 correct?

6 A. No infections, no tumors, no spondylitic  
7 defects. We could go on with the list of things  
8 there's not.

9 Q. All right. Two months after the accident --  
10 and I know you've already touched on this point. But  
11 you had an appointment with Mr. Moss on September 16th  
12 of 2020 and you ordered an MRI of Mr. Moss' low back.

13 Do you recall that?

14 A. That's correct.

15 MR. KNAUSS: Your Honor, one second.

16 THE COURT: Sure.

17 BY MR. KNAUSS:

18 Q. Dr. Muir, if you could reach behind you and  
19 grab the second volume of records.

20 A. Does this regard my records?

21 Q. I'm sorry?

22 A. Is it regarding my records because I have  
23 those right here.

24 Q. Yes, but I need you to, if you could, grab  
25 Defendants' Proposed. It's in the second binder behind



1 you. You and I don't have the same page numbers on our  
2 pages so...

3 THE COURT: Do you have the right volume?

4 THE WITNESS: I don't know what page. I  
5 pulled the same --

6 THE COURT: Let's make sure you have the  
7 right volume.

8 THE WITNESS: I have Volume I.

9 THE COURT: He said Volume II.

10 MR. KNAUSS: Volume II, please.

11 THE WITNESS: Oh, I'm sorry.

12 THE COURT: What exhibit number?

13 MR. KNAUSS: One second, Your Honor. I'm  
14 getting there.

15 THE WITNESS: 109-0055, that's two months  
16 afterwards.

17 MR. KNAUSS: Yeah, you're spot on.  
18 Thank you, Doctor.

19 BY MR. KNAUSS:

20 Q. In this -- this is your third appointment  
21 with Mr. Moss; correct?

22 A. That is correct.

23 Q. I know it's a silly question, but you've seen  
24 these records before?

25 A. Yes.

1 Q. Did you rely on these records for your  
2 opinions?

3 A. Yes.

4 MR. KNAUSS: Your Honor, I move to admit --

5 THE WITNESS: I relied on all my records  
6 together for my opinion, yes.

7 MR. KNAUSS: Your Honor, I move to admit  
8 Dr. Muir's medical records.

9 THE COURT: What's the number?

10 MR. KNAUSS: Exhibit 109.

11 THE COURT: Is it 109?

12 THE COURT CLERK: This hasn't been admitted.

13 THE COURT: Any objection to 109?

14 MS. BRASIER: No, Your Honor.

15 THE COURT: All right. 109 will be admitted.

16 (Defendants' Exhibit 109 was admitted into  
17 evidence.)

18 BY MR. KNAUSS:

19 Q. This is something I mentioned before. You  
20 would agree with me that an MRI is just a picture in  
21 time of what's going on in a person's body; correct?

22 A. Again, yes.

23 Q. Similarly, with a CT scan, it's a picture in  
24 time of what's going on in a person's body?

25 A. Again, yes.

1 Q. An MRI can show a degenerative condition;  
2 correct?

3 A. Correct.

4 Q. Are there also things on an MRI that can  
5 distinctly indicate trauma?

6 A. With most car accidents, the vast, vast  
7 majority you don't see any changes on the MRI scan that  
8 would indicate trauma, but sometimes you do.

9 Q. So can we agree then that on an MRI, acute  
10 traumatic, and degenerative findings are different?

11 A. Typically, you don't see the acute traumatic,  
12 but acute traumatic is different than degenerative.

13 Q. And I should also define. What is acute  
14 traumatic? When I say that, what does it mean?

15 A. Acute means something that happens right away  
16 or recently. And degenerative is something that occurs  
17 with wear and tear over time. So acute traumatic would  
18 be something that you -- we're kind of talking about  
19 something that has nothing to do with this, but for  
20 fractures, dislocations, which I haven't seen in my  
21 office for 10 years, but they do occur, those you'd be  
22 able to see the fracture right away, and that would be  
23 an acute finding. Where degenerative would be more  
24 like spurs.

25 Q. And there's nothing in an MRI that tells you

1 when a particular finding happens; right?

2 A. Correct.

3 Q. Because you're just looking at a still frame?

4 A. Correct.

5 Q. Doesn't tell you anything about the event;  
6 correct?

7 A. Correct. Typically. There's some that do,  
8 but not related to this case.

9 Q. All right. And would you agree if you're  
10 looking at imaging, MRI or CT scan, you have to  
11 clinically correlate it with the subjective information  
12 a patient is providing you?

13 A. Typically.

14 Q. And short of -- short of something very  
15 extreme, like a compound fracture or something like  
16 that, is there -- there's no way to tell if a patient  
17 is experiencing pain by just looking at an MRI?

18 A. Correct.

19 Q. Is there any way to tell if a patient is  
20 experiencing pain just by looking at a CT scan absent  
21 something extreme?

22 A. Typically, not.

23 Q. And I know we have that chart and you had two  
24 rounds of lumbar injections; correct?

25 A. Yes. In a three-hour phase.

1 Q. And I want to talk about those lumbar  
2 injections for just a moment.

3 A. All right.

4 Q. Your first round, that was on October 6th of  
5 2020, that was three months after our accident;  
6 correct?

7 A. Correct.

8 Q. What was plaintiff's pre-injections -- what  
9 was his pre-injection pain level in his low back?

10 A. His average pain level or how he felt right  
11 at that time when he was asked was 3 out of 10 before  
12 the injection, and 0 out of 10 afterwards.

13 Q. And I know we talked about what 10 out of 10  
14 was on that scale. Is 3 out of 10 the common level of  
15 pain that you administer this kind of procedure?

16 A. Well, that's kind of borderline as far as  
17 numbers. But you have to look at function and you have  
18 to look at highest level. Because facet injection  
19 will -- you can have no pain until you move and then,  
20 all of a sudden, you have a lot of pain. And right  
21 before his visit he was the same 2 to 3 out of 10 on an  
22 average. And, actually, that day he was 2 out of 10,  
23 but it went to 5 out of 10. So you have to take that  
24 into consideration.

25 Q. If a patient showed up right before you're

1 about to stick the needle in and he said, I'm at 2 out  
2 of 10 pain, would you still go through with that  
3 procedure?

4 A. Depends on the past history. He might  
5 have -- might have just a good day. He may not be  
6 moving at all and if he moves it may go up. But  
7 typically, 2 out of 10 I don't do injections if you  
8 just look at that one number without taking into  
9 consideration the function and other consideration.

10 Q. So 3 out of 10 is your lowest threshold of  
11 doing this kind of procedure?

12 A. If you just look just at the number,  
13 typically, yes. But if a patient said their pain is 1  
14 out of 10 sitting there, but they move, it's 9 out of  
15 10, then that would be appropriate for injection.

16 Q. What's the difference between a 3 out of 10  
17 and a 2 out of 10 in terms of pain from your  
18 perspective?

19 A. It's not much different. We're looking at  
20 just when you're sitting there.

21 Q. Okay. So is 3 -- 3 is your low threshold?

22 A. If you pull that out of context, yes.

23 Q. Okay. So what do you --

24 A. Typically. Typically.

25 Q. What do you use as a physician then to say

1 the difference between a level 2 out of 10 and 3 out of  
2 10? From your perspective, what is the difference  
3 between those two?

4 A. As we get closer to that number, it's more  
5 difficult to tell. You need to look at their function.  
6 You need to look at their high pain levels and take  
7 that into consideration as well.

8 Q. If they're on any medication, would that be  
9 an issue?

10 A. The reason we're asking in this is they're  
11 just sitting there. Say, how is your pain when you're  
12 just sitting there --

13 Q. Can appreciate it, but that's not the pending  
14 question --

15 A. In the end, they're doing the same thing.

16 MR. KNAUSS: Your Honor.

17 THE COURT: All right. He's finished. Go to  
18 the next one.

19 BY MR. KNAUSS:

20 Q. If the patient was on any kind of medication,  
21 would that affect your decision to do injections at a  
22 low, 3 out of 10, pain?

23 A. It could.

24 Q. In what way?

25 A. Well, if their function had mild limitations

1 as far as their functions, if their examination is  
2 fairly normal and they're doing quite well, I would not  
3 do an injection.

4 Q. And did plaintiff have 100 percent relief,  
5 pain free, following the injection on October 6th?

6 A. Yes.

7 Q. And diagnostically, what did that tell you?  
8 I know you think you've already answered that question.

9 A. Yes, according to the Consensus Guidelines,  
10 10 committees related to this, they all indicate not  
11 only is it diagnostic, but there's studies in that  
12 same -- in the same article saying that if he goes down  
13 to 0, that's even more significant.

14 Q. And I believe you testified it's the -- if  
15 they have 50 percent relief immediately. I wrote that  
16 down when you testified about it. That's the success  
17 metric for this kind of injection; correct?

18 A. For the immediate response. But then you  
19 have to look at their therapeutic response afterwards  
20 as well.

21 Q. And if they don't have 50 percent pain  
22 improvement, what does that tell you?

23 MS. BRASIER: Your Honor, can we just -- I  
24 just want to clarify. We're talking about the  
25 intra-articular facet injections or the medial branch



1 blocks. We've just been saying injections. I just  
2 wanted to make sure we're on the same page.

3 THE COURT: That's fair enough. Rephrase the  
4 question.

5 MR. KNAUSS: Sure.

6 BY MR. KNAUSS:

7 Q. Focusing on the facet injections, the first  
8 round that took place on October 6th?

9 A. Correct.

10 Q. There was 50 percent immediate improvement;  
11 correct?

12 A. 100 percent.

13 Q. I'm sorry, 100 percent improvement. That's  
14 far better than 50 percent; correct?

15 A. It is, and it's significant according to the  
16 Consensus Guidelines.

17 Q. And after that injection he reported pain in  
18 his back immediately after that procedure, what would  
19 that tell you diagnostically?

20 A. If it went from 3 to down to 0?

21 Q. 2 out of 3.

22 A. Pardon?

23 Q. Let's say, for example, it didn't alleviate  
24 his pain. He rated, still rated, 2 out of 3 pain.

25 A. Then that could occur if you have from the

1 needle itself and you can get a steroid flare. So  
2 there's sometimes you won't get a reduction and that's  
3 why you have to -- that's why it's best to consider  
4 satisfaction, meaning, what therapeutic response did  
5 they have to do.

6 And we went over this. If you just take this  
7 one piece of the puzzle, the pain of the medial branch  
8 block went from 2 to 3, you'd say, oh, doesn't look  
9 like he has facet mediated pain. But you've got to  
10 look at the other factors too, plus, did the radio  
11 frequency ablation. And the proof is in the pudding.

12 Q. Okay. So for the second round, if there's a  
13 medial branch block injection; correct?

14 A. Yes.

15 Q. Do you still maintain your testimony that  
16 50 percent immediate improvement is the measure that  
17 you use for that or is it something different?

18 A. For the immediate one. But as the consensus  
19 said, you can take -- it's good to take into  
20 consideration the response to the injection. And if  
21 the patient has a good therapeutic response, then it's  
22 appropriate. Even with one injection, it's important  
23 to go ahead with the radio frequency ablation.

24 Whether it's appropriate or not, your fear is  
25 that you do some treatment that was unnecessary or did

1 not help the patient, and that certainly was not the  
2 case here.

3 Q. Well, was it diagnostically relevant to you  
4 that after the second medial branch block injection, he  
5 had a 2 out of 3 after the injection?

6 A. It's certainly a consideration and it's  
7 relevant, but you've got -- you have to look at the  
8 other pieces of the puzzle, that he went from 3 to 0 on  
9 the other ones, and both he had significant therapeutic  
10 response. So there's overwhelming, overwhelming,  
11 evidence from the responses, including the first  
12 injection, that this was facet mediated.

13 And all this is whether to, to be -- if it's  
14 important to do a radio frequency ablation. Because  
15 you don't want to do something that the patient doesn't  
16 need. But the point is our suspicion was based upon  
17 the patient's symptoms, based upon the patient's  
18 examinations, based upon the responses to the  
19 injection, that he definitely had facet mediated pain  
20 and that was further confirmed by the responses in the  
21 radio frequency ablation.

22 Q. So I want to be absolutely clear and sure  
23 about this. The fact that after the second injections  
24 pain did not immediately go to 0, given all the other  
25 facts, it's diagnostically irrelevant?

1 A. No. It's relevant.

2 Q. Stay on that. Then how is that relevant?

3 A. Because it did not meet the immediate  
4 reduction of pain to be diagnostic.

5 Q. Okay. So staying on that point.

6 A. Yes.

7 Q. Does that mean it's possible that the pain  
8 generator was something other than the facets?

9 A. Possible. Unlikely, especially with the  
10 first response and the therapeutic response. Highly,  
11 highly unlikely. Is it possible, yes. Is it likely,  
12 absolutely not.

13 Q. Let's go to -- I want to talk about the  
14 relief that he had after that first injection, the  
15 facet injection, on October 6th of 2020. And I know  
16 you've answered this question, but how long did he have  
17 relief? How long did he have 100 percent pain relief?

18 A. I have to go to that record.

19 Q. And if it helps, when you testified, you  
20 mentioned you looked at your January 12th records.

21 A. If you don't mind me saying two months or  
22 three months, a couple months, according to my  
23 recollection.

24 Q. It was October to January, so about three  
25 months later?

1           A.    Two, three months. I think he had two  
2 months. It may have been three.

3           Q.    So he gets the injections on October 6th and  
4 he returns to you on January 12th?

5           A.    Well, he returned to me -- sorry.

6           Q.    We're actually --

7           A.    Yes, January 12.

8           Q.    And you actually previously mentioned, you  
9 actually read your note on the January 12th record?

10          A.    I did.

11          Q.    Okay. But my note of that was you actually  
12 omitted a little part of that. So I want you to read  
13 to the jury this update.

14                THE COURT: Counsel, what page are we on?

15                MS. BRASIER: What exhibit and page number?

16                MR. KNAUSS: Sorry. This is 109.

17                THE WITNESS: 98? 97?

18                MR. KNAUSS: Yes, you are correct, 97.

19                THE COURT: We're looking at 109, page 97; is  
20 that correct?

21                MR. KNAUSS: That's correct, Your Honor.

22 BY MR. KNAUSS:

23           Q.    And you actually did read this record  
24 already, except there was one part of this that you did  
25 not read, and I want you to read it in its entirety,

1 please.

2 A. What part?

3 Q. The general update, "the patient presents for  
4 a follow-up."

5 A. "Patient presents for a follow-up via  
6 telemedicine." This is during the COVID period. "And  
7 status post bilateral L4-S1 facet injections, which  
8 occurred on 10/6/20. The patient reports up until two  
9 weeks ago he had what he described as 100 percent  
10 relief with only some mild tightness. Over the last  
11 one to two weeks he has noted slight and progressive  
12 return of pain."

13 Q. And, Doctor, you actually omitted a very  
14 critical word, 100 percent pain relief; right?

15 A. Yes. Sorry.

16 Q. So this is important because it's something  
17 you did testify about?

18 A. Yes.

19 Q. He had a 100 percent pain relief. And you  
20 interpreted this as saying, basically, around the first  
21 of the year he was pain free from the date of your  
22 injection until then; correct?

23 A. Around the first of the year is when he  
24 started to have some progressive return of pain.

25 Q. And, again, that's a subjective complaint;

1 correct?

2 A. That is correct.

3 Q. He's telling you he feels pain; right?

4 A. Correct.

5 Q. And you're relying on him telling you the  
6 truth; correct?

7 A. Yes, we believe he's telling the truth.

8 Q. And your record here, this note that you just  
9 read, is my understanding correct that what he's  
10 telling you is he has been pain free since the  
11 injection, since he went to 0 out of 10 after  
12 October 6th?

13 A. Until two weeks ago he described as  
14 100 percent pain relief with only some mild tightness.

15 Q. So as his physician, what you were hearing  
16 was, since I have put those injections in your back  
17 back in October, you've had no pain in your lower back;  
18 correct?

19 A. Which is what I told you.

20 Q. Did you rely on that information?

21 A. Yes, I did consider that information.

22 Q. Now, we've also had some testimony about an  
23 October 22nd, 2020, about two weeks after your  
24 injections, Mr. Moss' low back pain was down to 0 out  
25 of 10, he was in a second car accident. And I maybe

1 worded that badly.

2 So he got the first round of injections from  
3 you. He goes to 0 out of 10 pain; right?

4 A. Immediately he had 0 out of 10 pain. And  
5 then I did not see him until January.

6 Q. Okay. And then two weeks after your  
7 injections, you're aware that Mr. Moss was in a second  
8 car accident; correct?

9 A. We talked about it, yes.

10 Q. How were you aware of that accident?

11 A. The patient told us when he came back in  
12 January, on that visit we're talking about, he  
13 mentioned that he had another accident, that he  
14 suffered head injury, and denied injuring the low back  
15 or increase in symptoms in the low back.

16 Q. Did you review any records from that second  
17 car accident?

18 A. At that time as the treating physician, no.

19 Q. Did you review records later when you did  
20 your review?

21 A. I have, yeah.

22 Q. Why did you review those records?

23 A. Because they could be pertinent. They could  
24 be important. When he hit the head, he could have  
25 worsened his back pain or had a new back injury, which



1 would have been important to know and could cloud the  
2 distinction of afterwards are we treating him because  
3 of that car accident or are we treating him from the  
4 prior accident or a combination.

5 MR. KNAUSS: Your Honor, could I approach,  
6 take a side bar, please?

7 THE COURT: No.

8 MR. KNAUSS: Your Honor, just to make a  
9 record, I believe he's opening the door --

10 THE COURT: I don't want to hear it. You  
11 heard my no.

12 BY MR. KNAUSS:

13 Q. What records did you review about this second  
14 car accident?

15 A. For the report?

16 Q. Yes. Just if it helps, it was from  
17 Sunrise Hospital.

18 A. I'm there.

19 Q. Okay.

20 A. Yeah, Sunrise Hospital, Community Ambulance,  
21 my records, and the chiropractor's record.

22 Q. Mr. Moss testified in this trial he hurt his  
23 head in that accident. He had a scar on his head  
24 because of that accident. He felt foggiess for a time  
25 period afterward that.

1                   Were these facts of this accident considered  
2                   by you in your review of the plaintiff's records?

3                   A.     Yes.

4                   Q.     But his head injury was unrelated to his low  
5                   back pain?

6                   A.     Yes.

7                   Q.     But it's still possible they affected one  
8                   another?

9                   A.     The head injury affecting his back?

10                  Q.     Yes.

11                  A.     Unlikely.

12                  Q.     Why unlikely?

13                  A.     They're two separate structures.

14                  Q.     The spinal column isn't connected to the head  
15                  in any way?

16                  A.     His facet joint wasn't connected to his head,  
17                  and that was the problem.

18                  Q.     Were you there in the hospital with him at  
19                  Sunrise Hospital?

20                  A.     No.

21                  Q.     Do you have any idea what state of mind he  
22                  was in after that second accident?

23                  A.     I reviewed the medical records that I  
24                  mentioned, as well as my records and the chiropractor's  
25                  records.

1 Q. Did you rely on these Sunrise records?

2 A. I did.

3 Q. Did you rely on the truthful reporting of any  
4 conditions or symptoms in those records?

5 A. Always a subjective component is considered,  
6 as well as objective findings. There's no indication  
7 in those records that he hurt his back.

8 Q. In review of all the records, both the first  
9 and the second accident, was there anything about the  
10 second accident that affected the plaintiff's low back  
11 pain?

12 A. No.

13 Q. Was there anything in the records that  
14 indicated the second accident affected plaintiff's  
15 treatment?

16 A. No.

17 Q. There was no effect on plaintiff's treatment  
18 after that second accident because of the second  
19 accident? There was nothing in his medical records  
20 about it?

21 A. The treatment that we did and the subsequent  
22 chiropractic treatment, there's no change in our  
23 treatment.

24 MR. KNAUSS: Your Honor, I move to admit the  
25 Sunrise records from Defendant's Proposed.

1 THE COURT: What number is that?

2 MR. KNAUSS: No. 39, Your Honor.

3 MS. BRASIER: I don't have a No. 39 in  
4 Defendants.

5 THE COURT CLERK: It's that big, black clip  
6 right there.

7 THE COURT: Oh, okay.

8 THE COURT CLERK: It wasn't given a tab.

9 MS. BRASIER: I'm just asking what number it  
10 is. I don't have a No. 39 or 139. It's in Volume III?

11 MR. KNAUSS: Yes.

12 THE COURT: I'm not sure I'm following this.  
13 All right. We'll have a side bar on this.

14 (The following proceedings were held outside  
15 the presence of the jury.)

16 THE COURT: Okay. I have a bunch of blank  
17 pages.

18 MR. KNAUSS: Yes, I know. This was the --

19 MS. BRASIER: Sorry. I didn't have that. I  
20 got those records, but I didn't have that it was going  
21 to be a new exhibit, but I don't have any objection to  
22 it.

23 THE COURT: Okay.

24 MS. BRASIER: I just didn't have it in my  
25 binder.

1 MR. KNAUSS: (Inaudible).

2 MS. BRASIER: Yeah, I reviewed it. I was  
3 just saying when it came over, it wasn't, hey, this is  
4 our 139, or I could have missed it. But I don't have  
5 an objection.

6 THE COURT: Do you want all 70 black pages  
7 introduced?

8 MS. BRASIER: It seems a little -- I mean, if  
9 we could.

10 THE COURT: I don't see any value to putting  
11 on all of the blacked out pages. I can see relevance,  
12 as I said before, as to the pages that have not -- no,  
13 we aren't going to allow in all these blacked out  
14 pages. You can allow in the records that have  
15 something on them, but I don't see a reason to hand  
16 them a thing with 60, 70 blacked out pages.

17 MR. KNAUSS: If I may, does this still have  
18 his name? As long as it has his identification.

19 THE COURT: Yeah. I mean --

20 MR. KNAUSS: And the hospital.

21 THE COURT: Hold this one second.

22 MR. KNAUSS: There's one page that says  
23 Sunrise Hospital, maybe page 3. Counsel would agree.  
24 I'm just trying to establish what it is. This one  
25 establishes --

1 THE COURT: Yeah, there's something printed  
2 on it. I know there's something printed on all the  
3 pages.

4 MR. KNAUSS: I just don't want them all.

5 THE COURT: Okay. You looked at these  
6 redactions?

7 MS. BRASIER: I believe so, but since we're  
8 just double checking, I'll just check it again.

9 MR. KNAUSS: I would probably say after this  
10 (inaudible) only because we've looked at them now a  
11 bunch of times.

12 MS. BRASIER: I have no objection to the  
13 redactions.

14 THE COURT: Okay. How much longer do you  
15 think -- and I'm not pushing any time restriction, but  
16 I just want to know for bathroom break purposes?

17 MR. KNAUSS: Probably at least an hour, maybe  
18 a little less.

19 THE COURT: We'll go ahead and take a break  
20 now. I'll let you put your --

21 MR. KNAUSS: I'm rounding up. It's an hour  
22 at most.

23 THE COURT: I'll let you put on your  
24 objection on the record so that you have it, and then  
25 we can get back in action; all right? Somebody hand

1     that to --

2                 (The following proceedings were held in the  
3                 presence of the jury.)

4                 THE COURT: Ladies and gentlemen, we've been  
5     going about an hour and 45 minutes so it makes sense to  
6     probably take a 15-minute break here. I show us at  
7     3:15. Let's get back in action at 3:30.

8                 While you're out there, do not talk to each  
9     other about the case or with anyone who has anything to  
10    do with it. Do not talk with anyone else about the  
11    case or about anyone who has anything to do with it.  
12    Anyone else includes members of your family, your  
13    employer, your friends. You may tell them you're a  
14    juror in a civil case, but do not tell them anything  
15    else about it. Do not let anyone talk to you about the  
16    case or about anyone that has anything to do with it.  
17    If someone should try to talk to you, please report it  
18    to me immediately by contacting the marshal. Do not  
19    read any news stories or articles or listen to any  
20    radio or television reports about the case or about  
21    anyone that has anything to do with it. Do not visit  
22    the scene of any events mentioned during the trial or  
23    undertake any investigation, experimentation or  
24    research on your own including the use of social media  
25    to in any way discuss the case or the use of the

1 internet or other reference materials to do any  
2 investigation or research. And do not begin to form or  
3 express any opinion on any subject connected with this  
4 case until it's finally submitted to you.

5 THE MARSHAL: All rise for the jury.

6 (The following proceedings were held outside  
7 the presence of the jury.)

8 MR. KNAUSS: Your Honor, he opened the door  
9 very clearly. He stated -- he was basically telling  
10 the jury that it's possible that this second accident  
11 impacted -- the second accident could be the cause of  
12 his pain. He's literally saying that. He's turning to  
13 them and saying to them, this second accident, it's  
14 possible it's part of his pain.

15 It's no now longer about Dr. Wang and his  
16 opinion. This is about this witness is putting forth a  
17 theory that the cause of plaintiff's pain is something  
18 other than the accident that he is stating. And the  
19 jury is allowed to hear the details of this accident  
20 that could possibly be a reason.

21 THE COURT: He's not stating that. He's  
22 saying -- he's stated over and over that it has nothing  
23 to do with this accident. Is it possible, he's, like,  
24 anything is possible. I think he used the asteroid  
25 coming out of the sky and hitting us. There's nothing



1 that he is saying that is tying that accident to the  
2 back.

3 And, again, I think you've got quite a bit  
4 in. There is this accident. They obviously know there  
5 was another car accident, that he hit his head. His  
6 opinion is it has nothing to do with the back. Is it  
7 possible? Is anything possible? Yes, it's possible,  
8 but he has -- you got him -- he has no -- other than  
9 anything is possible, he's not giving the jurors  
10 anything to suggest that this back -- this back injury  
11 and pain is coming from the second accident. And  
12 you're just starting to say, hey, he was thrown across  
13 the three lanes back, two lanes, or however many lanes  
14 it was and all this so that the jury can make that  
15 assumption when there's no basis being given to it by  
16 the doctor.

17 I understand what you're saying.

18 MR. KNAUSS: My only -- my only quarrel with  
19 your analysis is just that this is not a hypothetical.  
20 This is not a --

21 THE COURT: Doctor, do you mind stepping out  
22 just for one second. I apologize.

23 I'm sorry. Go ahead.

24 MR. KNAUSS: This isn't a hypothetical. This  
25 isn't, yeah, anything could happen, an asteroid could

1 hit, he could lift up a table. This is a factual  
2 event. This happened, and it's relevant for the jury  
3 to hear. That's my only issue.

4 THE COURT: All right. I think we've stated  
5 our -- do you want to put anything on the record?

6 MS. BRASIER: No. I think Your Honor  
7 summarized Dr. Muir's testimony appropriately. He also  
8 said there is no connection between the head and the  
9 facet joints involved in this. He explicitly said that  
10 so I don't think any more of a record needs to be made.

11 THE COURT: All right. Anyway, I've made my  
12 ruling. You've got it. If there is -- depending on  
13 what happens, you've got it for posterity.

14 Now, why don't you let the doctor come back  
15 in. You guys can go to the bathroom.

16 MS. BRASIER: Thank you.

17 (Whereupon, a recess was taken.)

18 THE COURT: -- on the witness stand. Do we  
19 have everybody else?

20 (Discussion held off the record.)

21 THE COURT: Don't write on those. We'll make  
22 that the exhibit, the official exhibit, of the court.  
23 If you need to write on it, we'll figure out something.  
24 I'm not telling you --

25 MR. KNAUSS: I can hand it now. I don't need

1 it.

2 THE COURT: All right. We've got everyone.  
3 All right. Bring them in.

4 THE MARSHAL: Yes, sir.  
5 All rise for the jury.

6 (The following proceedings were held in the  
7 presence of the jury.)

8 THE COURT: All right. Parties stipulate to  
9 the presence of the jury panel?

10 MS. BRASIER: Yes, Your Honor.

11 MR. KNAUSS: Yes, Your Honor.

12 THE COURT: Okay. Everybody get situated,  
13 get their notepads. All right. We're ready to go  
14 whenever you're ready, counsel.

15 MR. KNAUSS: Thank you, Your Honor.

16 THE COURT: And you had moved for --

17 MR. KNAUSS: Yes, housekeeping matter. We  
18 move to admit Sunrise Hospital records.

19 THE COURT: What is it one --

20 MR. KNAUSS: 39.

21 THE COURT: 139. Any objection to 139 as  
22 redacted?

23 MS. BRASIER: No, Your Honor.

24 THE COURT: 139 will be admitted.

25 (Defendants' Exhibit 139 was admitted into

1 evidence.)

2 BY MR. KNAUSS:

3 Q. Doctor, you testified about how common facet  
4 injuries were after a car accident?

5 A. Yes.

6 Q. Remind me, how common are facet injuries  
7 after a car accident?

8 A. Sprain/strains are the most common. Then  
9 disc, and then facet, putting in groups. And facet is  
10 the second most common injection that's done.

11 Q. But in terms of an injury after a car  
12 accident, a facet injury is one of the most common  
13 ones?

14 A. Yes.

15 Q. And why is that?

16 A. Well, just like the disc, it puts the stress  
17 and a jolt or a twisting, some force on the spine that  
18 can cause either disc problems or facet problems or  
19 just muscle.

20 Q. So even though a facet injury is one of the  
21 most common after a car accident, you concluded there  
22 wasn't a facet injury after the second car accident;  
23 correct?

24 A. Correct.

25 Q. And why did you rule that out?

1           A.     The records indicate that, the hospital  
2 records, if I go to those, they say back -- I'm sorry,  
3 Sunrise, 10/17.

4           THE COURT: All right. Let's have a side  
5 bar.

6           (The following proceedings were held outside  
7 the presence of the jury.)

8           THE COURT: All right. He's looking at  
9 unredacted records and starting to read from those,  
10 yeah. So he's looking at his file. (Inaudible). All  
11 right. That was my concern. Well, what are you  
12 looking at, and the page he's looking at is full of  
13 writing so...

14           MS. BRASIER: -- binder is just going to have  
15 a bunch of black pages. That's a little different than  
16 the (inaudible).

17           THE COURT: We'll hand him the records and  
18 we'll avoid the issue. Thank you.

19           MS. BRASIER: Thank you, Your Honor.

20           (The following proceedings were held in the  
21 presence of the jury.)

22           THE COURT: All right. We're going to have  
23 the doctor referring to the 139. Let's give him the  
24 copy that's been introduced into evidence.

25           THE WITNESS: The black one?

1 MR. KNAUSS: Yeah.

2 BY MR. KNAUSS:

3 Q. And the pending question was how did you  
4 conclude the facet injury wasn't a part of that second  
5 accident?

6 A. Based upon Sunrise Hospital records, my  
7 records, and the chiropractor who saw the patient right  
8 after the accident.

9 Q. Okay. But what was within the Sunrise  
10 records that made you believe that there were no facet  
11 injuries after the second car accident?

12 A. Under History of Present Illness, there's  
13 nothing about the back, but there are three lines about  
14 other problems. The examination shows back atraumatic.

15 Q. What does "back atraumatic" mean?

16 A. That there was no trauma to the back from  
17 this.

18 Q. What does that mean?

19 A. He did not injure --

20 THE COURT: Doctor, I want you to refer, just  
21 to make sure we are all on the same page, to the  
22 exhibit that's been admitted. So if you could look at  
23 that.

24 THE WITNESS: I just see black pages.

25 THE COURT: There's some stuff in there.

1 THE WITNESS: Oh, are there some things?

2 Which page?

3 BY MR. KNAUSS:

4 Q. What do you see in the record? There's not  
5 much there.

6 A. It's 99 percent of this, 95 percent blacked  
7 out so there's just a few nonproductive cough,  
8 shortness of breath, musculoskeletal, denies back pain.  
9 I'm not sure what you're looking for.

10 Q. Those test results that indicated to you  
11 there was no facet injury.

12 A. Under examination?

13 Q. Yeah.

14 A. Looks like it's blacked out here. It's my  
15 record, but it's blacked out here.

16 Q. Throughout your treatment of the plaintiff's  
17 pain, how much of the pain was being controlled by  
18 methadone?

19 A. None, or near none. I'd say none.

20 Q. So methadone doesn't affect pain?

21 A. It does not affect pain on a chronic -- if  
22 it's taken for a long period of time, it does not  
23 affect pain. I've got an article proving that.

24 Q. Okay. So if someone is experiencing pain in  
25 any part of their body and they're on methadone,

1 there's no relief to that pain?

2 A. Correct. If they're on it chronically, yes.

3 Q. So if it's non-chronic pain, then it would  
4 relieve --

5 A. No, it doesn't. I'm saying if they're on  
6 methadone chronically, such as Jared, you'd have no  
7 relief from pain from the methadone because of  
8 tolerance and hypersensitivity.

9 Q. So he has a higher pain tolerance than normal  
10 because of methadone?

11 A. No.

12 Q. So methadone itself does nothing for pain?

13 A. On chronic, no.

14 Q. You keep saying "on chronic."

15 A. More than three or four months on methadone.

16 Q. Then after three to four months, what  
17 happens?

18 A. It does not affect the pain.

19 Q. Okay. So if I start taking methadone and I  
20 have a sore back -- if I have a sore back and I start  
21 taking methadone, what happens to my back pain?

22 A. Your back pain that you're feeling would be  
23 the same whether you're on methadone or not on  
24 methadone.

25 Q. Does it affect my pain sensitivity? If I'm



1 on -- if I'm on chronic methadone, take methadone all  
2 the time --

3 THE COURT: I was going to say why don't you  
4 ask what he means by chronic.

5 BY MR. KNAUSS:

6 Q. Doctor, if you could explain, what does it  
7 mean to take, chronically take, methadone?

8 A. Chronic means more than three to four months.

9 THE COURT: So talking chronic means  
10 long-term taking methadone?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 BY MR. KNAUSS:

14 Q. So I've been taking methadone for three to  
15 four months and I fall off a chair.

16 A. Yes.

17 Q. Is my pain sensitivity any different than it  
18 would be before I started taking methadone?

19 A. Well, let's take it out to a year; okay? Can  
20 we do that?

21 Q. Sure.

22 A. Can I read from the Annals of Internal  
23 Medicine to answer this?

24 Q. No, I don't -- doctor, you can't look at  
25 records. I'm just asking from your own memory, your

1 knowledge.

2 A. Okay.

3 Q. I'll go to the hypothetical again. I'm on  
4 methadone for three to four months and I take a fall.  
5 Like I say, I'm putting a light in on the ceiling and I  
6 fall off a chair. Is my pain sensitivity any different  
7 because I'm on methadone versus before I was on  
8 methadone?

9 MS. BRASIER: Your Honor, I'm just going to  
10 lodge an objection that it's an incomplete  
11 hypothetical, and there's also different types of  
12 methadone for rehab purposes versus pain relief.

13 THE COURT: All right. I'll -- I'll  
14 overrule. The doctor is capable of making a  
15 distinction if he feels that some distinction is  
16 necessary. So I'll overrule at this point in time.

17 THE WITNESS: If patient is receiving a  
18 maintenance dose of methadone, then they do not derive  
19 any analgesia effect from the methadone.

20 BY MR. KNAUSS:

21 Q. Whatsoever?

22 THE COURT: Wait. What's analgesia?

23 THE WITNESS: Decrease of pain.

24 THE COURT: Okay.

25

1 BY MR. KNAUSS:

2 Q. Let's say I was experiencing a headache,  
3 constant headache, and then I started taking methadone.  
4 Nothing happens to my headache; right?

5 A. If you started taking methadone, yeah.

6 Q. What happens to my headache?

7 A. It will decrease.

8 Q. And why?

9 A. Because there's not a tolerance to the  
10 medicine and there's no hypersensitivity because you  
11 haven't taken it for a prolonged period of time. But  
12 when you take it for a prolonged period of time, you  
13 get a tolerance to it.

14 Q. Okay. So if I was on methadone for a long  
15 period of time and I felt a headache, I experience it  
16 the same as I would if I wasn't on methadone?

17 A. Yes. And I've got an article right here to  
18 prove it.

19 Q. What was the dosage that Mr. Moss was taking  
20 of methadone, do you know?

21 A. I don't recall.

22 Q. Could a plaintiff be experiencing physical  
23 pain, symptoms, but unaware of that because the  
24 methadone is masking it?

25 A. That would not be expected if the patient is

1 on maintenance dose therapy.

2 Q. How does the methadone play a part in your  
3 analysis after injections, facet or medial branch  
4 block, rating the pain afterwards?

5 A. It doesn't because it's on a prolonged period  
6 of time, a maintenance dose, and that does not alter  
7 the response to the pain.

8 Q. So you would -- so for you, from your  
9 perspective, your opinion, methadone is not a pain  
10 relieving drug in any way?

11 A. No, it is, absolutely, but not on an ongoing  
12 maintenance basis, it is not.

13 Q. Okay. And that's fair. But would you want a  
14 patient to stop taking methadone --

15 A. No.

16 Q. -- so when you do your medial branch blocks  
17 and your facet injections, you would have a more  
18 accurate record of pain?

19 A. No. It's accurate with ongoing methadone.

20 Q. Okay. So the methadone doesn't contaminate  
21 the branch block injections or the facet injections in  
22 any way?

23 A. Not the way that Jared was on it, no.

24 Q. You've recommended plaintiff receive RFAs,  
25 radio frequency ablations, once a year for the rest of

1 his life; is that correct, or about six to 24 months?

2 A. It's worded a little bit differently. Most  
3 likely the patient will benefit from ongoing radio  
4 frequency ablations approximately once a year.

5 Q. Okay. And how many would that be,  
6 approximately?

7 A. Well, at the time of the life care plan was  
8 39 years. So it would be 39 at that time. It would be  
9 37 now. He's had two since.

10 Q. So your recommendation possibly he could  
11 receive 37 RFAs?

12 A. In the life care plan I'm saying most likely  
13 he would benefit from an RFA approximately once a year  
14 for his life expectancy, which is 37 years.

15 Q. So I think that was a yes to my question.  
16 You recommend he get an RFA --

17 A. Recommend is different because sometimes it  
18 can help for eight months. Sometimes it can help for  
19 13, 14 months. So I'm not going to recommend it at  
20 eight months if he has good relief, but wait until 13,  
21 14 months until the nerves regenerate.

22 Q. So if Mr. Moss lives to 80 years old, how  
23 many radio frequency ablations could he have to  
24 require?

25 A. 37 is projected.

1           Q.    Have you ever administered 37 RFAs to a  
2    patient?

3           A.    They haven't been around that long.  They  
4    haven't been around for 37 years.

5           Q.    What is the amount of RFAs you've ever  
6    administered to a patient?

7           A.    I've been doing injections for 30 years.  
8    RFAs I went to the course and I've been doing those for  
9    by six or seven years.

10          Q.    Doctor, my question was, how many have you  
11   ever -- what's the most amount of RFAs --

12          A.    For me personally?

13          Q.    Yes.

14          A.    Okay.  I'll take it out of context, but  
15   that's fine.  Three or four.

16          Q.    You've never done more than three or four?

17          A.    I haven't done them for more than four or  
18   five years.

19          Q.    You haven't done RFAs for more than three or  
20   four years?

21          A.    More than four or five years, approximately  
22   five or six years ago.  Might have been eight years  
23   ago.  But I do have people come in approximately once a  
24   year for RFAs.

25          Q.    Is your sworn testimony that you would give a

1 patient more than five -- you'd give a patient more  
2 than 10 RFAs?

3 A. I would in this particular case, most likely  
4 the pain will persist and most likely the patient will  
5 continue to benefit from more than 10 RFAs.

6 Q. And you would administer more than 30 RFAs to  
7 a single patient?

8 A. Certainly. If it provided relief, yes.

9 Q. Is there at any point --

10 A. Over a long period of time. I would not give  
11 more than two in a year.

12 Q. At any point does an RFA stop being  
13 effective?

14 A. It can.

15 Q. How?

16 A. The nerve may not grow back. Typically, it  
17 does.

18 Q. In your clinical experience, how many times  
19 does it take for an RFA to burn a nerve so it doesn't  
20 grow back?

21 A. I don't understand that question.

22 Q. Have you ever had -- have you had a patient  
23 whose RFAs would be ineffective because they didn't  
24 have any nerves to burn?

25 A. Yes.

1 Q. How many times --

2 A. I don't know. Not frequently.

3 Q. Three or four?

4 A. Infrequently.

5 Q. Were they doing more than 10?

6 A. I haven't done them for 10 years.

7 Q. Not 10 years. Have you done more than 10?

8 A. Have I done more than 10 what?

9 Q. RFAs.

10 A. Have I done more than 10 RFAs?

11 Q. I mean -- let me reset.

12 A. Yes, I've definitely done more than 10 RFAs.

13 Q. Have you ever had a patient who stopped doing  
14 RFAs because there was no more effective use of them,  
15 you couldn't -- they would provide no benefit to them?

16 A. Yes, when they've had lumbar fusions.

17 Q. Okay. How many RFAs did you do before you  
18 decided there's no more effective use of this RFA?

19 A. It's on an individual basis.

20 Q. For example?

21 A. It's on an individual basis, that's all I can  
22 tell you.

23 Q. Give me an example.

24 A. If they've been having it for five years,  
25 10 years, and they've had great response from the RFA,



1 and they have an RFA that doesn't help at all, I'll  
2 repeat that RFA. Because if the needle is not in the  
3 right spot, you wouldn't have effective treatment.

4 Q. How many -- in that instance, how many did  
5 you do?

6 A. I don't know. I can't tell you.

7 Q. More than 10?

8 A. More than 10 what?

9 Q. RFAs on this patient that you're now thinking  
10 of.

11 A. I'm talking about patients in general. These  
12 are hypotheticals. I don't recall my patients where I  
13 can say this occurred on this many. I can give you the  
14 literature. My numbers are not that significant. The  
15 literature is what's significant.

16 Q. Let's go a different way.

17 What is your understanding of the medical  
18 literature regarding how many RFAs should be  
19 administered to a patient?

20 A. No more than two a year. You can do them  
21 three months a part, but no more than two a year. This  
22 is in the conservative.

23 Q. I'm talking aggregate, Doctor.

24 A. There's no aggregate.

25 Q. There's no guideline?

1           A.    There's no aggregate because we haven't done  
2   it to follow people for 40 years.

3           Q.    Even though you were just saying the RFA  
4   burns the nerve and there could be no nerve to burn?

5           A.    Sometimes, or sometimes you might not be in  
6   the right spot.

7           Q.    And your testimony is you could possibly give  
8   someone more than 30 -- a single patient more than 30  
9   RFAs?

10          A.    That would be appropriate in a patient that  
11   had significant back pain that responded to the RFAs,  
12   but no more than two a year.

13          Q.    But you've never done more than four or five  
14   on a single patient?

15          A.    No, I've -- I don't recall at this time. I  
16   don't know if it's six years, eight years I started  
17   doing these. I have patients that come in every  
18   six months for RFAs, but I'd have to look at the  
19   records.

20          Q.    And you mentioned the fusion surgery;  
21   correct?

22          A.    I did.

23          Q.    That's another part of your life care plan?  
24   Is it common to do a fusion surgery for a patient who's  
25   only presenting with a symptom of facet pain?

1 A. It is appropriate.

2 Q. How is it possible that an invasive surgery  
3 to the lumbar spine from just facet pain is  
4 appropriate? Can you explain that to me?

5 A. Yeah, you get rid of the facet joints, you  
6 get rid of the pain. You fuse across that joint.  
7 There's no movement in that joint.

8 Q. Even though you're doing the surgery based  
9 solely on the subjective complaints of the patient?

10 A. Well, it's based upon -- no, I don't do on  
11 subjective patients. We talked about this. It's based  
12 upon the diagnostic injections and the response from  
13 the radio frequency ablations. And it's based upon the  
14 patient's symptomatology and their ability to function.

15 Q. You were paid for your life care plans;  
16 correct?

17 A. I was.

18 Q. And your opinion, your expert medical  
19 opinion, is that all of Mr. Moss' injuries and symptoms  
20 were caused entirely by our accident on July 9th of  
21 2020 and no other event; is that correct?

22 A. Correct.

23 Q. And all your treatment was directly and  
24 causally related to the accident of July 9th of 2020?

25 A. Yes.

1 Q. Which would include all your bills and  
2 treatment?

3 A. Absolutely.

4 Q. Bills which have not been paid pending the  
5 outcome of this lawsuit?

6 A. Not pending the lawsuit, but they have not  
7 been paid yet because nothing has been settled yet.

8 Q. Because you're treating on a lien; is that  
9 correct?

10 A. It's a lien.

11 MR. KNAUSS: No further questions,  
12 Your Honor.

13 THE COURT: All right. Redirect?

14 MS. BRASIER: Yes, Your Honor.

15 REDIRECT EXAMINATION OF WILLIAM MUIR, MD  
16 BY MS. BRASIER:

17 THE COURT: Hold on. Does she need to hit  
18 the blue button?

19 MS. BRASIER: It's just flashing a blue.  
20 That's okay. I don't need it.

21 THE COURT: Do you know how to get it to  
22 work?

23 MS. BRASIER: It's okay. I don't need it.

24 THE COURT: Angie always says hit the blue  
25 button.

1 MS. BRASIER: This one?

2 THE COURT CLERK: Yeah, that one.

3 THE COURT: That's why we have Angie. All  
4 right. It usually takes a second.

5 MS. BRASIER: All right. There we go.  
6 Thank you.

7 THE COURT: Wait. Now, what is this?

8 MS. BRASIER: This is the demonstrative.

9 THE COURT: This is your demonstrative?

10 MS. BRASIER: Yeah, that we used during his  
11 direct.

12 BY MS. BRASIER:

13 Q. I just wanted to put it up here, Dr. Muir,  
14 since it's been a little while since we had it up since  
15 we were talking about it.

16 Just to follow-up on a few things,  
17 Consensus Guidelines were followed in this case;  
18 correct?

19 A. On every aspect.

20 Q. Okay. And you're here to talk about  
21 probabilities, more likely than not, not possibilities,  
22 like an asteroid coming and hitting us; right?

23 A. What's the most likely cause of something.

24 Q. Okay. And based on the Consensus Guidelines  
25 and the fact that all of the treatment so far has been

1 successful to treat Jared's facet pain, is it more  
2 likely than not that that was all a coincidence, he  
3 didn't have any facet pain but it just worked, or is it  
4 more likely than not a more reasonable conclusion that  
5 the guidelines were followed, you got the correct  
6 diagnosis, and the treatment was appropriate?

7 A. The latter is correct.

8 MS. BRASIER: Okay. Thank you, Dr. Muir.

9 THE COURT: That's it?

10 MS. BRASIER: I don't have any more  
11 questions.

12 THE COURT: Okay. Re-cross?

13 MR. KNAUSS: No re-cross, Your Honor.

14 THE COURT: Any member of the jury have a  
15 question for this witness? If you do, write it on a  
16 clean sheet of paper with your juror number and signal  
17 the marshal or myself. I see a hand. Okay. Can I  
18 have counsel at side bar.

19 THE MARSHAL: Do you have your juror number,  
20 ma'am? What's that?

21 (The following proceedings were held outside  
22 the presence of the jury.)

23 THE COURT: You have some juries where it's  
24 like 20 questions each witness and then others where  
25 it's like nothing. From Juror No. 5. "Could the costs

1 go up as Jared ages."

2 Any objection, plaintiff?

3 MS. BRASIER: No.

4 THE COURT: Defense?

5 MR. KNAUSS: No.

6 THE COURT: "Is inflation factored in?"

7 Any objection?

8 MS. BRASIER: No.

9 MR. KNAUSS: No.

10 THE COURT: "And 37 years into" -- I think

11 she means "is the calculation 37 years into the

12 future."

13 Any objection, plaintiff?

14 MS. BRASIER: No.

15 MR. KNAUSS: Yeah.

16 MS. BRASIER: I think she's trying to figure  
17 out (inaudible).

18 MR. KNAUSS: No. (Inaudible).

19 THE COURT: All right. Anything else? So  
20 I'll ask him the question. I'll give you a chance, if  
21 you feel something needs to be followed up. Then this  
22 is your last witness; correct?

23 MS. BRASIER: Yes.

24 THE COURT: All right. So when he gets off  
25 the stand, I'll ask you to call your next witness.

1 Just say that you rest.

2 And your doctor doesn't get in until 8:30 on  
3 Friday?

4 MR. KNAUSS: 9:30 on Friday.

5 THE COURT: 9:15. Tell the doctor to head  
6 here as soon as he gets off of the -- hopefully, he  
7 just has a day bag.

8 MS. BRASIER: Do you have a backup plan if  
9 Southwest delays?

10 MR. KNAUSS: Let's not contemplate that.

11 THE COURT: Fortunately, it's early morning  
12 so usually they're better off at that time. Okay.  
13 Very good.

14 (The following proceedings were held in the  
15 presence of the jury.)

16 THE COURT: All right. Doctor, could the  
17 costs of your life care plan go up as Jared ages?

18 THE WITNESS: Yes.

19 THE COURT: Was inflation factored into your  
20 life care plan?

21 THE WITNESS: No.

22 THE COURT: And you're saying that he, Jared,  
23 should statistically live 37 years into the future?

24 THE WITNESS: Yes.

25 THE COURT: And your life care plan is



1     calculated on that?

2             THE WITNESS: Yes. The life care plan I have  
3     in front of me is calculated at 39 years because it was  
4     two years ago.

5             THE COURT: Okay. All right. Does that  
6     generate any further questions from plaintiff?

7             MS. BRASIER: No, Your Honor.

8             THE COURT: Anything further from defense?

9             MR. KNAUSS: None, Your Honor.

10            THE COURT: All right. Thank you very much,  
11     Doctor, for your testimony. You're excused.

12            THE WITNESS: Thank you.

13            (Witness excused.)

14            THE WITNESS: I have something here.

15            THE COURT: That -- that's fine. I'll take  
16     that.

17            All right. Plaintiff may call his next  
18     witness.

19            MS. BRASIER: Your Honor, at this time,  
20     plaintiff rests his case.

21            THE COURT: All right. Ladies and gentlemen,  
22     that means that the plaintiff has presented all the  
23     evidence that they plan to present to you for your  
24     purposes in deliberations. At this point in time, the  
25     defense has an opportunity to present evidence if it

1 chooses to do so. It doesn't have an obligation to do  
2 so as the burden of proof in a civil case is on the  
3 plaintiff to prove his causes of actions and damages by  
4 a preponderance of the evidence, but the defense does  
5 have that opportunity.

6 It's my understanding, counsel, that you do  
7 have a witness, at the current time, just one  
8 witness --

9 MR. KNAUSS: Just one witness.

10 THE COURT: -- that you want to present? And  
11 it's my understanding that the witness is flying in on  
12 Friday morning. I had hoped we could get started at  
13 about 8:30. At this point in time, I think it's  
14 probably safer to ask you all to be here to get started  
15 at 9:15. So if you could get here at 9:05 so we could  
16 get started at 9:15, or as soon as the witness gets  
17 here, we can do that.

18 Once that witness is done testifying, the  
19 plaintiff has an opportunity to put on rebuttal  
20 evidence if the plaintiff chooses to do so. At this  
21 point in time, I assume you aren't anticipating that,  
22 but you certainly have the right.

23 MS. BRASIER: I don't anticipate that,  
24 Your Honor.

25 THE COURT: So if there is no rebuttal

1 evidence that's put on, the case will be done after the  
2 next witness testifies. At that point in time, I will  
3 read to you the jury instructions you're to use in your  
4 deliberations and the parties will begin their closing  
5 statements or closing arguments. And then the case  
6 will go to you for deliberations. So that's the plan  
7 on Friday.

8           You don't have to show up tomorrow. I'm sure  
9 you're all disappointed by that, and I'll miss you, but  
10 we'll get together on, like I said, Friday morning.  
11 Get here at about 9:05 so we can get started at 9:15.

12           All right. While you're out there today,  
13 tonight, and tomorrow, do not talk to each other about  
14 the case or with anyone who has anything to do with it.  
15 Do not talk with anyone else about the case or about  
16 anyone who has anything to do with it. Anyone else  
17 includes members of your family, your employer, your  
18 friends. You may tell them you're a juror in a civil  
19 case, but do not tell them anything else about it. Do  
20 not let anyone talk to you about the case or about  
21 anyone that has anything to do with it. If someone  
22 should try to talk to you, please report it to me  
23 immediately by contacting the marshal. Do not read any  
24 news stories or articles or listen to any radio or  
25 television reports about the case or about anyone that

1 has anything to do with it. Do not visit the scene of  
2 any events mentioned during the trial or undertake any  
3 investigation, experimentation or research on your own  
4 including the use of social media to in any way discuss  
5 the case or the use of the internet or other reference  
6 materials to do any investigation or research. And do  
7 not begin to form or express any opinion on any subject  
8 connected with this case until it's finally submitted  
9 to you.

10 All right. Thank you for your patience with  
11 us so far and for your time here today. We'll see you  
12 on Friday morning.

13 THE MARSHAL: All rise for the jury.

14 (The following proceedings were held outside  
15 the presence of the jury.)

16 THE COURT: Okay. Della indicated that she  
17 sent out to everybody last night the jury instructions.  
18 I assume that you've been diligently working on other  
19 stuff so you may not have looked at it, but look at  
20 that. Look at the order that they're in. And then if  
21 you have a concern either with any instruction or you  
22 thought of another instruction or you'd like the order  
23 somehow different, let's call us by noon tomorrow and  
24 we'll set up if we need to a zoom, a zoom conference,  
25 so that we can correct whatever it may be.

1 MS. BRASIER: I didn't print it out to look  
2 at them, but do you think we could resolve the verdict  
3 form today so then if we wanted to add that into our  
4 closing --

5 THE COURT: While we've got time, let me go  
6 grab that.

7 (Discussion held off the record.)

8 THE COURT: All right. I had my form, which  
9 is very similar to defendant's form. And I'll hand you  
10 that now. It's generally my preference --

11 MS. BRASIER: Your Honor, it's very similar  
12 to defendants. And I know that Your Honor doesn't know  
13 the evidence in this case as well as we do, but  
14 Dr. Wang in his reports has said Jared sustained a  
15 sprain/strain injury. He doesn't say there was no  
16 injury. He says he sustained a sprain/strain injury.  
17 Everything up to this point in time is related to the  
18 car crash.

19 Unless he gets up tomorrow and totally  
20 abandons that opinion, the defense has conceded that at  
21 least some of the claimed injuries are related to the  
22 car crash. So I think to include Question No. 1  
23 invites the possibility for a juror error and it  
24 probably automatically mistrial because they would have  
25 disregarded the evidence coming to their verdict and

1 answered (inaudible) on Question 1. So my concern is  
2 that we bring this back to the jury, the jury thinks  
3 this is something we have to decide, and if they picked  
4 no, that would be a disregard of the evidence because  
5 Dr. Wang is going to get up and testify that, yes, in  
6 fact, there was some injury related to this car crash.

7 THE COURT: Okay.

8 MR. KNAUSS: Actually, I'm in agreement  
9 because Dr. Wang will say those things. He'll say some  
10 of these injuries are reasonable and necessary. I like  
11 the Court's version on Question No. 2. I think my  
12 issue with plaintiff's original version was it just has  
13 a sentence and here's the numbers you can add in.

14 MS. BRASIER: Yeah, I would be in agreement  
15 with the Court's proposed verdict form if we took out  
16 Question No. 1. We could still leave the question in  
17 before the categories of damage. I just didn't want to  
18 invite potential juror error on the verdict form.

19 THE COURT: Okay. So you're conceding that  
20 there was some injury; correct?

21 MR. KNAUSS: Yes.

22 THE COURT: So you want to cut out Question  
23 1, just go to question -- we find Defendant Tomesco's  
24 negligence to be the proximate cause of the following  
25 damages to the plaintiff. And then just that being the

1     only question on the form?

2             MR. KNAUSS:   Yes, Your Honor.

3             THE COURT:   So I'll strike -- I'll leave in  
4     the introductory paragraph.  I'll strike Question 1,  
5     change Question 2 to 1.  And if I remember looking at  
6     your guys' stuff, these are the only four categories of  
7     damages; right?

8             MR. KNAUSS:   Right.

9             MS. BRASIER:  Yes, Your Honor.

10            MR. KNAUSS:   Yes, sir.

11            THE COURT:   All right.  Then we can do that.  
12     We'll send out the verdict form in the final form today  
13     so that you can include it on your PowerPoint.

14            MR. KNAUSS:   There's one error.  It says 2022  
15     is the year.  It just needs to be changed to --

16            THE COURT:   Oh.  Oh, one question.  I'll  
17     leave that to you.  If you notice on page 2, I have a  
18     total of four.  I've had some people complain about  
19     that because it relies on the jurors to accurately  
20     engage in addition.

21            MS. BRASIER:  Can we put a calculator back  
22     with them so they don't use the phone?

23            THE COURT:   No, I'd just say remove it.  I  
24     haven't found any issue with their adding.

25            MS. BRASIER:  I'm okay with it in.

1 THE COURT: It's up to you.

2 MR. KNAUSS: I'd prefer to have them do math.

3 THE COURT: Have them do math? Okay. We'll  
4 leave it. All right. Anything else then?

5 MR. KNAUSS: I need to make an offer of proof  
6 again.

7 THE COURT: Okay.

8 MR. KNAUSS: I submit that, again, the door  
9 is open to a second accident. We aren't presenting an  
10 alternative causation theory anymore. We had the  
11 doctor testify today that the second accident could  
12 have caused his low back pain. Doing so means the jury  
13 can hear about the factual event of a potential thing  
14 that happened and the facts surrounding it.

15 The doctors can comment on Mr. Moss' veracity  
16 or his truth telling, but it's up to the jury to hear  
17 what the events were and decide which event was the one  
18 that was causing the injury. That's based on the  
19 testimony of the witness that testified today. So we  
20 believe today did open the door. So I'm making that  
21 offer of proof just for that reason.

22 MS. BRASIER: As we put on the record  
23 earlier, Dr. Muir said anything is possible. When  
24 asked directly could his head injury -- his whole spine  
25 is connected so if he hurt his head, that wouldn't have



1 hurt his low back? And Dr. Muir clearly said his head  
2 is not connected to his lumbar facet joints. So while  
3 did answer anything is possible, which is a true  
4 statement, he did not in any way indicate that he felt  
5 there was -- there was a likely possibility other than  
6 the same as an asteroid hitting us that the second  
7 motor vehicle accident caused any of his back injuries.

8 THE COURT: Final word.

9 MR. KNAUSS: And none of that information was  
10 in Dr. Muir's report and he got to testify to it.

11 MS. BRASIER: He was asked questions by  
12 counsel --

13 THE COURT: I was going to say, yeah, you're  
14 the ones asking questions and trying to force this  
15 open. And even in asking questions, he indicated there  
16 was no relationship that he found between the second  
17 accident and the first. He hasn't provided any medical  
18 justification or basis for the jury to go back and  
19 evaluate whether or not the forces in the second  
20 accident were in any way related to the pain that the  
21 plaintiff is suffering or had suffered.

22 And so, again, for me to allow details of the  
23 accident that there's been no medical opinion that they  
24 had any likelihood of affecting the plaintiff's pain  
25 would allow the jury to engage in speculation. So I'm

1 going to deny the request. I don't find the door's  
2 been opened.

3 MS. BRASIER: Just, I guess, to address this  
4 issue so we don't have problems on Friday, Dr. Wang in  
5 his report says, I believe all treatment up to three  
6 months after the date of our incident is related. Now,  
7 the second accident happened two weeks beyond that  
8 point. And he doesn't say anywhere in his report, I  
9 think that the second accident is the cause of any  
10 ongoing pain. So I don't want him to come in here on  
11 Friday and now start talking about the second accident.

12 THE COURT: I think I already ruled on that.

13 MS. BRASIER: Okay. I just want to make it  
14 clear so we don't run into issues on Friday.

15 THE COURT: Okay. All right. I think we've  
16 all talked about that. I don't know what else I can  
17 say other than what I said.

18 I appreciate, as I've said to you before,  
19 your position. I mean, you hear about that accident  
20 and you think, wow. But nobody -- he doesn't -- I  
21 apologize. He doesn't tie it in and your doctor didn't  
22 tie it in so I'm not going to go -- like I said, I  
23 think it's just going to be speculation to let the jury  
24 play with that so I'm not going to let it in. You got  
25 quite a bit in.

1 All right. Anything else before we break  
2 until Friday morning?

3 MS. BRASIER: No, Your Honor.

4 MR. KNAUSS: Not from the defense,  
5 Your Honor.

6 THE COURT: All right. So we'll get the  
7 doctor in. The jury -- like I said, you see something  
8 with the jury instructions, let us know by noon  
9 tomorrow. Again, if something is said by Dr. Wang that  
10 necessitates a new jury instruction, obviously, up  
11 until I read it, we can deal with it. I'd like to  
12 first printing out copies after noon or us figuring  
13 out, you know, an issue tomorrow so that we can finish  
14 up with Dr. Wang and then legally move into the reading  
15 and your guys' closings.

16 How long do you think your close is going to  
17 be?

18 MS. JEFFERIS-AGUILAR: 30, 35 minutes.

19 MS. BRASIER: Sorry, Your Honor, 35 to 40 at  
20 most, maybe 45.

21 I did also want to ask because I know we have  
22 a full day Friday about lunch break for the jury just  
23 so we kind of know.

24 THE COURT: My hope is to, essentially, get  
25 the -- get through everything and send them back and

**EXHIBIT 5**

**EXHIBIT 5**

# **COMPUTATION OF SPECIALS / DAMAGES**

| PROVIDER                        | DATE OF SERVICE    | AMOUNT         |
|---------------------------------|--------------------|----------------|
| Henderson Hospital              | 07/09/2020         | \$25,864.00    |
| Shadow Emergency Physicians     | 07/09/2020         | \$1,266.00     |
| Desert Radiology                | 07/09/20           | \$1,604.00     |
| Advanced Spine & Rehabilitation | 7/10/20 – 01/06/21 | \$7,262.00     |
| Dr. William S. Muir             | 7/23/20 – 9/5/23   | \$118,749.00   |
| Pueblo Medical Imaging          | 7/30/20 – 9/12/20  | \$1,800.00     |
| Anesthesia and Intensive Care   | 10/06/20 – 4/6/21  | \$5,000.00     |
| TOTAL SPECIALS                  |                    | \$161,545.00   |
| FUTURE MEDICAL SPECIALS         |                    | \$1,539,710.00 |

| PROVIDER                        | DATE OF SERVICE    | AMOUNT         |
|---------------------------------|--------------------|----------------|
| Henderson Hospital              | 07/09/2020         | \$25,864.00    |
| Shadow Emergency Physicians     | 07/09/2020         | \$1,266.00     |
| Desert Radiology                | 07/09/20           | \$1,604.00     |
| Advanced Spine & Rehabilitation | 7/10/20 – 01/06/21 | \$7,262.00     |
| Dr. William S. Muir             | 7/23/20 – 9/5/23   | \$118,749.00   |
| Pueblo Medical Imaging          | 7/30/20 – 9/12/20  | \$1,800.00     |
| Anesthesia and Intensive Care   | 10/06/20 – 4/6/21  | \$5,000.00     |
| TOTAL SPECIALS                  |                    | \$161,545.00   |
| FUTURE MEDICAL SPECIALS         |                    | \$1,539,710.00 |

PFA + surgery -  
 PFAs only - 1,150,243

**EXHIBIT 6**

**EXHIBIT 6**

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The lawyers and witnesses have shown you charts and summaries to help explain the facts. The charts or summaries themselves, however, are not evidence or proof of any facts. Charts and summaries are only as good as the underlying evidence that supports them. You should therefore give them only such weight as you think the underlying evidence deserves.



**EXHIBIT 7**

**EXHIBIT 7**

1 **JGJV**

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2 Nevada Bar No. 10522

BETSY C. JEFFERIS-AGUILAR, ESQ.

3 Nevada Bar No. 12980

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Nevada Bar No. 13685

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14 *Attorneys for Plaintiff*

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 JARED MOSS, individually,

Case No. A-21-840372-C

18 Plaintiff,

Dept. No. 20

19 v.

**JUDGMENT UPON THE  
JURY VERDICT**

20 SEAN EDWARD TOMESCO,

individually; SECOND OPINION

21 PLUMBING, LLC, a domestic limited

liability company; DOES I through X,

22 inclusive; ROE CORPORATIONS XI

through XX, inclusive,

23 Defendants.

1 This action came on for trial before the Court and the jury, the Honorable  
2 Eric Johnson, District Court Judge, presiding, and the issues having been duly  
3 tried and the jury having duly rendered its verdict, the Court hereby enters  
4 judgment upon the verdict,<sup>1</sup> as follows:

5 IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Jared Moss  
6 has and recovers against Defendant Sean Edward Tomesco and Defendant  
7 Second Opinion Plumbing, LLC, jointly and severally, the following sums:

8 Past medical expenses: **\$200,000**

9 Past physical and mental pain,  
10 suffering, anguish, disability,  
and loss of enjoyment of life: **\$200,000**

11 Future medical expenses: **\$1,500,000**

12 Future physical and mental pain,  
13 suffering, anguish, disability,  
and loss of enjoyment of life: **\$3,100,000**

14 **SUBTOTAL OF VERDICT: \$5,000,000**

15 Based upon the post-trial proceedings, the Court has evaluated the  
16 evidence and amends the verdict to be consistent with the evidence as follows:

17 Past medical expenses: **\$161,545**

18 Past physical and mental pain,  
19 suffering, anguish, disability,  
and loss of enjoyment of life: **\$200,000**

20 Future medical expenses: **\$1,539,710**

21  
22  
23  
24 <sup>1</sup> The verdict form was filed on March 29, 2024.

**\$3,100,000**

**\$5,001,255**

\$161,545

986 days

10.50%

**\$45,821.24**

\$200,000

986 days

10.50%

**\$56,728.77**

In summary, Plaintiff Jared Moss has and recovers against Defendant Edward Tomesco and Defendant Second Opinion Plumbing, LLC, jointly and severally, the following sums:

**\$161,545**

**\$45,821.24**

3

|                                                                                                                                       |                           |
|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| <u>Past</u> physical and mental pain,<br>suffering, anguish, disability,<br>and loss of enjoyment of life:                            | <b>\$200,000</b>          |
| Prejudgment interest on<br><u>past</u> physical and mental pain,<br>suffering, anguish, disability,<br>and loss of enjoyment of life: | <b>\$56,728.77</b>        |
| <u>Future</u> medical expenses:                                                                                                       | <b>\$1,539,710</b>        |
| <u>Future</u> physical and mental pain,<br>suffering, anguish, disability,<br>and loss of enjoyment of life:                          | <b><u>\$3,100,000</u></b> |
| <b>TOTAL:</b>                                                                                                                         | <b>\$5,103,805.01</b>     |

Therefore, Plaintiff Jared Moss has and recovers a total judgment against Defendant Sean Edward Tomesco and Defendant Second Opinion Plumbing, LLC, jointly and severally, for **\$5,103,805.01**. This total judgment shall accrue post-judgment interest at the adjustable legal rate, which is currently 10.50%, and is a daily amount of approximately \$1,468.22 starting on July 11, 2024 until fully satisfied.<sup>3</sup>

IT IS SO ORDERED.

---

<sup>3</sup> This post-judgment interest rate may vary every January and every July, as outlined in NRS 17.130 and *Lee v. Ball*, 121 Nev. 391, 116 P.3d 64 (2005).

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Submitted by:  
**CLAGGETT & SYKES LAW FIRM**  
/s/ Micah S. Echols  

---

Micah S. Echols, Esq.  
David P. Snyder, Esq.  
Charles L. Finlayson, Esq.  
  
ALISON M. BRASIER, ESQ.  
BETSY C. JEFFERIS-AGUILAR, ESQ.  
**HICKS & BRASIER, PLLC**  
*Attorneys for Plaintiff*

**EXHIBIT 8**

**EXHIBIT 8**

In determining the amount of losses, if any, suffered by the plaintiff as a proximate result of the accident in question, you will take into consideration the nature, extent and duration of the injuries or damage you believe from the evidence plaintiff has sustained, and you will decide upon a sum of money sufficient to reasonably and fairly compensate plaintiff for the following items:

1. The reasonable medical expenses Plaintiff JARED MOSS has necessarily incurred as a result of the July 9, 2020 collision;
2. The medical expenses which you believe Plaintiff JARED MOSS will be reasonably certain to incur in the future as a result of the July 9, 2020 collision;
3. The physical and mental pain, suffering, anguish, disability, and loss of enjoyment of life endured by Plaintiff JARED MOSS from the date of the July 9, 2020 collision to the present; and
4. The physical and mental pain, suffering, anguish, disability, and loss of enjoyment of life which you believe Plaintiff JARED MOSS will be reasonably certain to experience in the future as a result of the July 9, 2020 collision.



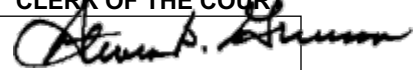
**EXHIBIT 9**

**EXHIBIT 9**

No fixed standard exists for deciding the amount of pain and suffering damages. Nor is the opinion of any witness required as to the amount of such reasonable compensation. You must use your judgment to decide upon a reasonable amount based on the evidence and your common sense.

**EXHIBIT 10**

**EXHIBIT 10**



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

|                              |   |                        |
|------------------------------|---|------------------------|
| JARED MOSS, individually,    | ) |                        |
|                              | ) |                        |
| Plaintiff,                   | ) | Case No. A-21-840372-C |
|                              | ) | DEPT. NO. 20           |
| vs.                          | ) |                        |
|                              | ) |                        |
| SEAN EDWARD TOMESCO,         | ) |                        |
| individually; SECOND OPINION | ) |                        |
| PLUMBING, LLC, A DOMESTIC    | ) |                        |
| LIMITED LIABILITY COMPANY;   | ) |                        |
| DOES I THROUGH X, inclusive; | ) |                        |
| ROE CORPORATIONS IX THROUGH  | ) |                        |
| XX, inclusive,               | ) |                        |
|                              | ) |                        |
| Defendants.                  | ) |                        |

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BEFORE THE HONORABLE ERIC JOHNSON  
TUESDAY, MARCH 26, 2024  
RECORDER'S TRANSCRIPT OF PROCEEDING:  
JURY TRIAL DAY 2

APPEARANCES:

For the Plaintiff: ALISON BRASIER, ESQ.  
BETSY C. JEFFERIS-AGUILLAR, ESQ.

For the Defendant: STEVEN KNAUSS, ESQ.  
CHERYL BRADFORD, ESQ.

Recorded by: Angie Calvillo, Court Recorder

Transcribed by: Donna J. Prather, RMR, NV CCR No. 372

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1 Jared Moss.

2 THE COURT: Okay. Mr. Moss.

3 I'd ask you to come on up to the witness stand.

4 There are a couple of steps. When you get to the  
5 top, stay standing for just a second. Our clerk over here  
6 will need to swear you in.

7 THE COURT CLERK: Raise your right hand.

8 JARED MOSS, PLAINTIFF WITNESS, SWORN

9 THE WITNESS: I do.

10 THE COURT CLERK: Thank you.

11 Go ahead and be seated. And once you're settled,  
12 please state and spell your name for the record.

13 THE WITNESS: My name is Jared, J-a-r-e-d. S,  
14 Scott. Moss, M-o-s-s.

15 THE COURT CLERK: Thank you.

16 THE COURT: Whenever you're ready, counsel.

17 MS. JEFFERIS-AGUILAR: Thank you, Your Honor.

18 Jared, thank you for being with us. So you're the  
19 man of the hour.

20 DIRECT EXAMINATION

21 BY MS. JEFFERIS-AGUILAR:

22 Q. How are you doing today?

23 A. All things considered, it's hard for me to talk  
24 about myself so, yeah, this is huge.

25 Q. Okay. Well, I appreciate you.

1           THE COURT: Let me get you to scoot up just a little  
2 bit there.

3           THE WITNESS: Better?

4           THE COURT: Yes. Thank you.

5 BY MS. JEFFERIS-AGUILAR:

6           Q. So I want to talk to you -- I want to talk to you  
7 about, you know, the date of this hit that we're here to  
8 discuss. Can you tell me, do you remember the date?

9           A. Yeah. It was July 9th, 2020.

10          Q. Okay. And do you remember about the time that the  
11 hit occurred?

12          A. Before noon. Like, mid-morning.

13          Q. Okay. And can you walk me through what you had done  
14 that morning, if you recall?

15          A. I had gotten -- just gotten off the bus coming back  
16 from one of my treatment sessions at the clinic that I go to,  
17 and I decided to do a quick set of pull-ups, because I'm just  
18 like that, in the park that's right across the street from my  
19 mom's house. And then I went to the intersection to the light  
20 and was waiting for the light to change, the little cross  
21 thing to indicate that I could go. And as soon as that  
22 happened, I stepped out into the street and started making my  
23 way in the intersection, in the crosswalk, and made it about  
24 halfway through the second lane when all of the sudden I'm  
25 getting hit and thrown up the street a little bit and clear

1 backwards, almost into the gutter, onto my butt and my hands I  
2 kind of threw back as a brace trying to -- and my lower back,  
3 I guess.

4 Q. Okay. Do you know if you, like, lost consciousness?

5 A. I don't know if I lost consciousness, but I was  
6 definitely dazed. It was like -- yeah, I was dazed. It took  
7 me a second to collect myself, for sure.

8 Q. So what did that impact feel like to you?

9 A. I don't know if you've ever been punched, but it's,  
10 like -- kind of like a flash. Like, you know, the best way to  
11 describe it, kind of like a bright flash in your vision, and  
12 it just jarred me and threw me back.

13 Q. Okay. Do you recall what parts of your body the van  
14 impacted?

15 A. As soon as I noticed it, I threw my hands up in kind  
16 of a defensive, like, trying to -- I don't know. I know it's  
17 not going to stop a van, but I just threw my hands up. That's  
18 kind of what happened. And it impacted my hands and I believe  
19 kind of, like, my left thigh, waist area.

20 Q. Okay. So did you realize you were going to be hit?

21 A. No, not at all.

22 Q. Okay. And you said you were thrown back?

23 A. Like, not straight back.

24 Q. Mm-hmm.

25 A. I was -- okay. If I'm in the crosswalk, I guess



1 you'd call it, crossing the street, if it would have thrown me  
2 straight back, I still would have been in the crosswalk. But  
3 kind of the trajectory, it threw me, like, up the street a  
4 little bit and back, if that makes any sense.

5 Q. It does. Thank you.

6 So, you know, once you were hit, did you start to  
7 have pain at the scene?

8 A. I mean, it -- yeah, it was painful. Like, I had  
9 just been -- I had just been hit by a 15-passenger van. So,  
10 yes, it was jarring painful, to say the least.

11 Q. So what happened next?

12 A. You know, it took a minute. I collected myself the  
13 best I could, and I proceeded into the neighborhood across the  
14 street to my mother's house. And, you know, I don't know if I  
15 wanted things to be okay or if -- whatever. But I was kind of  
16 just checking myself out and doing my thing. And after I --  
17 the initial shock of the whole situation wore off and the  
18 adrenaline kind of settles down, you know, it was like, this  
19 isn't -- this isn't okay. Like, I need to get to the  
20 hospital. So we made the decision to go to the ER.

21 Q. Okay. Why didn't you just go to, like, a primary  
22 care doctor?

23 A. In all honesty, when I think of my primary care  
24 doctor, I think of, like, I have the flu, or, you know, like,  
25 ailments that aren't serious. This definitely was an ER-type

1 situation.

2 Q. Okay. Thank you.

3 And which ER did you go to?

4 A. Henderson, Henderson Hospital.

5 Q. And your mother drove you; correct?

6 A. Yes. I didn't have a car at the time.

7 Q. Thank you for clarifying that.

8 What did the doctors do for you while you were in  
9 the ER?

10 A. They checked me out pretty thoroughly. I remember  
11 they did a -- I don't know if it's an X-ray or whatever, some  
12 sort of imaging, and then tried to treat the pain. They gave  
13 me a shot of Demerol in my butt cheek, so.

14 Q. Okay. And then they gave you -- my understanding --  
15 well, the records show that you received prescriptions for  
16 acetaminophen.

17 A. Acetaminophen, I think. I don't know. I'm just as  
18 bad with it.

19 Q. Sorry. Acetaminophen and Ibuprofen, does that sound  
20 right to you?

21 A. Yeah, I believe so.

22 Q. Okay. And you did not take those prescriptions; is  
23 that correct?

24 A. I doubt I truthfully even filled them. Like, I  
25 won't take them anyway. Unless it's something like I have an

1 infection, then no. I wouldn't have taken it, no.

2 Q. Okay. So you would -- thank you.

3 So you said you had gone to treatment that morning.  
4 Can you walk me through -- prior to this hit. Can you walk me  
5 through what that treatment consisted of, please, sir.

6 A. Yeah. I'm a member of the Adelson Clinic for  
7 medicated rehabilitation, I guess. You can get Suboxone or  
8 methadone. I think there's another one. I'm not sure of the  
9 name of it. But they also do counseling. And as a  
10 requirement, they UA you all the time, and you have to check  
11 in and talk with your counselor and, you know, kind of come up  
12 with a game plan for anything that's going on. You know, it's  
13 just like counseling kind of.

14 In the beginning of all that, you take a daily dose,  
15 because they don't let you leave with it or anything like  
16 that. So I would have to go there to take my dose and to do  
17 my counseling. And then that was what I had just come back  
18 from. Part of my sobriety.

19 Q. Thank you.

20 So at that time, you know, to prep- -- well, strike  
21 that.

22 So you had -- so it's safe to say you had taken your  
23 methadone prior to that hit.

24 A. Yeah. Yes. It's a daily -- yes. Yes, I had taken  
25 my methadone that day.

1 Q. And you currently take methadone every day --

2 A. Yes.

3 Q. -- as a part of your treatment plan?

4 A. Yes.

5 Q. And that was prescribed to you by the -- well, it's  
6 just a part of your treatment plan for your --

7 A. Medically assisted sobriety is kind of the technical  
8 term, I believe.

9 Q. Thank you.

10 Does methadone -- well, this is based on your  
11 perception. Does methadone give you a high when you take it?

12 A. No. I mean -- no. It's hard to describe exactly,  
13 but it makes -- it makes me feel normal. Like, I don't know  
14 what it is about me as an addict, but, like, I feel very  
15 chaotic a lot of the times and just abnormal is a way to put  
16 it, I guess. And taking my methadone makes me feel normal to  
17 where I can just -- like everything is okay. I'm normal. And  
18 I don't have to worry about all these crazy, like, just  
19 feelings and thoughts going on in my head. And yeah, it  
20 doesn't get you high. It makes you feel normal. I guess the  
21 best way to try to explain it to somebody who has never heard  
22 about it or doesn't know anything about it is if, like,  
23 somebody who has depression maybe, and then they take, like,  
24 their Zoloft and it makes them feel normal, it does the same  
25 thing.

1 Q. Okay. Thank you for the explanation.

2 So turning back to, you know, you get treatment at  
3 the ER. Did that -- did that treatment, you know, relieve  
4 your -- your low back and your buttock pain?

5 A. No. For the time being, there was -- they gave me a  
6 shot of Demerol, so it helped.

7 Q. Mm-hmm.

8 A. But no, it did not.

9 Q. Okay. And it's my understanding, based on Lorrie  
10 who we just heard, that, you know, she had called the  
11 Dr. Janda for you that evening.

12 A. Yes. It was a chiropractor that she knows, I  
13 believe, through her church and that she has been a patient at  
14 for -- in the past.

15 Q. Okay. Why did you feel that you needed a  
16 chiropractor?

17 A. Because the pain was persisting. It was still  
18 there. It was just an issue that I -- I felt further  
19 treatment needed, because I can't just keep going, you know,  
20 back to the ER. I'm not going to get another Demerol shot or  
21 anything. You know, there's an issue that needs to be dealt  
22 with. And it's just -- to me it felt like the normal course  
23 of things to do to try and fix the issue.

24 Q. Thank you.

25 And just to clarify, you -- your mother called the

1 chiropractor, and you attended your first chiropractor  
2 appointment prior to retaining your attorney. Does that sound  
3 correct to you?

4 A. Yeah. Yes.

5 Q. Thank you.

6 A. Medical issues were a must, so yes.

7 Q. Understood. Thank you.

8 So can you walk me through, you know, the treatment  
9 that Dr. Janda recommended for you and that you, you know,  
10 underwent as a part of the chiropractic therapy?

11 A. Yeah. Like, when I first get there, every time  
12 there's a TENS unit that they hook you up to. It shocks your  
13 back and kind of, like, tries to ease pain in, like, a weird  
14 pulsing way. It kind of soothes, like, the muscles I think.  
15 And then, like, his therapy team, I don't remember the exact  
16 name of it, they would help me with stretches and exercises to  
17 try to strengthen the core muscles and stabilizer muscles in  
18 your back to try to alleviate those types of things. And  
19 after that, you usually -- I would talk to Dr. Janda himself  
20 and get an adjustment if needed. And sometimes there would  
21 be, like, cold/hot packs, maybe. That wasn't every time. And  
22 if needed, we would schedule massages.

23 Q. Okay. Thank you.

24 And you saw Dr. Janda about -- you treated with him  
25 and his physical therapy team for about six months. Does that

1 sound correct to you?

2 A. It does, yes.

3 Q. Okay. Did the chiropractic treatment from Dr. Janda  
4 and his team alleviate your low back pain?

5 A. It did not.

6 Q. Okay. Did it, you know -- did it provide you  
7 some -- some relief or some help? Was it helpful to you?

8 A. It was helpful. It was helpful in the means of  
9 learning a lot of things I can do to try and combat the --  
10 when I'm having pain or when I feel fragile. You know, like,  
11 strengthening my muscles up and the stretches and things like  
12 that. The TENS unit that I can buy myself, I didn't know, and  
13 just things like that helps a lot, yes.

14 Q. Mm-hmm. Did he -- was his team the one who taught  
15 you the band resistance?

16 A. Yeah, the leg exercises with the bands, yes. Planks  
17 and all that stuff.

18 Q. And you still use those exercises as we sit here  
19 today?

20 A. Strangely enough, yes. I mean, I am kind of -- I  
21 used to love working out, and I still do. I've kind of  
22 adopted those as, like, just my regimen. So, like, maybe  
23 three times a week.

24 Q. Mm-hmm. So due to the fact that, you know, you  
25 advised Dr. Janda that, you know, you were still having that

1 low back pain, what did he recommend for you to do? What was  
2 that next step that he shared with you?

3 A. He referred me to Dr. Muir.

4 Q. Okay. And why did he refer you to Dr. Muir?

5 A. Because I was still feeling pain, and he thought  
6 that was the proper course of action.

7 Q. Okay. Do you remember how long after you started  
8 treating with Dr. Janda that the recommendation for Muir was  
9 made, when your first appointment with Muir was?

10 A. It was fairly early on. I'm thinking a couple three  
11 weeks.

12 Q. Okay. Okay. So you go and see Dr. Muir. And the  
13 records show that, you know, you go to see Dr. Muir, and he  
14 recommends that you obtain an MRI of your -- of your low back.  
15 Do you have any recollection of that?

16 A. I remember that, yes.

17 Q. Okay. Do you know why Dr. Muir -- or did Dr. Muir  
18 share with you as to why he recommended you to get an MRI of  
19 your low back?

20 A. I believe he was -- he needed imaging to try to see  
21 what was going on in my back, to see if he could locate the  
22 problem, the cause of my pain.

23 Q. Okay. Did he share the results with you or tell you  
24 what was going on in that MRI?

25 A. As far as telling me what's going on, it's been so



1 long, I don't remember the specific conversation about it.  
2 But I do remember looking at the images with him and seeing  
3 them. But as far as the specific conversation, like, this is  
4 four years. I don't -- I can't recall exact conversation of  
5 it, no.

6 Q. That's -- and that makes sense.

7 So, Dr. Muir recommended a set of facet injections  
8 in your low back. Do you recall him recommending that you,  
9 you know, have those injections done?

10 A. Yes, I do.

11 Q. Okay. And did you undergo that procedure?

12 A. I did.

13 Q. Okay. So you go and you have these facet injections  
14 in your low back. Did those provide you, you know, relief  
15 from your pain?

16 A. For a short time they did, but the -- sadly enough,  
17 the pain returned, and -- yeah, the pain returned.

18 Q. Okay. So they -- so you would say they did help  
19 you, but for a short time.

20 A. For a short time.

21 Q. Okay. Okay.

22 So some records from 2016 show that you went to the  
23 ER for some, like, bronchitis-like symptoms. And while you  
24 were there, you complained that you had bruised your tailbone.  
25 Do you remember how you bruised your tailbone or what happened

1 there?

2 A. I do not. I don't -- no, I really have no  
3 recollection of even going to the ER. 2016 is a long time  
4 ago. But I don't, no. Truthfully, no.

5 Q. Okay. Okay. Did you have or do you recall any  
6 other treatment that you received in 2016 for a bruised  
7 tailbone, other than that -- that record that I talked to you  
8 about?

9 A. No. And just the way that I am, if there was an  
10 issue, I would have sought treatment.

11 Q. Okay. Thank you.

12 So my understanding is that on October 17th of '20,  
13 you went to Sunrise Hospital for a subsequent car accident.  
14 Does that sound correct to you?

15 A. Yes.

16 Q. Okay. And the record reflects that you treated for  
17 a head injury. Does that sound correct to you?

18 A. Yes, it does.

19 Q. Okay. Do you recall if anybody at Sunrise asked you  
20 about your low back pain that day?

21 A. I don't --

22 MR. KNAUSS: Objection. Can we approach?

23 THE COURT: Okay.

24 (The following proceedings were held outside the  
25 presence of the jury.)

1 THE COURT: All right.

2 MR. KNAUSS: All right. We're getting close to  
3 opening the door at this point. She asked the question as a  
4 car accident, which is almost a misrepresentation to what that  
5 accident was. If she wants to ask the question a  
6 pedestrian/car accident, that would be fine.

7 THE COURT: Okay.

8 MR. KNAUSS: The implication is if you say you were  
9 in a car accident, the natural inclination is, oh, you were in  
10 a car -- in another car hitting someone else.

11 THE COURT: All right. Well, you can clear that up.  
12 Do you have any problems saying --

13 MS. JEFFERIS-AGUILAR: I have a problem in that the  
14 record is in there, and I'm trying to provide the context,  
15 which is why the record shouldn't have been in in the first  
16 place. And now I have to walk a very fine line.

17 THE COURT: Yes, you do.

18 MS. JEFFERIS-AGUILAR: So I'm going to do my best,  
19 but it's very frustrating.

20 UNKNOWN SPEAKER: That's just me. I'm just --

21 THE COURT: All right. That's fine.

22 MS. BRADFORD: Okay. I don't think it's a  
23 misrepresentation. I mean, if the car accident -- he got hit  
24 by a car. But to try to go into it -- right? -- I mean,  
25 that's what the Court has deemed to be too prejudicial, the

1 details of the accident. Right? The relevant information was  
2 that he was at Sunrise and that they --

3 THE COURT: Well, that's the irrelevant information.  
4 So far you had referred to it as an accident rather than a  
5 specific car accident.

6 MR. KNAUSS: This accident we're talking about is a  
7 pedestrian/vehicle accident. And to imply that it's just a  
8 car accident with the second one, we need to be specific. Was  
9 there two car accidents? Fine. We're saying accidents. But  
10 now we're laying foundation that this is a car accident.

11 THE COURT: Well, I don't think we -- you made  
12 reference to a car accident. Don't go any farther in it. And  
13 then -- but you didn't bring up the objection as to her  
14 question as to car accident. You brought it up as to her  
15 question: "Do you recall anybody saying -- asking about the  
16 back? Did you have any objection to that?"

17 MR. KNAUSS: I don't.

18 THE COURT: Okay. I just wanted to make sure while  
19 we were back here that we were --

20 MR. KNAUSS: Sorry. I know this is a -- I was being  
21 careful about the line we're trying not to cross. But I still  
22 think car accident is grossly misleading this jury into  
23 thinking he was in a car accident. So I'm asking counsel to  
24 rephrase that question. A pedestrian/vehicle accident.

25 THE COURT: At this point I don't know if relevance

1 as to it being a car accident or pedestrian accident is that  
2 critical for them to know. The issue which we're at is that  
3 he was in the hospital. He reported no back pain.

4 All right. At this point, I'll overrule -- don't go  
5 any further in terms of describing it.

6 MS. JEFFERIS-AGUILAR: Okay.

7 THE COURT: And just get through what you want to  
8 get through in terms of his explanation as to the remarks  
9 about back pain in the record. And we'll go on.

10 All right.

11 (The following proceedings were held in the  
12 presence of the jury.)

13 THE COURT: Please go ahead, counsel.

14 MS. JEFFERIS-AGUILAR: Thank you.

15 BY MS. JEFFERIS-AGUILAR:

16 Q. So Jared, back to my last question. Do you recall  
17 if anyone at Sunrise specifically asked you about your back  
18 pain that day?

19 A. I -- I was -- I don't specifically remember them  
20 asking me about my back pain. I was there because of a head  
21 injury. I had been struck.

22 Q. Okay.

23 MR. KNAUSS: Objection, Your Honor. Same issue.  
24 May we approach?

25 THE COURT: No. Overruled.

1 BY MS. JEFFERIS-AGUILAR:

2 Q. Jared, my next question is: Were you having low  
3 back pain that day?

4 A. I honestly don't remember.

5 Q. Okay. Around the end of 2020, do you recall missing  
6 a couple of chiropractic appointments due to transportation  
7 issues?

8 A. Yes, I do.

9 Q. Okay. And do you know why you missed your  
10 appointments due to transportation issues?

11 A. I didn't have my own vehicle at the time, and I  
12 wasn't going to, you know, burden my mom by asking her to use  
13 hers. She's a busy woman. And the bus, truthfully. I was on  
14 the bus, and sometimes you'd literally be pulling up to your  
15 stop, and you'll watch the other bus go the way -- you're  
16 missing your own bus. So it's frustrating sometimes, yeah.

17 Q. Thank you.

18 There were some other records saying that you had  
19 problems following up with Dr. Janda due to some PSD -- PTSD  
20 as to the second accident. Do you recall that?

21 A. I -- I was very -- I guess you'd say skittish  
22 around, like, a lot of traffic driving around me. It made me  
23 nervous --

24 Q. Okay.

25 A. -- for a time being. But it -- you know, it

1     subsided, I guess you'd say. But there was a time when I was  
2     nervous around traffic, yeah.

3             Q.     Okay. Thank you.

4                     So because that first set of facet injections didn't  
5     provide you, you know, long-term relief, what did Dr. Muir  
6     then recommend for you to do?

7             A.     I believe the block was the next recommendation.

8             Q.     Okay. And do you -- do you know why Dr. Muir  
9     recommended that you get a nerve block?

10            A.     I believe it was he thought that it would help my  
11     pain subside. It would fix the issue.

12            Q.     Okay. And did you get the nerve block done?

13            A.     Yes.

14            Q.     Okay. Do you have -- do you recall about the time  
15     period you had that block done?

16            A.     I'm horrible with dates. I don't remember the exact  
17     date.

18            Q.     Okay. Does January of about 2021 sound correct to  
19     you?

20            A.     Yes.

21            Q.     Okay. So tell me, you got the nerve block, and how  
22     did that go?

23            A.     Kind of the same as the first. It went well for a  
24     time, and the pain returned.

25            Q.     Mm-hmm. Okay.

1                   So your pain returned after the nerve block. Did  
2 you go back to Dr. Muir to report that?

3           A.    Yes.

4           Q.    Okay. And what did he recommend to you for the next  
5 step?

6           A.    That -- the RFAs.

7           Q.    Okay. Did he explain to you what an RFA was?

8           A.    Yes, he did.

9           Q.    Okay. And did you have any hesitation about  
10 undergoing an RFA procedure?

11          A.    Only -- yes, hesitation, I did, because it's --  
12 like, it's burning the nerves out of my back and my spine, and  
13 that sounds, like, horrible, and it terrified me. But the  
14 pain that I was dealing with and not being able to do things  
15 that were necessary in life for me to do especially is just --  
16 it outweighed that nervousness, I guess you'd say.

17          Q.    Okay. So you went ahead and got that first ablation  
18 in about April -- the records reflect April of 2021. How did  
19 you feel after that ablation?

20          A.    The recovery time sucks. You know, even taking a  
21 shower, just, you know, it burns. It's just -- it hurts.  
22 You're very sore. You know, I was bedridden or on the couch,  
23 like, not doing anything until it healed. But after that, it  
24 was relief.

25          Q.    What was your approximate, like, downtime from



1 the -- from the RFA?

2 A. Three days, maybe. If I pushed it, probably three  
3 days, I think.

4 Q. Okay. So did that -- did that first ablation give  
5 you complete relief from your pain?

6 A. I did have relief, yes.

7 Q. Okay. How long did that relief last for you?

8 A. I don't remember exactly how long it lasted. But  
9 after time went on, I would start to feel more fragile. You  
10 know, I would ache and hurt. And then it got to the point  
11 where there was no other option but to contact Muir again and  
12 see what was supposed to be done.

13 Q. Okay. And what did -- and what did he tell you to  
14 do when you went to him saying that your pain had returned  
15 after that first RFA?

16 A. He -- we scheduled another RFA.

17 Q. Okay. About how long -- well, can you estimate for  
18 me how long after the first RFA that you proceeded with your  
19 second RFA?

20 A. I think it was give or take a year. I believe it  
21 was a year.

22 Q. Okay. Does May of 2022 sound right?

23 A. Yes.

24 Q. Okay. So you have this second ablation on May of  
25 2022. You know, what happened after that? How did that

1 second ablation, you know, work for you?

2 A. Honestly, it was relief. Again, I would say -- you  
3 know, yeah, definitely relief.

4 Q. Mm-hmm. About how -- was it complete relief?

5 A. In the beginning, yeah.

6 Q. Mm-hmm.

7 A. Like, it's -- everything is beautiful again,  
8 literally. But it did return again. I would say -- I don't  
9 know. I don't know exactly how long it took, but you start  
10 feeling fragile again and everything hurts. And it takes  
11 longer and longer for the pain to subside when you do -- well,  
12 when I overdo it. And I, you know, would go back to the  
13 doctor again.

14 Q. Can you -- okay.

15 Can you explain, can you just kind of explain to me  
16 what the overdo it means to you. Because my overdo and your  
17 overdo could be different things. So can you walk me through  
18 what overdo it means to you?

19 A. If any time I have to, like, bend over excessively  
20 or lift things, like, excessively, it would end up overdoing  
21 it. You know, overextenuating -- or overexerting myself, I  
22 guess.

23 Q. Okay. So your last record from -- well, your last  
24 visit after your second RFA was July of 2022. Does that --  
25 does that sound right?

1 A. Mm-hmm.

2 Q. And then you go --

3 THE COURT: You need to answer "yes" or "no".

4 THE WITNESS: Yes. Sorry. Sorry, Your Honor.

5 THE COURT: That's okay. Everybody does it.

6 THE WITNESS: I apologize.

7 BY MS. JEFFERIS-AGUILAR:

8 Q. You then returned to Dr. Muir a year later. Why did  
9 you return to Dr. Muir a year later in August of 2023?

10 A. The same scenario. For -- I would have relief for a  
11 time, and then the same process happens again. Pain returns,  
12 and there's nothing else you can do but try to deal with it  
13 and push it off until you can't.

14 Q. Okay. So, did you undergo a third RFA?

15 A. I did.

16 Q. Okay. Do you recall about when that time period  
17 was?

18 A. It's been maybe six months, seven months, since I've  
19 had it, I think.

20 Q. Does September 2023 sound correct?

21 A. About then.

22 Q. Okay. As we sit here today, do you intend to get a  
23 fourth RFA?

24 A. If it's necessary, of course, I intend to. I have  
25 no option to deal with the pain other than what has worked.

1 You know, I'm not going to at 42 be bedridden and have to have  
2 my wife provide everything that -- you know, it's just not  
3 going to happen. So I don't have the option of a lot of  
4 people of going and getting a prescription of OxyContin.  
5 That would literally destroy my life.

6 I hate to say it, but I have a weakness in me.  
7 Something is wrong with me. I'm an addict. You know, and I  
8 can't -- I can't just do the normal -- the normal things that  
9 most people would do when they have pain like that.

10 Q. So what concerns you -- well, you know, what  
11 concerns you about, you know, about the future of your -- you  
12 know, and having to get more -- you know, if you weren't able  
13 to get more RFAs, how would that -- how would that affect your  
14 life?

15 A. It would be devastating. I would be -- I would  
16 always be on the sidelines. I would have to have people  
17 taking care of me. I would be constantly, like, just  
18 monitoring every little thing I do to make sure that I don't  
19 do anything to aggravate my back. And at the same time when  
20 it is aggravated, which would at that point be all the time, I  
21 would think, and it would be -- I would be bedridden. Not  
22 doing things, not providing, not living life, literally.  
23 Like, pain is debilitating.

24 Q. Mm-hmm. Mm-hmm.

25 I know -- you know, my understanding is you wear --

1 you were prescribed a back brace as a part of your treatment  
2 and to help -- to help you.

3 A. Yes.

4 Q. Do you continue to wear your back brace?

5 A. I do.

6 Q. Okay. And when -- how often are you wearing your  
7 back brace?

8 A. Every time I go to work, I'm wearing it for a fact.  
9 And any time that I'm doing anything that is going to, you  
10 know, constitute me bending over a lot, picking things up, if  
11 I had to help my family move when I got to, I wear my back  
12 brace. Any time that -- you know, so far it's mainly been  
13 just to work.

14 Q. And you're currently in a job with some manual  
15 labor; is that right?

16 A. Yeah. I'm part of the on-call custodial team at  
17 Thomas & Mack through Marathon Staffing.

18 Q. Okay. Have you noticed recently any, you know, any  
19 limitations that you've had completing your work, even with  
20 the assistance of your brace?

21 A. For sure. In the beginning there's -- okay. They  
22 put you on, like, crews, and everybody has their own  
23 assignments to go off and do as part of those crews. But in  
24 the very beginning of, like, the night, everybody goes into  
25 the stadium and picks up everything that, you know, everybody

1 that was there left, for the game or for the concert or  
2 whatever. And it's a lot of bending over and picking up.  
3 Bending over and picking up. And after literally 45 minutes  
4 tops, I couldn't do it anymore. I was dropping to one knee  
5 straight back, even with my back brace on, picking up one  
6 little item at a time. And when I -- you know, my bosses and  
7 people were noticing, what the hell. I don't want to get  
8 fired, so I literally had to go explain this to them. I can't  
9 keep doing this. Like, this is an issue. What else can I do?  
10 And they ended up having to put me on a different team all  
11 together that only deals with the VIP seats and these really  
12 big vacuums that kind of move themselves a little bit. So  
13 it's definitely affected things, embarrassingly.

14 Q. And as a part of this -- as a part of this case, you  
15 went to go see a doctor hired by the defense who examined you.  
16 Do you remember that?

17 A. I do.

18 Q. Okay. And, you know, how did you feel about  
19 attending that appointment? Did it worry you at all? Did you  
20 have any concerns about it?

21 A. I mean, truthfully, I was concerned about being  
22 judged. But that's just my life. I have that concern nine  
23 times out of ten. Because of the way I look and all my  
24 tattoos, and just I've been dealing with it forever. And it's  
25 my own fault, but I definitely have reservations about being

1 looked at in a certain light, yes.

2 Q. And you've heard, you know, you already know this,  
3 the -- you know, you heard this today. The doctor hired by  
4 the defense is saying that, you know, you should have healed  
5 after three months. Your low back pain should have been  
6 completely eradicated. And you don't need -- you know, that  
7 you should be completely healed. How does that make you feel?

8 A. It feels -- it pisses me off, honestly. Sorry. It  
9 upsets me. It feels absurd. Because I don't know where -- I  
10 don't know where he's coming off with -- what he did while we  
11 were in that appointment, I don't know where he's getting this  
12 information from. It just -- it -- yeah. It's -- it's odd to  
13 me.

14 Q. It's not -- you know, it's not my intention to, you  
15 know, to strike a nerve with you whatsoever. So, you know,  
16 what -- what just has frustrated you the most about your pain?

17 A. Just the fact that I didn't -- you know, I didn't do  
18 anything to deserve this. You know, I know that I have a  
19 past. But I've paid exponentially for every wrong that I've  
20 ever committed. And this happened to me at a time when I'm  
21 literally just getting, like, wind in my sails. I'm, like, on  
22 fire for being sober. I'm madly in love. I'm getting  
23 married. I'm literally just starting out at being a  
24 productive member of society for the first time in my entire  
25 adult life. And I feel like that's been stolen from me.

1 Like, someone else's carelessness has devastated that. And  
2 now I have to, like, fight tooth and nail, not only for the  
3 stress to stay off of everything this has overloaded me with,  
4 but my sobriety. I have to fight tooth and nail to try to  
5 find -- and educate myself to get different employment.  
6 Hopefully that will happen, because this sounds like a career.  
7 But it's just -- I feel wronged. I truthfully feel wronged.

8 Q. What are your -- you know, and what are your hopes  
9 for the future?

10 A. My hopes for the future is that I'm healthy enough  
11 to provide the life that my wife deserves, that my family  
12 deserves to see their son living, that I deserve at this  
13 point, you know. My hopes for the future are that I'm going  
14 to be healthy.

15 Q. I -- I don't have any questions for you -- any more  
16 questions for you at this point. But I may ask you a few more  
17 after the defense asks you questions. Okay?

18 A. Mm-hmm.

19 Q. Thank you for sharing that with me.

20 THE COURT: Cross-examination.

21 MR. KNAUSS: Can we take five minutes?

22 THE COURT: You really need five minutes?

23 MR. KNAUSS: I would, Your Honor. I'd just  
24 appreciate the courtesy.

25 THE COURT: All right. Well, let's go ahead and



1 just take a bathroom break then.

2 Ladies and gentlemen, we'll break. It's now almost  
3 2:05. Let's try and get back in action in 15 minutes. 2:20.

4 While you're out there, do not talk to each other  
5 about the case or about anyone that has anything to do with  
6 it. Do not talk with anyone else about this case or about  
7 anyone that has anything to do with it. Do not talk to -- do  
8 not let anyone talk to you about the case or about anyone that  
9 has anything to do with it. If someone should try to talk to  
10 you, please report it to me immediately by contacting the  
11 marshal.

12 Do not read any news stories, articles, or listen to  
13 any radio or television reports about the case or about anyone  
14 that has anything to do with it. Do not visit the scene of  
15 any events mentioned during the trial or take any  
16 investigation, experimentation, or research on your own,  
17 including the use of social media to in any way discuss the  
18 case or the use of the Internet or other reference materials  
19 to do any investigation or research. And do not begin to form  
20 or express any opinion on any subject connected with this case  
21 until it's finally submitted to you.

22 We'll see you back in just a few minutes.

23 (The following proceedings were held outside the  
24 presence of the jury.)

25 THE COURT: Okay. All right. Get yourself

1 organized, and we'll get going in 15 minutes.

2 MR. KNAUSS: Thank you, Your Honor.

3 (Whereupon, a recess was taken.)

4 (The following proceedings were held in the  
5 presence of the jury.)

6 THE COURT: All right. The parties stipulate to the  
7 presence of the jury panel?

8 MS. BRASIER: Yes, Your Honor.

9 MR. KNAUSS: Yes, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, I  
11 apologize for the delay in getting us back into action. We've  
12 been trying to work through a technological problem.

13 Do you think you can get it going, or should we just  
14 go with the ELMO?

15 IT REPRESENTATIVE: I would say probably just go  
16 with the ELMO at this point.

17 THE COURT: All right. Are you comfortable doing  
18 that, counsel?

19 MS. BRADFORD: I am, Your Honor, yes.

20 THE COURT: All right. Technology has failed us.  
21 So we're going to go with sort of tried and true, still a  
22 little bit of technology.

23 All right. Cross-examination?

24 ///

25 ///

## CROSS-EXAMINATION

BY MS. BRADFORD:

Q. Hi, Mr. Moss. I want to applaud you for your sobriety, and I hope you know that you're not being judged on your past here today. Okay?

A. Thank you. That means a lot, honestly.

Q. Do you agree the truth is important?

A. Absolutely.

Q. And you've taken an oath here today to tell the truth?

A. Yes, I have.

Q. Okay. And that's the same oath you took when you were answering questions in your deposition?

A. Yes.

Q. Okay. And you told the truth in that deposition?

A. I did to the best of my knowledge, yes.

Q. Okay.

THE COURT: Can you pull the microphone a little closer to you?

THE WITNESS: Yes, sir, Your Honor.

BY MS. BRADFORD:

Q. Okay. And so now, including the trial and your deposition testimony, you've had two separate occasions to provide answers under oath about this accident and what you're claiming as a result of this accident; correct?

1 A. Yes.

2 Q. And it is your testimony that all of those have been  
3 truthful; correct?

4 A. To the best of my knowledge, yes.

5 Q. Okay. And so if the truth is the truth, they should  
6 always be the same?

7 A. The truth is the truth, so they should always be the  
8 same to the best of, like, my being able to answer the  
9 question. If it's something from four years ago that I'm  
10 trying to answer off the top of my head, I could see there  
11 being a little possible variation in wording, but, yes, I  
12 would think they need to be comparable.

13 Q. Okay. And just like telling the truth in a lawsuit,  
14 do you agree it's important to be honest with your doctors?

15 A. Yes.

16 Q. Okay. And did you attempt to provide your doctors  
17 with the most comprehensive information as possible?

18 A. Absolutely. And, you know, it would change from day  
19 to day, so whatever was the day's conversation would be what I  
20 would report, yes.

21 Q. Okay. And was there any reason to withhold  
22 information?

23 A. No.

24 Q. And so you would expect that your doctors would  
25 agree you were also truthful?

1 A. Yes.

2 Q. Okay. You've discussed liens in this case. Do you  
3 have a lien with your chiropractor, Dr. Janda?

4 A. I believe I do as well. I know I signed -- I know I  
5 signed papers. I believe so, yes.

6 Q. Okay. So have you ever paid your chiropractor  
7 anything out of pocket?

8 A. Not to my knowledge, no.

9 Q. Okay. And do you -- have you ever paid for any  
10 appointments with Dr. Muir?

11 A. No.

12 Q. Okay. And have you -- so you've never paid for  
13 anything out of your pocket?

14 A. No, ma'am.

15 Q. Okay. Why did you stop with treating Dr. Janda?

16 A. Because it had reached a point where I had learned  
17 everything I could from the physical therapy team about the  
18 TENS unit and about how to attack the problem myself. And  
19 aside from getting massages, it was kind of -- it had done  
20 everything it could do to try to alleviate the problem.

21 Q. Okay. And there's been a brief mention of an  
22 accident that occurred in October of 2020 when you injured  
23 your head. Do you recall that?

24 A. Yes.

25 Q. All right. Did your -- did you stop treating with

1 Dr. Janda because of PTSD from that accident?

2 A. No. Like I said, I stopped treating with Dr. Janda  
3 because it had reached its maximum benefit for what it was  
4 able to do for my pain.

5 Q. And so if Dr. Janda wrote down that you were ceasing  
6 treatment due to PTSD from that accident, would he be lying?

7 A. No, he wouldn't. I doubt he's lying. No, he's not  
8 lying. I don't think he's -- he didn't ever diagnose me with  
9 PTSD though. This is me speaking terms that I've tried to  
10 self-diagnose myself with to him, and I think on maybe two  
11 occasions at most. So I don't know how anybody could have  
12 ever said I actually had PTSD or anything of the nature. This  
13 is me trying to explain something myself. I'm not a doctor.

14 Q. Okay. I'm going to show you a chart note from  
15 Exhibit 138.

16 THE COURT: Hold on. We haven't had any -- what's  
17 been admitted? Have we have any agreement to admissions?

18 MS. BRASIER: No, Your Honor.

19 THE COURT: Okay. Then we don't show that.

20 BY MS. BRADFORD:

21 Q. Okay. Do you recall treating with Advanced Spine  
22 and Rehabilitation?

23 A. Yes, ma'am.

24 Q. Okay. And were there records from that treatment?

25 A. I would assume.

1 Q. Okay. I thought we had agreed on --

2 THE COURT: Let's have a sidebar before we have a  
3 general conversation out here.

4 (The following proceedings were held outside the  
5 presence of the jury.)

6 THE COURT: Okay. What do you guys -- what did you  
7 guys enter an agreement on?

8 MS. BRASIER: We don't have any stipulated exhibits,  
9 I mean, with each other on proposed exhibits. So, I mean,  
10 I -- if foundation is laid and they offer it, I probably won't  
11 have an objection, but --

12 THE COURT: Okay.

13 MS. BRASIER: -- we don't have a stipulated set.

14 THE COURT: Okay.

15 MR. KNAUSS: Lay a foundation for it.

16 THE COURT: Okay. I mean, how do you plan to lay  
17 the foundation for this?

18 MR. KNAUSS: Have him testify the records of the  
19 treatment he received and who he saw.

20 THE COURT: Okay. How does that lay the foundation  
21 for the records? I mean, he can certainly say I treated at,  
22 whatever the place is, and he can certainly say I saw Dr. So  
23 and So, but how does that go to the records? He's certainly  
24 not a custodian. He certainly didn't create the records.

25 MR. KNAUSS: I'm not certain how we do it.

1           THE COURT: I'm -- and I'm not trying -- but I'm a  
2 stickler in terms of you don't show anything to the jury.  
3 Plus I think I'd get in trouble if I didn't do that. But you  
4 don't show anything to the jury that hasn't been admitted. So  
5 until it's admitted -- I mean, you're certainly free to ask  
6 him about it.

7           MS. BRADFORD: Okay.

8           THE COURT: Okay. Go ahead.

9           (The following proceedings were held in the  
10 presence of the jury.)

11 BY MS. BRADFORD:

12           Q. Okay. Do you recall telling Dr. Janda that you'd be  
13 ceasing treatment due to transportation issues because of  
14 PTSD?

15           A. I remember telling him that I was very skittish in  
16 traffic, and that was one of the reasons that I had missed the  
17 bus to get to an appointment. But I don't remember it being  
18 the reason I ceased treatment at all. The reason we ceased  
19 treatment was because I had learned everything that I could  
20 from his team and from him, and I felt like I was wasting  
21 their time as well as my own by just going in to get hour-long  
22 massages when there's no need for it.

23           Q. Do you recall your pain reports increasing after you  
24 missed appointments?

25           A. I don't remember something that technical, no.



1 Q. Okay.

2 A. It was very early on in the treatment.

3 Q. Okay. There's been testimony that, obviously you've  
4 discussed it, you had another accident in October of 2020.  
5 Did you have any pain increase after that second accident?

6 A. I -- I mean, not to any great extent. I was there  
7 for a head injury to be treated for, and, you know, that was  
8 scary in itself. I have a scar on the side of my head to this  
9 day. And, you know, I was very, I guess -- I don't know. My  
10 mom put it in a weird way. I can't remember how she said it,  
11 but I was foggy, you know. That was the extent.

12 Q. Have you had any follow-up treatment for that head  
13 injury?

14 A. No. After the -- no, the fogginess subsided, and I,  
15 you know.

16 Q. Okay. How long did the pain last after the second  
17 accident?

18 A. The fogginess?

19 Q. Yes. (Inaudible.)

20 THE COURT: I don't remember him saying it. What,  
21 are you referring to the fogginess, is that what you're asking  
22 him?

23 MS. BRADFORD: I thought he testified that yes, he  
24 had some pain and fogginess that lingered.

25 MS. BRASIER: I'll just object.

1 THE COURT: All right --

2 MS. BRADFORD: Okay. Did you have any head pain --

3 THE COURT: The jurors' recollection of the  
4 testimony is what will control. Let's go back and go through  
5 that.

6 MS. BRADFORD: Okay.

7 BY MS. BRADFORD:

8 Q. So I'm going to ask you again. Did you have any  
9 head pain after that accident?

10 A. Head pain? Yes, ma'am. My head was split open.

11 Q. Okay. So how long did that pain last?

12 A. The -- I mean, the actual pain from it would have  
13 healed as soon as the abrasion was gone, I guess, and the  
14 swelling went down. But the fogginess took a little bit of  
15 time.

16 Q. Okay. And when you say a little bit of time, can  
17 you be more descriptive?

18 A. I mean, other than to start guessing, no.

19 Q. Okay. Did you have any emotional trauma after the  
20 accident that we're here for today?

21 A. Emotional trauma?

22 Q. Yes.

23 A. I mean, I was hit by a 15-passenger plumbing van and  
24 thrown all the way through the street, so it was emotionally  
25 damaging, I guess anybody would say that. But the damages

1 were to my back, my butt, and my hands.

2 Q. Okay. If you had any -- the emotional trauma that  
3 you might have had, did you mention that to any of your  
4 doctors?

5 A. I mean, it was never specifically a thing. No, not  
6 to my knowledge.

7 Q. Okay. Did you have any emotional trauma after the  
8 second accident?

9 A. I did for a time, and it subsided itself. I can get  
10 on the bus again if I ever had to. Luckily I have my own car  
11 now, so I don't need to. But traffic is not the same issue as  
12 it was at the time.

13 Q. And how long do you think that that emotional trauma  
14 lasted?

15 A. Again, I would be guessing. And this is way too  
16 important to guess. So I don't -- I can't. I don't know.

17 Q. Okay. Did you tell any of your doctors about the  
18 emotional trauma you were suffering after the second accident?

19 A. I may have mentioned it to Janda, I believe. But  
20 not in any way that verifies PTSD. Like I said before, no one  
21 told me I have PTSD, or did, that was me just trying to  
22 explain something that I truthfully don't know anything about.  
23 So I probably should have never even said it in the way I said  
24 it the one or two times that I may have.

25 Q. Okay. And was your emotional trauma after this

1 accident any different than the emotional trauma you suffered  
2 after the second accident?

3 A. They have no relation whatsoever to each other. I  
4 was skittish of being around traffic after the head injury.  
5 And I was and still am furious that it's unsafe to cross the  
6 street in front of my mother's house while I'm literally  
7 trying to go about my life and just do things. So I wouldn't  
8 say that those are the two -- that they are the same types of  
9 issue. So I can't -- to answer that question, that's the best  
10 way I can answer it. I'm sorry.

11 Q. Okay. And you testified that your pain returned  
12 after you received a nerve block. Do you recall that?

13 A. Yes.

14 Q. Okay. Do you know how long after the nerve block  
15 before the pain returned?

16 A. That was early on in the procedures, and I don't  
17 know exactly how long, but it definitely returned.

18 Q. Could you say it was a month? Was it two months?

19 A. I would be guessing.

20 Q. Okay.

21 A. This is my life. I'm not going to guess at  
22 something. I'm sure there's documentation that actually  
23 proved exactly what it was, but I'm not going to guess at any  
24 of that. I can't remember.

25 Q. Did you recall if the pain increased after the

1 missed chiropractor appointments?

2 MS. BRASIER: Objection, Your Honor. Vague. We're  
3 talking about a head injury and back pain, so.

4 THE COURT: All right. I guess let's be body  
5 specific. Back pain and head pain.

6 MS. BRADFORD: Okay.

7 BY MS. BRADFORD:

8 Q. I was talking about the pain returning after your  
9 nerve block.

10 THE COURT: Okay. Back pain or head pain?

11 MS. BRADFORD: Yes, back pain.

12 BY MS. BRADFORD:

13 Q. So do you recall the back pain returning after you  
14 started missing chiropractic appointments?

15 A. I don't know specifically if it was after I had  
16 decided to stop going to the chiropractor, but I know that the  
17 pain returned. The pain has continued to return. That's why  
18 I've continued to seek treatment.

19 Q. And when is the last time you saw Dr. Janda, the  
20 chiropractor?

21 A. I believe I saw him for maybe six and a half months,  
22 so. I mean, I'm horrible with dates, so I don't know the  
23 exact date, but the time duration was about six months, maybe  
24 a couple weeks longer.

25 MS. BRADFORD: Okay. Nothing further.

1 THE COURT: I'm sorry. Are you done?

2 MS. BRADFORD: Yes, I'm done.

3 THE COURT: I'm sorry, I didn't pick that up. I  
4 apologize.

5 All right. Redirect?

6 MS. JEFFERIS-AGUILAR: A brief one.

7 THE COURT: Okay.

8 MS. JEFFERIS-AGUILAR: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. JEFFERIS-AGUILAR:

11 Q. Jared, I just have a couple more questions for you.  
12 Okay?

13 A. Mm-hmm.

14 Q. Thank you.

15 So we briefly discussed that you treated on liens  
16 for a couple of your medical providers. Is it your  
17 understanding that a lien absolves you from financial  
18 responsibility of paying your bills, sir?

19 A. I didn't know specifically what it absolved me of  
20 one way or the other. I just knew that by signing it, that I  
21 wouldn't have to or no payments would be made until it was all  
22 done with was my understanding. And that's the laymen's way  
23 of saying it, but.

24 Q. There was no -- your understanding is you still have  
25 to pay. You're still financially responsible.

1 A. There's bills that have to be paid, absolutely.

2 Q. One way or the other.

3 A. For sure. Yeah, that's why this is so important,  
4 absolutely.

5 Q. We had talked a little bit about, you know, today  
6 with Lorrie and Jen about how active your family is,  
7 outdoorsy. And, you know, Lorrie talked a little bit about  
8 she wasn't kind of clear on what missed opportunity you had or  
9 things that you wanted to do with your brothers or your  
10 friends that you were concerned about doing or worried about  
11 doing because of your low back pain. Could you expound on  
12 that for me a little bit, please.

13 A. Let's see, I guess one of the specific things would  
14 be my little brother is really into dirt bikes. Kevin. He  
15 was a metro cop here for a time, now he's a cop in Idaho. But  
16 he's super into dirt bikes. And he's trying to teach his son  
17 in the same type of path, like motocross and those types of  
18 things. He has a couple of older Yamahas, like classics in  
19 his garage. Specifically that, like, I couldn't help him lift  
20 the bike up to put 'em on the rack. It's like a little maybe  
21 foot-high racks, I couldn't even help him lift those up just  
22 to work on the bike and stuff like that. So it was little  
23 things like that I recently missed out on. And then riding  
24 dirt bikes, you know. And they also have winter sport  
25 activities. They have snowmobiles and they snowboard. It's

1 things like that, you know, with my nieces and my nephews and  
2 both of my brothers, also cousins and stuff like that that I'm  
3 just now finally merging again with, you know. I'm on the  
4 sidelines when I'm in pain. My pain comes and goes. It's  
5 either there or it's not. And it's bad when it is. So I'm  
6 tentatively trying not to make it worse at any time. So it's,  
7 like, I kind of self-regulate a lot. Maybe even more than I  
8 should, but it's worth it. So, yeah, I guess to answer your  
9 question -- aside from that, they camp a lot. They go  
10 fishing. You know, my grandparents own property up at Cascade  
11 Lake up in Northern Idaho. Yeah, they like to hike, they like  
12 to -- all that sort of stuff. So a lot of outdoor activities.

13 Q. And you want to be able to be a part of that fully.

14 A. Absolutely, like, yes.

15 Q. Okay. As we sit here today, did you do your very  
16 best to attend all of your chiropractic appointments and your  
17 appointments with Dr. Muir?

18 A. Absolutely.

19 Q. Okay. And is there any kind of --

20 MS. AGUILAR: Well, that's all I have. Thank you.

21 THE COURT: All right. Recross?

22 Does any member of the jury have a question for this  
23 witness? If you do, write it on a clean sheet of paper with  
24 your Juror No. and signal the marshal or me.

25 I'm not seeing any signalling.



1 All right. Thank you very much for your testimony.  
2 You are excused.

3 THE WITNESS: Thank you, Your Honor.

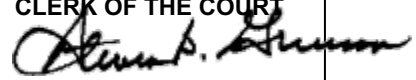
4 THE COURT: All right. I conferred with the  
5 attorneys on both sides. The good news is we are on schedule  
6 to complete the trial this week. The better news is that we  
7 moved quicker than they had anticipated and, at this point in  
8 time, you can anticipate not having to come down here on  
9 Thursday. We'll go tomorrow. We'll get started at 11:00  
10 tomorrow and go through until about 5:00. We won't have trial  
11 on Thursday. We'll come back on Friday. If possible, I know  
12 I had said 9:00, but I would like to try to get started at  
13 8:30 so that we can get the case to you as early as possible  
14 on Friday.

15 So, that will be the changes in the schedule that I  
16 gave you yesterday when we were here. So we'll go tomorrow.  
17 I'll ask you to get here at about 10:50 so we can get started  
18 again at 11:00. We'll go straight through with bathroom  
19 breaks, so eat beforehand or a snack to munch. Again, if you  
20 need refrigeration, let the marshal know and we can help you  
21 with that. But you can count on Thursday not having to come  
22 down here, and so -- and we'll come back in session on Friday,  
23 and then get the case to you on Friday. So that's our  
24 schedule for the remainder of the week.

25 Until we get together again tomorrow, do not talk to

# **EXHIBIT 11**

# **EXHIBIT 11**



1 **TB**  
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3 Nevada Bar No. 10522  
4 BETSY C. JEFFERIS-AGUILAR, ESQ.  
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12 *Attorney for Plaintiff*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 JARED MOSS, individually,  
16  
17 Plaintiff,

18 vs.

19 SEAN EDWARD TOMESCO,  
20 individually; SECOND OPINION  
21 PLUMBING, LLC., a domestic limited  
22 liability company; DOES I through X,  
23 inclusive; ROE CORPORATIONS XI  
24 through XX, inclusive,  
25  
26 Defendants.

)  
) CASE NO.: A-21-840372-C  
) DEPT. NO.: 20

) **PLAINTIFF'S TRIAL BRIEF NO. 1**  
) **REGARDING HIS UNRELATED**  
) **SUBSEQUENT ACCIDENT ON**  
) **OCTOBER 17, 2020**

27 Plaintiff JARED MOSS, by and through his attorneys of record of the law firm HICKS  
28 & BRASIER, PLLC, hereby submits Plaintiff's Trial Brief No. 1 Regarding his Unrelated  
Subsequent Collision on October 17, 2020 pursuant to EDCR 7.27.

This Trial Brief is made and based upon the attached memorandum of points and  
authorities, all papers and pleadings on file herein and such oral argument as the court may  
allow at hearing on this matter.

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1 When Jared returned to his treatment providers related to the subject accident, he did  
2 not report any additional or new pain/symptoms in his low back and his pain ratings for his low  
3 back did not increase.

4 In his Deposition, Jared testified as follows:

5 7 Q So some of your medical records indicate that there  
6 8 was a second accident on October 17<sup>th</sup> of 2020. Does  
7 9 that sound right?

8 10 A That does sound right.

9 11 Q Now, do you remember like what parts of  
10 12 your body other than you said the backs of your legs  
11 13 and your head do you remember if you sustained  
12 14 injuries to any other parts of your body?

13 15 A No, it was—the injury is just to my  
14 16 head, but they had my head wrapped up in gauze and  
15 17 that was the injury I sustained was to my head and  
16 18 had a nice scar for it.

17 See **Exhibit “1”** as the Deposition of Jared Moss at Pg. 23, lines 7-18.

18 Plaintiff’s treating physician, and retained medical expert, Dr. William Muir does not  
19 relate any of Jared’s low back injuries or treatment to the subsequent accident.

20 The patient’s discharge diagnosis was motor vehicle accident with resulting  
21 altered mental status and head contusion. **There is no evidence that the patient**  
22 **sustained an exacerbation of low back pain neither in the medical records**  
23 **reviewed nor from the patient pertaining to the 10/7/20 accident.**

24 See **Exhibit “2”** as the Initial Expert Report of Dr. Muir at Pg. 9.

25 Moreover, even *Defendant’s own medical expert*, Dr. Wang, does not relate any of Jared’s  
26 low back injuries or treatment to the subsequent accident. The totality of his causation opinions  
27 are as follows:

28 ///

1 This is a 41 year-old male, who was involved in a pedestrian versus MVA on  
2 7/9/20. There is no identified structural injury to the lumbar spine from the  
3 incident on any of the post-accident radiological studies. He had a soft tissue  
4 buttock contusion and a possible lumbar strain from the incident, which would  
5 warrant a reasonable amount of conservative soft tissue treatments. I would relate  
6 the need for the initial medical evaluations, the initial radiological studies of the  
7 spine, and the initial chiropractic treatments, to be associated with the incident.  
8 After allowing for a reasonable period of time for these strains to resolve, I could  
9 no longer relate any further medical care, to be linked to the incident. *After the*  
10 *completion of about 3 months of chiropractic treatments in October 2020, I do*  
11 *not relate the need for any further medical treatments for the spine, to be linked to*  
12 *the incident of 7/9/20.* I do not relate the spinal injections nor the lumbar facet  
13 ablations, to be linked to the MVA, as the structures injected or ablated, were not  
14 injured or altered by the incident. I would relate the conservative care, with the  
15 exception of the facet injections, up to the subsequent accident in October 2020,  
16 to be connected to the incident of 7/9/20. I do not relate any ongoing subjective  
17 reports of spine symptoms, nor any future medical care for the spine, to be  
18 causally linked to the MVA of 7/9/20. (emphasis added).

19 See **Exhibit “3”** as Dr. Wang’s Initial Expert Report at Pg. 5.

20 In fact, Dr. Wang believes that Jared’s treatment should have ended before Jared  
21 underwent the bilateral facet injections to his low back, which occurred on October 6, 2020 (11  
22 days prior to the subsequent accident). Dr. Wang cannot opine that the subsequent accident  
23 caused an exacerbation of Jared’s low back injury or pain because there is no evidence in the  
24 medical records to support such a finding.

25 Dr. Wang is limited to the contents of his report at trial, which is notably silent as to any  
26 opinion that the second accident had any causal effect on Jared’s low back injuries from the  
27 subject accident.

28 With absolutely no medical evidence to support that the subsequent accident had any  
effect on Jared’s claimed injuries for this case, there is no basis for admitting such information  
or evidence at trial.

## 29 II.

### 30 ARGUMENT

31 In Nevada, only relevant evidence may be admitted at trial. “Relevant evidence” is  
32 “evidence having any tendency to make the existence of any that is of consequence to the

1 determination of the action more or less probable than it would be without the evidence.” NRS  
2 48.015. Relevant evidence is admissible unless its “probative value is substantially outweighed  
3 by the danger of unfair prejudice, confusion of the issues or misleading the jury.” NRS 48.035.

4 Plaintiff anticipates that Defendants will attempt to argue, offer evidence, or refer to  
5 Jared’s October 17, 2020, pedestrian versus auto accident. Any mention of this subsequent  
6 accident would be improper, however, as none of the medical providers or medical experts  
7 have opined the subsequent accident had any impact on the injuries and damages Jared is  
8 claiming for the subject accident. Thus, information about the subsequent accident has no  
9 probative value to the claims in this case and must be excluded as irrelevant under NRS 48.015  
10 and 48.025.

11 Even if this information had some minute probative value, which it does not, the  
12 probative value would be substantially outweighed by the confusion that it would cause the  
13 jury to hear about a different accident that caused different injuries. The jury would  
14 undoubtedly be confused into thinking that these other injuries are somehow related to our  
15 case. It would also be unfairly prejudicial to Plaintiff for the jury to hear about the unrelated  
16 injuries he sustained in the subsequent accident, as there is a significant chance that the jury  
17 would be tempted to speculate – despite the absence of evidence – that Jared must have  
18 reinjured his low back in this subsequent accident.

19 It is well-settled law that causation of injury and damages must be established by  
20 medical expert testimony to a reasonable degree of medical probability. *Morsicato v. Sav-On*  
21 *Drug Stores, Inc.*, 121 Nev. 153, 157, 111 P.3d 1112 (2005); *Williams v. Eighth Jud. Dist. Ct.*,  
22 127 Nev. 518, 262 P.3d 360, 362-63 (2011); *Layton v. Yankee Caithness Joint Venture*, 774 F.  
23 Supp. 576 (1991); *Fernandez v. Admirand*, 108 Nev. 963, 973, 843 P.2d 354 (1993); *Brown v.*  
24 *Capanna*, 105 Nev. 665, 671-72, 782 P.2d 1299 (1989). Further, “[a] verdict may not be based  
25 on speculation, whether the testimony comes from the mouth of a lay witness or an expert.”  
26 *Gramanz v. T-Shirts & Souvenirs*, 111 Nev. 479, 894 P.2d 342 (1995) (citing *Advent Systems*  
27 *Ltd. v. Unisys Corp.*, 925 F. 2d 670, 682 (3rd Cir. 1991)).

1 In order for evidence of any injury or accident other than the subject accident to be  
2 admissible, a party must present, by competent evidence, a causal connection between the prior  
3 event and the incident at issue. *See, generally, FGA, Inc. v Giglio*, 128 Nev. Adv. Rep. 26, 278  
4 P.3d 490, 498 (2012). A party seeking to introduce evidence of a prior [or subsequent] incident  
5 bears the burden to establish why it is relevant to a fact of consequence. *Id.* In other words, any  
6 evidence of or reference to the October 17, 2020, accident should be excluded unless Jared  
7 sustained injury to his low back (he did not) and Defendants can offer medical expert testimony  
8 linking the subsequent accident to the injuries claimed in this case (they cannot).

9 Defendants' expert, Dr. Wang, was required, pursuant to NRCP 16.1(a)(2)(B)(i), to  
10 provide "a complete statement of all opinions (he) will express, and the basis and reasons for  
11 them." Notably, Dr. Wang's report fails to provide the necessary link between the two  
12 accidents. Defendants cannot now attempt to expand Dr. Wang's testimony beyond the  
13 opinions contained in his report simply to introduce irrelevant and prejudicial information  
14 about Jared's subsequent accident. Allowing new opinions that were not contained in his  
15 report would be a complete disregard for the rules regarding disclosures of evidence and would  
16 constitute trial by ambush. This must be avoided.

#### 17 IV. CONCLUSION

18 Based on the foregoing, Plaintiff respectfully requests that during trial, this Court  
19 preclude any mention of or questioning related to Plaintiff's subsequent, unrelated collision of  
20 October 17, 2020.

21  
22 DATED THIS 17<sup>th</sup> day of March 2024.

**HICKS & BRASIER, PLLC**

/s/ Betsy C. Jefferis-Aguilar, Esq.  
BETSY C. JEFFERIS-AGUILAR, ESQ.  
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# EXHIBIT “1”



is now



(702) 476-4500 | [www.oasisreporting.com](http://www.oasisreporting.com) | [info@oasisreporting.com](mailto:info@oasisreporting.com)  
400 South Seventh Street, Suite 400, Las Vegas, NV 89101

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DISTRICT COURT  
CLARK COUNTY, NEVADA

|                          |   |                        |
|--------------------------|---|------------------------|
| JARED MOSS, individually | ) |                        |
|                          | ) |                        |
| Plaintiff,               | ) |                        |
|                          | ) |                        |
| vs.                      | ) |                        |
|                          | ) | Case No. A-21-840372-C |
| SEAN EDWARD TOMESCO,     | ) |                        |
| individually; SECOND     | ) |                        |
| OPINION PLUMBING, LLC, a | ) |                        |
| domestic limited         | ) |                        |
| liability company; DOES  | ) |                        |
| I through X, inclusive;  | ) |                        |
| ROE CORPORATIONS XI      | ) |                        |
| through XX, inclusive,   | ) |                        |
|                          | ) |                        |
| Defendants.              | ) |                        |

REMOTE DEPOSITION OF JARED MOSS  
Taken on Tuesday, January 31, 2023  
By a Certified Court Reporter  
At 1:30 p.m. PST

Reported by: Kelly R. Rexroat, CCR 673, RPR, CRR  
Job No. 51809, Firm No. 061F/116F

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 For the Plaintiff:</p> <p>4 CHARLES S. JACKSON, ESQ.</p> <p>5 HICKS &amp; BRASIER, PLLC</p> <p>6 2630 South Jones Boulevard</p> <p>7 Las Vegas, NV 89146</p> <p>8</p> <p>9 For the Defendants:</p> <p>10 JASON G. MARTINEZ, ESQ.</p> <p>11 MESSNER REEVES LLP</p> <p>12 8945 West Russell Road</p> <p>13 Suite 300</p> <p>14 Las Vegas, NV 89148</p> <p>15</p> <p>16 * * * * *</p> <p>17 INDEX</p> <p>18</p> <p>19 WITNESS</p> <p>20 JARED MOSS</p> <p>21 Examination by Mr. Martinez</p> <p>22</p> <p>23 NO EXHIBITS MARKED</p> <p>24</p> <p>25</p> <p>PAGE 3</p>                                                                                                                                                                                                                                                                                                                                                                                         | <p>4</p> <p>1 are testifying from today?</p> <p>2 A.</p> <p>3 Q. Is that a residence?</p> <p>4 A. Yeah, this is my apartment.</p> <p>5 Q. Do you have an apartment number?</p> <p>6 A. Yeah, apartment .</p> <p>7 Q. Okay. And do you have the ZIP code?</p> <p>8 A. 89123.</p> <p>9 Q. Is anybody in the room with you?</p> <p>10 A. No.</p> <p>11 Q. You understand that as part of this</p> <p>12 deposition you are not to get instructions or</p> <p>13 assistance from any other person in responding to my</p> <p>14 questions; right?</p> <p>15 A. Yeah, yes.</p> <p>16 Q. And obviously a little bit of prep on</p> <p>17 that depo there because you were anticipating one of</p> <p>18 my admonitions, but typically have you ever had your</p> <p>19 deposition taken before?</p> <p>20 A. No.</p> <p>21 Q. Have you ever testified in court under</p> <p>22 oath?</p> <p>23 A. No.</p> <p>24 Q. Okay. So we'll run through some ground</p> <p>25 rules, just for the sake of ease while we're moving</p>                                                                                                                                                                                                                                 |
| <p>3</p> <p>1 PROCEEDINGS</p> <p>2 (Prior to the commencement</p> <p>3 of the deposition, all of</p> <p>4 the parties present agreed</p> <p>5 to waive statements by the</p> <p>6 court reporter pursuant to</p> <p>7 Rules 30(b)(5)(A) and</p> <p>8 30(b)(5)(C) of the NRCP.)</p> <p>9 JARED MOSS</p> <p>10 of lawful age, having been first duly sworn to tell</p> <p>11 the truth, the whole truth, and nothing but the</p> <p>12 truth, testified as follows:</p> <p>13 EXAMINATION</p> <p>14 BY MR. MARTINEZ:</p> <p>15 Q. All right. Good afternoon, Mr. Moss. My</p> <p>16 name is Jason Martinez.</p> <p>17 Would you please state and spell your</p> <p>18 name for the record.</p> <p>19 A. Yeah. My name is Jared, J-A-R-E-D, S, as</p> <p>20 in Scott, Moss, M-O-S-S.</p> <p>21 Q. Have you ever been known by any other</p> <p>22 names or aliases?</p> <p>23 A. No.</p> <p>24 Q. So obviously we're doing this deposition</p> <p>25 by Zoom. Can you give me the address of where you</p> | <p>5</p> <p>1 through the deposition.</p> <p>2 The first question I'm going to ask</p> <p>3 though before we get to that is have you had any</p> <p>4 drugs or alcohol in the last 24 hours that would</p> <p>5 effect your ability either to understand my</p> <p>6 questions or provide truthful answers?</p> <p>7 A. No.</p> <p>8 Q. Any other reason why we shouldn't go</p> <p>9 forward with your deposition today?</p> <p>10 A. No.</p> <p>11 Q. Okay. So moving into the questions or</p> <p>12 the admonitions kind of like the ground rules for a</p> <p>13 deposition. Kelly is our wonderful court reporter.</p> <p>14 She is taking down every word we are saying</p> <p>15 ultimately to produce it into a written transcript</p> <p>16 that appears like a question and answer format.</p> <p>17 A. Uh-huh.</p> <p>18 Q. So one of the important things to do is</p> <p>19 that we have to give audible answers. So nodding</p> <p>20 your head, shaking your head those things don't</p> <p>21 translate into a transcript. It has to be a yes or</p> <p>22 a no. Do you understand that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And sometimes when I ask you a question</p> <p>25 because in normal conversation you might be like</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>6</p> <p>1 uh-huh, uh-huhs and huh-uhs also don't translate.<br/> 2 So I might ask you is that a yes or is<br/> 3 that a no. I'm not trying to be rude. I'm just<br/> 4 trying to make sure that the transcript is clear.<br/> 5 Okay?<br/> 6 A. I understand.<br/> 7 Q. And again it applies to, like I said,<br/> 8 words not gestures like nods, hands up, stuff like<br/> 9 that. You have to try and describe it with words.<br/> 10 Okay?<br/> 11 A. Okay.<br/> 12 Q. And you are doing a great job of it so<br/> 13 far. Via Zoom sometimes in person it's a little<br/> 14 easier, but Zoom sometimes there is a delay.<br/> 15 So it's important that you let me finish<br/> 16 asking my question so that I get the whole question<br/> 17 out there before you start to answer. Okay. You<br/> 18 have done a great job of that so far.<br/> 19 There will be a small window of time<br/> 20 where your attorney might object to one of my<br/> 21 questions. The majority -- overwhelming majority of<br/> 22 the time all he's doing is preserving an objection<br/> 23 for future reference because, as you know, there is<br/> 24 no judge here, right.<br/> 25 A. Uh-huh.</p>  | <p>8</p> <p>1 not yet answered, I'm entitled to that answer before<br/> 2 we go on that break. Okay?<br/> 3 A. Okay.<br/> 4 Q. And sometimes this is one of the things<br/> 5 that is interesting about depositions is I'm not<br/> 6 looking for you to guess. I don't want you to<br/> 7 guess. I want you to tell me what you know, what<br/> 8 you remember to the best of your ability. Okay?<br/> 9 A. Okay.<br/> 10 Q. And sometimes I might ask you to estimate<br/> 11 or give me what is your best estimate of something<br/> 12 whether it be timing, location something like that,<br/> 13 but do you understand the difference between an<br/> 14 estimate and a guess?<br/> 15 A. Yes.<br/> 16 Q. So, for example, estimates are something<br/> 17 that you have yourself experienced. You would be<br/> 18 able to tell me how big the couch is you are sitting<br/> 19 on because you are sitting in the room with it, it's<br/> 20 your couch, but the difference would be a guess to<br/> 21 ask you to say how big is my desk that I'm sitting<br/> 22 at right now. You have never seen it. You have no<br/> 23 idea. So that would be a complete guess.<br/> 24 Is that the same understanding you have<br/> 25 between those two things?</p> |
| <p>7</p> <p>1 Q. So the reason why he's doing that is he's<br/> 2 preserving that for future issues.<br/> 3 I am still entitled to an answer from you<br/> 4 to the best of your ability unless he instructs you<br/> 5 not to answer. Do you understand that?<br/> 6 A. I do understand that, yes.<br/> 7 Q. Okay. Now, also understand that the oath<br/> 8 you just took is the same oath you would take in a<br/> 9 court of law and it is subject to the penalties of<br/> 10 perjury?<br/> 11 A. Yes, I understand that.<br/> 12 Q. Okay. Now, I'll do my best to ask the<br/> 13 clearest questions possible, but if at any point you<br/> 14 don't understand my question, please ask me to<br/> 15 rephrase it. Okay?<br/> 16 A. Okay.<br/> 17 Q. If you answer one of my questions, I'm<br/> 18 going to assume that you understood it. You<br/> 19 understand that?<br/> 20 A. Yes.<br/> 21 Q. You have a right to a break at any time<br/> 22 you want. You want to get up, you want to stretch,<br/> 23 you want to use the restroom let me know. I have no<br/> 24 problem with that. The only exception to that if<br/> 25 there is currently a question pending that you have</p> | <p>9</p> <p>1 A. Yes, it would be.<br/> 2 Q. So just to give you a brief little<br/> 3 rundown of how the depo is going to go. I start<br/> 4 with kind of some background information just about<br/> 5 you. I don't get into the accident right way, but<br/> 6 then we'll break into the accident, and then we'll<br/> 7 probably talk about some of your medical treatment.<br/> 8 Okay?<br/> 9 A. Okay.<br/> 10 Q. Now, in preparation for your deposition<br/> 11 today, did you review any documents either whether<br/> 12 it be medical records, discovery that's been<br/> 13 produced in this case or written discovery that<br/> 14 you've responded to, did you review anything like<br/> 15 that in preparation for your deposition?<br/> 16 A. No.<br/> 17 Q. Do you have any documents sitting in<br/> 18 front of you right now that you brought with you or<br/> 19 you have in front of you for this deposition?<br/> 20 A. I have a piece of paper right here in<br/> 21 front of me that have a couple of dates on it just<br/> 22 so I can remember them off the top of my head for<br/> 23 you, but other than that, no.<br/> 24 Q. Can you show me that piece of paper. Can<br/> 25 you hold it up so I can see the whole thing?</p>       |

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| <p style="text-align: right;">10</p> <p>1 A. (Witness complying.)</p> <p>2 Q. Can you do me a favor and can you provide</p> <p>3 a copy of that to your attorney so he can produce it</p> <p>4 to me --</p> <p>5 A. Yes.</p> <p>6 Q. -- since you are going to be testifying</p> <p>7 from it?</p> <p>8 MR. JACKSON: We'll produce that. We'll</p> <p>9 disclose that.</p> <p>10 MR. MARTINEZ: Thanks, Charles.</p> <p>11 BY MR. MARTINEZ:</p> <p>12 Q. All right. Have you reviewed any of your</p> <p>13 medical records in this case in preparation for</p> <p>14 today?</p> <p>15 A. No.</p> <p>16 Q. Did you review any of your medical bills</p> <p>17 in preparation for today?</p> <p>18 A. No, I haven't. Medical bills I believe</p> <p>19 went to my lawyer.</p> <p>20 Q. Okay. And have you ever reviewed your</p> <p>21 medical records even if it's a while back have you</p> <p>22 ever looked at them before?</p> <p>23 A. Just as it was happening at the time, of</p> <p>24 course. Anybody would read them, but yeah, I</p> <p>25 haven't like gone over them again since, no.</p>                                                             | <p style="text-align: right;">12</p> <p>1 birth?</p> <p>2 A. 9-1-81.</p> <p>3 Q. Where were you born?</p> <p>4 A. Salt Lake City, Utah.</p> <p>5 Q. And is the address that you are</p> <p>6 testifying to today, that's your current address;</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Does anybody live with you?</p> <p>10 A. My wife.</p> <p>11 Q. What is your wife's name?</p> <p>12 A. Jennifer Moss.</p> <p>13 Q. How long have you guys been married?</p> <p>14 A. Going on two years.</p> <p>15 Q. Okay. How long have you lived at your</p> <p>16 current address?</p> <p>17 A. About a year and a half.</p> <p>18 Q. Okay. Where did you live before that?</p> <p>19 A. I lived at my mother's house.</p> <p>20 Q. Do you know the address for that?</p> <p>21 A. Yeah. It's 9004 Campanella Street, Las</p> <p>22 Vegas, Nevada 89123.</p> <p>23 Q. Is that -- I believe I recognize the</p> <p>24 address. Is that the address you were living at at</p> <p>25 the time of this accident in July of 2020?</p>             |
| <p style="text-align: right;">11</p> <p>1 Q. Do you know how much your medical bills</p> <p>2 total today?</p> <p>3 A. I do not.</p> <p>4 Q. All right. Now, in preparation for your</p> <p>5 deposition, did you speak with anybody?</p> <p>6 A. I spoke with my lawyer.</p> <p>7 Q. Okay. Now, I'm not asking -- I don't</p> <p>8 want to know what the subject or any of the content</p> <p>9 of that discussion was because that's privileged.</p> <p>10 I'm not asking for that.</p> <p>11 What I'm going to ask you as related to</p> <p>12 that discussion, but like I said I don't want any of</p> <p>13 the content. Okay?</p> <p>14 A. Okay.</p> <p>15 Q. Now, in relation to the conversation you</p> <p>16 had with your attorney, when was it?</p> <p>17 A. Yesterday midafternoon.</p> <p>18 Q. And do you know approximately how long it</p> <p>19 was?</p> <p>20 A. About an hour, hour and a half.</p> <p>21 Q. Have you spoken with anybody else related</p> <p>22 to your deposition other than your attorney?</p> <p>23 A. No.</p> <p>24 Q. All right. I'm going to break into a</p> <p>25 little bit of background. What is your date of</p> | <p style="text-align: right;">13</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do you have any children?</p> <p>3 A. No, sir.</p> <p>4 Q. Do you have anybody that you are</p> <p>5 financially responsible for?</p> <p>6 A. Just me and my wife.</p> <p>7 Q. What is your highest level of education</p> <p>8 that you completed?</p> <p>9 A. My -- I got my GED.</p> <p>10 Q. Okay. When did you get your GED?</p> <p>11 A. May 2011.</p> <p>12 Q. Have you done any college, some college</p> <p>13 maybe you didn't complete to get a degree, but did</p> <p>14 you do any college work?</p> <p>15 A. I did do college, but I didn't finish the</p> <p>16 courses. It was a year of college right now for --</p> <p>17 it was going to be cyber security, but I quit a year</p> <p>18 into it.</p> <p>19 Q. Where were you taking courses in cyber</p> <p>20 security?</p> <p>21 A. Grand Canyon University.</p> <p>22 Q. Is that one online?</p> <p>23 A. Yes.</p> <p>24 Q. When were you taking those courses and</p> <p>25 when did you quit?</p> |



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| <p>14</p> <p>1 A. I don't remember the exact dates</p> <p>2 honestly.</p> <p>3 Q. Do you remember the year like roughly?</p> <p>4 A. It was when I was living at my mom's</p> <p>5 house right before this happened. So probably three</p> <p>6 years ago.</p> <p>7 Q. Okay. So like 2019, 2020?</p> <p>8 A. Yeah, but right before that probably,</p> <p>9 yeah, around there.</p> <p>10 Q. Okay. That's a good example of where I'm</p> <p>11 asking for kind of an estimate. Like you might not</p> <p>12 remember perfectly, but you can give me close.</p> <p>13 Okay. Are you currently employed?</p> <p>14 A. Yes, I am.</p> <p>15 Q. Who is your employer?</p> <p>16 A. Sin City Diabetics.</p> <p>17 Q. And what do you do for Sin City</p> <p>18 Diabetics?</p> <p>19 A. I'm the shipping and receiving manager.</p> <p>20 Q. What does Sin City Diabetics do?</p> <p>21 A. It is a medical supply company an</p> <p>22 E-commerce medical supply company for diabetic</p> <p>23 products.</p> <p>24 Q. Which location do you work at?</p> <p>25 A. I work off of Tropicana and -- there is</p>                                     | <p>16</p> <p>1 A. Most of the week I'm seated cleaning</p> <p>2 boxes in the product that come into the store and</p> <p>3 inventorying them and most of the time I'm seated.</p> <p>4 Q. Okay. Do you do any lifting as a part of</p> <p>5 your job?</p> <p>6 A. Yeah, when product comes into the store</p> <p>7 generally about usually two to four times a week a</p> <p>8 box will come in that I have to lift and unpack.</p> <p>9 Q. Okay. And I imagine that those boxes</p> <p>10 have varying weights and sizes; right?</p> <p>11 A. Yeah.</p> <p>12 Q. Can you give me an estimate of kind of</p> <p>13 the average weight and size of those boxes?</p> <p>14 A. The main box is a pretty large box. I'd</p> <p>15 say 50 pounds or 50, 60 pounds, and it has lots of</p> <p>16 smaller product in it like diabetic products inside</p> <p>17 of those boxes.</p> <p>18 Q. Okay. Sorry. It can vary. Is that what</p> <p>19 you said?</p> <p>20 A. Yes.</p> <p>21 Q. I apologize for talking over you. So the</p> <p>22 large box comes in and it's about 50 pounds; right?</p> <p>23 A. Yes.</p> <p>24 Q. Do you pick the box up yourself?</p> <p>25 A. I need -- I usually need help. My boss</p> |
| <p>15</p> <p>1 only one location. I think it's Trop and Maryland.</p> <p>2 I can't remember the exact address on Trop and</p> <p>3 Maryland.</p> <p>4 Q. You said there is only one location for</p> <p>5 this?</p> <p>6 A. Yeah.</p> <p>7 Q. What kind of job duties do you have for</p> <p>8 Sin City Diabetics as a shipping and receiving</p> <p>9 manager?</p> <p>10 A. Just all the product that comes in, I</p> <p>11 identify it and log it however we need to for the</p> <p>12 appropriate product and customers and ship</p> <p>13 everything back out to those customers, and then</p> <p>14 anything that needs to be sent out as a payment to</p> <p>15 customers, I ship all of those out as well.</p> <p>16 Q. You said ship out as in payment?</p> <p>17 A. Yeah, checks go out to customers as well</p> <p>18 as product.</p> <p>19 Q. Is that the E-commerce side of Sin City</p> <p>20 Diabetics?</p> <p>21 A. Yes.</p> <p>22 Q. Checks, okay. Now, as part of your job</p> <p>23 duties, do you do a lot of -- is it mostly seated,</p> <p>24 or are you standing? You walking around? What are</p> <p>25 you doing?</p> | <p>17</p> <p>1 Daniel Coronto (phn) helps with that.</p> <p>2 Q. What did you say your boss's name was?</p> <p>3 A. Daniel Coronto.</p> <p>4 Q. Do you know how to spell his last name?</p> <p>5 A. I don't.</p> <p>6 Q. Okay. Do you have a best guess or a best</p> <p>7 estimate.</p> <p>8 A. I'm horrible at spelling, but Daniel</p> <p>9 Coronto. I don't know. I can't spell his last</p> <p>10 name.</p> <p>11 Q. No problem. How long have you worked at</p> <p>12 Sin City Diabetic -- well, I guess, when did you</p> <p>13 start?</p> <p>14 A. I started about two years ago.</p> <p>15 Q. So like early part of 2021?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. For the smaller boxes that you end up</p> <p>18 taking out of the larger box, about roughly what is</p> <p>19 the average of what those weigh and are those ones</p> <p>20 that you pick up by yourself?</p> <p>21 A. Yeah, they're just the normal size of a</p> <p>22 diabetic box containing either 50 or 100 strips.</p> <p>23 It's very light. Ounces is what it would weigh</p> <p>24 probably.</p> <p>25 Q. Okay.</p>                                                                                                   |



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| <p>18</p> <p>1 A. A hand-held box is what it's down to by<br/>2 that point.</p> <p>3 Q. Okay. Is there any other physical labor<br/>4 that you have to do as a result of that job?</p> <p>5 A. No.</p> <p>6 Q. Okay. Now, in your written discovery I<br/>7 think you already answered that, but are you making<br/>8 any lost wage claim as a result of this accident?</p> <p>9 A. No, I'm not.</p> <p>10 Q. Now, prior to working at Sin City<br/>11 Diabetics what was the job you had before that?</p> <p>12 A. Before Sin City Diabetics, I was<br/>13 self-employed as a painter and sometimes a handyman,<br/>14 but mostly paint work, interior, exterior of<br/>15 people's homes.</p> <p>16 Q. Okay. Do you remember the last time you<br/>17 did any painting or handyman work prior to working<br/>18 at Sin City Diabetics?</p> <p>19 A. It was just prior to COVID was the last<br/>20 job I had.</p> <p>21 Q. Do you know was that before this accident<br/>22 or after?</p> <p>23 A. That was before.</p> <p>24 Q. Okay.</p> <p>25 A. The COVID whenever the COVID outbreak</p> | <p>20</p> <p>1 Vegas ever since that time period?</p> <p>2 A. Yes.</p> <p>3 Q. All right. So now I'm going to move<br/>4 into -- well, actually let me confirm. So based on<br/>5 what you just told me you were not employed at the<br/>6 time of this accident in July of 2020?</p> <p>7 A. No, I was not employed.</p> <p>8 Q. All right. So now I'm going to get into<br/>9 a little bit of your prior like medical history.</p> <p>10 Have you ever had other than like we're<br/>11 talking prior to the July 9th, 2020, accident, okay.</p> <p>12 So all of my questions are going to be before then.<br/>13 Does that make sense?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Have you ever had any prior<br/>16 accidents whether they be motor vehicle accidents,<br/>17 slip and falls or anything where you ended up<br/>18 getting injured --</p> <p>19 A. No.</p> <p>20 Q. -- prior to this accident?</p> <p>21 A. No.</p> <p>22 Q. Had you ever had any injuries whether<br/>23 they be sports related or anything like that to any<br/>24 part of your body prior to July 9th of 2020?</p> <p>25 A. No.</p> |
| <p>19</p> <p>1 was. I don't remember the exact date. That was my<br/>2 last job.</p> <p>3 Q. Yeah, I think that was in early 2020 was<br/>4 kind of the first little bit we got here.</p> <p>5 You were self-employed in Las Vegas?</p> <p>6 A. Yes.</p> <p>7 Q. Had you lived in Las Vegas pretty much<br/>8 the entire time since this accident?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. That was a bad question actually.<br/>11 Have you lived in Las Vegas the entire time since<br/>12 July 9th of 2020?</p> <p>13 A. Since July 9th of 2020, I have lived in<br/>14 Las Vegas.</p> <p>15 Q. Okay. When did you first start living in<br/>16 Las Vegas?</p> <p>17 A. I moved here years ago when I was a young<br/>18 man probably 20 more years ago.</p> <p>19 Q. Which year was that? We don't have to<br/>20 say. You are only a little older than me.</p> <p>21 So moved to Las Vegas. Do you know<br/>22 roughly when that was like 20 years ago?</p> <p>23 A. I believe, yeah, early 2000, '99<br/>24 probably.</p> <p>25 Q. Okay. Okay. And you've lived in Las</p>                    | <p>21</p> <p>1 Q. Have you ever injured yourself while at<br/>2 work?</p> <p>3 A. No.</p> <p>4 Q. Have you ever filed a workers'<br/>5 compensation claim for any injury you sustained<br/>6 while at work?</p> <p>7 A. No.</p> <p>8 Q. Have you ever been in any prior auto<br/>9 accidents prior to July 9th of 2020?</p> <p>10 A. No.</p> <p>11 Q. All right. Now, the next question is<br/>12 after July 9th of 2020, do you have any subsequent<br/>13 auto accidents?</p> <p>14 A. I was -- had an auto accident after that<br/>15 that I was in a coma for two days in the hospital.</p> <p>16 Q. Were you in a motor vehicle or was it --<br/>17 were you a pedestrian?</p> <p>18 A. No, I was a pedestrian.</p> <p>19 Q. You said you were in a coma for two days?</p> <p>20 A. Yes.</p> <p>21 Q. What parts of your body were injured as a<br/>22 result of that subsequent auto accident?</p> <p>23 A. Everything that I remember is I woke up<br/>24 in the hospital after the fact obviously. The car<br/>25 hit me from behind, clipped my legs from behind, and</p>                                   |

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| <p style="text-align: right;">22</p> <p>1 I have a scar on my head from the impact. Like I</p> <p>2 don't remember.</p> <p>3 So I can't say what happened. I was</p> <p>4 knocked out instantly obviously, but from what they</p> <p>5 told me, I spun around in the air and my head hit</p> <p>6 the ground.</p> <p>7 Q. From your understanding of what other</p> <p>8 people told you about that accident you actually</p> <p>9 were shot up into the air as a result of getting hit</p> <p>10 by the car?</p> <p>11 A. Yes.</p> <p>12 Q. And then obviously you would have landed</p> <p>13 on the ground I assume; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Was anybody there with you?</p> <p>16 A. My wife was, yes.</p> <p>17 Q. And this was prior to you guys getting</p> <p>18 married I assume?</p> <p>19 A. Yes, I believe it was just prior.</p> <p>20 Q. Do you know roughly when this subsequent</p> <p>21 accident happened?</p> <p>22 A. I don't remember the exact date, no. I</p> <p>23 should have written it down on this little piece of</p> <p>24 paper, but I didn't. Sorry about that.</p> <p>25 Q. No, you are good. Just one little point.</p>                                                                                                                                                                            | <p style="text-align: right;">24</p> <p>1 roadway or were you on the sidewalk?</p> <p>2 A. My wife was on the sidewalk and I was</p> <p>3 intermittently in the gutter and on the sidewalk so</p> <p>4 I would say I was both.</p> <p>5 Q. Okay. Did you ever step out into the</p> <p>6 roadway?</p> <p>7 A. I did.</p> <p>8 Q. Do you remember roughly where that</p> <p>9 accident happened like major cross street that might</p> <p>10 be near there?</p> <p>11 A. It was in a neighborhood just off of</p> <p>12 Mountain Vista and Tropicana. We were on the way</p> <p>13 from one friend's house to the other in that</p> <p>14 neighborhood.</p> <p>15 Q. Okay. So this was in a residential</p> <p>16 neighborhood?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you have any idea how fast that car</p> <p>19 was going?</p> <p>20 A. I don't.</p> <p>21 Q. But the speed limit in there was I would</p> <p>22 assume is 25?</p> <p>23 A. If he was going the speed limit, I mean,</p> <p>24 he hit me on purpose, so I don't know if he was</p> <p>25 following the law of the speed, but I believe</p>                                                                                                                                  |
| <p style="text-align: right;">23</p> <p>1 This is not a memory test, so if you don't remember,</p> <p>2 let me know you don't remember and then I'll try and</p> <p>3 jog your memory if I have some records, which might</p> <p>4 tell you.</p> <p>5 A. All right.</p> <p>6 Q. Which is what I'm going to do right now.</p> <p>7 So some of your medical records indicate that there</p> <p>8 was a second accident on October 17th of 2020. Does</p> <p>9 that sound right?</p> <p>10 A. That does sound right.</p> <p>11 Q. Now, do you remember like what parts of</p> <p>12 your body other than you said the back of your legs</p> <p>13 and your head do you remember if you sustained</p> <p>14 injuries to any other parts of your body?</p> <p>15 A. No, it was -- the injury was just to my</p> <p>16 head, but they had my head wrapped up in gauze and</p> <p>17 that was the injury I sustained was to my head and</p> <p>18 had a nice scar for it.</p> <p>19 Q. Okay. Do you know roughly the size of</p> <p>20 the car like what type of car it was that hit you?</p> <p>21 Was it a truck? A van? A sedan?</p> <p>22 A. I believe it was a car. Like I said,</p> <p>23 didn't see it. He came from behind me, but I was</p> <p>24 told that it was a smaller sedan, four-wheel car.</p> <p>25 Q. And when you were hit were you in the</p> | <p style="text-align: right;">25</p> <p>1 whatever residential would be is whatever is posted.</p> <p>2 Q. And that was not really my question so</p> <p>3 let me rephrase it.</p> <p>4 My question is that the speed limit in</p> <p>5 there in a residential area that one to your</p> <p>6 knowledge is 25?</p> <p>7 A. Whatever it would be legally. I'm not</p> <p>8 sure what it is, but you know, you might know better</p> <p>9 than me on that. I don't know. I assume it's 25,</p> <p>10 if you say so, yeah.</p> <p>11 Q. Most residential areas are 25. Some are</p> <p>12 less, but most of the time they're closer to 25?</p> <p>13 A. Yeah, yep.</p> <p>14 Q. Okay. But like I said this was in a</p> <p>15 residential area. So there were homes that it was</p> <p>16 directly adjacent to the street?</p> <p>17 A. Yes, sir.</p> <p>18 Q. You said it was a hit and run?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if the police ever located</p> <p>21 the person who hit you?</p> <p>22 A. They did not. They said they located the</p> <p>23 car and they knew it was the car from I don't know</p> <p>24 why. The rearview mirror was broken off, and I</p> <p>25 think my wife said that the make of whatever color</p> |

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| <p>26</p> <p>1 so they figured it was that car, but it was parked<br/>2 down the street and left there, but I don't even<br/>3 know if it was that car for sure.<br/>4 Q. Okay. If the police or maybe the police<br/>5 haven't told you anything about the investigation,<br/>6 but do you know if they made any arrests or brought<br/>7 in anybody for related to that subsequent motor<br/>8 vehicle accident?<br/>9 A. No, nothing.<br/>10 Q. So of the injuries that you can remember,<br/>11 the ones you remember are head and your knees, both<br/>12 knees?<br/>13 A. The injury was to my head.<br/>14 Q. Okay. But did any other parts of your<br/>15 body that you know of make contact with the vehicle?<br/>16 A. It had to have made contact with the<br/>17 vehicle, but the injury itself was to my the side --<br/>18 the right side of my skull.<br/>19 Q. Okay. But it's probably safe to say that<br/>20 that vehicle since it hit you from behind and you<br/>21 were catapulted into the air that probably your<br/>22 whole body at some point from head to toe made<br/>23 contact with the vehicle?<br/>24 A. I couldn't guess at that. I couldn't<br/>25 guess at that. I don't know. I just know that the</p> | <p>28</p> <p>1 A. That's quite a long time ago, but I don't<br/>2 recall that happening.<br/>3 Q. Now, other than this lawsuit -- well,<br/>4 actually let me back up. So you're the plaintiff in<br/>5 this lawsuit. You understand that?<br/>6 A. Yes.<br/>7 Q. Okay. In civil lawsuits there are<br/>8 typically and just do the simplified version there<br/>9 are plaintiffs and defendants. Plaintiffs are the<br/>10 ones that bring the lawsuit. Defendants are the<br/>11 ones that defend themselves in the lawsuit.<br/>12 Do you understand that?<br/>13 A. Yes.<br/>14 Q. So sometimes those people are referred to<br/>15 as parties to a lawsuit. Does that make sense?<br/>16 A. Yes.<br/>17 Q. Other than this lawsuit, have you ever<br/>18 been a party to any other lawsuit?<br/>19 A. I don't think so, no.<br/>20 Q. Okay. Do you have any ongoing medical<br/>21 conditions maybe you claim are as a result of this<br/>22 accident or any other type of injury? Do you have<br/>23 any ongoing medical conditions?<br/>24 A. I mean, the only ongoing medical<br/>25 condition would be the pain I'm dealing with if I</p>                                                                                                                |
| <p>27</p> <p>1 injury was to my head.<br/>2 Q. Understood. Did you have any other<br/>3 injuries that you were specifically told about other<br/>4 than the right side of your head?<br/>5 A. No.<br/>6 Q. Have you had any other -- and now we're<br/>7 going back to prior to this accident. Prior<br/>8 non-automobile related injuries?<br/>9 A. No.<br/>10 Q. Have you ever injured yourself in a slip<br/>11 and fall or a slip or trip and fall anything like<br/>12 that?<br/>13 A. No.<br/>14 Q. And this is going back a little bit, but<br/>15 have you ever fallen and landed on like your<br/>16 tailbone or anything like that in the time like<br/>17 maybe the five years prior to this accident?<br/>18 A. No, not at all.<br/>19 Q. So would it surprise you to know that<br/>20 there is an ER record from 2016 that indicates that<br/>21 you fell backwards onto your -- and injured your<br/>22 coccyx which is your tailbone? It's like a small<br/>23 bone on your tailbone. It was in 2016.<br/>24 A. 2016?<br/>25 Q. Yeah.</p>                                                                                                                                                                                   | <p>29</p> <p>1 overdo anything. If I overexert myself at all, I<br/>2 have to decide how much pain I have to deal with<br/>3 because of it.<br/>4 Q. Okay. Where is -- sorry. Didn't mean to<br/>5 interrupt. Where is that pain normally?<br/>6 A. It's located in my lower back.<br/>7 Q. And you said if you overexert yourself.<br/>8 Do you feel the pain all the time, or is it only if<br/>9 you push too far?<br/>10 A. If I push too far.<br/>11 Q. So you're not -- if you don't exert<br/>12 yourself or overexert yourself, you are not<br/>13 experiencing that pain in your lower back?<br/>14 A. There is a dull pain maybe very low, but<br/>15 nothing that stops me from doing anything unless I<br/>16 overexert myself. Like if I have to lift anything<br/>17 at work, I make sure to put my back brace on and the<br/>18 stuff that I learned from my chiropractic too the<br/>19 little exercises the stretches and things to make<br/>20 sure that the stabilizer muscles continue working to<br/>21 keep me from feeling that pain and those things help<br/>22 a lot, but --<br/>23 Q. Okay. Other than the pain in your lower<br/>24 back, do you have any other ongoing medical<br/>25 conditions whether they cause pain or not?</p> |

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| <p>30</p> <p>1 A. No.</p> <p>2 Q. Do you have any other ongoing medical</p> <p>3 conditions that cause pain in another area of your</p> <p>4 body other than your lower back?</p> <p>5 A. No.</p> <p>6 Q. So you've gotten treatment for your lower</p> <p>7 back from both it looks like a chiropractor and a</p> <p>8 pain management doctor.</p> <p>9 Would you -- you are familiar with the</p> <p>10 range they use from zero to 10 to like what they</p> <p>11 call a pain scale?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And what was the -- what is your</p> <p>14 understanding of that scale, meaning like how what</p> <p>15 you are supposed to use to rate your pain on it?</p> <p>16 Does that make sense?</p> <p>17 A. Yeah. I would say like a 1 or a 1 or 2</p> <p>18 would be normal, everyday adult person pain -- aches</p> <p>19 and pains just nothing, you know, but if it's to a</p> <p>20 10, that would be debilitating pain that stops you</p> <p>21 from doing things you need to do.</p> <p>22 Q. Okay. And have -- is that how your</p> <p>23 doctors have explained that scale to you?</p> <p>24 A. That's how I understood the scale to be.</p> <p>25 Q. Okay. Did they ever explain it to you</p>                                          | <p>32</p> <p>1 do anything is kind of what a 10 out of 10 to you</p> <p>2 is?</p> <p>3 A. Yes.</p> <p>4 Q. Now, for the pain in your lower back, I'm</p> <p>5 going to kind of break it apart because you said</p> <p>6 there is a dull pain that you kind of have.</p> <p>7 Is it constant that you have this dull</p> <p>8 pain?</p> <p>9 A. Maybe a 1 I would say.</p> <p>10 Q. Okay. And then the pain if you overexert</p> <p>11 yourself, what is the typical range on that zero to</p> <p>12 10 for that?</p> <p>13 A. The typical range it's only gotten to a</p> <p>14 10 twice, and I've had to have medical procedures to</p> <p>15 correct it, and that's what I do daily is to try to</p> <p>16 focus on to not happen again.</p> <p>17 Q. Okay. Sorry. Go ahead.</p> <p>18 A. I was finished.</p> <p>19 Q. Okay. So you've only ever had a 10 out</p> <p>20 of 10 pain twice, but you had medical procedures</p> <p>21 when that happened. What medical procedures did you</p> <p>22 have?</p> <p>23 A. I believe it's called a rhizotomy.</p> <p>24 Q. Okay. Have you ever heard of it called</p> <p>25 radiofrequency ablation?</p>                                 |
| <p>31</p> <p>1 that like a 10 out of 10 on pain is the most</p> <p>2 excruciating pain you could ever experience and them</p> <p>3 give like a contextual type thing like for women</p> <p>4 they usually give which I've asked women and they</p> <p>5 say it's not accurate, but for women they usually</p> <p>6 say childbirth without meds.</p> <p>7 For men they usually use kidney stones as</p> <p>8 an example like 10 out of 10 that has just doubled</p> <p>9 you over, you can't function type of pain.</p> <p>10 Has any doctor ever described it that</p> <p>11 way?</p> <p>12 A. Just, yeah, a 10 is debilitating pain</p> <p>13 that you can't really function anymore, yes.</p> <p>14 Q. So that would be consistent with like the</p> <p>15 kidney stones or --</p> <p>16 A. Not to interrupt you, I'm sorry. I have</p> <p>17 never had a kidney stone, so I don't know, but I</p> <p>18 just know that it's excruciating pain that stops you</p> <p>19 at a 10, you know.</p> <p>20 Q. I've heard other doctors describe it as</p> <p>21 like having an arm amputated without any pain</p> <p>22 medication. Have you ever had them describe it that</p> <p>23 way as a 10?</p> <p>24 A. No.</p> <p>25 Q. So just debilitating unable to function</p> | <p>33</p> <p>1 A. Yes.</p> <p>2 Q. So that's the same -- we have the same</p> <p>3 understanding of those two terms?</p> <p>4 A. Yes.</p> <p>5 Q. So your pain level has only gotten to 10</p> <p>6 out of 10 twice since this accident; correct?</p> <p>7 A. To where I was debilitated and finally</p> <p>8 had to do something about it to where I couldn't</p> <p>9 move, yes.</p> <p>10 Q. And then once you got to that 10 out of</p> <p>11 10 pain level, you went and got a radiofrequency</p> <p>12 ablation or rhizotomy?</p> <p>13 A. Yes.</p> <p>14 Q. Who performed the radiofrequency ablation</p> <p>15 or rhizotomy, do you remember?</p> <p>16 A. Dr. Muir I believe.</p> <p>17 Q. Other than those two occurrences where it</p> <p>18 went to 10 out of 10, what was the highest level of</p> <p>19 pain that you experienced any other time since the</p> <p>20 accident?</p> <p>21 A. If I overexert myself you mean, it hasn't</p> <p>22 gotten to a 10, but I don't know. I would say up</p> <p>23 there a good 5, 6, pretty painful.</p> <p>24 Q. So 5 to 6 out of 10 is the highest it's</p> <p>25 been if you overexerted yourself since the accident?</p> |



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| <p style="text-align: right;">34</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And that's obviously excluding the</p> <p>3 two times where it went to 10 out of 10?</p> <p>4 A. Yes.</p> <p>5 Q. Have you ever been a smoker?</p> <p>6 A. I do smoke.</p> <p>7 Q. Do you currently smoke?</p> <p>8 A. I do.</p> <p>9 Q. How long have you been a smoker?</p> <p>10 A. Off and on since I was 18.</p> <p>11 Q. Roughly how many cigarettes do you smoke</p> <p>12 a day?</p> <p>13 A. Maybe a half a pack.</p> <p>14 Q. So other than the two radiofrequency</p> <p>15 ablations rhizotomies that you had, have you had any</p> <p>16 other either surgeries or procedures like that since</p> <p>17 this accident -- actually scratch that.</p> <p>18 Prior to this accident, have you had any</p> <p>19 surgeries or procedures for any kind of treatment?</p> <p>20 A. Prior to this accident? No.</p> <p>21 Q. Yeah, prior to July of 2020.</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 A. Not that I remember I haven't, no.</p> <p>25 Q. Okay. Now, as it relates to this</p>                                                                                                                                                                                                                                                                               | <p style="text-align: right;">36</p> <p>1 A. I'm sorry. No, just my lower back. I'm</p> <p>2 sorry.</p> <p>3 Q. You said there was an abrasion to your</p> <p>4 buttocks. I'm assuming that's resolved itself?</p> <p>5 A. Yeah, that took about a good month to</p> <p>6 resolve itself.</p> <p>7 Q. So lower back and the abrasion to your</p> <p>8 buttocks those are the only two areas of your body</p> <p>9 that were injured as a result of this accident?</p> <p>10 A. Well, the palms of my hands were scuffed</p> <p>11 up from the street, and the abrasion on my lower</p> <p>12 back and buttocks.</p> <p>13 Q. Okay. Have you ever injured your lower</p> <p>14 back prior to the accident that we're talking about</p> <p>15 today?</p> <p>16 A. To my knowledge, no.</p> <p>17 Q. Have you ever injured your hands prior to</p> <p>18 the accident that we're discussing today?</p> <p>19 A. Not to my knowledge, no.</p> <p>20 Q. Have you had any X-rays of your lower</p> <p>21 back prior to this motor vehicle accident?</p> <p>22 A. Prior to this accident? I don't believe</p> <p>23 so. Not to my knowledge, no.</p> <p>24 Q. And I'm going to ask this more generally.</p> <p>25 Are you familiar with the term "MRI"?</p> |
| <p style="text-align: right;">35</p> <p>1 accident, okay, the July 9, 2020, what areas of your</p> <p>2 body were injured?</p> <p>3 A. Prior to this accident?</p> <p>4 Q. No, no, no. Now, and it was kind of hard</p> <p>5 because we jump around a little bit. Now, I'm</p> <p>6 talking specifically related to this accident. What</p> <p>7 injuries did you sustain as a result of it?</p> <p>8 A. As a result of this accident, when I was</p> <p>9 thrown in the street the initial -- the abrasion</p> <p>10 that was on my lower back and buttocks is I guess</p> <p>11 and to that and then just whatever it's done to my</p> <p>12 lower back. I'm not a doctor. I don't know the</p> <p>13 actual injuries. I just know when I overexert</p> <p>14 myself and the pain comes on I try to do what the</p> <p>15 chiropractors have taught me, and if it gets out of</p> <p>16 my hands, then I go to the surgeon, and I hope I</p> <p>17 don't have to do it again, but other than that, I</p> <p>18 don't -- you know, I don't really know how to answer</p> <p>19 that.</p> <p>20 Q. And my question was not really a medical</p> <p>21 kind of question.</p> <p>22 A. Yeah.</p> <p>23 Q. It was more like what parts of your body</p> <p>24 were injured and you can just do generally my head,</p> <p>25 my back, my neck, my legs?</p> | <p style="text-align: right;">37</p> <p>1 A. Yeah.</p> <p>2 Q. Are you familiar with the term "CT scan"?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Those and X-rays are typically</p> <p>5 like generally referred to as imaging.</p> <p>6 A. Okay.</p> <p>7 Q. So my next question is just to cover the</p> <p>8 basics because you said you haven't had any X-rays</p> <p>9 of these areas prior to this accident.</p> <p>10 Have you had any other imaging of your</p> <p>11 lower back prior to the July 2020 accident?</p> <p>12 A. To my knowledge, no. Everything that all</p> <p>13 the scans and everything that happened were because</p> <p>14 of the accident that -- to my knowledge I haven't</p> <p>15 had anything prior to this, no.</p> <p>16 Q. Okay. Now, have you ever treated with a</p> <p>17 chiropractor before this accident?</p> <p>18 A. No.</p> <p>19 Q. Have you ever treated with a pain</p> <p>20 management doctor like an anesthesiologist or</p> <p>21 somebody that you went to specifically for pain</p> <p>22 prior to the July 9th, 2020, accident?</p> <p>23 A. Not to my knowledge, no.</p> <p>24 Q. Okay. Have you ever undergone any</p> <p>25 injections to your spine prior to this accident?</p>              |

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| <p>38</p> <p>1 A. No.</p> <p>2 Q. Do you have a primary-care doctor that</p> <p>3 you go to for routine medical treatment?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know what that doctor's name is?</p> <p>6 A. Off the top of my head I don't. I would</p> <p>7 have to go look it up his name.</p> <p>8 Q. Do you know --</p> <p>9 A. I do have a primary-care doctor.</p> <p>10 Q. Okay. Do you know where that office is</p> <p>11 located that you go to?</p> <p>12 A. It's off of Silverado Ranch and Eastern I</p> <p>13 believe. I can have that information for you, but I</p> <p>14 don't have it offhand.</p> <p>15 Q. That's fine. Do you know the name of</p> <p>16 that office?</p> <p>17 A. Like I said, I don't know off the top of</p> <p>18 my head. I do have a primary care though.</p> <p>19 Q. Okay. Did you use insurance for any of</p> <p>20 your treatment for this accident?</p> <p>21 MR. JACKSON: Object to form. Collateral</p> <p>22 source, but go ahead and answer.</p> <p>23 BY MR. MARTINEZ:</p> <p>24 Q. You can answer.</p> <p>25 A. I believe that I used my insurance for</p>                                                                          | <p>40</p> <p>1 A. No.</p> <p>2 Q. How did you find your current attorney?</p> <p>3 A. How did I find my current attorney.</p> <p>4 Q. Yeah. How did you figure out who they</p> <p>5 were and then go to them for legal advice?</p> <p>6 A. Well, I guess -- I guess, I was referred</p> <p>7 to them to correct what I just said because my</p> <p>8 mother is the one who told me about my attorney.</p> <p>9 Q. Okay. And do you know how she -- go</p> <p>10 ahead.</p> <p>11 A. What?</p> <p>12 Q. Do you know why she referred you to this</p> <p>13 particular attorney?</p> <p>14 A. Just asked her if she knew an attorney</p> <p>15 and that was the first thing that came out of her</p> <p>16 mouth was that.</p> <p>17 Q. Okay. Do you know if your mom has ever</p> <p>18 been in like a plaintiff in a personal injury case</p> <p>19 or anything like that?</p> <p>20 A. To my knowledge, no, I don't know though.</p> <p>21 Q. Okay. So you don't know why your mom</p> <p>22 would have referred this particular attorney?</p> <p>23 A. She was just trying to help her son.</p> <p>24 Other than that, no.</p> <p>25 Q. No, that was not -- that was a bad</p> |
| <p>39</p> <p>1 the very first when I initially went to the</p> <p>2 emergency room, and then after that whatever</p> <p>3 paperwork I had to sign I believe it was for my</p> <p>4 lawyer's office. So I don't know exactly how that</p> <p>5 works after that if that makes sense.</p> <p>6 Q. Yeah, no, I understand that. So normally</p> <p>7 that's called a lien. Are you familiar with that</p> <p>8 term?</p> <p>9 A. Yes.</p> <p>10 Q. When did you first retain your attorney</p> <p>11 or actually when did you first speak to any attorney</p> <p>12 about this accident?</p> <p>13 A. Immediately after it happened.</p> <p>14 Q. Okay. So that was on the day of the</p> <p>15 accident?</p> <p>16 A. I believe the next day.</p> <p>17 Q. What made you want to go to an attorney?</p> <p>18 A. I just -- nothing made me go to an</p> <p>19 attorney. I just followed what you are supposed to</p> <p>20 do. You know, it's a normal -- the normal thing to</p> <p>21 do is to acquire a legal counsel and pursue</p> <p>22 whatever.</p> <p>23 Q. Were you instructed to go to any</p> <p>24 particular attorney or did somebody refer you to an</p> <p>25 attorney?</p> | <p>41</p> <p>1 question. I'm not like asking what her motive was</p> <p>2 for providing an example. I'm saying do you know</p> <p>3 why she provided this particular attorney as your --</p> <p>4 as a recommendation? Do you know why?</p> <p>5 A. Other than them being a good attorney,</p> <p>6 no.</p> <p>7 Q. Okay. That's fine. Have you ever filed</p> <p>8 for bankruptcy?</p> <p>9 A. No.</p> <p>10 Q. Have you ever served in the military?</p> <p>11 A. No, sir.</p> <p>12 Q. Have you ever been convicted of a felony?</p> <p>13 A. Yes, I have.</p> <p>14 Q. What felony were you convicted of?</p> <p>15 A. In 2013 I was convicted of possession and</p> <p>16 in 2016 I was convicted of possession and larceny.</p> <p>17 Q. I assume possession is of a controlled</p> <p>18 substance?</p> <p>19 A. Yes, sir.</p> <p>20 Q. In 2013 what were you in possession of?</p> <p>21 A. Controlled substance.</p> <p>22 Q. Which one?</p> <p>23 A. I mean, that was a very hectic part of my</p> <p>24 life, and I don't -- I don't know if it was -- it</p> <p>25 was a drug. I'm not sure if it was meth or heroin</p>                                              |

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| <p style="text-align: right;">42</p> <p>1 or what, but I just know I had controlled</p> <p>2 substances.</p> <p>3 Q. Okay. And I'm not doing this to pass</p> <p>4 judgment.</p> <p>5 A. No.</p> <p>6 Q. Just for fact information. You say it's</p> <p>7 a pretty hectic part of your life, and I noticed</p> <p>8 throughout a lot of your medical records it mentions</p> <p>9 that you had substance abuse problems.</p> <p>10 Is that the reason why that time period</p> <p>11 you are not entirely clear on it?</p> <p>12 A. Yes.</p> <p>13 Q. And in 2016, we'll break it up, but the</p> <p>14 possession part, was that also controlled</p> <p>15 substances?</p> <p>16 A. That possession was of documents I</p> <p>17 believe.</p> <p>18 Q. Stolen documents?</p> <p>19 A. Yes.</p> <p>20 Q. And the only reason why I kind of ask</p> <p>21 that question is because it's related to larceny.</p> <p>22 What were you stealing?</p> <p>23 A. I wasn't stealing anything. I was in</p> <p>24 possession of stolen passports.</p> <p>25 Q. Okay. Now, what was the larceny portion</p>                                                                                                                                                                                                    | <p style="text-align: right;">44</p> <p>1 A. I think it was after.</p> <p>2 Q. Okay. So after 2016, but not in the last</p> <p>3 three years I would guess?</p> <p>4 A. I would believe that not in the last</p> <p>5 three years for sure. So I would guess.</p> <p>6 Q. So this is after 2016, but you are not</p> <p>7 sure exactly?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Now, some of these questions are</p> <p>10 going to sound weird, but I got to ask them. I know</p> <p>11 your highest level of education is a GED, but do you</p> <p>12 have any training or experience in the medical</p> <p>13 field?</p> <p>14 A. No.</p> <p>15 Q. Do you have any training or experience in</p> <p>16 law enforcement?</p> <p>17 A. No.</p> <p>18 Q. Do you have any training or experience in</p> <p>19 biomechanical engineering?</p> <p>20 A. No.</p> <p>21 Q. Do you have any training or experience in</p> <p>22 the legal field?</p> <p>23 A. No.</p> <p>24 Q. And do you have any training or</p> <p>25 experience in the insurance industry?</p>                                                                                             |
| <p style="text-align: right;">43</p> <p>1 of that charge about because usually it deals with</p> <p>2 money or something involving money?</p> <p>3 A. Yeah, like I said it was a very hectic</p> <p>4 time. I've changed myself completely 180, and I've</p> <p>5 tried to forget every portion of that portion of my</p> <p>6 life. It's hard for me to remember every little</p> <p>7 detail, but possession and larceny.</p> <p>8 Q. No, I understand that and like I said I'm</p> <p>9 not passing judgment. This is just a simple</p> <p>10 question that certain things that we're allowed to</p> <p>11 ask you about.</p> <p>12 A. Yeah, 100 percent.</p> <p>13 Q. Were you ever convicted of any</p> <p>14 misdemeanors that involved being dishonest?</p> <p>15 A. I believe I was arrested for a</p> <p>16 misdemeanor of a machete or something. I don't know</p> <p>17 if that's being dishonest. I think it was for</p> <p>18 carrying concealed weapon I thought was my</p> <p>19 misdemeanor arrest.</p> <p>20 Q. Do you know roughly when that was?</p> <p>21 A. Like I said, I've tried to forget it.</p> <p>22 I'm sorry. I don't.</p> <p>23 Q. That's all good. Do you have a general</p> <p>24 time period? Was it before these two felony charges</p> <p>25 or maybe after?</p> | <p style="text-align: right;">45</p> <p>1 A. No.</p> <p>2 Q. All right. So we've been going about</p> <p>3 50 minutes. Normally I like to take a little short</p> <p>4 break every hour or so if it's needed especially if</p> <p>5 you need to get up and stretch or anything like</p> <p>6 that.</p> <p>7 Are you good to keep going or would you</p> <p>8 like to take a good little five-minute stretch</p> <p>9 break?</p> <p>10 A. I'm good to keep going if you guys are.</p> <p>11 MR. JACKSON: I'm fine.</p> <p>12 MR. MARTINEZ: Kelly, do you need a break</p> <p>13 or good to go? Good to go.</p> <p>14 BY MR. MARTINEZ:</p> <p>15 Q. Now, we're going to move into talking</p> <p>16 more about this particular accident, the July 9th</p> <p>17 accident 2020 accident, okay.</p> <p>18 Now, do you remember roughly what time of</p> <p>19 day it was?</p> <p>20 A. Maybe noon-ish I think, midday.</p> <p>21 Q. Okay. Well, it's Vegas so I know this</p> <p>22 question is a stupid question, but what was the</p> <p>23 weather like?</p> <p>24 A. It was sunny, nice day.</p> <p>25 Q. I'm assuming the road conditions were</p> |

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| <p style="text-align: right;">46</p> <p>1 dry?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Was there a lot of traffic?</p> <p>4 A. It didn't -- no, not a lot.</p> <p>5 Q. So you were a pedestrian at the time of</p> <p>6 this accident; right?</p> <p>7 A. Yes.</p> <p>8 Q. Do you remember what kind of vehicle hit</p> <p>9 you?</p> <p>10 A. I believe it was a 15-passenger van.</p> <p>11 Q. Okay. Do you remember what color it was?</p> <p>12 A. I don't remember exactly the color, no.</p> <p>13 Q. Do you know who was the owner of the</p> <p>14 vehicle?</p> <p>15 A. I believe it was Second Opinion Plumbing</p> <p>16 was the advertisement on both sides of the van.</p> <p>17 Q. Okay. And did you speak with the driver</p> <p>18 of the van?</p> <p>19 A. No.</p> <p>20 Q. Now, do you remember the cross streets of</p> <p>21 where the accident happened?</p> <p>22 A. Maryland Parkway and Bevel -- I don't</p> <p>23 know the exact cross street. Maryland Parkway.</p> <p>24 Q. Okay.</p> <p>25 A. It's right in the 8400 block of Maryland</p>                                                                                                                                                                                                                                                                                                                                                                                                                | <p style="text-align: right;">48</p> <p>1 house.</p> <p>2 Q. Okay. I just want to walk through a</p> <p>3 little bit so I understand where you were kind of</p> <p>4 coming from. So the side of the street that you</p> <p>5 were on you were walking through the crosswalk.</p> <p>6 Was the traffic -- was there traffic like</p> <p>7 immediately to your left that was stopped at a red</p> <p>8 light?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So you were walking across the</p> <p>11 stopped traffic and you saw that you were getting</p> <p>12 close to the median that was halfway across the</p> <p>13 crosswalk?</p> <p>14 A. Yes.</p> <p>15 Q. That's the time period where the van made</p> <p>16 a -- what looks to be like a left-hand turn.</p> <p>17 Essentially they were going the same direction you</p> <p>18 were but turning left in front of you?</p> <p>19 A. They were going the opposite way. I was</p> <p>20 crossing from west to east and they were coming from</p> <p>21 east to west making the southbound left-hand turn,</p> <p>22 if that makes sense.</p> <p>23 Q. And have to draw myself a diagram. Okay.</p> <p>24 So you were heading from west to east?</p> <p>25 A. Yes.</p>                                      |
| <p style="text-align: right;">47</p> <p>1 Parkway.</p> <p>2 Q. Okay. Now, what I'm going to do I'm just</p> <p>3 going to ask you to kind of like walk me through,</p> <p>4 you know, a few minutes before the accident and then</p> <p>5 all the time after the accident and just kind of do</p> <p>6 it in your own words. Like describe what you were</p> <p>7 doing and what happened. Okay?</p> <p>8 A. Okay. Prior to the accident, I was</p> <p>9 standing at the crosswalk intersection waiting for</p> <p>10 the light to change indicating for me to be able to</p> <p>11 go, and as soon as the light changed, I started</p> <p>12 walking across the street.</p> <p>13 I made it about halfway. I remember</p> <p>14 seeing the median and halfway through the -- halfway</p> <p>15 across the street, I got hit by the van. I believe</p> <p>16 he was running a red light. I don't know how he</p> <p>17 made that turn if my light indicated for me to be</p> <p>18 walking, but he hit me near the median, and it threw</p> <p>19 me backwards, and I landed almost right next to the</p> <p>20 gutter. So probably two lanes of street I was</p> <p>21 thrown back, and after I got my senses back, I</p> <p>22 guess, the next thing I remember is he had parked</p> <p>23 the van on the side of the street and the car that</p> <p>24 was witness to this helped me up to the side of the</p> <p>25 street, and then after that I made my way back to my</p> | <p style="text-align: right;">49</p> <p>1 Q. And he was heading east to west -- okay.</p> <p>2 So you were on the south side of the street then?</p> <p>3 A. The south side -- I was on the west side,</p> <p>4 I guess, the southwest corner, yeah.</p> <p>5 Q. Okay. And you were going from west to</p> <p>6 east on the south side of the street which we're</p> <p>7 not -- southwest is obviously where you were and you</p> <p>8 were heading from southwest to southeast on that</p> <p>9 corner?</p> <p>10 A. Across Maryland, yes.</p> <p>11 Q. Okay. And the van was going east to west</p> <p>12 on basically heading opposite direction of you at</p> <p>13 the time before he started the turn is the direction</p> <p>14 he was facing?</p> <p>15 A. Yeah, he would have just passed me if he</p> <p>16 hadn't of turned south onto Maryland, if that makes</p> <p>17 sense.</p> <p>18 Q. No, I understand that. Yeah, he would</p> <p>19 have gone past you in the opposite direction if he</p> <p>20 was going straight?</p> <p>21 A. Yeah, yes.</p> <p>22 Q. Now, you said there were two lanes of</p> <p>23 traffic on each side of the street?</p> <p>24 A. I believe there is, yeah.</p> <p>25 Q. Okay. So on the street you were</p> |



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| <p>50</p> <p>1 crossing, there is two lanes of traffic and a median<br/>2 then two lanes of traffic?<br/>3 A. I believe so, yes.<br/>4 Q. And approximately where were you in<br/>5 relation to those two lanes of traffic on your side<br/>6 like where you were crossing before you get to the<br/>7 median? Where were you when you got hit?<br/>8 A. Just before the median in the second lane<br/>9 of traffic, I guess, if one would be -- one and two<br/>10 going from west to east I would have been in the<br/>11 second lane just before the median, but I wasn't in<br/>12 the lane. I was in my crosswalk.<br/>13 Q. Okay. So you're in the crosswalk. About<br/>14 how far do you think -- well, hey, let's go back a<br/>15 second. So you described one and two lane as one<br/>16 being the one closest to the curb?<br/>17 A. Yes.<br/>18 Q. And two being closest to the median?<br/>19 A. Yes.<br/>20 Q. Okay. And obviously the No. 1 lane is<br/>21 farther west and the No. 2 lane is farther east?<br/>22 A. Yes.<br/>23 Q. Okay. And while you are crossing from<br/>24 west to east, you go past the No. 1 lane and you are<br/>25 past the dots that separate lane 1 and 2 before you</p> | <p>52</p> <p>1 the street.<br/>2 Q. Okay. So you don't think you hit the<br/>3 curb or anything like that?<br/>4 A. I don't believe so, no.<br/>5 Q. So you said it hit your hands and you are<br/>6 certain of that; right?<br/>7 A. I just know I turned when I noticed it<br/>8 was going to hit me and like that split second I<br/>9 turned my hands were obviously out in front of me,<br/>10 but I know I had scrapes and bruises on the palms of<br/>11 my hands probably also from trying to protect myself<br/>12 when I hit the street throwing my hands back maybe.<br/>13 Q. To kind of catch your fall?<br/>14 A. Tried to maybe, yeah.<br/>15 Q. Okay. And you said it might have hit<br/>16 your thigh or your hip area. Are you certain of<br/>17 that or you're not sure that the van actually made<br/>18 contact with your body?<br/>19 A. I think if it would have just hit my<br/>20 hands it would have probably spun me out of the way<br/>21 rather than threw me that far back. With that much<br/>22 transfer of energy to my body to throw me, it had to<br/>23 have hit me pretty well on, but I didn't have like a<br/>24 broken leg or my knee wasn't dislocated. I didn't<br/>25 have major injuries to my leg is what I'm trying to</p> |
| <p>51</p> <p>1 get hit?<br/>2 A. Yes.<br/>3 Q. About how far into the second lane were<br/>4 you when you were hit?<br/>5 A. Probably maybe midway, I guess.<br/>6 Q. Now, what part of your body made contact<br/>7 with the van?<br/>8 A. I noticed it was going to hit me and not<br/>9 pass me. I turned and a split second it impacted my<br/>10 hands and probably the side of my thigh maybe and<br/>11 threw me backwards, and then the main impact was me<br/>12 hitting the ground in like a seating position, I<br/>13 guess, on my butt, my back my lower back, butt.<br/>14 Q. And so where did you end up landing?<br/>15 A. In the No. 1 lane almost all the way to<br/>16 the gutter.<br/>17 Q. Okay. So based on that description as a<br/>18 result of the accident, you flew back a little bit<br/>19 more than a lane's width?<br/>20 A. I would say so.<br/>21 Q. Now, when you landed on the ground, you<br/>22 were near the gutter.<br/>23 Did you land on the curb or did you land<br/>24 on the flat ground?<br/>25 A. I believe I landed on the flat ground of</p>                                                                                                                        | <p>53</p> <p>1 say, but it had to have hit me like that. Do you<br/>2 see what I'm saying.<br/>3 Q. Yeah, I understand what you are saying.<br/>4 A. I'm not trying to guess, but --<br/>5 Q. You are making an assumption?<br/>6 A. Yeah. It happened so fast that all I<br/>7 remember is just turning and seeing it. My hands<br/>8 were out in front of me and the next thing I know<br/>9 I'm in the street getting my senses brought back to<br/>10 me and people helping me up.<br/>11 Q. Now, which lane did the van end up<br/>12 turning into 1 or 2?<br/>13 A. Against the gutter. So in the one behind<br/>14 me.<br/>15 Q. Okay.<br/>16 A. So like if you were pulled over by a<br/>17 police officer, how you would pull against the side<br/>18 of the street.<br/>19 Q. Well, the way we described it was the No.<br/>20 1 lane that we're referring to is the one on the<br/>21 gutter, and the No. 2 lane is the one that goes up<br/>22 next to the median.<br/>23 A. Yeah, yep.<br/>24 Q. 1 and 2 are sitting like this essentially<br/>25 and you're walking this way?</p>                                                                                                                                                                          |

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| <p>54</p> <p>1 A. Yes, yep.</p> <p>2 Q. Across you enter 1 and then you enter 2</p> <p>3 and then you hit the median?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So the van turned into lane 1, but</p> <p>6 you said you were halfway through lane No. 2; right?</p> <p>7 A. I was struck while I was walking in lane</p> <p>8 2, and I was thrown all the way back into the far</p> <p>9 edge of lane 1 next to the gutter.</p> <p>10 Q. Okay. So you were thrown backwards --</p> <p>11 basically you were thrown back to where you were</p> <p>12 walking from?</p> <p>13 A. Backwards and up the street a little bit,</p> <p>14 but yes. Backwards and south, I guess.</p> <p>15 Q. Okay. So you didn't -- did you land in</p> <p>16 the crosswalk again?</p> <p>17 A. No. I landed up in the lane of the</p> <p>18 street probably a good maybe 5, 10 feet away from</p> <p>19 the crosswalk at this point.</p> <p>20 Q. And that was south of the crosswalk?</p> <p>21 A. Yeah.</p> <p>22 Q. And that would have been the same</p> <p>23 direction that when the van completed its turn, it</p> <p>24 was now heading south it was in the direction that</p> <p>25 the van was driving?</p>  | <p>56</p> <p>1 before, but are you aware of any witnesses to the</p> <p>2 accident?</p> <p>3 A. Just the man and his son that were parked</p> <p>4 in lane 3, I guess, it would be to make that turn.</p> <p>5 They helped me up, and then helped me to the side --</p> <p>6 up just to get onto the sidewalk and then they were</p> <p>7 the ones that were helping me remember and making</p> <p>8 sure that I understood because at this point the guy</p> <p>9 jumped back in his van and drove off, and they</p> <p>10 wanted me to understand that it was the Second</p> <p>11 Opinion Plumbing van. The name of it was Second</p> <p>12 Opinion Plumbing, and I'm not sure where the other</p> <p>13 gentleman came from Hispanic gentleman, but he was</p> <p>14 on his phone and I believe he said he was talking to</p> <p>15 the police, and then he got in his car and chased</p> <p>16 after the person when they drove off, but other than</p> <p>17 those three people, those were the witnesses that I</p> <p>18 know about.</p> <p>19 Q. Okay. Do you know the names of any of</p> <p>20 those people?</p> <p>21 A. No, I don't.</p> <p>22 Q. Okay. Okay. So let me see if I</p> <p>23 understand this correct and if I don't, please</p> <p>24 correct me, okay.</p> <p>25 So what I'm kind of -- trying to figure</p>                                                                                 |
| <p>55</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So you said the van was turning</p> <p>3 into lane No. 1. So it would have been behind you?</p> <p>4 A. I don't know where it was turning. I</p> <p>5 just know I was walking probably through lane 2 by</p> <p>6 this point, and that's where I got struck.</p> <p>7 Q. Okay. And it pushed you south on that</p> <p>8 street out of the crosswalk, but into lane 1 again</p> <p>9 towards the gutter, but not in the gutter?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Just making sure I understand.</p> <p>12 Now, did you -- I think the answer to this is</p> <p>13 probably yes, but did you see the van before it made</p> <p>14 contact with you?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And about how long before the</p> <p>17 contact did you see the van?</p> <p>18 A. Just seeing it come and going through the</p> <p>19 intersection I assumed it was going to just go</p> <p>20 straight. So just watching traffic, yeah, I saw the</p> <p>21 van.</p> <p>22 Q. So it was basically a second or so</p> <p>23 roughly before it made contact with you?</p> <p>24 A. If that, yeah.</p> <p>25 Q. Okay. Now, I think you mentioned this</p> | <p>57</p> <p>1 out is how your body moved as a result of the</p> <p>2 accident, okay. So from what you told me, you were</p> <p>3 walking across the lanes. Then you see the van</p> <p>4 coming and you stick your hands out like you kind of</p> <p>5 turn to your left stick your hands out and your</p> <p>6 hands make contact with the van, you possibly made</p> <p>7 contact with your thigh. Now, would that be your</p> <p>8 right thigh or your left thigh?</p> <p>9 A. I wouldn't say possibly. For me to be</p> <p>10 thrown that far back, I definitely got hit by my</p> <p>11 left thigh I would say, yes.</p> <p>12 Q. Left thigh, okay. Now, okay. So left</p> <p>13 thigh and your hands?</p> <p>14 A. Just because of the way I turned like</p> <p>15 that sudden turn my left side and my hands got hit.</p> <p>16 Q. And what part of the van did you hit?</p> <p>17 A. I believe it was the front of the van.</p> <p>18 Q. Now, was it like the center of the front</p> <p>19 of the van or was it more to one side or the other?</p> <p>20 A. It happened so quick, you know, I just</p> <p>21 turned and the van is right there. It was, you</p> <p>22 know, just based on I think if he's turning into</p> <p>23 that lane and I'm in the middle of it, you know,</p> <p>24 logic dictates it would be pretty much the center of</p> <p>25 the van -- the center of the front of the van I</p> |

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| <p style="text-align: right;">58</p> <p>1 would assume.</p> <p>2 Q. But don't have any specific memory of</p> <p>3 exactly where on the van you were hit?</p> <p>4 A. It happened so quick my honest opinion</p> <p>5 would have to be just the front of the van the</p> <p>6 grill.</p> <p>7 Q. But you're not certain -- it's not a</p> <p>8 trick. You're not certain if it's farther to the</p> <p>9 passenger side or the driver's side. You just know</p> <p>10 it was the front of the van, but can't narrow it</p> <p>11 down anymore than that?</p> <p>12 A. It happened so quick. I mean, I would be</p> <p>13 guessing at that point. It was the front of the</p> <p>14 van, you know.</p> <p>15 Q. Okay.</p> <p>16 A. Sorry not to get any closer than that for</p> <p>17 you.</p> <p>18 Q. No, that's okay. So the answer to that</p> <p>19 then is, yes, you can't narrow it down any further</p> <p>20 than that; it's just the front?</p> <p>21 A. The front of the van hit me.</p> <p>22 Q. Now, immediately after the impact after</p> <p>23 you landed, what did you do next?</p> <p>24 A. After I came like I got my wits back to</p> <p>25 me, I tried to get up, and they wouldn't really --</p>                                                                                                                                                      | <p style="text-align: right;">60</p> <p>1 Q. Okay. So you were dazed, but your memory</p> <p>2 is like in the moments after that accident. So you</p> <p>3 don't think you were unconscious?</p> <p>4 A. I don't think I was unconscious. I was</p> <p>5 dazed. I just got hit, but I don't believe I was</p> <p>6 unconscious, no.</p> <p>7 Q. And the only parts of your body that made</p> <p>8 contact with the van were your hands and your left</p> <p>9 thigh?</p> <p>10 A. It happened so quick, but from what I</p> <p>11 believe, yes, I tried to brace myself against the</p> <p>12 impact and took the front of the van in the thigh</p> <p>13 and my hands.</p> <p>14 Q. Now, you said that the man and the son</p> <p>15 helped you get up onto the curb and then you laid</p> <p>16 down on your back.</p> <p>17 Did you try and get up or move around at</p> <p>18 any point until emergency services or any police got</p> <p>19 there?</p> <p>20 A. Emergency services didn't show up until I</p> <p>21 called the police myself and was taken to the</p> <p>22 hospital after the fact.</p> <p>23 Q. So you weren't taken by ambulance from</p> <p>24 the scene to the hospital?</p> <p>25 A. No. The father and son left, and I</p>                                            |
| <p style="text-align: right;">59</p> <p>1 the two the father and son were trying to convince</p> <p>2 me not to get up. They wouldn't really let me sit</p> <p>3 all the way up, and then they kind of both picked me</p> <p>4 up and moved me to the actual curb the sidewalk, and</p> <p>5 I laid down there on my back directly. That was</p> <p>6 pretty much instantly after the next thing that</p> <p>7 happened.</p> <p>8 Q. And you were talking to the man and the</p> <p>9 son and then the Hispanic gentleman who was on the</p> <p>10 phone who you believe was talking to the police or</p> <p>11 911?</p> <p>12 A. From what he had said, yes. He said he</p> <p>13 was calling -- he's talking to the police.</p> <p>14 Q. Okay. Did you lose consciousness as a</p> <p>15 result of the impact?</p> <p>16 A. I don't know if I lost consciousness, but</p> <p>17 I know that I was dazed, but I don't know if I was</p> <p>18 actually asleep. Do you know what I mean.</p> <p>19 Q. Yes.</p> <p>20 A. The next thing I remember, remember was</p> <p>21 he was already -- the van that hit me was already</p> <p>22 parked and standing there like looking back at the</p> <p>23 situation and then they helped -- they helped me up</p> <p>24 and then I laid back down, and that's when he kind</p> <p>25 of jogged back to the van and drove away.</p> | <p style="text-align: right;">61</p> <p>1 continued on down the street to my mother's house is</p> <p>2 maybe a block away from where this happened, and I</p> <p>3 was living there at the time, and that's where my</p> <p>4 cellphone was so I knew that was the closest phone</p> <p>5 that I had.</p> <p>6 So I hobbled -- I don't want to say</p> <p>7 hobbled, but I made my way a block down the street</p> <p>8 to my phone and that's when I called the authorities</p> <p>9 myself.</p> <p>10 Q. Now, did you -- did the police come to</p> <p>11 your house?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Now, when the police came to your house,</p> <p>14 did they ask you if you needed medical care?</p> <p>15 A. Yes.</p> <p>16 Q. Now, did you tell them that you were okay</p> <p>17 or that you needed medical treatment?</p> <p>18 A. Well, I refused the ambulance because I</p> <p>19 knew I couldn't afford it myself, and my mother was</p> <p>20 right there and she just offered to drive me</p> <p>21 herself. So the only reason I refused medical care</p> <p>22 is because I didn't want to get billed for the --</p> <p>23 really didn't know how it worked.</p> <p>24 I didn't want to get billed for the</p> <p>25 ambulance and everything. So I just had her drive</p> |

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| <p style="text-align: right;">62</p> <p>1 me. That might have been a bad decision on my part,<br/> 2 but that's what happened.<br/> 3 Q. So you refused the ambulance, but your<br/> 4 mom drove you to the hospital. Do you know which<br/> 5 hospital you went to?<br/> 6 A. I believe Henderson hospital. Does that<br/> 7 sound right?<br/> 8 Q. It does.<br/> 9 A. Okay.<br/> 10 Q. Yeah, the ER records indicate that you<br/> 11 went to Henderson hospital.<br/> 12 A. Okay.<br/> 13 Q. Now, backing up just a quick second. At<br/> 14 the scene of the accident did anybody offer you any<br/> 15 medical help or treatment?<br/> 16 A. I mean, other than to just make sure that<br/> 17 I wasn't bleeding profusely or anything or going to<br/> 18 die. The father and the son, I wish I would have<br/> 19 gotten their name and I didn't, but father and son<br/> 20 they made sure I wasn't dying if that's medical<br/> 21 treatment, but other than that, no.<br/> 22 Q. Okay. So the father and the son kind of<br/> 23 went up to you and said like, hey, are you okay and<br/> 24 you responded?<br/> 25 A. Well, they -- I don't know if they</p>                                                                                                       | <p style="text-align: right;">64</p> <p>1 going to walk home situation going on in my head,<br/> 2 but yeah, I wouldn't say any longer than that, no.<br/> 3 Q. Okay. Where were you coming from when<br/> 4 you were walking back to your house? What<br/> 5 destination were you at? Like were you at the gas<br/> 6 station? Did you like go to get a soda or what were<br/> 7 you doing?<br/> 8 A. There is a park right at the 8400 block a<br/> 9 park across the street and prior to this accident, I<br/> 10 liked to work out a lot and I was at the -- I was<br/> 11 doing pull-ups and stuff like that at the monkey<br/> 12 bars and the gym thing they have over there and I<br/> 13 was on my way back to my home my mother's house<br/> 14 afterwards.<br/> 15 Q. Okay. Now, we're going to go back to<br/> 16 kind of the pain levels. At the scene do you<br/> 17 remember what your pain levels were and where that<br/> 18 pain was located?<br/> 19 A. I mean, I was -- I think I was in shock.<br/> 20 It's kind of hard for me to say what my pain was<br/> 21 right then. I just got hit by a car so I was messed<br/> 22 up, but I was still able to move. I don't know if I<br/> 23 was under my own adrenaline in shock to get myself<br/> 24 to the house and in a car to the hospital.<br/> 25 Q. Okay. Do you remember the first time</p> |
| <p style="text-align: right;">63</p> <p>1 necessarily asked me if I was okay. They just made<br/> 2 sure I was okay and made sure I wasn't moving<br/> 3 around. I was trying to get up and they were trying<br/> 4 to make sure I didn't and then they helped me -- I<br/> 5 think they were trying to stabilize my neck. They<br/> 6 helped me lay down and get to the curb. I couldn't<br/> 7 construe that as medical attention, but other than<br/> 8 that I don't know how to answer that question.<br/> 9 Q. Fair enough. And I understand your<br/> 10 answer.<br/> 11 A. Yeah.<br/> 12 Q. In the time period from when from the<br/> 13 accident happened until you got up and started to<br/> 14 walk back to your mom's house, do you know roughly<br/> 15 how much time had elapsed?<br/> 16 A. I would be guessing. I honestly don't<br/> 17 know.<br/> 18 Q. Was it 30 minutes?<br/> 19 A. I honestly couldn't -- I mean, I would<br/> 20 say less than 30 minutes probably.<br/> 21 Q. Is it safe to say that you probably can't<br/> 22 narrow down the timeline any smaller than that?<br/> 23 A. I would be guessing, you know. Like I<br/> 24 said, I was dazed. You know what I mean. It took<br/> 25 me a good couple minutes to get up that you are</p> | <p style="text-align: right;">65</p> <p>1 that you felt pain?<br/> 2 A. The first time I felt pain at the<br/> 3 hospital. I mean, I had -- I had pain right after<br/> 4 it happened, but I don't know if I could level it<br/> 5 out, you know, if you were asking on a 1 to 10.<br/> 6 Q. Okay. So you remember that you felt pain<br/> 7 right after the accident, but you can't remember the<br/> 8 level of that pain?<br/> 9 A. I guess, yeah, that's how you would say<br/> 10 that. I can't remember the level of the pain, but I<br/> 11 just got hit by a van. So I mean, you would assume<br/> 12 the pain would be, I guess.<br/> 13 Q. Well, I don't want to make an assumption.<br/> 14 A. Neither do I. I don't know.<br/> 15 Q. Okay. So then you do remember feeling<br/> 16 pain. You just don't know the intensity of that<br/> 17 pain?<br/> 18 A. Exactly sir, yes.<br/> 19 Q. Was it immediately like kind of when you<br/> 20 came out of your dazed status, I guess, that you<br/> 21 realized you were in pain?<br/> 22 A. Yes.<br/> 23 Q. Do you remember if you told anybody at<br/> 24 the scene that you were injured or that you were in<br/> 25 pain?</p>                                                                                                                                                                              |



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| <p>66</p> <p>1 A. I don't remember having much of a</p> <p>2 conversation other than no, not that I was in pain.</p> <p>3 Q. Do you remember if you experienced any</p> <p>4 bruising, redness or any marks on your body at like</p> <p>5 any point after the accident?</p> <p>6 A. Yes.</p> <p>7 Q. What was that?</p> <p>8 A. My lower back and my buttocks that had</p> <p>9 basketball-sized abrasion on it.</p> <p>10 Q. A break or a bruise?</p> <p>11 A. I would assume both. It was just a very</p> <p>12 large red gnarly looking mess.</p> <p>13 Q. And you said it was like the size of a</p> <p>14 basketball?</p> <p>15 A. Road rash I guess you call it, yeah.</p> <p>16 Q. Okay. So and the reason why I ask that</p> <p>17 question is a bruise is normally purple or yellow in</p> <p>18 color; right?</p> <p>19 A. Yeah.</p> <p>20 Q. And an abrasion is like a scrape, scratch</p> <p>21 kind of thing. It's usually red to begin with.</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. So it was a red mark which you</p> <p>24 believe is an abrasion about a basketball sized and</p> <p>25 you described it as road rash?</p>                                                                                                         | <p>68</p> <p>1 localized in my lower back I didn't feel until after</p> <p>2 I was at the hospital.</p> <p>3 Q. Okay.</p> <p>4 A. As like say the body aches kind of wore</p> <p>5 off and now I noticed, okay, this isn't wearing off.</p> <p>6 My lower back something is wrong. I guess, that's</p> <p>7 when I noticed if that helps answer the question.</p> <p>8 Q. No, I think I understand that. And that</p> <p>9 makes sense.</p> <p>10 A. Okay.</p> <p>11 Q. So after the initial hit, you kind of had</p> <p>12 like a full body ache, I guess, is the way to</p> <p>13 describe it?</p> <p>14 A. I guess.</p> <p>15 Q. Okay. But you didn't feel like localized</p> <p>16 more intense pain in your lower back until you were</p> <p>17 already at the hospital?</p> <p>18 A. Well, okay. Maybe I said that wrong. I</p> <p>19 was feeling all of the pain my lower back and my</p> <p>20 body felt like crap, but as the normal aches and</p> <p>21 pains of just the impact of it kind of wore off the</p> <p>22 bruise, the lesser stuff I guess you would say, the</p> <p>23 first time that I knew that there was pain was at</p> <p>24 the hospital that there is something wrong.</p> <p>25 Q. Okay. And when you first felt that pain</p> |
| <p>67</p> <p>1 A. Yeah, the officer took pictures of it. I</p> <p>2 know that there is pictures of the injury in the</p> <p>3 police report if you needed them.</p> <p>4 Q. Okay. So when was the first time that</p> <p>5 you began to experience any soreness, stiffness or</p> <p>6 pain that you attribute to the motor vehicle</p> <p>7 accident?</p> <p>8 A. Immediately thereafter after the Demerol</p> <p>9 wore off at the hospital I would say and this isn't</p> <p>10 a good situation, you know. Dawned on me pretty</p> <p>11 good.</p> <p>12 Q. You said after the Demerol wore off at</p> <p>13 the hospital?</p> <p>14 A. Well, they initially gave me pain</p> <p>15 killers, you know. That's when you know you start</p> <p>16 moving around and feel your body is not normal</p> <p>17 anymore. I guess, that's when the realization of</p> <p>18 what really happened was settling in, if that makes</p> <p>19 sense.</p> <p>20 Q. Yeah. But maybe my question needs to be</p> <p>21 a little more narrow.</p> <p>22 The first time you felt pain was</p> <p>23 immediately after the accident; correct?</p> <p>24 A. Just from the initial getting hit and</p> <p>25 thrown into the street pain, but the pain that is</p> | <p>69</p> <p>1 and I think you said it was in your lower back;</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. When you first felt that pain it was more</p> <p>5 localized in that area and kind of not like you said</p> <p>6 not the lesser pain. It was more of a greater pain.</p> <p>7 Do you know roughly or do you remember</p> <p>8 what your pain level was in that zero to 10 when you</p> <p>9 first started feeling that pain at the hospital in</p> <p>10 your lower back?</p> <p>11 A. Probably a 7 or an 8.</p> <p>12 Q. Okay. Now, I got a couple general</p> <p>13 questions about medical care before I ask you some</p> <p>14 questions about your particular providers.</p> <p>15 Now, generally would you agree with me</p> <p>16 that it's important to tell your doctors all of the</p> <p>17 things that you are experiencing so they can give</p> <p>18 you the best medical care possible?</p> <p>19 A. Absolutely.</p> <p>20 Q. And would you agree with me that you</p> <p>21 should be honest with your doctors about where and</p> <p>22 how intense your pain is?</p> <p>23 A. Yes.</p> <p>24 Q. And would you agree with me you should be</p> <p>25 honest with your doctors about any other medical</p>                         |

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| <p style="text-align: right;">70</p> <p>1 conditions you might have so that they have the most<br/> 2 information possible to give you the best possible<br/> 3 treatment?<br/> 4 A. Yes.<br/> 5 Q. And specifically you should also tell<br/> 6 your doctors about any other injuries you might have<br/> 7 sustained to the same areas maybe and this doesn't<br/> 8 necessarily apply to only the immediate providers<br/> 9 you see. It's any time you go to a treatment<br/> 10 provider, you should tell them about any other<br/> 11 injuries you might have sustained or other treatment<br/> 12 that you might have gotten before you went to this<br/> 13 provider?<br/> 14 A. Yeah.<br/> 15 Q. Okay. How many times in your life have<br/> 16 you been involved in a motor vehicle accident where<br/> 17 you see multiple doctors?<br/> 18 A. Just these two times that I recall.<br/> 19 Q. So that would be the July 9, 2020, and<br/> 20 the October 2020?<br/> 21 A. Yes, sir.<br/> 22 Q. Now, when you got home and you walked<br/> 23 back to your mom's house, you said you called the<br/> 24 police; right?<br/> 25 A. Yes.</p>                                                                  | <p style="text-align: right;">72</p> <p>1 take you to drive to Henderson hospital from your<br/> 2 mom's house?<br/> 3 A. Maybe the same, 10, 15 minutes. It's not<br/> 4 far.<br/> 5 Q. So it looks like approximately based on<br/> 6 what you said about an hour after the accident is<br/> 7 when you arrived at Henderson hospital?<br/> 8 A. I believe so. I'm sure they probably --<br/> 9 the records probably say what exact time I got there<br/> 10 I'm assuming, but I would think it would be a good<br/> 11 hour or two.<br/> 12 Q. Okay. Yeah, the records say what they<br/> 13 say, right?<br/> 14 A. Yeah, I don't remember. I don't want to<br/> 15 guess. I'm not trying to be rude at all. I just<br/> 16 was suggesting maybe that would be where it is. I<br/> 17 don't know.<br/> 18 Q. No, that's perfectly fine. Like I said I<br/> 19 don't want you to guess.<br/> 20 A. Yeah.<br/> 21 Q. I don't want you to guess.<br/> 22 A. Okay.<br/> 23 Q. Like I said, the records will say what<br/> 24 the records say and, you know, that we will go from<br/> 25 there.</p> |
| <p style="text-align: right;">71</p> <p>1 Q. What did you do before the police got<br/> 2 there?<br/> 3 A. I laid down at my mom's house and waited<br/> 4 for them to get there.<br/> 5 Q. About how long did it take the police to<br/> 6 get there after you called them?<br/> 7 A. I honest -- I don't know honestly. Maybe<br/> 8 15, 20 minutes truthfully. I don't know. Pretty<br/> 9 quick probably.<br/> 10 Q. So roughly 15 to 20 minutes the police<br/> 11 arrive. You talk to the police and we already went<br/> 12 through that part right where they asked you if you<br/> 13 wanted medical care, you refused it and your mom<br/> 14 ended up driving you to the hospital.<br/> 15 Do you know roughly how long the cops<br/> 16 were there before you left to go to the hospital?<br/> 17 A. Took my statement and everything.<br/> 18 Probably 20 minutes.<br/> 19 Q. Okay. Now, from the accident scene to<br/> 20 your mom's house, roughly how long did it take you<br/> 21 to walk home from there?<br/> 22 A. Oh, it's only one block. So minutes.<br/> 23 Q. Would that be 10 minutes?<br/> 24 A. 10 minutes call it, yeah, maybe.<br/> 25 Q. So basically from the -- how long did it</p> | <p style="text-align: right;">73</p> <p>1 A. Yeah.<br/> 2 Q. All right. Other than going to Henderson<br/> 3 hospital, do you remember the first doctor or<br/> 4 treatment provider that you went to after Henderson<br/> 5 hospital do you know what the first one was?<br/> 6 A. The chiropractor. His name is Dr. Janda.<br/> 7 Q. Do you know what company or practice he<br/> 8 works for?<br/> 9 A. Spine -- I don't know exact name. Spinal<br/> 10 rehabilitation or something like that. I don't<br/> 11 remember exactly the name. I'm sorry.<br/> 12 Q. No, that's perfectly fine. You do<br/> 13 remember it's Dr. Janda, J-A-N-D-A?<br/> 14 A. I believe so, yes.<br/> 15 Q. Does Advanced Spine and Rehabilitation<br/> 16 ring a bell?<br/> 17 A. Yep, yes.<br/> 18 Q. So Dr. Janda was at Advanced Spine and<br/> 19 Rehab?<br/> 20 A. Yes.<br/> 21 Q. How did you learn about Advanced Spine<br/> 22 and Rehab?<br/> 23 A. My mother.<br/> 24 Q. Your mom recommended Advanced Spine and<br/> 25 Rehab?</p>                                                                      |

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| <p style="text-align: right;">74</p> <p>1 A. She didn't recommend them, but she<br/> 2 looked -- she looked them up for me and found one I<br/> 3 should -- I guess, that's the one we chose.<br/> 4 Q. Okay. I mean, other than your mom, did<br/> 5 anybody tell you to go to that particular provider?<br/> 6 A. No.<br/> 7 Q. Do you remember the cross streets or the<br/> 8 address of the particular building you went to when<br/> 9 you got treatment at Advanced Spine?<br/> 10 A. The exact address, no. It's right behind<br/> 11 the Galleria mall. It's in that same parking lot as<br/> 12 the Galleria mall, so I don't know what that cross<br/> 13 street would actually be.<br/> 14 Q. The Galleria is on Sunset; right?<br/> 15 A. Yeah, yep.<br/> 16 Q. So it's in the same parking lot shopping<br/> 17 center that the Galleria mall is in?<br/> 18 A. It is, yes.<br/> 19 Q. What kind of treatment did you receive at<br/> 20 Advanced Chiro?<br/> 21 A. Sometimes it would be as simple as a<br/> 22 massage, and other times it would be as intense as<br/> 23 electric shock to kind of stimulate the muscles, and<br/> 24 they also did a lot to teach me how to stretch my<br/> 25 lower back and also how to do specific workouts with</p> | <p style="text-align: right;">76</p> <p>1 Q. Do you remember the name of the physical<br/> 2 therapist?<br/> 3 A. I don't. There was more than one. It's<br/> 4 like a group of girls. There is three of them I<br/> 5 think. I don't remember their names.<br/> 6 Q. Now, how many times do you think you went<br/> 7 to Advanced Chiro -- or excuse me, Advanced Spine<br/> 8 and Rehabilitation?<br/> 9 A. Just as needed. You know, he set me<br/> 10 appointments pretty regularly at first. I honestly<br/> 11 don't remember how many times.<br/> 12 Q. Did you ever cancel or cancel any of your<br/> 13 appointments without going?<br/> 14 A. I believe I missed a couple and it was<br/> 15 to -- just due to I was on the bus that time and<br/> 16 just not being able to get there. It wasn't not<br/> 17 wanting to go, but yes, I believe I had to cancel<br/> 18 once or twice.<br/> 19 Q. You said you rode the bus. Do you not<br/> 20 have a driver's license?<br/> 21 A. Oh, I do now.<br/> 22 Q. Did you have a driver's license at the<br/> 23 time?<br/> 24 A. Yes. I didn't have a vehicle at the<br/> 25 time.</p> |
| <p style="text-align: right;">75</p> <p>1 my legs to strengthen specific muscles in my back.<br/> 2 Q. Okay. Did they provide and I think you<br/> 3 said up to. So I guess, I'll do it this way.<br/> 4 Sometimes all they gave you was massage?<br/> 5 A. Sometimes. Like if the -- yeah,<br/> 6 sometimes I would just get a massage.<br/> 7 Q. Okay. And then the electric shock<br/> 8 sometimes they refer to that as a TENS unit. Have<br/> 9 you ever heard that term before?<br/> 10 A. I honestly don't remember what they<br/> 11 called it, but that sounds right.<br/> 12 Q. When you talk about the electric shock,<br/> 13 is it they put like receivers on you and it kind of<br/> 14 forces the muscle to contract?<br/> 15 A. Yes, for 10 minutes at a time, yes.<br/> 16 Q. Roughly how long were the massages when<br/> 17 you got those?<br/> 18 A. An hour massage.<br/> 19 Q. Okay. And then the stretching and the<br/> 20 workout, was that with a physical therapist or was<br/> 21 that taught to you by the chiropractor or who taught<br/> 22 you that?<br/> 23 A. I believe it's the physical therapists at<br/> 24 the chiropractor's office. It wasn't actually Janda<br/> 25 himself. It was like the team they have there.</p>          | <p style="text-align: right;">77</p> <p>1 Q. Got you. Were you not able to like<br/> 2 borrow your mom's car or anything like that?<br/> 3 A. I mean, I don't want to get into my<br/> 4 mom's, you know, vehicle usage truthfully, but I<br/> 5 would transfer myself on the bus not to be rude.<br/> 6 That's just how I got around.<br/> 7 Q. And was this still at the time that you<br/> 8 lived at your mom's house?<br/> 9 A. Yes.<br/> 10 Q. Okay.<br/> 11 A. She's super busy. It's kind of more of<br/> 12 an inconvenience to beg her to drive me places is<br/> 13 what it was.<br/> 14 Q. No, I understand that. I understand<br/> 15 that.<br/> 16 My question is only like was there a<br/> 17 reason why you weren't driving yourself in a car?<br/> 18 You yourself didn't have one?<br/> 19 A. Yeah, yeah. Just pride basically I<br/> 20 guess, but yeah.<br/> 21 Q. But you had a valid driver's license<br/> 22 during that entire time period?<br/> 23 A. I believe so, yes.<br/> 24 Q. So you believe you missed a couple of the<br/> 25 appointments for chiropractic or PT treatment, but</p>                       |

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| <p style="text-align: right;">78</p> <p>1 that was because you had transportation issues?</p> <p>2 A. Yes, sir. And, yes.</p> <p>3 Q. Did you find any of the treatment that</p> <p>4 you got at advanced chiro or excuse me Advanced</p> <p>5 Spine and Rehab, did you find any of that treatment</p> <p>6 helpful?</p> <p>7 A. Yes, absolutely.</p> <p>8 Q. Was any of it that was more helpful than</p> <p>9 others or was some of it not helpful at all?</p> <p>10 A. I think the most helpful was what I</p> <p>11 learned from how to, you know, how to deal with if I</p> <p>12 have overexerted myself how to deal with trying to</p> <p>13 combat it is the most I've learned from them is</p> <p>14 pretty valuable. Just stretching and how to work</p> <p>15 out my back.</p> <p>16 Q. Got you. Okay. Was there any part of</p> <p>17 the treatment you received at Advanced Spine and</p> <p>18 Rehab that wasn't helpful?</p> <p>19 A. No, very good over there.</p> <p>20 Q. Do you know about how long you treated</p> <p>21 with Advanced Spine and Rehab?</p> <p>22 A. I don't remember the exact amount of</p> <p>23 time, but I have records if you need them. I could</p> <p>24 look them up and send them to you.</p> <p>25 Q. No, the last treatment date I see is</p> | <p style="text-align: right;">80</p> <p>1 Q. Okay. That was the radiofrequency</p> <p>2 ablation?</p> <p>3 A. Yes.</p> <p>4 Q. I think you called it a rhizotomy before?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So those are the treatments that</p> <p>7 you received from Dr. Muir?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Do you know roughly when those</p> <p>10 radiofrequency ablations were?</p> <p>11 A. I don't off the top of my head know the</p> <p>12 dates, but like I said I can provide them for you if</p> <p>13 you don't have them right there I think.</p> <p>14 Q. No, that's fine. Based on the records,</p> <p>15 it looks like you had two procedures for</p> <p>16 radiofrequency ablation and that was once was in</p> <p>17 April of 2021?</p> <p>18 A. Sounds right.</p> <p>19 Q. And then the next one I see is May of</p> <p>20 2022?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. Who recommended that you get the</p> <p>23 radiofrequency ablation?</p> <p>24 A. Dr. Muir after conversations with the</p> <p>25 pain I was experiencing and where and I believe they</p>                                                                                                                                      |
| <p style="text-align: right;">79</p> <p>1 January of 2021, which would have been about six</p> <p>2 months or less?</p> <p>3 A. That sounds right.</p> <p>4 Q. After the accident?</p> <p>5 A. Yeah.</p> <p>6 Q. Did anybody tell you to stop treating or</p> <p>7 why did you stop treating with Advanced Spine?</p> <p>8 A. I had -- I think I had pretty much</p> <p>9 learned everything that I needed to to combat it</p> <p>10 myself at that point.</p> <p>11 It was -- it was unnecessary at that</p> <p>12 point I think, you know. I had started going to</p> <p>13 learn about the next step, which was the Dr. Muir.</p> <p>14 Q. Okay. So it looks like the next provider</p> <p>15 you went to was Dr. Muir?</p> <p>16 A. Yes, sir.</p> <p>17 Q. What kind of doctor is he?</p> <p>18 A. A spinal doctor back and spine, I</p> <p>19 believe.</p> <p>20 Q. Okay. How did you learn of Dr. Muir?</p> <p>21 A. I was referred by Dr. Janda.</p> <p>22 Q. Okay. Now, what kind of treatment did</p> <p>23 you receive from Dr. Muir?</p> <p>24 A. They did -- I forget exactly what it's</p> <p>25 called -- a radioablation I think.</p>                                                                                                                                          | <p style="text-align: right;">81</p> <p>1 sent me for more X-rays at one point from Dr. Muir</p> <p>2 himself, and they came up with that as a means to</p> <p>3 get rid of the pain, and it honestly worked</p> <p>4 amazingly.</p> <p>5 Q. Did you receive any treatments from</p> <p>6 Dr. Muir before that?</p> <p>7 A. No.</p> <p>8 Q. Did you ever do any injections in your</p> <p>9 lower back?</p> <p>10 A. Oh, I thought you meant prior to me going</p> <p>11 to him at all.</p> <p>12 Q. I meant within the treatment that you got</p> <p>13 from Dr. Muir before the radiofrequency ablations,</p> <p>14 did you get any other treatment before that from</p> <p>15 Dr. Muir?</p> <p>16 A. You know, he did -- there was a couple of</p> <p>17 appointments. I don't remember anything really</p> <p>18 other than the getting down twice for the radio</p> <p>19 ablations whatever they're called, sorry.</p> <p>20 Q. You can call them RFAs if you want.</p> <p>21 A. RFAs.</p> <p>22 Q. I don't want to say that word multiple</p> <p>23 times either. Okay. So you might have had a couple</p> <p>24 other procedures before the radiofrequency -- the</p> <p>25 RFAs, but don't remember what they were?</p> |



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| <p style="text-align: right;">82</p> <p>1 A. I mean, those are the two main ones I<br/>2 remember. I had a few doctor appointments with him.<br/>3 Q. Yeah. It looks to me like were a lot of<br/>4 those appointments in person?<br/>5 A. There was a couple -- there was one or<br/>6 two video appointments for the back brace, and then<br/>7 the actual procedures were in person, yeah, and then<br/>8 the doctor appointments.<br/>9 Q. Okay. So your medical records indicate<br/>10 that you actually got injections and they had -- may<br/>11 have been different types of injections in your<br/>12 spine a couple times before you got radiofrequency<br/>13 ablations. You don't remember those?<br/>14 A. Well, I remember them. I think I'm just<br/>15 lumping them the procedures all together as the<br/>16 radio ablations is what they did.<br/>17 Every time I had an appointment, they<br/>18 would -- I would get put under, and they would do<br/>19 injections or the frequency ablation in my back.<br/>20 Every time I was getting a stab in my lower back.<br/>21 So I don't know exactly if they were injections or<br/>22 if it was the radiofrequency ablation, but those<br/>23 were the appointments.<br/>24 Q. Okay. Yeah, no, and that's fine. The<br/>25 medical records show that the first injection that</p> | <p style="text-align: right;">84</p> <p>1 of odd timing, but you had what I see in the medical<br/>2 records, and I'll represent to you I'm looking at<br/>3 the medical records like that lower back injection<br/>4 that you had in October of 2020 was on October 6th<br/>5 and then I believe that subsequent motor vehicle<br/>6 accident was on October 17th just eleven days later.<br/>7 Do you remember whether or not you were<br/>8 having any lower back pain symptoms between that<br/>9 injection and before you got hit by the second car?<br/>10 A. I don't remember exactly the pain levels.<br/>11 I know that once I got hit by the second car, you<br/>12 know, I had injury obviously to my head, and just my<br/>13 normal pain level I would say went up just from<br/>14 getting hit and then getting in the hospital getting<br/>15 normal pain, but it went probably back down to a<br/>16 normal level I would assume or back to wherever it<br/>17 would have been beforehand. Does that make sense?<br/>18 Q. So you are saying that prior to the<br/>19 subsequent motor vehicle accident the one in October<br/>20 of 2020, you believe your pain levels -- you're not<br/>21 sure what they were before that, but just before<br/>22 that and after that accident they went back down to<br/>23 the same level?<br/>24 A. Yes.<br/>25 Q. Okay. Now, as part of that second motor</p> |
| <p style="text-align: right;">83</p> <p>1 you had from Dr. Muir was in your lower back and it<br/>2 was in October of 2020. Do you remember?<br/>3 A. Okay. Like I said, there was multiple --<br/>4 like I don't remember exact dates, but there were<br/>5 multiple appointments and yes, I would remember<br/>6 them.<br/>7 Q. Do you know what your pain level was<br/>8 around the time that you ended up getting injections<br/>9 or the RFAs do you remember like -- let me ask that<br/>10 question differently.<br/>11 What level of pain would you have to have<br/>12 on that zero to 10 to want to get something more<br/>13 invasive like an injection or a radiofrequency<br/>14 ablation other than just doing the chiropractic PT<br/>15 treatment?<br/>16 A. Oh, it would need to be the 10, yeah. I<br/>17 wouldn't want anything -- yeah, it's a very invasive<br/>18 surgery. It doesn't probably seem like that to most<br/>19 people, but it's something going in my back. So<br/>20 yes, stressful.<br/>21 Q. So that would relate to like for you to<br/>22 undergo the injections or even the RFAs you would<br/>23 have to have 10 out of 10 pain?<br/>24 A. Yeah, I was up there.<br/>25 Q. Okay. And then the -- I guess, it's kind</p>                                                                                  | <p style="text-align: right;">85</p> <p>1 vehicle accident, which sounds like it was a little<br/>2 more traumatic -- I'm not trying to discount this<br/>3 one, but it sounds like it was a little more<br/>4 traumatic. You jumped up in the air, you lost<br/>5 consciousness, you had a head injury, you landed on<br/>6 the ground. It seems a little more severe than the<br/>7 one we're talking about today?<br/>8 A. I mean, I know it sounds more severe, but<br/>9 I think I'm lucky truthfully and all I have is a<br/>10 scar on my head. I was unconscious for two days and<br/>11 scared the heck out of my wife, but I truthfully<br/>12 feel like I was lucky.<br/>13 Q. Lucky?<br/>14 A. Head injuries. Yeah, head injuries.<br/>15 Q. Head injuries can definitely be scary.<br/>16 A. Yes.<br/>17 Q. But at least we get the cool haircut.<br/>18 A. I'm going bald. Sorry about that.<br/>19 Q. It's all right. Save us on hair<br/>20 products.<br/>21 A. Right.<br/>22 Q. Okay. So okay. We went through -- when<br/>23 did you stop treating with Dr. Muir?<br/>24 A. After the last -- I don't remember the<br/>25 exact date. I honestly haven't stopped treating</p>                                                                                                                                                                                                                      |

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| <p>86</p> <p>1 with him, but if my pain rises anywhere near a 10</p> <p>2 again, I'm going to have to call him again, but I</p> <p>3 mean -- I mean, my last treatment though was</p> <p>4 whatever the last ablation was.</p> <p>5 Q. The last RFA?</p> <p>6 A. Yeah.</p> <p>7 Q. That looks like it was May of 2022.</p> <p>8 A. Yeah, that sounds right, yep.</p> <p>9 Q. And I think you had a couple more visits</p> <p>10 after that as like follow-ups, but they look to all</p> <p>11 be tele med, meaning either on a phone or video</p> <p>12 conference; is that correct?</p> <p>13 A. I went and got -- they were tele med, but</p> <p>14 I actually went down there once and they gave me a</p> <p>15 back brace for the job I have now just to make sure</p> <p>16 to try to combat when the pain level rises at all,</p> <p>17 and that was probably the second to last, I believe,</p> <p>18 appointment I had with him and then the video call</p> <p>19 one, yeah.</p> <p>20 Q. Okay. So the records indicate the last</p> <p>21 treatment date you had was, excuse me, July 14th of</p> <p>22 2022. Does that sound right?</p> <p>23 A. It sounds right.</p> <p>24 Q. And the medical records in Dr. Muir's</p> <p>25 records he indicates that on that day you had</p> | <p>88</p> <p>1 Q. Does that sound right to you?</p> <p>2 A. It sounds right.</p> <p>3 Q. Now, after you got the injections, do you</p> <p>4 remember if those were helpful or not?</p> <p>5 A. I know they were helpful. I know that</p> <p>6 the main help that I remember were the two radio</p> <p>7 ablations though. I remember twice my pain was so</p> <p>8 bad that that's what we decided to do.</p> <p>9 Q. So that would have been -- that would</p> <p>10 have had to have been 10 out of 10 pain for you</p> <p>11 then?</p> <p>12 A. For sure, yes. I think maybe that's why</p> <p>13 I focus on those two appointments so much and</p> <p>14 remember them maybe is because it was like I can't</p> <p>15 deal with this anymore, twice and maybe it -- I'm</p> <p>16 not recollecting the two injections you are talking</p> <p>17 about so much. I apologize for that.</p> <p>18 Q. No, that's fine. Like I said it's not a</p> <p>19 memory test. I can't remember everything I did in</p> <p>20 the last two years. There is no way I'd be able to</p> <p>21 do that.</p> <p>22 So you would and like I said this sounds</p> <p>23 a little bit like I'm repeating but I'm just making</p> <p>24 clear. You would have had to have had 10 out of 10</p> <p>25 pain and then conveyed that to Dr. Muir before you</p> |
| <p>87</p> <p>1 ongoing relief of your lower back pain and you</p> <p>2 didn't have any back pain problems; is that correct?</p> <p>3 A. I didn't have any pain levels anywhere</p> <p>4 near prior.</p> <p>5 Q. Okay. So then relating to the treatment</p> <p>6 that you got. So you don't remember the injections</p> <p>7 specifically; right?</p> <p>8 A. I mean, I don't know exactly what they</p> <p>9 were doing each time. I just know that I had the</p> <p>10 radio ablations and I guess an injection, it sounds</p> <p>11 like, but I was put under every time, you know.</p> <p>12 Q. Okay. How many times were you put under</p> <p>13 for a procedure?</p> <p>14 A. I want to say two or three.</p> <p>15 Q. Okay. It looks like you had injections</p> <p>16 twice -- let me double-check.</p> <p>17 A. Yeah, I truly don't remember every time.</p> <p>18 I just know as our discussions went as it was</p> <p>19 needed, Dr. Muir would schedule and he would come up</p> <p>20 with what would fix the problem.</p> <p>21 Q. It looks to me based on glancing through</p> <p>22 that real quick it looks to me like you had two</p> <p>23 procedures where you had injections done and two</p> <p>24 procedures where you had the RFA?</p> <p>25 A. Okay.</p>          | <p>89</p> <p>1 were willing to undergo a procedure like an RFA?</p> <p>2 A. Yeah, the pain was intense.</p> <p>3 Q. And you would have told Dr. Muir I'm in</p> <p>4 unbearable amount of pain 10 out of 10 we got to do</p> <p>5 something before you'd be willing to go through with</p> <p>6 those procedures?</p> <p>7 A. The pain needs to be bad. I would hope</p> <p>8 for anybody to go through with that procedure, but</p> <p>9 yes.</p> <p>10 Q. And is that the same thing with the</p> <p>11 injections before you would be willing to have the</p> <p>12 doctor inject something into your spine, you'd have</p> <p>13 to be a 10 out of 10 pain?</p> <p>14 A. You know what, as I'm remembering it, I</p> <p>15 remember the 10 out of 10 pain the two times. I</p> <p>16 can't say what my pain level was at when he did</p> <p>17 these injections. Like I said, I don't know why I</p> <p>18 don't remember them exactly. I had a few</p> <p>19 appointments, but like I said, I remember the two</p> <p>20 times that it was so bad, you know, twice.</p> <p>21 Q. Okay. And again you haven't had to go</p> <p>22 back to Dr. Muir since July of last year?</p> <p>23 A. Not yet, no.</p> <p>24 Q. Do you have any appointments scheduled</p> <p>25 with Dr. Muir in the future?</p>                                 |

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| <p style="text-align: right;">90</p> <p>1 A. Not as of now, no.</p> <p>2 Q. Do you have any appointments scheduled</p> <p>3 with anybody right now?</p> <p>4 A. No.</p> <p>5 Q. Okay. So you're not currently treating</p> <p>6 with any of your medical providers for any of your</p> <p>7 injuries?</p> <p>8 A. Well, I myself don't have insurance. So</p> <p>9 that might be one reason I'm not seeking anything</p> <p>10 and the pain level hasn't gotten -- they taught me</p> <p>11 so much about how to try to combat it through my,</p> <p>12 you know, through the two teams that I dealt with</p> <p>13 that I feel like I'm doing pretty good of dealing</p> <p>14 with it, you know, fighting it off and dealing with</p> <p>15 just the way I live now, you know.</p> <p>16 Q. The lack of insurance wouldn't</p> <p>17 necessarily be a reason why you wouldn't treat</p> <p>18 because you were treating on liens before; right?</p> <p>19 A. Well, yeah, but at some point, you know,</p> <p>20 with the procedure that we had done helped to that</p> <p>21 point. At some point we have to move forward with</p> <p>22 whatever the lien and this lawsuit. So I can't just</p> <p>23 constantly say, oh, you guys are going to pay for</p> <p>24 this and feed off. That would be dishonest, you</p> <p>25 know.</p> | <p style="text-align: right;">92</p> <p>1 Advanced Spine and Rehab and Dr. Muir at his own</p> <p>2 office, do you have any other treatment providers</p> <p>3 that you've gone to for injuries that you say are</p> <p>4 related to this accident?</p> <p>5 A. No.</p> <p>6 Q. I think I already asked this. You</p> <p>7 stopped going to Dr. Muir. Did anybody tell you to</p> <p>8 stop treating with Dr. Muir?</p> <p>9 A. No. It was just a decision that we came</p> <p>10 to after the last procedure.</p> <p>11 Q. When you say "we," who are you referring</p> <p>12 to?</p> <p>13 A. Me and the doctor.</p> <p>14 Q. Okay. Did you discuss any of that with</p> <p>15 your wife?</p> <p>16 A. No.</p> <p>17 Q. Okay. Why not?</p> <p>18 A. Well, I mean, not to be rude to my wife,</p> <p>19 but it's my medical situation personal and my</p> <p>20 doctors. It's not really a, I don't know. That's</p> <p>21 not one of those joint decisions in my book. Maybe</p> <p>22 I'm wrong there.</p> <p>23 Q. I'm not going to ask that question. That</p> <p>24 would be for the wife to decide, right. Okay. Keep</p> <p>25 moving forward here.</p> |
| <p style="text-align: right;">91</p> <p>1 So we came to the decision that, you</p> <p>2 know, let's stop this, and then in the future if</p> <p>3 God, you know, forbid if the pain comes back, you</p> <p>4 know, obviously he's extended that call me back.</p> <p>5 Q. But you don't have any concrete plans</p> <p>6 right now to go seek any additional treatment for</p> <p>7 your injuries?</p> <p>8 A. Not unless the pain comes back. I hope</p> <p>9 not.</p> <p>10 Q. It looks like you have some treatment</p> <p>11 from a provider called Anesthesia and Intensive</p> <p>12 Care. Does that sound familiar?</p> <p>13 A. I guess.</p> <p>14 Q. It looks like they might have been --</p> <p>15 based on the dates they're probably the surgery</p> <p>16 center or the anesthesiologist that you went to when</p> <p>17 you did these --</p> <p>18 A. Yeah, at his office, okay, yes. I didn't</p> <p>19 know it was a separate provider. I just assumed</p> <p>20 that was his Muir's, you know, anesthesiologist.</p> <p>21 Q. I mean, that's all medical treatment,</p> <p>22 right. Every time you go to the hospital you got 15</p> <p>23 people that have a piece to it.</p> <p>24 A. Right.</p> <p>25 Q. Okay. So other than Dr. Janda at</p>                                                                      | <p style="text-align: right;">93</p> <p>1 MR. MARTINEZ: So we've been going almost</p> <p>2 two hours now. Does anybody want to take a quick</p> <p>3 little bathroom break like 5 minutes? I don't have</p> <p>4 a ton more moving forward.</p> <p>5 I should be able to get through a lot of</p> <p>6 this pretty quickly, but I think I have probably</p> <p>7 like an hour left at most. So do we want to take a</p> <p>8 quick break? Do you want to stretch?</p> <p>9 MR. JACKSON: I'm okay.</p> <p>10 THE WITNESS: I'm good.</p> <p>11 MR. MARTINEZ: Kelly, you good to keep</p> <p>12 going?</p> <p>13 THE REPORTER: Yeah, I'm fine.</p> <p>14 MR. MARTINEZ: Like I said if anybody</p> <p>15 needs a break at any point, please let me know. We</p> <p>16 can take a quick, little five-minute break.</p> <p>17 BY MR. MARTINEZ:</p> <p>18 Q. Okay. So your mom was the one that kind</p> <p>19 of researched and found Advanced Spine and Rehab for</p> <p>20 you; right?</p> <p>21 A. That's Dr. Janda; right?</p> <p>22 Q. Yes.</p> <p>23 A. Yes.</p> <p>24 Q. And Dr. Janda referred you to Dr. Muir?</p> <p>25 A. Yes.</p>                        |

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| <p style="text-align: right;">94</p> <p>1 Q. Now, did you do any research separately<br/>2 on your own about any of doctors like Dr. Janda or<br/>3 Dr. Muir about their qualifications to see if they<br/>4 could actually help you for what you were looking<br/>5 for?<br/>6 A. I kind of just trusted in Janda's opinion<br/>7 when it came to Muir truthfully, and my mother has<br/>8 dealt with the chiropractor in the past, and, you<br/>9 know, that's how she knew them and knew that it was<br/>10 a good chiropractor, so I trusted her.<br/>11 Q. I'm not trying to get into your mom's<br/>12 personal medical history, and that's not really why<br/>13 I'm asking this question, but is that because your<br/>14 mom has treated with a chiropractor before that<br/>15 she's familiar with Dr. Janda?<br/>16 A. I believe so, yes.<br/>17 Q. Because I mean, the other option would be<br/>18 I guess related to her line of work maybe she comes<br/>19 across Dr. Janda and maybe that's why she<br/>20 recommended?<br/>21 A. No. I'm almost positive she has been a<br/>22 patient of his in the past for massages.<br/>23 Q. Got you, okay. Why didn't you go to your<br/>24 primary-care doctor instead of a chiropractor?<br/>25 A. Because -- well, my primary-care doctor</p>                                                         | <p style="text-align: right;">96</p> <p>1 him about half the time?<br/>2 A. Yes.<br/>3 Q. And the other half of the time was<br/>4 treatment from his team or somebody that worked<br/>5 within the Advanced Spine?<br/>6 A. Yes.<br/>7 Q. Got it. Same question regarding<br/>8 Dr. Muir. How many times when you went -- when you<br/>9 had an appointment with Dr. Muir's office did you<br/>10 see Dr. Muir?<br/>11 A. I don't remember the lady's name. There<br/>12 is another doctor there a blond woman. She would<br/>13 see me any time that he -- I'm assuming it's just<br/>14 his partner -- any time that he was out of the<br/>15 office, but it was -- I always had appointments<br/>16 scheduled with him when I went, but sometimes it<br/>17 would be her that I saw. Does that make sense?<br/>18 Q. Yeah, no, I understand. So but she was a<br/>19 medical doctor like Dr. Muir?<br/>20 A. Absolutely, yes.<br/>21 Q. And you don't remember her name?<br/>22 A. I don't off the top of my head, sir, no.<br/>23 Q. I'm sure it's in the records.<br/>24 A. I apologize.<br/>25 Q. No, that's fine. And approximately if</p>                                                                                                               |
| <p style="text-align: right;">95</p> <p>1 is like my ulcer, you know. He gives me my ulcer<br/>2 medication. It's like if I'm sick and have<br/>3 sniffles, you know what I mean. That's more of what<br/>4 I go to for him. This was a situation that was I<br/>5 didn't feel in his wheelhouse, you know what I mean.<br/>6 Q. So more it's kind of not his specialty?<br/>7 A. Yeah, I guess.<br/>8 Q. Sorry. I'm looking through some of my<br/>9 notes. Some of these things we've already gone<br/>10 through so I'm trying not to repeat.<br/>11 For your treatments with Dr. Janda, if<br/>12 you remember, roughly how many of them were with<br/>13 Dr. Janda himself instead of like a PA or a physical<br/>14 therapist?<br/>15 A. I think I would say roughly about every<br/>16 other time I would see him for actual like hands-on<br/>17 treatment with him, but I would always talk to him<br/>18 every time. It was maybe 10 minutes, 5 minutes at<br/>19 the end or whatever. I would always talk to him and<br/>20 see him whatever, but for the actual his hands on<br/>21 and not me just working with his team and the actual<br/>22 electrical equipment would probably I think have<br/>23 been about every other time.<br/>24 Q. Okay. So you talked to him every time<br/>25 you were there, but only got treatment directly from</p> | <p style="text-align: right;">97</p> <p>1 you had to give like a percentage, how many times<br/>2 did you see Dr. Muir overseeing the other doctor<br/>3 that was there?<br/>4 A. Maybe twice. Twice I saw her and the<br/>5 rest of the time it would have been him.<br/>6 Q. Okay. Did any of your doctors tell<br/>7 you -- well, let's put it this way. Did Janda ever<br/>8 tell you what your diagnosis was?<br/>9 A. My diagnosis, not to my recollection, no.<br/>10 He just -- no. He would just -- no, he would just<br/>11 deal with the problem the pain I was having. I<br/>12 don't think he ever diagnosed me with like a<br/>13 sickness of anything, no, not that I remember.<br/>14 Q. Did he ever diagnose you with like<br/>15 sprain, strain or any of those types of discussions<br/>16 or dislocations or anything like that?<br/>17 A. You know what, I know that him and his<br/>18 assistant would take super detailed notes, and I<br/>19 don't remember truthfully the actual, do you know<br/>20 what I'm saying, but I know that that information is<br/>21 completely out there.<br/>22 Q. Okay. So you don't remember --<br/>23 A. No.<br/>24 Q. -- what the diagnosis was?<br/>25 A. If he diagnosed something, no, I don't</p> |



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| <p style="text-align: right;">98</p> <p>1 remember him actually saying, oh, this is a<br/> 2 diagnosis. I mean, we had pretty thorough<br/> 3 discussions on how to combat the pain and how to<br/> 4 deal with it why it's happening and stuff like that<br/> 5 but not -- I don't remember a diagnosis, no.<br/> 6 Q. Okay. Were you given any instructions to<br/> 7 do like at-home exercises over and above kind of<br/> 8 what you were doing at Advanced Spine and Rehab?<br/> 9 A. Yeah, yes. There is leg exercises with a<br/> 10 stretching like stretch bands that they have that I<br/> 11 do and stretches.<br/> 12 Q. And those stretches were for your lower<br/> 13 back specifically?<br/> 14 A. Yes. And I still do them.<br/> 15 Q. How often did they tell you to do your<br/> 16 home exercises?<br/> 17 A. I do it three times a week myself just to<br/> 18 keep a consistent like routine, but I don't remember<br/> 19 them telling me specifically. He just said if you<br/> 20 want to really attack this problem, you have to stay<br/> 21 vigilant on it. So that's what I've done.<br/> 22 Q. And you've done these home exercises<br/> 23 three times a week since you started treating?<br/> 24 A. Approximately, yes. But that's just me<br/> 25 doing it myself. That's not the doctor appointment</p> | <p style="text-align: right;">100</p> <p>1 Q. Okay. So you had radiation in your legs.<br/> 2 What kind of feeling would you get?<br/> 3 A. It was kind of a shooting pain down my<br/> 4 left thigh to maybe my knee, and it happened only a<br/> 5 couple times where it was like this is -- this is<br/> 6 shooting pain down my leg. What the heck is going<br/> 7 on. They tried to describe that as the radiating<br/> 8 thing I think is what you are talking about like a<br/> 9 shooting pain.<br/> 10 Q. Yeah, the other term sometimes they use<br/> 11 is a little bit more medical. It's called<br/> 12 radiculopathy. Have you ever heard that term?<br/> 13 A. No.<br/> 14 Q. Okay. So it was just a shooting pain.<br/> 15 Did you ever experience any like tingling or<br/> 16 numbness or anything like that down your legs?<br/> 17 A. Not necessarily tingling -- okay. This<br/> 18 is kind of hard to describe, but when the pain like<br/> 19 starts to set in, I'll notice I'll start to kind of<br/> 20 hunch forward. So my posture is all messed up and<br/> 21 that's like a good indication of it's affecting me<br/> 22 more than just trying to deal with the pain. So<br/> 23 I'll do what they've told me to do at that point.<br/> 24 Q. Do you know -- you said it only happened<br/> 25 a couple of times. Do you know approximately when</p> |
| <p style="text-align: right;">99</p> <p>1 or anything.<br/> 2 Q. So the doctor didn't order you to do it<br/> 3 that often. He just said do them if you want to and<br/> 4 you have decided to do them?<br/> 5 A. Well, he suggested obviously if I have<br/> 6 pain this is how you combat it was his suggestion.<br/> 7 Q. Okay. Did you ever keep like a pain<br/> 8 journal or anything like that where you wrote down<br/> 9 kind of your symptoms for the day and what your pain<br/> 10 level was?<br/> 11 A. You know, when I would go to his -- to<br/> 12 Dr. Janda's they would have like a questionnaire I<br/> 13 would fill out every time, but I wouldn't keep my<br/> 14 own journal like at my home or anything like that,<br/> 15 but there was something kind of like that with those<br/> 16 medical records, if that makes sense.<br/> 17 Q. Yeah, so you would fill out paperwork.<br/> 18 It would talk about kind of where you are feeling<br/> 19 pain and what type of pain you are feeling every<br/> 20 time you went to Janda's?<br/> 21 A. 100 percent, yes.<br/> 22 Q. Did you ever feel maybe it might have<br/> 23 been described this way. Any type of radiating pain<br/> 24 that went down your legs?<br/> 25 A. Yes.</p>                                                                             | <p style="text-align: right;">101</p> <p>1 you experienced that shooting pain down your left<br/> 2 leg?<br/> 3 A. It was early in the appointments to<br/> 4 Dr. Muir. I want to say very early in that stage.<br/> 5 Q. Okay. Did Dr. Muir ever change his<br/> 6 treatment process based on the fact that you were<br/> 7 telling him you were experiencing radiating pain<br/> 8 that shooting pain?<br/> 9 A. Well, I don't remember him saying<br/> 10 radiating, but I told him that I was experiencing<br/> 11 like kind of a shooting pain and it would travel a<br/> 12 little bit down my leg, and that was just me<br/> 13 bringing it up. He never brought it up to me. I<br/> 14 never said radiating.<br/> 15 So I don't even know if we're talking<br/> 16 about the same thing, but a couple of times there<br/> 17 was a weird shooting pain down to maybe my knee, but<br/> 18 that was only literally twice maybe and it was early<br/> 19 on with Dr. Muir.<br/> 20 Q. Okay.<br/> 21 A. But I've had nothing like that since the<br/> 22 radiofrequency ablation.<br/> 23 Q. And is that from the first radiofrequency<br/> 24 ablation back in April of 2020?<br/> 25 A. Yes. The shooting pain hasn't happened</p>                                                                                                                                         |

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| <p style="text-align: right;">102</p> <p>1 yet.</p> <p>2 Q. And you think it's early on in the</p> <p>3 appointments with Dr. Muir, but you don't really</p> <p>4 know exactly when you experienced that shooting</p> <p>5 pain?</p> <p>6 A. I mean, dates, no. I don't know date</p> <p>7 exactly, but yeah, it was early in those</p> <p>8 appointments for sure.</p> <p>9 Q. Was it before that second accident?</p> <p>10 A. Before the second.</p> <p>11 Q. I'm using it as kind of like a marker in</p> <p>12 time, right?</p> <p>13 A. Yeah, yeah.</p> <p>14 Q. It's easier to remember stuff it's before</p> <p>15 that event, but I don't know when, but I can narrow</p> <p>16 it down.</p> <p>17 This accident was in July of 2020 and the</p> <p>18 second accident was about three months later in</p> <p>19 October.</p> <p>20 A. Okay.</p> <p>21 Q. Did you experience that shooting pain in</p> <p>22 that three-month time period, or was it only after</p> <p>23 the second accident?</p> <p>24 A. I truly don't know if it was after the</p> <p>25 second accident. I just know that it was for sure</p>                                                                                                                                                                                                                                                                                                     | <p style="text-align: right;">104</p> <p>1 back, or down your shoulders into your arms your</p> <p>2 upper extremities and neck?</p> <p>3 A. Yes.</p> <p>4 Q. And that's usually referred to as</p> <p>5 radiculopathy, radiation, numbness, tingling those</p> <p>6 kind of things like that's how it is described.</p> <p>7 That's why I asked the question that way.</p> <p>8 A. Yeah, I honestly don't know if we're</p> <p>9 talking about the same thing. I think I might not</p> <p>10 have had what you are saying. I just know it was</p> <p>11 shooting pain down my one thigh a couple of</p> <p>12 different times.</p> <p>13 Q. You're not sure if Dr. Muir ever</p> <p>14 categorized that as radiculopathy or radiation, but</p> <p>15 you did tell him about the shooting pain?</p> <p>16 A. Yes.</p> <p>17 MR. MARTINEZ: Again I'm looking through</p> <p>18 my notes because conversationally we jump around to</p> <p>19 certain things so sometimes it's not in the order</p> <p>20 that we have it in the outline. So making sure I</p> <p>21 have covered all of my bases.</p> <p>22 THE WITNESS: I appreciate the</p> <p>23 thoroughness.</p> <p>24 BY MR. MARTINEZ:</p> <p>25 Q. Now, you mentioned that when you went to</p>                                                                                                          |
| <p style="text-align: right;">103</p> <p>1 early on. I think it was even before I had the</p> <p>2 radio ablations, but it was probably during the</p> <p>3 injections you were talking about that maybe fixed</p> <p>4 that radiating pain or the shooting pain because it</p> <p>5 only happened, like I said twice, and very early on.</p> <p>6 So it kind of had to have been during</p> <p>7 that time, right, I would assume. Sorry, I'm not</p> <p>8 trying to be rude, but I would assume that.</p> <p>9 Q. Understood.</p> <p>10 A. Yeah.</p> <p>11 Q. I didn't see anything about radiating</p> <p>12 pain or shooting pain or anything like that, and</p> <p>13 that's the term that the doctor would use. I didn't</p> <p>14 see anything like that in the records.</p> <p>15 A. Yeah, like I said that was me telling</p> <p>16 him. It wasn't like he did oh this is what is</p> <p>17 happening. That was me trying to describe in my</p> <p>18 laymen's terms to him what the pain I'm feeling, and</p> <p>19 like I said, it might not have been the radiating</p> <p>20 thing you are talking about. Just like a sharp</p> <p>21 shooting pain down by leg. So I don't even know if</p> <p>22 we're talking about the same thing.</p> <p>23 Q. Typically, the pain radiation or</p> <p>24 radiating pain or radiculopathy is used for symptoms</p> <p>25 that move either down your legs, if it's in your</p> | <p style="text-align: right;">105</p> <p>1 Dr. Janda every time you would fill out paperwork</p> <p>2 that had like pain levels and pain locations and</p> <p>3 stuff like that; right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Did you do the same thing with Dr. Muir</p> <p>6 every time you saw him?</p> <p>7 A. You know what it wasn't in any way the</p> <p>8 same kind of form. I don't remember that at all.</p> <p>9 It was more just we would talk. You know, when I</p> <p>10 first got there they would like maybe his assistant</p> <p>11 or somebody would log me in on a laptop or whatever</p> <p>12 and then he would come in and we'd talk. Unless it</p> <p>13 was the actual, you know, scheduled treatments, then</p> <p>14 I would just go in and they'd put me under the</p> <p>15 whatever I'd get the injections or whatever they</p> <p>16 would stick in my back.</p> <p>17 Q. So every one of your treatment -- or your</p> <p>18 appointments for every one of your appointments with</p> <p>19 Dr. Muir you showed up at the office in person?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. But sometimes his assistant would</p> <p>22 come in and put you on like something like this like</p> <p>23 a zoom or a video?</p> <p>24 A. No, no. She would just log me in. It</p> <p>25 was like however they did their paperwork. I don't</p> |

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| <p style="text-align: right;">106</p> <p>1 know. It was like her laptop. She would just log<br/> 2 me in. It wasn't a video call with him or anything.<br/> 3 Q. And that paperwork you would fill out it<br/> 4 would have like pain levels and pain locations and<br/> 5 stuff like that?<br/> 6 A. Not with -- with Dr. Janda, yes, when I<br/> 7 would get there, there would be that kind of form,<br/> 8 but with Dr. Muir, no. Not that I remember. I<br/> 9 didn't fill out forms like that with him, no.<br/> 10 Q. Do you ever remember reporting your pain<br/> 11 levels to Dr. Muir?<br/> 12 A. Yeah, but it wasn't the same type of form<br/> 13 is what I'm saying that I remember.<br/> 14 Q. Did you fill out a form or did you just<br/> 15 tell him what it was?<br/> 16 A. I remember specifically the form with<br/> 17 Dr. Janda the chiropractor, and I obviously conveyed<br/> 18 my pain levels with Dr. Muir, but I don't<br/> 19 specifically remember the actual chart.<br/> 20 Q. Okay. That's fair. Approximately how<br/> 21 many times did you see Dr. Muir?<br/> 22 A. A handful of times I think four or five.<br/> 23 I truly don't know the exact number of how many<br/> 24 times off the top of my head.<br/> 25 Q. Maybe that was a bad question. Let me</p> | <p style="text-align: right;">108</p> <p>1 A. I don't believe so. I might have<br/> 2 canceled one just on the same type of transportation<br/> 3 issue, but it was never on, oh, this isn't important<br/> 4 enough to go or anything like that.<br/> 5 Q. Now, did you get any -- I know there is<br/> 6 and I'll tell you I can represent to you that in<br/> 7 your medical records it indicates there is quite a<br/> 8 bit of imaging. That's the X-rays, the CT scans and<br/> 9 I believe there is a couple sets of MRIs.<br/> 10 A. Okay.<br/> 11 Q. Now, did anybody ever review the results<br/> 12 of those imaging tests with you?<br/> 13 A. I mean, I remember seeing the imaging<br/> 14 tests and I'm sure they went over them with me.<br/> 15 Yeah, I don't see why they would not have talked<br/> 16 about them. I don't remember specifics about it,<br/> 17 no.<br/> 18 Q. Okay. That's fine.<br/> 19 A. I remember seeing the pictures that the<br/> 20 imaging, but I don't remember the actual<br/> 21 conversations about them.<br/> 22 Q. Okay. Other than the injections and the<br/> 23 radiofrequency ablations from Dr. Muir, did he<br/> 24 prescribe you any pain medication?<br/> 25 A. No.</p> |
| <p style="text-align: right;">107</p> <p>1 back that up. How many times -- how many<br/> 2 appointments did you attend with Dr. Muir's office?<br/> 3 A. I don't remember exactly how many<br/> 4 appointments there were, sir. I apologize.<br/> 5 Q. No, that's fine.<br/> 6 A. It was a handful though. There was a<br/> 7 few.<br/> 8 Q. Got you. I mean, it looks to me like<br/> 9 there is -- I mean, there is certainly more than 10.<br/> 10 A. Wow, okay.<br/> 11 Q. I mean, there were only a couple before<br/> 12 the second motor vehicle accident. I see one, two<br/> 13 maybe four -- I see four appointments with Dr. Muir<br/> 14 before the second accident, and then after the<br/> 15 second accident there are a lot more treatments.<br/> 16 There is more than ten that I can see right now.<br/> 17 Does that sound right?<br/> 18 A. I don't have the paperwork right in front<br/> 19 of me, so I'm not going to -- it sounds right.<br/> 20 Q. No, that's fair and I'm not asking you to<br/> 21 confirm what I'm looking at.<br/> 22 A. I don't remember. I know that there was<br/> 23 quite a few appointments.<br/> 24 Q. Okay. Now, did you have any appointments<br/> 25 scheduled with Dr. Muir that you ended up canceling?</p>                                | <p style="text-align: right;">109</p> <p>1 Q. Did you take any pain medication during<br/> 2 this process at any point even if it's over the<br/> 3 counter?<br/> 4 A. I'm currently in recovery so I try to<br/> 5 stay away from any kind of pills or any of that.<br/> 6 Q. Okay. And I think in your records it<br/> 7 indicates that are you still taking methadone?<br/> 8 A. Yes, like I said I'm in recovery, but I<br/> 9 have changed my life a million percent from the<br/> 10 hecticness it used to be. So yes, I'm still in<br/> 11 recovery now, and I probably will be the rest of my<br/> 12 life.<br/> 13 Q. Good for you. Good for you.<br/> 14 A. Thank you.<br/> 15 Q. Now, when did you start taking the<br/> 16 methadone, do you remember?<br/> 17 A. I've been on methadone a couple of times.<br/> 18 This isn't the first time I've been on it, but I<br/> 19 don't remember the exact date. I have records. I<br/> 20 can produce those records if you need them. I don't<br/> 21 remember the exact date though.<br/> 22 Q. No, that's fine and I have the medical<br/> 23 records.<br/> 24 A. Yes.<br/> 25 Q. Mostly the reason why I'm asking is</p>                                                |

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| <p style="text-align: right;">110</p> <p>1 methadone is sometimes used as a pain medication.<br/> 2 A. Okay.<br/> 3 Q. So when -- I guess, the better way to ask<br/> 4 the question. I can understand that you might have<br/> 5 been on and off methadone while you are working on<br/> 6 your recovery, right, and I understand that process.<br/> 7 A. Yes.<br/> 8 Q. You've been on methadone consistently<br/> 9 since prior to this accident; right?<br/> 10 A. Yes.<br/> 11 Q. Okay. How far before this accident July<br/> 12 of 2020 were you on methadone consistently, if you<br/> 13 remember?<br/> 14 A. I truly don't remember the date and I'm<br/> 15 not trying to be vague. I don't. I'm very serious<br/> 16 about my recovery, but I don't remember the exact<br/> 17 date.<br/> 18 Q. Okay. But you were on methadone at the<br/> 19 time of this accident?<br/> 20 A. Yeah, I've been on methadone for a --<br/> 21 yes.<br/> 22 Q. Okay. So you've been on methadone for at<br/> 23 least, it looks like, two and a half years now?<br/> 24 A. Sounds about right, yep.<br/> 25 Q. Okay. Were you prescribed any pain</p>                                                                                                                                      | <p style="text-align: right;">112</p> <p>1 Dr. Muir's office?<br/> 2 A. Yes.<br/> 3 Q. And what procedure did he want you to do<br/> 4 potentially if you were going to come back?<br/> 5 A. He didn't suggest any specific things. I<br/> 6 just know what obviously has worked in the past and<br/> 7 I remember was those two -- those two specific<br/> 8 appointments when the pain was so bad and it<br/> 9 eradicated the pain.<br/> 10 Q. So Dr. Muir didn't say I recommend you go<br/> 11 through with another radiofrequency ablation if the<br/> 12 pain returns he never recommended that to you?<br/> 13 A. He obviously recommended future<br/> 14 treatments if there is a need, do you see what I'm<br/> 15 saying, but he didn't recommend anything, oh, hey in<br/> 16 two years you need to do this. No, nothing like<br/> 17 that ever happened, you know.<br/> 18 He's not trying to get my business in the<br/> 19 future in any weird way. If the pain returns, they<br/> 20 extended their services obviously.<br/> 21 Q. Okay. So it was an open-ended kind of<br/> 22 like, hey, if your pain comes back contact us and<br/> 23 we'll see what you need?<br/> 24 A. Yeah.<br/> 25 Q. But he never told you like, hey, every 12</p>                                                             |
| <p style="text-align: right;">111</p> <p>1 medications by any of your providers whether that be<br/> 2 the hospital, whether that be Dr. Muir, Dr. Janda<br/> 3 anybody? Has anybody prescribed you any prescribed<br/> 4 pain medications?<br/> 5 A. No. Other than the Demerol when I went<br/> 6 to Henderson hospital, I refused. I don't take meds<br/> 7 like that. I would rather try to deal with the pain<br/> 8 in other ways like what they've taught me, you know,<br/> 9 what the doctors have told me to do. That's just<br/> 10 what I chose to do.<br/> 11 Q. Okay. Now, it's going to sound like a<br/> 12 bit of a repeat question, but I promise you it's<br/> 13 not.<br/> 14 Have you been recommended to have any<br/> 15 future or further treatment or surgeries at this<br/> 16 time? Have you gotten a recommendation like, hey,<br/> 17 go do this procedure or you should do this<br/> 18 procedure?<br/> 19 A. The only thing that was ever said to me<br/> 20 was if the pain returns, you know how to contact us<br/> 21 and this is what should be done because it's<br/> 22 obviously worked in the past, but other than that,<br/> 23 no.<br/> 24 Q. And when you are referring to like you<br/> 25 know how to contact us, is that referring to</p> | <p style="text-align: right;">113</p> <p>1 months come back and get another radiofrequency<br/> 2 ablation and we'll run a special?<br/> 3 A. Absolutely not. That would be kind of<br/> 4 nice, but no, but no.<br/> 5 Q. And I joke a little bit with that one,<br/> 6 but he didn't specifically tell you like every 12<br/> 7 months come back and get another radiofrequency<br/> 8 ablation?<br/> 9 A. You know what, he did talk to me a little<br/> 10 bit about what other people have needed the<br/> 11 frequency of like I don't know if it's like an<br/> 12 average of people or whatever, and he said that I<br/> 13 was very lucky to last a year in between the first<br/> 14 and second one, if that makes any sense, and I<br/> 15 myself was pushing it, you know, and he has told me<br/> 16 not to do that. Don't try to like just deal with<br/> 17 the pain, if that makes any sense, but I wouldn't<br/> 18 take that as him trying to be oh, yeah, contact us.<br/> 19 He's not -- it wasn't anything nefarious, but yeah,<br/> 20 if that makes sense.<br/> 21 Q. So he didn't specifically tell you like<br/> 22 we'll do it -- like I said, we're going to do this<br/> 23 procedure 12 months and you're going to need it<br/> 24 forever?<br/> 25 A. It was specifically if there is a</p> |



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| <p style="text-align: right;">114</p> <p>1 problem, contact us. If the pain returns if you<br/> 2 can't combat the pain with what I've learned from --<br/> 3 he doesn't know about all the little exercises I<br/> 4 learn from the chiropractor. I didn't talk about<br/> 5 that specifically, but if those things don't work<br/> 6 obviously contact us.<br/> 7 Q. Okay. So it's just kind of like a come<br/> 8 back when you need it?<br/> 9 A. Yeah. That's how I took it.<br/> 10 Q. Was there anything recommended by any of<br/> 11 your treatment providers any of your doctors that<br/> 12 you didn't want to try?<br/> 13 A. No, I was pretty open to that -- I mean,<br/> 14 that's what they do. So I didn't like refuse to --<br/> 15 I didn't refuse their advice if that's what you<br/> 16 mean.<br/> 17 Q. Yeah, that was kind of the question.<br/> 18 Like if they recommended you do it, you were like,<br/> 19 no, I'm not doing that?<br/> 20 A. No, I didn't refuse any of their advice<br/> 21 anything they said or recommended. I tried to<br/> 22 follow to the best I could, you know.<br/> 23 Q. Okay. And then did any of your doctors<br/> 24 ever tell you or actually did anybody ever tell you<br/> 25 that you needed to stop treating?</p> | <p style="text-align: right;">116</p> <p>1 could so I have had counselors in the past, but not<br/> 2 specifically like that, you know what I mean.<br/> 3 Q. So you haven't seen a psychologist or a<br/> 4 psychiatrist to talk about any mental health issue<br/> 5 or psychological conditions?<br/> 6 A. No.<br/> 7 Q. And the counselors you refer to, you said<br/> 8 while you were incarcerated, are those just like --<br/> 9 what kind of counselors are they, do you know?<br/> 10 A. Like treatment counselors like drug<br/> 11 counselors things that they provide for you to try<br/> 12 to better yourself, you know, combatting the<br/> 13 problems that was obviously there.<br/> 14 Q. Were all of those counselors that you saw<br/> 15 while you were incarcerated related to substance<br/> 16 abuse?<br/> 17 A. Yeah, yes.<br/> 18 Q. Did any of your doctors ever tell you<br/> 19 that you have a permanent disability?<br/> 20 A. No.<br/> 21 Q. Did you take any -- I think I already<br/> 22 asked this. But when was the last time that you<br/> 23 took any medication for your symptoms?<br/> 24 A. I don't take any medication other than<br/> 25 methadone.</p>                                                                                                    |
| <p style="text-align: right;">115</p> <p>1 A. No.<br/> 2 Q. Did anybody ever tell you that there is<br/> 3 not enough money and that you couldn't get more<br/> 4 treatment?<br/> 5 A. No, not at all.<br/> 6 Q. Did anybody ever tell you what the policy<br/> 7 limits were for my client's insurance in this case?<br/> 8 A. I thought it was that they had a million<br/> 9 dollar policy, but that's all I have ever heard of<br/> 10 it.<br/> 11 Q. Okay.<br/> 12 A. And I'm not -- I don't know. That was<br/> 13 hearsay. I don't know if that's true. I haven't<br/> 14 looked up anything or I don't know about insurance<br/> 15 stuff.<br/> 16 Q. Okay. Has anybody ever diagnosed you<br/> 17 with depression?<br/> 18 A. No, not diagnosed with depression, no,<br/> 19 not that I remember.<br/> 20 Q. Have you ever treated with like a<br/> 21 psychologist or a psychiatrist for depression?<br/> 22 A. You know, not for depression. I had<br/> 23 counselors in the past when I was incarcerated not<br/> 24 to bring that back up, but once there was a problem<br/> 25 in my life, I tried to deal with it the best way I</p>                                                                                                                                | <p style="text-align: right;">117</p> <p>1 Q. Okay. So then it would have been the<br/> 2 Demerol essentially that you got at the hospital?<br/> 3 A. Yeah, just that one -- yep.<br/> 4 Q. Are you claiming any continuing injuries<br/> 5 that are ongoing?<br/> 6 A. I don't know how to classify it as<br/> 7 ongoing or not. It's just I have to wear a back<br/> 8 brace at work just to try to fight this. You know,<br/> 9 I don't go to the gym anymore. I have kind of lost<br/> 10 that hobby, and that's just me trying to make sure<br/> 11 that I don't have to get this procedure done again,<br/> 12 you know.<br/> 13 I think I'm doing everything I can to<br/> 14 make sure that it doesn't pop up again, but I think<br/> 15 that possibility is always there. I don't know how<br/> 16 else to answer that, you know.<br/> 17 Q. Okay. You said you don't go to the gym<br/> 18 anymore. How often did you go to the gym before<br/> 19 this accident?<br/> 20 A. I used to go quite regularly. I used to<br/> 21 enjoy working out, lifting weights specifically.<br/> 22 Q. Which gym did you go to?<br/> 23 A. I have weights myself. So I like to work<br/> 24 out a lot myself, but I have had 24 Hour Fitness, I<br/> 25 don't anymore, but that was back in the past.</p> |

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| <p style="text-align: right;">118</p> <p>1 Q. When was the last time you had a 24 Hour<br/>2 Fitness membership?<br/>3 A. It's been years.<br/>4 Q. Okay.<br/>5 A. Like I said I have weights.<br/>6 Q. You haven't gone since this incident?<br/>7 A. Yes. I have my own weights, if that<br/>8 makes sense.<br/>9 Q. How often did you work out either like<br/>10 you said going to the park and exercising or lifting<br/>11 weights at home, how often did you exercise before<br/>12 this accident?<br/>13 A. I would say pretty regularly I'd try to<br/>14 stay on it. Multiple times a week usually four days<br/>15 a week I would work out.<br/>16 Q. And how much do you work out now?<br/>17 A. Now, all I do now is whatever the doctor<br/>18 my chiropractor told me to. That's what I focus on<br/>19 now three days a week.<br/>20 Q. So that's the home stretches and<br/>21 exercises and stuff like that?<br/>22 A. Yeah, yep.<br/>23 Q. Okay. So safe to say essentially you<br/>24 have dropped maybe one day a week in exercise after<br/>25 this accident as compared to before?</p>                                                                     | <p style="text-align: right;">120</p> <p>1 A. Not how I used to. It's not the same<br/>2 heavy weight at all, but like I said three times a<br/>3 week I try to -- I try to keep my regimen going, if<br/>4 that makes sense. It's not heavy weight anymore,<br/>5 but it's still working out. Does that make sense?<br/>6 Q. So is it more body weight or are you<br/>7 using any weights at all?<br/>8 A. Resistant bands.<br/>9 Q. Okay. Do you have any other limitations<br/>10 other than the exercise kind of change in your<br/>11 regimen? Any other limitations that you have now as<br/>12 a result of what you are claiming is our accident<br/>13 not the second one, our accident that you can't do<br/>14 today that you could do before?<br/>15 A. I mean, aside from working out and my<br/>16 change in job, I'm not going to try to start a<br/>17 painting business again by any means. You know, I<br/>18 like my job now is a good fit. It's not going to<br/>19 overexert me, you know.<br/>20 Q. Okay. And you like your new job better<br/>21 than painting?<br/>22 A. I don't know if I like it better than<br/>23 painting. I wouldn't say that necessarily. The<br/>24 money was way better in painting, but I get along<br/>25 with who I work with, so that's all right.</p> |
| <p style="text-align: right;">119</p> <p>1 A. No. I mean, it's changed completely. I<br/>2 used to lift weights. I don't lift weights anymore<br/>3 at all. I don't think I would dare dead lift<br/>4 anything now, but I do still work out just what<br/>5 they've taught me like the stretches and<br/>6 specifically how to strengthen the stabilizer<br/>7 muscles, I think they call it, in my lower back and<br/>8 the ones that I'm not usually using, I guess.<br/>9 Q. Okay. They're real good for dead lifts.<br/>10 Now, when you lifted weights before -- it's a weird<br/>11 question because it's kind of subjective -- did you<br/>12 lift heavy? Like how heavy were the weights that<br/>13 you were lifting before?<br/>14 A. I maxed out on my bench was 350, and<br/>15 that's really my maximum was 350 on bench, if that<br/>16 helps.<br/>17 Q. How much do you weigh?<br/>18 A. I right now I believe I weigh right<br/>19 around 200.<br/>20 Q. How tall are you?<br/>21 A. 6 foot 1.<br/>22 Q. 350 is a respectable number.<br/>23 A. Yeah. Thank you.<br/>24 Q. Have you tried to lift weights at all now<br/>25 or you just haven't been trying?</p> | <p style="text-align: right;">121</p> <p>1 Q. So there is not really any other<br/>2 limitations other than the exercise regimen change?<br/>3 A. Yeah, I would say.<br/>4 Q. Does anything hurt as you sit here today?<br/>5 A. Today is pretty good. No.<br/>6 Q. I guess, I can kind of ask this question<br/>7 now that we've talked a little bit.<br/>8 The only time that you have any pain in<br/>9 your lower back is if you overexert yourself?<br/>10 A. Yes, sir.<br/>11 Q. Okay. And you do your best not to do<br/>12 that?<br/>13 A. I try my best, yeah.<br/>14 Q. You are doing your stretches your stretch<br/>15 band exercises and all that stuff and you are<br/>16 wearing a back brace if you are going to lift<br/>17 anything at work. So you are taking the precautions<br/>18 to not overexert?<br/>19 A. To the best of my ability, yes, sir.<br/>20 Q. Is there -- and this is kind of a<br/>21 different way to ask the question, but is there<br/>22 anything that you did before the accident that you<br/>23 can't do now at all?<br/>24 A. I would be lying if I said I can't do<br/>25 anything now. I can do everything. It's just I</p>                                                                                                                                |

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| <p style="text-align: right;">122</p> <p>1 have to -- I have to decide how much pain I'm going<br/> 2 to deal with with what I chose to do. That's really<br/> 3 the only change, you know, but I can pretty much do<br/> 4 whatever I need to do to survive. It's just going<br/> 5 to hurt, I guess you could say, if that makes any<br/> 6 sense on how to answer that question.<br/> 7 Q. And it wouldn't be everything that you<br/> 8 are doing hurts. It's just at the times where you<br/> 9 overexert yourself that's where the pain might come<br/> 10 in?<br/> 11 A. Well, I wouldn't say it's going to come<br/> 12 and go right away, but if I overexert myself the<br/> 13 pain starts to creep back in and stay, so yeah.<br/> 14 Q. What kinds of levels of pain do you get<br/> 15 to on that zero to 10 scale when you overexert<br/> 16 yourself?<br/> 17 A. Oh, maybe a 4, 5. It hasn't got to a 10<br/> 18 since the last procedure --<br/> 19 Q. Okay.<br/> 20 A. -- you know. God willing it won't again.<br/> 21 We're all crossing our fingers for that.<br/> 22 Q. Is there anything that you did before the<br/> 23 accident that when you do it now if you do it it<br/> 24 always ends up in pain?<br/> 25 A. You know what, I'm pretty careful</p>                                                        | <p style="text-align: right;">124</p> <p>1 that.<br/> 2 Q. I mean, you haven't tried to go back to<br/> 3 painting or anything like that, right, and you're<br/> 4 not making a wage loss claim here?<br/> 5 A. I'm not making a wage loss claim, no.<br/> 6 Q. Okay. Did your pain or injuries keep you<br/> 7 from doing like daily home chores like taking out<br/> 8 the trash or cleaning dishes or anything like that?<br/> 9 A. No, it just comes to overexerting myself<br/> 10 and lifting anything heavy.<br/> 11 Q. Have you done any home improvements to<br/> 12 your house or anything like that since the accident?<br/> 13 A. I live in an apartment, so no. Sorry,<br/> 14 no.<br/> 15 Q. Have you done any travel since the<br/> 16 accident?<br/> 17 A. Yes. Sadly, my wife's mom died and we<br/> 18 flew to Chicago and back for the funeral.<br/> 19 Q. Do you remember when that was?<br/> 20 A. I'm so bad with dates. It was -- I don't<br/> 21 remember the exact date, but it was a couple three<br/> 22 months ago.<br/> 23 Q. Okay. So it was like late last year?<br/> 24 A. Yeah.<br/> 25 Q. Late 2022. Have you been to any</p>                                                  |
| <p style="text-align: right;">123</p> <p>1 honestly. I try my best to, you know, follow<br/> 2 through with what they taught me I learned and what<br/> 3 works. So I try not to overexert myself, but it<br/> 4 does happen. It can happen.<br/> 5 Q. Okay. Does your pain or did your pain or<br/> 6 injury effect your social life?<br/> 7 A. I mean, I had different friends back then<br/> 8 than I do now, I guess you could say, but I wouldn't<br/> 9 necessarily say it's because of the accident. I<br/> 10 changed my life, you know, so that has more to do<br/> 11 with it than anything else.<br/> 12 Q. So I have to say that the pain or<br/> 13 injuries that you incurred as a result of the<br/> 14 accident didn't really have any impact on your<br/> 15 social life?<br/> 16 A. Not my social life I wouldn't say.<br/> 17 Q. Okay. And did the pain or injuries that<br/> 18 you sustained in this accident effect your home life<br/> 19 in any way?<br/> 20 A. I mean, not to sound like I'm whining,<br/> 21 but my paychecks were better when I had a painting<br/> 22 business and I know that I stopped because of COVID,<br/> 23 but if I could paint again, you know, obviously we<br/> 24 all try to get more money. It's just what it is in<br/> 25 life. So I would say I would have gone back to</p> | <p style="text-align: right;">125</p> <p>1 amusement parks since the accident?<br/> 2 A. No. I wasn't big on those before, but<br/> 3 no.<br/> 4 Q. What activities and like hobbies do you<br/> 5 have now? Like what do you like to do in your spare<br/> 6 time?<br/> 7 A. I mean nothing really anymore truthfully.<br/> 8 My hobby -- like my spare time I like to lift<br/> 9 weights. That's what I did. I enjoyed that. So<br/> 10 when it comes to like a hobby or anything, that's<br/> 11 pretty much that was it, you know.<br/> 12 Q. Is there anything else in your daily life<br/> 13 that this accident had an effect on that you can<br/> 14 think of?<br/> 15 A. Not off the top of my head, no.<br/> 16 Q. Do you have any social media accounts?<br/> 17 A. I do have old ones that I can't remember<br/> 18 the password to. MySpace or Facebook too, but no,<br/> 19 not that are current by any means.<br/> 20 Q. Did you post on my social media about the<br/> 21 accident or your injuries or your pain or<br/> 22 treatments?<br/> 23 A. Oh, no. These were years ago, sir. I<br/> 24 haven't had social media in a while, so no.<br/> 25 Q. I can tell you are older because you</p> |

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| <p style="text-align: right;">126</p> <p>1 mentioned MySpace?</p> <p>2 A. Yeah, right.</p> <p>3 Q. That doesn't exist. Kind of been</p> <p>4 overrun.</p> <p>5 A. Yeah.</p> <p>6 Q. All right. I've got some concluding</p> <p>7 questions here that I'm going to run through, and</p> <p>8 then I'll turn it over to your attorney if he has</p> <p>9 any questions for you.</p> <p>10 A. Okay.</p> <p>11 Q. When was the last time prior to this</p> <p>12 accident that you treated with any healthcare</p> <p>13 provider for muscular or skeletal pain or injuries</p> <p>14 in your back?</p> <p>15 A. Prior to this accident?</p> <p>16 Q. Yeah.</p> <p>17 A. None.</p> <p>18 Q. Okay. And when was the last time since</p> <p>19 this, but before today so since July of 2020, but</p> <p>20 before today when was the last treatment you</p> <p>21 received for any of your pain or injuries if you</p> <p>22 remember?</p> <p>23 A. I believe it was the last treatment I had</p> <p>24 was the radiofrequency ablation I believe.</p> <p>25 Q. And the records indicate that you had a</p>                                                                               | <p style="text-align: right;">128</p> <p>1 Q. And did I give you a fair opportunity to</p> <p>2 answer all of my questions?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And is there anything else that you'd</p> <p>5 like to add before I turn it over to your attorney</p> <p>6 and then we ultimately go off the record?</p> <p>7 A. I just want to thank you guys for your</p> <p>8 time everybody involved, and I appreciate your work</p> <p>9 in this. So other than that, no.</p> <p>10 Q. And then you understand that you are</p> <p>11 under oath during the entirety of your deposition</p> <p>12 meaning that you are subject to the penalties of</p> <p>13 perjury under the laws of the state of Nevada?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. And before I turn it over to</p> <p>16 Charles --</p> <p>17 MR. MARTINEZ: Charles, do you have any</p> <p>18 questions?</p> <p>19 MR. JACKSON: I do not have any</p> <p>20 questions.</p> <p>21 MR. MARTINEZ: All right. Then I will</p> <p>22 thank everybody for their time today. Mr. Moss, I</p> <p>23 appreciate you sitting down with me. I know it's</p> <p>24 been about two and a half hours solid. So I</p> <p>25 appreciate you powering through and us getting it</p>                                                                                                                                   |
| <p style="text-align: right;">127</p> <p>1 couple of follow-ups with Dr. Muir after that?</p> <p>2 A. That was just -- that was a follow-up to</p> <p>3 talk about where my pain level was since the</p> <p>4 procedure, and then the last one was to get a back</p> <p>5 brace so that I could -- for at work.</p> <p>6 Q. Did any of your treatment providers ever</p> <p>7 ask you if you had prior experiences with pain in</p> <p>8 your lower back?</p> <p>9 A. I'm sure they asked me if I had prior</p> <p>10 pain or anything like that just regular questions,</p> <p>11 but I didn't.</p> <p>12 Q. All right. So some concluding questions</p> <p>13 that are just general related to the deposition,</p> <p>14 okay.</p> <p>15 Has everything that you've testified to</p> <p>16 today been true and accurate to the best of your</p> <p>17 knowledge?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And did you understand all of my</p> <p>20 questions that you provided answers to?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And did I adequately clarify any</p> <p>23 questions that you were unsure about before you</p> <p>24 provided your answer?</p> <p>25 A. Yes, sir.</p> | <p style="text-align: right;">129</p> <p>1 done, and I appreciate you being forthcoming with</p> <p>2 your answers.</p> <p>3 Usually you have the opportunity, if</p> <p>4 you'd like -- Kelly is obviously creating that</p> <p>5 written transcript. You have the opportunity if</p> <p>6 you'd like to review the transcript before it's</p> <p>7 finalized and sign off on it or you can waive your</p> <p>8 right to review it and sign. That's something you</p> <p>9 can discuss with your attorney. I don't know if</p> <p>10 you've already previously discussed it, but if you</p> <p>11 have that opportunity and you decide to make any</p> <p>12 changes to the transcript, I'll just let you know</p> <p>13 that any substantive change you made to the</p> <p>14 transcript like change a yes to a no or a red to a</p> <p>15 green would be an example, right, if you were</p> <p>16 talking about a light.</p> <p>17 If you make any substantiative changes, I</p> <p>18 have the opportunity to comment on that at the time</p> <p>19 of trial. Do you understand that?</p> <p>20 THE WITNESS: Yeah, that makes sense.</p> <p>21 MR. MARTINEZ: Okay. Then I think we are</p> <p>22 done for the day.</p> <p>23 MR. JACKSON: It sounds like we'll waive</p> <p>24 and I'll have an E-transcript please.</p> <p>25 MR. MARTINEZ: Just electronic for us.</p> |

130

1 THE REPORTER: Is it okay to go off,  
 2 guys?  
 3 MR. MARTINEZ: Yes, we are good to go  
 4 off.  
 5 (Proceedings recessed at  
 6 4:06 p.m.)  
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1 REPORTER'S CERTIFICATE  
 2  
 3 STATE OF NEVADA )  
 4 ) ss  
 5 COUNTY OF CLARK )  
 6  
 7 I, Kelly R. Rexroat, a duly certified court  
 8 reporter licensed in and for the State of Nevada, do  
 9 hereby certify:  
 10 That I reported the taking of the proceedings  
 11 at the time and place aforesaid;  
 12  
 13 That I thereafter transcribed my shorthand  
 14 notes into typewriting and that the typewritten  
 15 transcript of said proceedings is a complete, true  
 16 and accurate record of the proceedings to the best  
 17 of my ability.  
 18  
 19 I further certify that I am not a relative,  
 20 employee or independent contractor of counsel of any  
 21 of the parties; nor a relative, employee or  
 22 independent contractor of the parties involved in  
 23 said action; nor a person financially interested in  
 24 the action; nor do I have any other relationship  
 25 with any of the parties or with counsel of any of  
 the parties involved in the action that may  
 reasonably cause my impartiality to be questioned.  
 IN WITNESS WHEREOF, I have hereunto set my  
 hand in the County of Clark, State of Nevada, this  
 20th day of February 2023.  
*Kelly R. Rexroat*  
 Kelly R. Rexroat, CCR 977, RPR

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# EXHIBIT “2”



## **MEDICAL RECORDS REVIEW**

**Patient: Jared Moss**

**Date of Injury: 7/9/2020**

**Type of injury: Ped vs Auto**

**Date of review: 7/5/2021**

**Time involved in review/report: 5 hrs.**

### **Medical Records**

1. Henderson Hospital
2. Shadow Emergency Physicians
3. Desert Radiologist
4. Advanced Spine & Rehabilitation
5. William Muir, MD
6. Pueblo Medical Imaging
7. Anesthesia and Intensive Care
8. Community Ambulance
9. Sunrise Hospital
10. Fremont Emergency Services
11. Radiology Specialists

### **1. Henderson Hospital**

**7/9/2020: ER Visit**

**Chief Complaint:** S/p fall. Right buttock pain, swelling

**History of Present Illness:** The patient presents with complaints of right buttock pain status post fall backwards after being hit by a car. He also reports low back pain that gradually started after he fell. He states that the car had been stopped and then started to go to make a left-hand turn and hit him in the intersection. He said that the car hit his hands and he fell backwards onto his buttock and back. He denies hitting his head. He has been ambulatory all day but stated that he really only noticed pain in the buttock when he got into the family members car and noticed that there was a bunch of swelling as well.

**Exam:** Mild to moderate diffuse mid to lower lumbar tenderness. Normal, painless ROM of both hips and knees although with extremes of flexion there is worsening of his low back pain complaints. Large hematoma affecting the right buttock with minimal overlying superficial abrasion. No tenderness of the hands or wrists. No motor or sensory deficits noted.

**CT Abdomen/Pelvis:** Soft tissue hematoma of the right posterior buttock, superficial to the muscle in the subcutaneous tissues, measuring 2.7 x 6.0 x 12.0 cm in dimension

**CT Lumbar Spine:** Unremarkable

**Impression:** Pedestrian injured in traffic accident. Lumbar contusion. Traumatic hematoma of buttock

**Plan:** Rx Ibuprofen, APAP. D/c home

*Medical bills were reviewed and \$25,864.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **2. Shadow Emergency Physicians**

**7/9/2020: Emergency Evaluation & Management \$1335**

Provider: Dr. Martin

*Medical bills were reviewed and \$1,335.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **3. Desert Radiologist**

**7/9/2020: CT Lumbar Spine \$556**

Unremarkable

**7/9/2020: CT Abdomen and Pelvis \$1048**

Soft tissue hematoma of the right posterior buttock, superficial to the muscle in the subcutaneous tissues, measuring 2.7 x 6.0 x 12.0 cm in dimension

No acute traumatic injury identified within the peritoneal cavity or retroperitoneum

*Medical bills were reviewed and \$1,604.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **4. Advanced Spine & Rehabilitation**

**Treatment Dates: 7/10/2020-1/6/2021 (31 Sessions)**

**7/10/2020: Initial Report**

**Chief Complaints:** Low back pain, Right buttock/hip pain, Right knee pain, Sleeplessness

**History of Injury:** The patient was a pedestrian and a marked crosswalk and an intersection when a driver of a full-size van failed to yield and struck the patient, knocking him to the ground. He was unable to get out of the way of the Van and reports landing on his right side. He states the offending driver fled the scene. The patient presented to the ER for evaluation where he underwent CTs. He presents today with lower back pain as well as right knee pain and right buttock pain currently rated 8/10.

**Past Medical History:** Noncontributory

**Medications:** Methadone

**Exam:** Notable difficulty with prolonged sitting. Transition from a seated position was guarded. Palpation revealed spasms and marked tenderness along the lumbar paraspinal musculature bilaterally. Marked tenderness at the lower lumbar facets and SI joints, greater on the right. ROM significantly reduced in the lumbar spine. Positive standing Kemp's test, Sitting Kemp's, Farfan Torsion and Compression, SI Compression, Hibb's on the right. Large hematoma with associated swelling in the right hip buttock region with marked tenderness in the posterior hip. Positive tenderness in the posterior aspect of the right knee. ROM within normal limits.

**10/5/2020:** Reports gradual overall improvement of his right hip. He does have some continued lower back pain and tightness and is scheduled for injections tomorrow. The patient received 31 sessions of chiropractic treatment with the last session on 1/6/21. At that time the patient did have hypertonicity in the lumbar musculature and the current radiating pain was 0-3/10 with overall improvement of 90%.

**10/28/2020:** Patient reports he was struck by a car on 10/22/2020. He was transported to sunrise Hospital and hospitalized due to TBI symptomatology including blunt head trauma and loss of consciousness. He reports no increased symptomatology in regards to his chief complaints related to the MVA versus pedestrian collision from 7/9/20.

**12/2/2020:** Patient reports overall 70% improvement of his low back pain since starting treatment. He does feel that his pain is starting to increase him that his injection response is starting to wear off. Current pain 3-5/10. He reports increased pain with prolonged sitting and daily activities. He does report his right buttock/hip pain and sleeplessness have resolved.

**1/6/2021: Final Report**

Patient reports 90% overall improvement of his low back pain complaints since beginning treatment. Current pain intensity radiating over the past week is 0-3/10. He does continue to have slightly increased pain and/or symptoms with travel, 9/6/2021

rotation, lifting, walking and standing.

**Exam:** Hypertonicity in the lower lumbar musculature with mild tenderness. ROM was within normal limits.

*Medical bills were reviewed and \$7,262.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **5. William Muir, MD**

### **7/23/2020: Initial Visit**

**Chief Complaints:** Low back pain

**History of Injury:** On 7/9/2020, the patient was a pedestrian crossing a marked crosswalk at the intersection of Maryland and Wigwam, when a driver of a vehicle failed to yield, hitting and knocking the patient to the ground. He was evaluated in the ER.

**Medical History:** None

**Past Surgical History:** None

**Lumbar Exam:** ROM-flexion 100%, extension 90%, lateral flexion 100% all with pain. Sensation and strength intact and full. Mild to moderate tenderness in the lumbar paraspinals and right buttock and SI joint and moderate muscle tightness

**Impression:** Sprain/strain with possible additional injuries, Right buttock contusion/hematoma

**Plan:** Refer for MRI if pain persists

### **8/10/2020: Followup Visit**

Presents for a follow-up via telemedicine. Reports he continues to attend therapy with noted benefit as his overall pain has decreased. He is no longer having the sharp pains and is now only having that of a intermittent discomfort depending on his activity.

**Plan:** Continue therapy as beneficial

### **9/9/2020: Followup Visit**

Telemedicine follow up. Overall condition remains the same. He does take methadone chronically but despite medications still feels the low back pain.

**Plan:** Refer for MRI lumbar spine

### **9/16/2020: Followup Visit**

Presents for follow-up and for review of his recent lumbar spine MRI. He reports he continues to attend therapy with noted temporary benefit however his overall progress has somewhat plateaued and he continues to experience low back pain.

**MRI:** Facet hypertrophy and disc height narrowing L4-S1

**Plan:** Candidate for bilateral L4-S1 facet injections

### **10/6/2020: Procedure: Bilateral L4-S1 Facet Injections**

Pre-Procedure Pain: 3/10

Post-Procedure Pain: 0/10

### **1/12/2021: Followup Visit**

Follow-up via telemedicine and status post bilateral L4-S1 facet injections which occurred on 10/6/2020. The patient reports up until 2 weeks ago he had what he described as 100% pain relief with only some mild tightness. Over the last 1-2 weeks he has noted a slight and progressive return of pain.

**Subsequent injuries** (new since problem for which being seen):

Ped vs auto in late 10/2020. Suffered head injury. Denies injury to low back or increase of symptoms

**Plan:** Candidate for bilateral L3, L4, L5 MBB for consideration of an RFA

### **1/19/2021: Procedure: Bilateral L3, L4, L5 MBB**

Pre-Procedure Pain: 3/10

Post-Procedure Pain: 2-3/10

### **2/3/2021: Followup Visit**

Telemedicine followup and s/p bilateral L3, L4, L5 MBB from 1/19/2021. The patient reports again 100% pain relief with the injections.

**Plan:** Candidate for RFA if pain returns. No if no return of pain likely would be at MMI



**3/3/2021: Followup Visit**

Telemedicine followup. Reports that he has continued to remain pain free since his lumbar MBB, although has noted some return of the "tightness" and "stiffness" in his low back of which usually precedes the return of pain. He does admit that he currently he is in school and does sit for long periods of time after which he will notice more tightness, but with activity will improve and nearly resolve. Discussed HEP and stretching as well as breaks from a seated position.

Plan: Candidate for RFA if pain returns. No if no return of pain likely would be at MMI

**3/31/2021: Followup Visit**

Telemedicine follow up. Reports that the very positive therapeutic response from the January medial branch block injection has now worn off. He is miserable with his low back pain and wishes to discuss options and in particular radiofrequency ablation which he has researched online.

Plan: Candidate for bilateral L3, L4, L5 RFA

**4/6/2021: Procedure: Bilateral L3, L4, L5 RFA****4/21/2021: Followup Visit**

Telemedicine followup s/p bilateral L3, L4, L5 RFA which took place on 4/6/2021. The patient reports he is doing very well and has already noted complete relief of his low back pain and symptoms.

Plan: If no return of pain or symptoms at next visit, would be at MMI

**5/19/2021: Followup Visit**

Telemedicine followup. Continues to do very well since his RFA and has not noted any return of pain/

Plan: At MMI

*Medical bills were reviewed and \$59,791.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

**6. Pueblo Medical Imaging****7/3/2020: Xray Right Knee \$150**

Unremarkable

**9/12/2020: MRI Lumbar Spine (No billing)**

L1-2: Unremarkable

L2-3: Unremarkable

L3-4: Unremarkable

L4-5: Bilateral facet hypertrophy

L5-S1: Disc height narrowing

*Medical bills were reviewed and \$150.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

**7. Anesthesia and Intensive Care****10/6/2020: Anesthesia Coverage \$1750**

Procedure: Bilateral L4-S1 Facet Injections

**1/19/2021: Anesthesia Coverage (No billing)**

Procedure: Bilateral L3, L4, L5 MBB

**4/6/2021: Anesthesia Coverage \$1750**

Procedure: Bilateral L3, L4, L5 RFA

*Medical bills (Incomplete) were reviewed and \$3,500.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

**8. Community Ambulance**

#### **10/17/2020: EMS Transport to Sunrise Hospital \$1266.60**

**Narrative:** 39-year-old male involved in an auto vs pedestrian accident. Upon arrival patient was found sitting upright and appeared to be in distress. The patient's girlfriend states that the patient was struck by a sedan with its 305 off while the patient was on the side of the road. The car fled the scene after the accident. Per the patient's girlfriend he was launched in the air and fell head first into the asphalt and was not alert for approximately 30 seconds. He was initially found to be alert and oriented x3 with a GCS of 14. The patient however was noted to be sluggish to respond to simple questions but was able to once given a painful stimuli. Patient chief complaint of pain is to his head and he does not remember the accident. Denies abdominal pain, visual changes, nausea vomiting. Patient showed no acute changes in route to sunrise and was stable in transport.

**Exam:** Patient's head showed a contusion to his right occipital region with abrasion, no active bleeding. Abrasion to the right eyebrow and right cheek. Small abrasion to the left knee. Back was unremarkable.

### **9. Sunrise Hospital**

**Admission: 10/17/2020-10/19/2020 \$117469**

#### **10/17/2020: Admission/ER Note**

**Chief Complaint:** Patient arrived by EMS with head pain, neck pain, extremity pain

**History of Present Illness:** 39-year-old male presents to the ED in c-collar with face pain, right shoulder pain, left knee pain, abdominal pain, left toe/foot pain that began today status post auto versus speed. Patient was struck during a hit and run an unknown speed with positive LOC.

**Exam:** Awake, alert. Abrasion to right side of the face. Scalp hematoma with laceration. Pupils equal and reactive. Immobilized in a C-collar. Abdominal diffuse tenderness. Back atraumatic. Abrasion to right shoulder. Abrasion to left knee. Abrasion to left toe. No motor or sensory deficits noted.

#### **Imaging:**

CT Cervical Spine: No evidence of acute injury

CT Facial Bones: No acute facial bone fractures

CT Brain: No evidence of acute intracranial hemorrhage

CT Thorax: No evidence of acute traumatic injury in the chest

CT Abdomen and Pelvis: No acute traumatic injury in the abdomen or pelvis

Xray Right Shoulder: No acute injury

Chest xray: Unremarkable

Xray Femur Bilateral: Unremarkable

Xray Tib-Fib Right: Unremarkable

Xray Hands Bilateral: No acute injury

Impression: Altered Mental Status, Abrasion, Contusion

Plan: Admit

#### **10/19/2020: Discharge Note**

39-year-old male with unknown past medical history presented on 10/17/2020 after being hit by a motor vehicle. Currently patient is alert and oriented x1-2, poor historian and not answering questions appropriately therefore HPI obtained by ER provider. It was reported that the patient was hit by a motor vehicle while crossing the road. Per EMS, the patient is taking methadone. There was no other information reported. Patient was admitted and monitored. No fracture seen on x-ray. Patient now more alert and awake. Able to work with PT and has been cleared for home.

**Discharge Diagnosis:** Altered mental status, Motor vehicle accident, injury. head contusion. Polysubstance abuse

### **10. Fremont Emergency Services**

**10/17/2020: Critical Care Evaluation and Management \$1899**

Provider: Brett Michael Hansen, MD

### **11. Radiology Specialists**

**10/17/2020: CT Cervical Spine \$189**

No evidence of acute injury

**10/17/2020: CT Facial Bones \$174**

No acute facial bone fractures

**10/17/2020: CT Brain \$156**

No evidence of acute intracranial hemorrhage

**10/17/2020: CT Thorax \$212**

No evidence of acute traumatic injury in the chest

**10/17/2020: CT Abdomen and Pelvis \$271**

No acute traumatic injury in the abdomen or pelvis

**10/17/2020: Xray Right Shoulder \$39**

No acute injury

**10/17/2020: Chest xray \$29**

Unremarkable

**10/17/2020: Xray Femur Bilateral \$39**

Unremarkable

**10/17/2020: Xray Tib-Fib Right \$29**

Unremarkable

**10/17/2020: Xray Hands Bilateral \$30**

No acute injury

## **Summary**

On 7/9/20 the patient was a pedestrian walking in a marked crosswalk at an intersection when a driver of a full-size van struck the patient impacting his hands, knocking him backwards to the ground landing on his back and buttocks.. The patient indicated he was unable to get out of the way of the van and after being struck landed on his right side. The patient was taken to **Henderson Hospital Emergency Room**. His chief complaints were right buttocks pain and swelling. On examination the patient had diffuse lower lumbar tenderness and a large hematoma over the right buttocks with minimal overlying superficial abrasion. Neurologically the patient was intact. A CT scan was obtained of the pelvis showing a soft tissue hematoma in the right posterior buttocks. A CT scan of the lumbar spine was taken as well. The patient was provided ibuprofen, aspirin, and was discharged to home.

The patient was evaluated at **Advanced Spine and Rehabilitation** on 7/10/20 with chief complaints of low back, right buttocks/hip, right knee pain. The patient also complained of difficulty sleeping. Initial examination was done which was abnormal regarding the lumbar spine joining significantly reduced lumbar range of motion, **Marked tenderness to the lower lumbar facets**, and a large hematoma with associated swelling in the right buttocks, as well as tenderness to the posterior aspect of the right knee. However the right knee range of motion was normal. The patient received 31 sessions of chiropractic treatment with the final report on 1/6/21. At that time the patient had been doing very well since his lumbar injection and was discharged from chiropractic treatment.

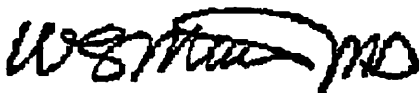
The patient was referred to evaluated by **William Muir M.D.**, Orthopedic Spine Surgeon, on 7/23/20 with chief complaint of low back pain. On examination the patient had painful lumbar range of motion with mild to moderate tenderness in the paraspinal lumbar muscles. The patient also complained of **sharp pains which are consistent with lumbar facet mediated pain**. A lumbar MRI scan was ordered and done on 9/12/20. The lumbar **MRI scan of the lumbar spine at Pueblo Medical Imaging** which was essentially fairly unremarkable with disc height narrowing at L5-S1 and bilateral facet hypertrophy at L4-5. The patient continued with his therapy however had somewhat plateaued. After discussing options the patient chose to proceed with the option of bilateral L4 to S1 facet injections. The patient's preinjection pain level is 3/10 and post level 0/10 which was diagnostic and very therapeutic. The patient returned three months later reporting that he had **100% pain relief** with only some mild tightness however recently the low back pain was returning. He also reported another pedestrian versus auto injury in October in which he suffered a head injury but denied any injury to the low back nor any increase of his lumbar symptoms. Subsequently in January 2021 the patient underwent bilateral L3, L4, L5 medial branch block injection which again provided 100% relief of pain from the injection. By March 2021 the patient noted some return of

lumbar symptomatology. By the end of March the positive benefit of the injection had worn off. On 4/6/21 the patient underwent bilateral radiofrequency ablations for the L4 to S1 levels. At follow-up, 15 days later, the patient noted complete relief of his low back pain and symptoms. The patient followed up again on 5/19/21 still reporting complete relief of his lumbar symptoms from the radiofrequency ablation. The patient was instructed to return for follow-up as needed.

As referenced above, on 10/7/20 the patient was involved in **another pedestrian versus automobile accident**. **Community Ambulance** reported to the scene and the patient appeared to be in distress. His girlfriend indicates that he was struck by another vehicle which resulting in the patient being launched in the air and following head first into the asphalt. The patient was not alert for approximately 30 seconds. The patient was found to be sluggish in response to simple questions. The patient's chief complaint was pain in the head. The patient was found to have a contusion to the right occipital region within the abrasion as well as an abrasion in the right eyebrow and right cheek. The patient was taken to **Sunrise Hospital** with chief complaints of head, neck, and extremity pain. On examination the patient was found to have an abrasion in the right side of his face, scalp hematoma, and laceration. *The patient was assessed as having no trauma to the low back.* CT scans were obtained of the cervical, face, brain, thorax, and abdomen all showing no acute traumatic injuries visible on CT scan. Impression was status post MVA with altered mental status, abrasion, and contusion. The patient was admitted to the hospital and discharged two days later. The patient's discharge diagnosis was motor vehicle accident with resulting altered mental status and head contusion. *There is no evidence that the patient sustained an exacerbation of low back pain neither in the medical records reviewed nor from the patient pertaining to the 10/7/20 accident.*

Due to the pedestrian versus automobile accident on 7/9/20 the patient sustained injury to his **lower lumbar facets**. The patient's symptoms included sharp pain with movements which is consistent with facet mediated pain. The patient underwent 2 lumbar injections that provided 100% relief of symptoms temporarily. The patient subsequently underwent radiofrequency ablation approximately 3 months ago which resulted in at least a temporary resolution of symptoms. The treatment rendered subsequent to the 7/9/20 MVA was reasonable, customary, and directly related to the injury. There are no prior medical records or history of the patient having lower lumbar facet mediated symptoms prior to the 7/9/20 injury. The patient did sustain an additional injury on 10/7/20 however the medical records are clear that this did not result in an exacerbation or new lumbar symptomatology. Due to the chronicity of the lumbar spine most likely the patient's low back pain will return and he most likely will benefit from future medical visits, therapy for acute exacerbations, imaging to rule out other new pathology, and repeat radiofrequency ablations. The need for such treatment is directly related to the 7/9/20 injury. The treatment of radiofrequency ablation is not considered to be a permanent treatment and there is a possibility that the patient's lumbar facet injury will resolve with time and not require future treatments.

These opinions are stated to a reasonable degree of medical probability and are based upon my evaluations of the patient and the medical records that I have reviewed. Opinions may change based upon the medical records or additional information.



William S. Muir, M.D.  
Orthopedic Spine Surgeon  
Diplomate, American Board of Orthopedic Surgeons  
Fellow, American Academy of Orthopedic Surgeons



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Spine Surgery



## **Additional MEDICAL RECORDS REVIEW**

**Patient: Jared Moss**  
**Date of Injury: 7/9/2020**  
**Type of injury: Ped vs Auto**  
**Date of review: 7/6/2022**  
**Time involved in review/report: 30min**

### **Medical Records**

#### **1. William Muir, MD**

#### **1. William Muir, MD**

##### **5/19/2021: Followup Visit**

The patient presents for a follow-up via telemedicine status post bilateral L3, L4, L5 RFA's which took place on 4/6/2021. The patient reports he is doing very well and has already noted complete relief of his low back pain and symptoms. Plan: S/p bilateral L3, L4, L5 RFA-continue to monitor response. If no return of pain or symptoms at next visit, would be at MMI

##### **11/22/2021: Followup Visit**

The patient presents for a telemedicine followup visit. The patient does continue to do very well from the radiofrequency ablation, however notes that after eight hours prolonged sitting his back bothersome for a couple hours. Plan: Continue to monitor response to RFA

##### **12/21/2021: Followup Visit**

The patient presents for a followup via telemedicine. Since his last visit he reports overall continued improvement. He has noted that the discomfort he was having with any prolonged sitting at work has improved with the use of a lumbar support. At this point he is very happy with his overall progress as he reports minimal to no pain. Plan: At MMI although at risk for acute exacerbations of which may require additional/repeat treatment

**Since the last since the last testing since the last testing 123 testing 123 testing 123 testing**

## **Summary**

Since the last LCP, the patient has been seen 7 times. The positive benefit of the RFA wore off and a repeat bilateral L4-S1 RFA was done on 5/17/22. At follow up on 6/2/22, the patient reported 100% improvement. Most likely 9-0008

continue to require RFA's in the future. If they become no longer beneficial, most likely he would be a candidate for a two level fusion.

These opinions are stated to a reasonable degree of medical probability and are based upon my examinations of the patient and the medical records that I have reviewed. Opinions may change based upon the medical records or additional information.

A handwritten signature in black ink, appearing to read "W.S. Muir MD". The signature is stylized with a large, sweeping "W" and a distinct "MD" at the end.

William S. Muir, M.D.  
Orthopedic Spine Surgeon  
Diplomate, American Board of Orthopedic Surgeons  
Fellow, American Academy of Orthopedic Surgeons

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# EXHIBIT “3”

## Comprehensive Medical Examination

Patient: Jared Moss

Date of Service: October 7, 2022

Date of Birth:

Date of Incident: July 9, 2020

I was asked to perform an examination and review the medical records of Jared Moss as they relate to the incident of 7/9/20.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. He states he was walking in a crosswalk and a plumbing van struck him on the left side, causing him to land on his butt and back. He denies any loss of consciousness, and he did not require any emergency care or transportation to the hospital by ambulance. He reports he had immediate pain in his lower back and hands. Currently, he has ongoing low back pain which does not radiate. He rates this pain at 4-5/10, and describes it as a deep-pressure and tightness. He has treated with PT, heat, ice, TENS, massage, medications, exercise, chiropractic care, and lower back injections. The pain is worse with over-exertion or repetitive motions. The pain is better with ablations, rest, and stretching. The pain limits him. His providers have not recommended any spine surgery for him. He denies any prior symptoms, and denies any prior accidents. He reports a subsequent MVA but does not know the date, and states it only injured his head and did not affect his lower back.

Past Surgical history: denies

Past Medical History: denies

Allergies: PCN, amoxicillin

Current Medications: denies

Social history: he works in shipping/receiving, at time of the accident he was a painter, he admits to smoking

Family history: denies

Review of systems: negative in detail

## Medical Time Line:

### Pre-Incident Medical Records:

2/14/16      Spring Valley Hospital – ER – chest pain, SOB for 1 day, PMH hepatitis C, methamphetamine abuse, has HA, fall 2 weeks ago landing on coccyx  
CXR  
xrays coccyx – no fracture



1/6/19 Desert Springs Hospital – ER – fevers, chills, PMH cirrhosis  
9/22/19 Henderson Hospital – ER – abdominal/groin pain, inguinal hernia

### **Incident**

**7/9/20 MVA – Traffic Accident Report – front right bumper of V1 struck P1’s left side causing him to fall in travel lane, declined medical transport, V1 Econoline, non-motorist Jared Moss**

### **Post-Incident Medical Records:**

7/9/20 Henderson Hospital – ER – s/p fall backwards after being hit by car, on methadone therapy, LBP and right buttock pain, started gradually after being knocked over by car today, car hit his hands and he fell backwards onto his buttock and back, did not hit head, hands bothering him, denies weakness or n/t, exam neck normal, mid to lower lumbar tenderness, neuro normal, smoker, high risk substance abuse current methamphetamines,  
CT lumbar spine – mild scoliosis, unremarkable  
CT abdomen/pelvis – right buttock soft tissue hematoma

7/10/20 chiro – initial report, LBP, right buttocks/hip, right knee, pedestrian in crosswalk, van struck him, knocking him to ground, landed on right side, heavy smoker

7/13/20 chiro

7/15/20 chiro – lumbar, right hip, right knee, right buttock contusion

7/17/20 chiro

7/23/20 Dr. Muir – LBP, pedestrian, hit by van, no radiation, neuro normal

7/24/20 chiro

7/27/20 chiro

7/30/20 xrays right knee - unremarkable

8/4/20 chiro

8/5/20 chiro

8/7/20 chiro

8/10/20 Dr. Muir – telemed f/u, pain decreased with therapy

8/12/20 chiro

8/14/20 chiro

8/17/20 chiro

8/19/20 chiro

8/21/20 chiro

8/24/20 chiro

8/26/20 chiro

8/31/20 chiro

9/2/20 chiro

9/9/20 Dr. Muir – telemed f/u, takes methadone chronically but still feels LBP, no radiation, smoker, not employed, neuro normal

9/12/20 MRI lumbar spine –  
T12-L1 unremarkable  
L1-2 unremarkable  
L2-3 unremarkable  
L3-4 unremarkable  
L4-5 FJ, LF  
L5-S1 unremarkable

9/16/20 chiro

10/5/20 chiro

10/6/20 Dr. Muir – bilateral L4-S1 facet injections, pain from 3 to 0/10

|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10/7/20         | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 10/14/20        | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>10/17/20</b> | <b>MVA vs pedestrian</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 10/17/20        | Ambulance – PMH heroin use history, taking methadone, struck by sedan, car fled, LOC, pain to head, right occipital contusion, facial abrasions                                                                                                                                                                                                                                                                                                                                                                                           |
| 10/17/20        | Sunrise Hospital – ER – via EMS, head, neck, extremity pain, pedestrian, pain in head, face, abdomen, right UE and left LE, LOC, right shoulder and left knee, s/p hit and run, patient on methadone<br>xrays bilateral femur – no injury<br>CXR<br>CT thorax – in acute traumatic injury<br>CT cervical spine – unremarkable<br>CT brain – unremarkable<br>xrays hands – retained metallic BB pellet<br>CT facial bones – unremarkable<br>CT abdomen/pelvis<br>xrays right shoulder – unremarkable<br>xrays right tib/fib - unremarkable |
| 10/28/20        | chiro – hit by car on 10/22/20, transported to Sunrise Hospital for TBI for head trauma and LOC, no increase in symptomatology, lumbar and right hip                                                                                                                                                                                                                                                                                                                                                                                      |
| 11/25/20        | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 12/2/20         | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 12/7/20         | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 12/30/20        | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 1/6/21          | chiro – final report – LBP 90% overall improvement since beginning of treatment, 0-3/10                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 1/12/21         | Dr. Muir – telemed, s/p facet injections on 10/6/20, had 100% relief until 2 weeks ago                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 1/19/21         | Dr. Muir – bilateral L3-5 MBB, pain from 3 to 2-3/10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 2/3/21          | Dr. Muir – telemed, 100% relief after injections                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 3/3/21          | Dr. Muir – telemed, return of tightness and stiffness in lower back                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 3/31/21         | Dr. Muir – telemed, LBP, wants RFA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 4/6/21          | Dr. Muir – bilateral L3-5 RFA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 4/21/21         | Dr. Muir – telemed, doing well with complete relief                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 5/19/21         | Dr. Muir – doing well with relief of pain                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 7/5/21          | Dr. Muir – reviewed records, injury to lumbar facets, had 2 lumbar injections with 100% relief, had additional injury on 10/7/20 which did not exacerbate lumbar symptoms, future care with future RFA, pain management, chiro, future imaging                                                                                                                                                                                                                                                                                            |
| 7/23/21         | Henderson Hospital – ER – referral from primary care doctor he saw today, left sided chest pain for one week, left lower chest without radiation, pain went to back, taking methadone, PMH hepatitis C, cirrhosis, neuro normal                                                                                                                                                                                                                                                                                                           |
| 11/22/21        | Dr. Muir – telemed, doing well, after 8 hours of sitting back bothers him<br>CXR                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 8/31/21         | Dr. Sood – abdominal pain, no medications regularly                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 9/16/21         | Henderson Hospital – endoscopy                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 11/22/21        | Dr. Muir – telemed, doing well from RFA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 12/21/21        | Dr. Muir – telemed, doing well                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 5/2/22          | Dr. Muir – LBP increased                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 5/17/22         | Dr. Muir – bilateral L3-5 RFA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

6/2/22 Dr. Muir – telemed f/u, continued relief of LBP, no more medications, able to return to normal activities with minimal discomfort  
6/30/22 Dr. Muir – telemed, minimal LBP  
7/6/22 Dr. Muir – life care plan, future care required and related  
7/14/22 Dr. Muir – telemed, ongoing relief of LBP  
8/10/22 Michael Walters – had Sean Tomesco yielded right of way to Jared Moss, this collision would not have occurred

Photos:

Right buttocks contusion

Imaging Studies:

7/9/20 CT lumbar spine – mild degenerative changes, L5-S1 disc narrowing with endplate changes, L4-5 endplate changes  
7/9/20 CT abdomen/pelvis  
7/30/20 xrays right knee  
9/12/20 MRI lumbar spine – mild narrowing L5-S1 with endplate changes  
7/23/21 CXR

Physical Examination:

General: The patient is awake, alert, oriented. The patient has intact recent and remote memory and is oriented to time, place and person. The patient has normal mood and affect. The patient is without any distress and has normal stature.

Musculoskeletal examination: The patient walks a normal gait, and is able to raise on the toes and heels, and balance.

Lumbar spine: The patient has no tenderness to light touch on the lumbar paraspinal areas. There is a normal range of motion of the lumbar spine, and no discomfort with movements.

Cervical spine: The patient has no tenderness to light touch in the cervical and thoracic areas. There is no limitation of motion of the cervical spine and no discomfort with movement.

Neurovascular examination: Lower extremities demonstrates 5/5 motor strength in the lower extremities. Sensation is intact to light touch throughout the bilateral lower extremities. Deep tendon reflexes are 0 and symmetrical in the lower extremities. There is no evidence of clonus. There is a negative straight-leg raise bilaterally.

Upper extremities demonstrate 5/5 motor strength in the bilateral upper extremities. Sensation is intact to light touch throughout the bilateral upper extremities. Deep tendon reflexes are 0 and symmetrical in the upper extremities without a Hoffmann's reflex.

Assessment / Opinions / Future Care:

All of my opinions below are based on my training, clinical teaching practice and the medical literature. I am currently a Professor of Orthopaedic Surgery and Neurosurgery at the USC Spine Center. My opinions are also based on a reasonable medical probability, however, are preliminary and subject to change based on future records/documents supplemented and reviewed. I am reviewing these records and performing an examination for evaluation purposes only. There is no doctor-patient relationship.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. He states he was walking in a crosswalk and a plumbing van struck him on the left side, causing him to land on his butt and back. He denies any loss of consciousness, and he did not require any emergency care or transportation to the hospital by ambulance. According to the records, he sought evaluation in the emergency room after the incident, with the records documenting pain in the lower back and right buttock, without radiation of the pain. He had a bruise on his buttocks. He had CT scans of the lumbar spine and abdomen and pelvis, which did not show any injuries. He started chiropractic treatments on 7/10/20, with documentation of lower back pain, right hip and buttocks pain, and right knee pain. He continued chiropractic care for about 3 months. On 9/12/20 he had an MRI of the lumbar spine, which did not show any injuries. On 10/6/20, he had lumbar facet injections.

He was involved in another accident, where he was hit by a vehicle as a pedestrian, on 10/17/20. He required ambulance transportation to the hospital, where he had a loss of consciousness and head injuries. He had CT scans of the cervical spine, thorax, abdomen, pelvis, facial bones, and radiographs of the chest, bilateral femurs, hands, right shoulder, and right lower leg. He re-started chiropractic care on 10/28/20, and continued further treatments for about 2 months, where he was 90% improved.

On 1/19/21 he had more lumbar facet injections, and on 4/6/21 he had facet ablations. On 5/17/22, he had more lumbar facet ablations.

I have some any pre-accident records. He is on methadone for prior methamphetamine abuse, and had a prior fall in 2016. He has hepatitis C with liver cirrhosis, and is a smoker.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. There is no identified structural injury to the lumbar spine from the incident on any of the post-accident radiological studies. He had a soft tissue buttock contusion and a possible lumbar strain from the incident, which would warrant a reasonable amount of conservative soft tissue treatments. I would relate the need for the initial medical evaluations, the initial radiological studies of the spine, and the initial chiropractic treatments, to be associated with the incident. After allowing for a reasonable period of time for these strains to resolve, I could no longer relate any further medical care, to be linked to the incident. After the completion of about 3 months of chiropractic treatments in October 2020, I do not relate the need for any further medical treatments for the spine, to be linked to the incident of 7/9/20. I do not relate the spinal injections nor the lumbar facet ablations, to be linked to the MVA, as the structures injected or ablated, were not injured or altered by the incident. I would relate the conservative care, with the exception of the facet injections, up to the subsequent accident in October 2020, to be connected to the incident of 7/9/20. I do not relate any ongoing subjective reports of spine symptoms, nor any future medical care for the spine, to be causally linked to the MVA of 7/9/20.

I would like to see more recent medical records, all of the imaging studies, and more detailed records prior to the incident, if they exist. I reserve the right to alter my opinions if more information is provided to me.

Sincerely,



Jeffrey C. Wang, MD  
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Co-Director USC Spine Center  
Professor of Orthopaedic Surgery and Neurosurgery  
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**EXHIBIT “10”**

**EXHIBIT “10”**



1 **RIS**

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16 Attorneys for Defendants Sean Edward Tomesco

17 and Second Opinion Plumbing, LLC

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

13 JARED MOSS, individually,

14 Plaintiff,

15 vs.

16 SEAN EDWARD TOMESCO, individually;  
17 SECOND OPINION PLUMBING, LLC, a  
18 domestic limited liability company; DOES I  
through X, inclusive; ROE CORPORATIONS XI  
through XX, inclusive,

19 Defendants.

Case No.: A-21-840372-C

Dept. No.: 20

**DEFENDANTS' REPLY IN SUPPORT OF  
RENEWED MOTION FOR JUDGMENT  
AS A MATTER OF LAW PURSUANT TO  
NRCP 50(b), AND MOTION FOR NEW  
TRIAL PURSUANT TO NRCP 59, OR  
ALTERNATIVELY FOR REMITTITUR**

***HEARING REQUESTED***

21 Defendants SEAN EDWARD TOMESCO and SECOND OPINION PLUMBING, LLC  
22 (collectively "Defendants"), by and through their attorneys of record, M. Caleb Meyer, Esq., Renee  
23 M. Finch, Esq., and Steven G. Knauss, Esq., of the law firm MESSNER REEVES LLP, hereby submits  
24 this *Reply in Support of Renewed Motion for Judgment as a Matter of Law Pursuant to NRCP 50(b),*  
25 *and Motion for New Trial Pursuant to NRCP 59, or alternatively for Remittitur* (hereafter "the  
26 Motions").

27 ///

28 ///



1 This Reply is based upon the following memorandum of points and authorities, all pleadings  
2 and papers on file with this Court, and any oral argument this Court may entertain at the hearing on  
3 this matter.

4 DATED this 12th day of July, 2024.

5 **MESSNER REEVES LLP**

6 /s/ Steven Knauss

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 At trial, Plaintiff failed to prove his claims for both past medical damages and future medical  
4 damages, warranting judgment as a matter of law. Additionally, (i) the jury's award of \$200,000 in  
5 past medical damages was unsupported by competent evidence, (ii) its award of \$3.1M in future  
6 general damages appears to have been issued under passion or prejudice, and (iii) this Court both  
7 misapplied Nevada law and contradicted its own evidentiary ruling in prohibiting Defendants from  
8 presenting highly relevant evidence regarding the prior factual event of Plaintiff's second accident.  
9 This warrants a new trial, and accordingly, this Court should grant Defendants' Motions.

10 **II. LEGAL ARGUMENT**

11 **A. JUDGMENT AS A MATTER OF LAW IS WARRANTED PURSUANT TO NRCP 50(B)**

12 Plaintiff's initial issue-preservation arguments fail. Defendant moved the Court for judgment  
13 as a matter of law on Plaintiff's claims for past medical damages and future medical damages and  
14 thus presented these issues to the Court for a ruling at trial. This preserved these issues. *Matter of*  
15 *L.L.S.*, 137 Nev. 241, 244 n.1, 487 P.3d 791, 795 n.1 (2021) ("There is no bright-line rule to determine  
16 whether a matter has been properly raised. A workable standard, however, is that the argument must  
17 be raised sufficiently for the trial court to rule on it.") (quoting *In re E.R. Fegert, Inc.*, 887 F.2d 955,  
18 957 (9th Cir. 1989)).

19 Defendants further cited the controlling legal authority that a plaintiff must establish their  
20 claim for medical damages, either past or future or both, by a preponderance of the evidence and  
21 presented facts demonstrating that Plaintiff had failed to do so through his case-in-chief. This  
22 established NRCP 50(a)'s requirement that a motion for judgment as a matter of law "must specify  
23 the judgment sought and the law and facts that entitle the movant to the judgment."

24 Defendants now present the same issues and same controlling legal authority in this Motion.  
25 Specifically, Defendants again argue, as they did at trial, that Plaintiff failed to present sufficient  
26 evidence to establish his claims for past medical damages or future medical damages. These issues  
27 are preserved. The arguments are preserved. Plaintiff's contentions to the contrary fail.

1 **1. Plaintiff failed to prove his claim for past medical damages, warranting judgment as**  
2 **a matter of law.**

3 **a. Plaintiff failed to establish the amount of his past medical expenses as a matter**  
4 **of law.**

5 To recover damages for past medical expenses, Plaintiff must at minimum establish the  
6 accurate amount of his claimed expenses by a preponderance of the evidence. *Taylor v. Brill*, 139  
7 Nev. Adv. Op. 56, 539 P.3d 1188, 1193 (2023) (requiring plaintiff to establish the accurate amount  
8 billed for medical treatment to recover damages for past medical expenses); *see also Sanchez v. Wal-*  
9 *Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009) (holding that personal injury  
10 plaintiff must establish each element of a negligence claim, including damages).<sup>1</sup>

11 Further, the jury's damages award for Plaintiff's past medical expenses must be supported by  
12 competent evidence. *Rd. & Highway Builders v. N. Nev. Rebar*, 128 Nev. 384, 391, 284 P.3d 377,  
13 382 (2012) (compensatory damages award must be supported by competent evidence); *Nevada Indep.*  
14 *Broad. Corp. v. Allen*, 99 Nev. 404, 418, 664 P.2d 337, 347 (1983) (same).

15 Thus, where Plaintiff has failed to present any admissible and competent evidence  
16 establishing the amount of his past medical expenses, he has failed to prove his claim for past medical  
17 damages as a matter of law. *Taylor*, 139 Nev. Adv. Op. 56, 539 P.3d at 1193; *Sanchez*, 125 Nev. at  
18 824, 221 P.3d at 1280; *Rd. & Highway Builders*, 128 Nev. at 391, 284 P.3d at 382.

19 Plaintiff failed to present any admissible and competent evidence establishing the amount of  
20 his past medical expenses for two reasons. First: as set forth in Legal Argument section A.1(a)(i),  
21 *infra*, Nevada's best evidence rule prohibits Plaintiff's attempt here to establish the amount of his  
22 past medical expenses without admitting his medical bills into evidence. Second: as set forth in Legal  
23 Argument section A.1(a)(ii), *infra*, even assuming, *arguendo*, that Nevada's best evidence rule  
24 permits Plaintiff to establish the amount of his past medical expenses through testimony and without  
25 his medical bills in evidence (it does not), Plaintiff still failed to present sufficient evidence  
26 establishing the amount of his medical bills as necessary to defeat a directed verdict. Judgment as a

27 <sup>1</sup> As set forth in Argument section I.A.1(b), *infra*, to recover damages for past medical expenses, Plaintiff must further  
28 establish that the amounts billed for his treatment were reasonable and necessary. *Taylor*, 139 Nev. Adv. Op. 56, 539  
P.3d at 1193. But the requirement to establish that the amounts billed for his treatment were reasonable and necessary is  
not pertinent to this issue. Here, this issue addresses the threshold requirement that Plaintiff must at minimum establish  
the amount of his incurred medical expenses.

matter of law is thus warranted on Plaintiff's claim for past medical expenses. *Nelson v. Heer*, 123 Nev. 217, 222, 163 P.3d 420, 424 (2007) (judgment as a matter of law is warranted where "the opposing party has failed to prove a sufficient issue for the jury, so that his claim cannot be maintained under the controlling law. To defeat the motion, the nonmoving party must have presented sufficient evidence such that the jury could grant relief to that party.").

**i. Under Nevada's best evidence rule, Plaintiff failed to present any admissible and competent evidence establishing the amount of his past medical expenses.**

Plaintiff does not contest that: (i) apart from medical bills from Advanced Spine & Rehabilitation for \$7,262, Plaintiff never admitted his medical bills into evidence; and (ii) apart from medical bills from Advanced Spine & Rehabilitation for \$7,262, the only other evidence Plaintiff admitted in an attempt to establish the amount of his past medical bills was testimony from Dr. Muir. (*See* Opp'n, pp. 10-21.) Plaintiff instead argues summarily that "under Nevada law, Dr. Muir's testimony is sufficient to support the jury's award of Plaintiff's past [] medical expenses." (Opp'n, p. 18.) But, this is not so.

Dr. Muir testified that he "review[ed] the medical bills and records related to [the] facilities" listed on Plaintiff's demonstrative computation of Plaintiff's claimed medical damages. (Ex. A, Day 3 Tr., p. 72:15-22.) Dr. Muir then testified that the amounts of those medical bills totaled \$161,545. (Ex. A, Day 3 Tr., p. 72:23-25.) Thus, in practical effect, Dr. Muir was testifying as to the contents of a writing (Plaintiff's purported medical bills) where neither the original writing nor a copy had been admitted into evidence. As Defendant's counsel argued during trial, Nevada's best evidence rule, codified at NRS 52.235 et. seq., prohibits this. (Excerpt of Trial Transcript, Day 4, attached as **Exhibit G**, p. 5:19-21 (Defendant's counsel arguing: "And the testimony of bills is just hearsay. Plaintiff needed to admit those bills as best evidence.")).

"In essence, NRS 52.235 requires that the party trying to prove the contents of a written document, a recording, or a photograph produce the original." *Tomlinson v. State*, 110 Nev. 757, 760, 878 P.2d 311, 312 (1994). Copies of the original are also generally sufficient. NRS 52.245.

NRS 52.255 provides four limited exceptions to this general rule requiring a party to produce an original written document or copy thereof. *Tomlinson*, 110 Nev. at 760, 878 P.2d at 312 (observing

that “NRS 52.255 sets forth the limited circumstances in which the court can admit other evidence to prove the contents of the original”). Specifically, NRS 52.255 provides that the original written document or a copy of the original is not required only in those select instances where:

1. All originals are lost or have been destroyed, unless the loss or destruction resulted from the fraudulent act of the proponent;
2. No original can be obtained by any available judicial process or procedure;
3. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or
4. The writing, recording or photograph is not closely related to a controlling issue.

NRS 52.255.

Plaintiff has not, and cannot, establish that any of these exceptions apply here. (*See generally*, Opp’n.) Regarding the first and second possible exceptions, Plaintiff’s original medical bills had not been lost or destroyed but rather were readily available to Plaintiff. Plaintiff in fact concedes that his medical bills “were available in binders in the courtroom[.]” (Opp’n, p. 19.) The first and second possible exceptions therefore do not apply.

Third, Plaintiff’s original medical bills were never “under the control” of Defendant as “the party against whom offered[.]” thus precluding the possibility that Defendant’s failure to produce the original or a copy of Plaintiff’s medical bills could excuse Plaintiff’s failure to do so. Plaintiff instead, at all relevant times, maintained control of his medical billing records and it was Plaintiff’s burden, not Defendant’s, to establish his past medical expenses. The third exception therefore does not apply.

Fourth, Plaintiff’s medical bills are indeed critical to Plaintiff’s burden to establish his damages by a preponderance of the evidence along with the jury’s determination of a proper damages award. The fourth exception therefore does not apply.

Because none of the four numerated exceptions under NRS 52.255 apply, Nevada’s best evidence rule required Plaintiff to admit his actual medical billing records into evidence to establish the amount of his past medical expenses. NRS 52.235. Accordingly, without Plaintiff’s medical bills in evidence, Dr. Muir testimony regarding the purported total amount of those medical bills lacked

sufficient foundation. *Id.* But Dr. Muir’s testimony was the only evidence presented by Plaintiff establishing the amount his past medical expenses. Under Nevada’s best evidence rule, this was not and cannot be competent evidence of Plaintiff’s past medical expenses.

No case cited by Plaintiff provides supporting authority for this Court to disregard the straightforward application of Nevada’s best evidence rule here. This is because no case cited by Plaintiff supporting his argument that ‘*Plaintiff was permitted to establish the amount of his past medical expenses without admitting his medical bills into evidence*,’ analyzes or even references Nevada’s best evidence rule. *See Taylor v. Brill*, 139 Nev. Adv. Op. 56, 539 P.3d 1188, 1194 (2023) (no analysis or reference to Nevada’s best evidence rule); *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 270, 396 P.3d 783, 791 (2017) (same); *Park Apts, Inc. v. Cisneros*, 137 Nev. 948, 480 P.3d 880 (Nev. App. 2021) (same). Further, Plaintiff has not and cannot cite any case holding that Nevada’s best evidence rule somehow does not apply to medical billing records.

Rather, by plain statutory text, Nevada’s best evidence rule applied here and required Plaintiff to admit his actual medical billing records into evidence to establish the amount of his past medical expenses. NRS 52.235; NRS 52.235. Plaintiff failed to do so at trial. This Court’s analysis need go no further on this issue. Judgment as a matter of law is warranted on Plaintiff’s claim for past medical expenses. *Nelson*, 123 Nev. at 222, 163 P.3d at 424.

**ii. Dr. Muir’s testimony is insufficient to establish the amount of Plaintiff’s past medical expenses.**

Even assuming, *arguendo*, that Nevada’s best evidence rule somehow does not prohibit Plaintiff’s attempt to establish the amount of his past medical expenses without admitting his medical bills into evidence (it does), Plaintiff still failed to present sufficient evidence establishing the amount of his medical bills as necessary to defeat a directed verdict. Apart from medical bills from Advanced Spine & Rehabilitation for \$7,262, the only other evidence Plaintiff admitted in an attempt to establish the amount of his past medical bills was testimony from Dr. Muir. Plaintiff failed to even admit into evidence a summary of his past medical bills under NRS 52.275. Instead, Plaintiff merely presented a demonstrative computation of his claimed medical bills which Plaintiff’s counsel acknowledged

1 was “just a demonstrative” and that he was not “introducing it into evidence[.]” (Ex. A, Day 3 Tr., p.  
2 72:10-11.)

3 Thus, for Plaintiff to defeat a directed verdict on his claim for past medical expenses, Dr.  
4 Muir’s testimony was required to present sufficient evidence establishing the amount of Plaintiff’s  
5 past medical bills. But Dr. Muir’s testimony was not sufficient evidence establishing the amount of  
6 Plaintiff’s past medical bills, warranting judgment as a matter of law on Plaintiff’s claim for past  
7 medical expenses.

8 Initially, and critically, Dr. Muir never once testified that he reviewed an accurate collection  
9 of Plaintiff’s past medical bills attributable to the accident for which Plaintiff claimed damages.  
10 Instead, Dr. Muir only testified that he “review[ed] the medical bills and records related to these  
11 facilities that [Plaintiff’s counsel] listed” on Plaintiff’s demonstrative computation of claimed  
12 medical expenses. (Ex. A, Day 3 Tr., p. 72:15-22.) Dr. Muir then testified that the medical bills for  
13 “all that treatment” purportedly “related to these facilities” on Plaintiff’s demonstrative totaled  
14 \$161,545. (Ex. A, Day 3 Tr., p. 72:15-24.) That demonstrative was never admitted into evidence, nor  
15 was there any further evidence establishing that the demonstrative presented the accurate amounts of  
16 Plaintiff’s past medical bills.

17 The result is that Dr. Muir’s testimony never once purported to establish that the total  
18 \$161,545 on Plaintiff’s demonstrative computation equated to an accurate amount of Plaintiff’s past  
19 medical bills attributable to the accident for which Plaintiff claimed damages. Thus, and simply  
20 stated: Dr. Muir’s testimony did not even purport to establish the accurate total of Plaintiff’s past  
21 medical bills attributable to the accident.

22 Plaintiff’s past medical bills were not in evidence, there was not even a summary of Plaintiff’s  
23 past medical bills admitted into evidence, and Dr. Muir only testified that the medical bills for “all  
24 that treatment” purportedly “related to these facilities” on Plaintiff’s demonstrative totaled \$161,545.  
25 (Ex. A, Day 3 Tr., p. 72:15-24.).

26 Without any further evidence establishing, or even attempting to establish, that the \$161,545  
27 amount to which Dr. Muir testified equated to the total amount of Plaintiff’s past medical bills  
28 attributable to the accident for which Plaintiff claimed damages, Plaintiff presented insufficient

evidence to establish his claim for past medical expenses. Holding to the contrary would permit the jury to award Plaintiff damages for past medical expenses based on unsupported speculation, without any competent evidence of the accurate amount of Plaintiff's past medical bills attributable to the accident for which Plaintiff claimed damages. This would contradict Nevada law. *Rd. & Highway Builders*, 128 Nev. at 391, 284 P.3d at 382 (compensatory damages award must be supported by competent evidence). Dr. Muir's testimony is insufficient to establish Plaintiff's claim for past medical expenses for this reason alone.

Additionally, even again assuming, *arguendo*, that Dr. Muir's testimony could be construed as purporting to establish the accurate total of Plaintiff's past medical bills attributable to the accident as \$161,545 (it cannot), Dr. Muir's testimony would still be insufficient to establish Plaintiff's claim for past medical expenses. The reason is simple: In practical effect, Dr. Muir would be attempting to testify regarding the contents of Plaintiff's medical bills and proffering that the amounts on those bills equated to an accurate total of the charges Plaintiff incurred for treatment attributable to the accident. In addition to contradicting Nevada's best evidence rule as set forth above, Dr. Muir's testimony would also lack adequate foundation to establish the amount of Plaintiff's past medical bills.

"The requirement of authentication or identification [is] a condition precedent to admissibility[.]" NRS 52.015(1). To be admissible, there must be "evidence sufficient to support a finding that the matter in question is what its proponent claims." NRS 52.015(1). Such evidence may include testimony from a witness with "personal knowledge that a matter is what it is claimed to be." NRS 52.025.

There was no testimony or other evidence authenticating or identifying that the "medical bills and records related to these facilities [] listed" on Plaintiff's demonstrative, which Dr. Muri testified that he reviewed, was a true and accurate collection of Plaintiff's past medical bills attributable to the accident. (Ex. A, Day 3 Tr., p. 72:15-22.) Nor was there any testimony or other evidence establishing that Dr. Muir had the requisite personal knowledge of the billing procedures for each of Plaintiff's providers which would permit him to testify that the billing records for each of Plaintiff's providers amounted to an accurate total of the charges Plaintiff incurred for treatment attributable to the



1 accident. There was also no testimony or other evidence establishing that Dr. Muir had personal  
2 knowledge of the billing procedures even for his own office or of the amounts that his office billed  
3 to Plaintiff. Accordingly, there was an insufficient evidentiary foundation for Dr. Muir to testify  
4 regarding a purported accurate total of Plaintiff's past medical bills attributable to the accident.

5 Nor was there any further testimony at trial to remedy these deficiencies. Not one custodian  
6 of records testified about Plaintiff's past medical bills. Plaintiff himself never testified regarding the  
7 amounts he was billed for the medical treatment for which he claimed damages. Nor did any of  
8 Plaintiff's medical treatment providers testify regarding the amounts they billed for their treatment  
9 of Plaintiff, including Dr. Muir. Thus, to the extent Dr. Muir's testimony could be construed as  
10 purporting to establish the accurate total of Plaintiff's past medical bills attributable to the accident,  
11 Dr. Muir's testimony lacked foundation to establish the accurate amount of Plaintiff's past medical  
12 bills.

13 This Court's analysis again need go no further on this issue. Plaintiff failed to establish the  
14 accurate amount of his past medical expenses and thus failed to prove his claim for past medical  
15 damages as a matter of law. *Taylor*, 139 Nev. Adv. Op. 56, 539 P.3d at 1193. Judgment as a matter  
16 of law is warranted on Plaintiff's claim for past medical expenses.

17 **b. Plaintiff failed to establish that his past medical bills were reasonable and**  
18 **necessary.**

19 In addition to establishing the accurate amount of his past medical expenses, Plaintiff must  
20 further establish that "the amounts [he] was billed were reasonable and necessary." *Taylor*, 139 Nev.  
21 Adv. Op. 56, 539 P.3d at 1193. Plaintiff failed to do so here.

22 Initially, because Plaintiff failed to even present sufficient evidence establishing the accurate  
23 amount of his incurred medical expenses as set forth above, Plaintiff did not, and could not, have  
24 presented sufficient evidence for an additional jury determination that Plaintiff's incurred medical  
25 expenses were reasonable and necessary. Stated differently: the amount of Plaintiff's incurred  
26 medical expenses is the predicate for any further determination that those incurred medical expenses  
27 were also reasonable and necessary. Without sufficient evidence establishing even the accurate  
28 amount of incurred expenses as the predicate, there cannot be sufficient evidence to further establish



that Plaintiff's incurred expenses were reasonable and necessary. Plaintiff thus failed to establish that his past medical bills were reasonable and necessary for this reason alone.

Nor did Dr. Muir's testimony present sufficient evidence to establish that Plaintiff's medical bills were reasonable and necessary. Plaintiff did not establish any foundation that Dr. Muir possessed personal knowledge regarding the reasonableness and medical necessity of the charges billed to Plaintiff by each of Plaintiff's providers. This is dispositive.

As Plaintiff appears to concede, *Cisneros* instructs that in order for a plaintiff to recover damages for past medical expenses where the plaintiff's medical bills are not in evidence, the plaintiff must at minimum present testimony from an expert with the "requisite personal knowledge to support the" damages award.<sup>2</sup> *Park Apts, Inc. v. Cisneros*, 137 Nev. 948, 480 P.3d 880 (Nev. App. 2021); *see also*, Opp'n, p. 12. Further, and critical here, this requisite personal knowledge must include personal knowledge regarding the reasonableness and medical necessity of the charges billed to a plaintiff by each provider. *Id.*

This conclusion in *Cisneros* comports with *Taylor*'s instruction that without the plaintiff's medical bills in evidence, the district court had improperly precluded the plaintiff from establishing her claim for past medical expenses where it excluded proffered testimony from "the CFO of the charging hospital, a health care billing representative, and a health care customer service billing manager[,] all of whom would have testified regarding the charges for the medical treatment provided to" the plaintiff. *Taylor*, 139 Nev. Adv. Op. 56, 539 P.3d at 1193. Both individually and collectively, the proffered witnesses in *Taylor* would have had personal knowledge regarding the reasonableness and medical necessity of the charges billed to the plaintiff.

Accordingly, Nevada law instructs that to establish the reasonableness and medical necessity of a plaintiff's past medical expenses where a plaintiff's medical bills are not in evidence, the plaintiff must at minimum present testimony from a witness with personal knowledge regarding the reasonableness and medical necessity of the charges billed to that plaintiff by each provider. *Taylor*, 139 Nev. Adv. Op. 56, 539 P.3d at 1193; *Cisneros*, 137 Nev. 948, 480 P.3d 880. Plaintiff's citation

<sup>2</sup> Though an unpublished Court of Appeals opinion, Plaintiff asserts arguments in their Opposition regarding *Cisneros*, as Defendant did in his Motion. Defendants thus responds to Plaintiffs' arguments in this Reply.

to *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 396 P.3d 783 (2017), does not negate this instruction. (Opp’n, pp. 11, 16.) *Pizarro* addressed the counterevidence which a defendant could present to contest reasonableness. *Pizarro*, 133 Nev. at 268, 396 P.3d at 789. The case is thus inapposite to the evidence a plaintiff must present to establish the reasonableness and medical necessity of past medical bills where the bills are not in evidence. The result is that under Nevada law, where a plaintiff’s medical bills are not in evidence, the plaintiff must at minimum present testimony from a witness with personal knowledge regarding the reasonableness and medical necessity of the charges billed to that plaintiff by each provider in order to establish the reasonableness and medical necessity of past medical expenses. *Taylor*, 139 Nev. Adv. Op. 56, 539 P.3d at 1193; *Cisneros*, 137 Nev. 948, 480 P.3d 880.

Additionally, *Cisneros* further instructs that an expert may establish this requisite personal knowledge where the expert testifies regarding: (1) the treatment by each provider along with the “equipment and personnel necessary” to provide that treatment; (2) the “billing practices” of each provider; (3) “the range of costs associated” with the treatment by each provider; and (4) “the billing codes associated with the [treatment], equipment, and personnel[]” from each provider. *Cisneros*, 137 Nev. 948, 480 P.3d 880. Where the expert is either unable to or otherwise fails to present testimony on any of these topics, the expert lacks the requisite personal knowledge to establish the reasonableness and medical necessity of a plaintiff’s medical bills without the medical bills in evidence. *Id.*

In *Cisneros*, the plaintiff’s treating provider expert testified regarding each of these topics and did so for each of the plaintiff’s two medical bills at issue, with one bill as the expert’s own surgical bill and the second bill from the facility where the provider performed the surgery. *Id.* Accordingly, the *Cisneros* court held that the treating provider expert possessed the requisite personal knowledge to support a damages award for the plaintiff’s past medical bills even without the plaintiff’s medical bills in evidence. *Id.*

Here, in marked distinction, Dr. Muir did not testify regarding any of these topics for any of Plaintiff’s treatment providers, even including Dr. Muir’s own office. Instead, Dr. Muir merely stated that he reviewed “medical bills and records related to these facilities [] listed” on Plaintiff’s

demonstrative and then summarily opined, without further explanation or analysis, that the bills from each provider were reasonable and customary. (Ex. A, Day 3 Tr., p. 72:15-73:12.) Regarding the medical necessity of the charges on the “medical bills and records related to these facilities [] listed” on Plaintiff’s demonstrative, Dr. Muir presented no testimony at all.

Plaintiff therefore did not establish any foundation that Dr. Muir possessed personal knowledge regarding the reasonableness and medical necessity of the charges billed to Plaintiff by each provider. Where: (i) Plaintiff’s medical bills were not admitted into evidence; and (ii) Dr. Muir provided the only testimony even attempting to establish the reasonableness and medical necessity of the charges billed to Plaintiff by each provider but lacked the requisite personal knowledge, then Plaintiff did not and could not present sufficient evidence to establish that his medical bills were reasonable and necessary. *Taylor*, 139 Nev. Adv. Op. 56, 539 P.3d at 1193; *Cisneros*, 137 Nev. 948, 480 P.3d 880. Plaintiff thus failed to establish his claim for past medical expenses for this additional reason, further warranting judgment as a matter of law. *Taylor*, 139 Nev. Adv. Op. 56, 539 P.3d at 1193 (plaintiff must establish that charges on medical bills were reasonable and necessary to recover damages for past medical expenses); *Nelson*, 123 Nev. at 222, 163 P.3d at 424 (to defeat a motion for judgment as a matter of law, “the nonmoving party must have presented sufficient evidence such that the jury could grant relief to that party.”).

**2. Plaintiff failed to prove his claim for future medical damages, warranting judgment as a matter of law.**

Plaintiff attempts to defend the jury’s unsupported award of future medical damages by arguing that he had no “obligation to challenge his own evidence of future medical expenses.” (Opp’n, p. 21.) On this issue, Plaintiff misses the point.

The critical issue is simple: “An award of future medical expenses must be supported by sufficient and competent evidence.” *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 249, 955 P.2d 661, 671 (1998). Unsupported speculation is not and cannot be competent evidence sufficient to support a damages award for future medical expense. *See id.*

But here, the minimal evidence Plaintiff admitted in an attempt to support his claim for future medical expenses mandates the conclusion that the jury’s award of \$1.5M in future medical expenses

1 resulted from unsupported speculation. As set forth in Defendants' Motion, Plaintiff presented the  
 2 jury only two scenarios regarding the medical necessity of Plaintiff's future care: (i) a scenario where  
 3 Plaintiff required both ablations and fusion surgery, or (ii) a scenario where Plaintiff required just  
 4 ablations. (*See* Mot., p. 9.) There was no further evidence even suggesting a possibility that Plaintiff  
 5 would require any other future medical services or procedures apart from ablations, a fusion surgery,  
 6 or both.

7 But critically, by Plaintiffs' own calculations in Dr. Muir's Life Care Plans, neither the  
 8 ablations alone nor the combination of the ablations and fusion surgery amount to \$1.5M in future  
 9 medical expenses. (*See* Mot, Ex C.) Instead, a \$1.5M damages amount can only result when  
 10 ~\$350,000 of unspecified/unknown additional future medical services are arbitrarily factored into the  
 11 itemized medical procedures and treatment categories in Dr. Muir's Life Care Plans. But there was  
 12 no evidence admitted regarding a need for any other future medical services or treatment categories  
 13 apart from the ablations or fusion surgery, or even any mention of any of the other itemized  
 14 procedures and treatment categories in Dr. Muir's Life Care Plans. The necessary conclusion, based  
 15 on Plaintiff's own calculations, is that the jury awarded \$1.5M in future medical expenses without  
 16 knowing what it was awarding these expenses for.

17 Stated differently: even if the jury accepted the scenario Plaintiff would require both ablations  
 18 and fusions surgery, then by Plaintiff's own numbers, the expenses for those two future procedures  
 19 still would not amount to the \$1.5M that the jury awarded for future medical expenses. Thus, and  
 20 again by Plaintiffs' own numbers, in awarding \$1.5M in future medical expenses, the jury must have  
 21 awarded future medical expenses for treatment and procedures apart from and in addition to the  
 22 ablations and fusion surgery. But there was no evidence of the medical necessity, or even a medical  
 23 possibility, that Plaintiff would require any other future treatment and procedures apart from ablations  
 24 and fusion surgery. The jury necessarily had to speculate, *without any evidentiary support*, as to  
 25 what other future medical services Plaintiff might require apart from ablations and fusion surgery in  
 26 order to arrive at a \$1.5M award for future medical damages.

27 Accordingly, the jury's \$1.5M award for future medical damages necessarily resulted from  
 28 unsupported speculation. Unsupported speculation is not and cannot be competent evidence

sufficient to support a damages award for future medical expenses. *Yamaha Motor Co.*, 114 Nev. at 249, 955 P.2d at 671. Plaintiff thus failed to establish his claim for future medical damages, warranting judgment as a matter of law on Plaintiff's future medical damages.

**B. A NEW TRIAL IS WARRANTED PURSUANT TO NRCP 59(A)**

**1. The jury award of \$200,000 for past medical damages was unsupported by the evidence.**

Plaintiff's issue-preservation arguments on this issue fail as well. Plaintiff's cited authority merely holds that a party is required to object to a jury's verdict prior to the discharge of a jury to argue that a verdict is inconsistent. *Cramer v. Peavy*, 116 Nev. 575, 583, 3 P.3d 665, 670 (2000) ("[F]ailure to timely object to the filing of the verdict or to move that the case be resubmitted to the jury" constitutes a waiver of the issue of an inconsistent verdict. Accordingly, to preserve the issue for appeal, [the plaintiff] was required to object to the verdict before the jury was discharged.") (emphasis added) (internal citations omitted).

Defendants do not argue here that the jury's verdict is inconsistent. Defendants instead argue that a new trial is warranted because the jury disregarded the instructions given by this Court when they awarded \$200,000 in past medical damages when there was no evidence presented to the jury, at any point in the trial, establishing that Plaintiff incurred \$200,000 in past medical damages, and further, where Plaintiff himself never even requested \$200,000 in past medical damages. Instead, Plaintiff merely requested the amount of past medical expenses compiled on his demonstrative chart, which totaled \$161,545.00. The jury then inexplicably awarded an additional nearly \$40,000 in past medical damages that Plaintiff did not request and which the evidence did not support.

In such a scenario, Plaintiff has not cited any authority holding or even suggesting that this Court must permit a jury verdict to stand where the verdict is plainly contradicted by the evidence. Nevada law instead tasks this Court to remedy such a prejudicial error and irregularity in the proceedings. *See, e.g., Soper v. Means*, 111 Nev. 1290, 1294, 903 P.2d 222, 224 (1995). And where this inexplicable and unsupported \$200,000 damages award contradicts the instructions of this Court, Nevada law requires a new trial. NRCP 59(a)(1)(E).

1 Additionally, this Court should reject Plaintiff's attempt to remedy the juror's error through a  
2 "draft alternative judgment" that unilaterally adjusts the damages amounts awarded by the jury.  
3 (Opp'n, p. 27.) The jury awarded \$200,000 in past medical expenses. No alternative judgment  
4 proffered by Plaintiff can alter this. Nor can Plaintiff explain or defend a damages award containing  
5 an additional nearly \$40,000 in past medical damages that Plaintiff did not request and which no  
6 evidence supports.

7 Finally, Plaintiff is correct that for this Court to grant a new trial, the alleged errors must have  
8 prejudiced Defendants' substantial rights. (Opp'n, pp. 23-24.) Plaintiff is further correct that  
9 Defendants' substantial rights are prejudiced where "if it were not for the alleged errors, a different  
10 result might reasonably have been expected." *Beattie v. Thomas*, 99 Nev. 579, 586, 668 P.2d 268,  
11 273 (1983). To the extent this point was not clear in Defendants' Motion, Defendants will further  
12 clarify in this Reply: had the jury followed this Court's instructions and issued a damages award that  
13 comports with the evidence at trial, then the jury would not have awarded \$200,000 in past medical  
14 expenses. The reason is simple: Plaintiff did not request \$200,000 in past medical expenses and no  
15 evidence supports these damages. The jury's award of \$200,000 in past medical expenses is thus  
16 unsupported by the evidence, contradicts this Court's instructions, and prejudiced Defendants'  
17 substantial rights. This warrants a new trial. NRCP 59(a)(1)(E).

18 **2. The jury award of \$3,100,000 for future general damages appears to have been the**  
19 **result of passion or prejudice, and not reasoned decision making**

20 No case cited by Plaintiff negates the fact that courts "will reverse or reduce the amount of an  
21 excessive compensatory damages award that was given under the influence of passion or prejudice[.]"  
22 *Wyeth v. Rowatt*, 126 Nev. 446, 470, 244 P.3d 765, 782 (2010). Nor does any case cited by Plaintiff  
23 alter this Court's analysis to determine whether a new trial is warranted because of an excessive  
24 damages award resulting from passion or prejudice.

25 This Court must ensure that the jury's award of \$3.1M in damages for future pain and  
26 suffering is supported by competent evidence. *Rd. & Highway Builders v. N. Nev. Rebar*, 128 Nev.  
27 384, 391, 284 P.3d 377, 382 (2012) (compensatory damages award must be supported by competent  
28 evidence); *Nevada Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 418, 664 P.2d 337, 347 (1983) (same).

1 This includes an analysis of whether the \$3.1M damages award for future pain and suffering is  
2 substantially supported by expert testimony. *See Krause Inc. v. Little*, 117 Nev. 929, 938, 34 P.3d  
3 566, 572 (2001) (holding that when an injury “is subjective and not demonstrable to others,” expert  
4 medical testimony is required before a jury may award future damages); *Lerner Shops of Nev., Inc.*  
5 *v. Marin*, 83 Nev. 75, 79-80, 423 P.2d 398, 401 (1967) (claim for future pain and suffering “must be  
6 substantially supported by expert testimony to the effect that future pain and suffering is a probable  
7 consequence rather than a mere possibility.”).

8 Applied here, these factors indicate that the \$3.1M damages for future pain and suffering was  
9 given under passion and prejudice. This damage award is excessive and unsupported by competent  
10 evidence, but the absence of evidence of future general damages warrants emphasis. Plaintiff asserted  
11 no wage loss claims, no future wage loss claims, no loss of future earning capacity claims, and no  
12 claims of permanent injury. Plaintiff also failed to demonstrate any significant future life impact,  
13 particularly when he still works out three times per week. This lack of evidence of any significant  
14 future life impact negates the possibility that competent evidence supports a \$3.1M damages award  
15 for future pain and suffering, particularly where the jury awarded only \$200,000 for past pain and  
16 suffering yet the evidence indicated that the worst of Plaintiff’s pain, suffering, and limitations of  
17 daily life was in the past, not future.

18 Nor is a \$3.1M damages award for future pain and suffering substantially supported by expert  
19 testimony. Plaintiff argues that Dr. Muir’s assessment that Plaintiff would require future pain  
20 treatment provides sufficient expert testimony to support a \$3.1M damages award for future pain and  
21 suffering. (Opp’n, p. 31.) Not so. Expert testimony that Plaintiff will merely require future medical  
22 treatment for pain in no way establishes why or how a \$3.1M damages award is warranted for future  
23 pain and suffering, particularly where Plaintiff has failed to demonstrate any future significant life  
24 impact from his alleged injuries. In his Opposition, Plaintiff has failed to cite any expert testimony  
25 which establishes, much less even addresses, the future pain levels Plaintiff will suffer and the  
26 limitations this will impose on his life. There is simply no expert testimony which substantially  
27 supports \$3.1M in damages for future pain and suffering.



Accordingly, where the jury's \$3.1M damages award for future pain and suffering is excessive, unsupported by competent evidence, and unsupported by expert testimony, the necessary conclusion is that this excessive award appears to have been given under passion or prejudice, warranting a new trial. NRCP 59(a)(1)(F).

**3. Defendants were barred from presenting highly relevant evidence of Plaintiff's 2<sup>nd</sup> vehicle vs. pedestrian accident even though the door was opened by Plaintiff's expert**

Defendants incorporate by reference their arguments in their trial brief on this issue and assert that this Court has improperly excluded highly relevant evidence critical to Plaintiff's claims and the purported causation between the subject accident and Plaintiff's alleged injuries, to the prejudice of Defendant's substantial rights. This alone warrants a new trial under NRCP 59(a)(1)(G).

Additionally, this Court has contradicted its own evidentiary ruling. Plaintiff does not, and cannot, contest that this Court expressly ordered that Defense counsel would be permitted to discuss Plaintiff's second accident if the door was opened to this issue. Dr. Muir unquestionably opened the door to the 2<sup>nd</sup> accident by stating that when Plaintiff hit his head in the 2<sup>nd</sup> accident, he could have worsened his back pain or had a new back injury.

Defendants did not "'open the door' themselves" to this issue, as Plaintiff contends. (Opp'n, p. 33.) Defendants merely inquired as to whether and why Dr. Muir reviewed records from Plaintiff's second accident. It was then Dr. Muir (Plaintiff's expert), not Defendants, who volunteered the possibility that at minimum some portion of Plaintiff's claimed injuries might be attributable to Plaintiff's second accident:

Q. Why did you review those records?

A. Because they could be pertinent. They could be important. ***When he hit the head, he could have worsened his back pain or had a new back injury***, which would have been important to know and could cloud the distinction of afterwards are we treating him because of that car accident or are we treating him from the prior accident or a combination.

See Excerpt of Trial Transcript, Day 3, at 155:6-156:4, attached as **Exhibit F**.

This should have allowed Defendants to further inquire and discuss the details of Plaintiff's second accident and the medical treatment he received for that accident. This is an objective, prior factual event: Plaintiff was involved in a second traumatic accident for which he received medical



treatment following that accident. Nevada law does not require Defendants to retain and present an expert with a specific opinion that Plaintiff's second accident caused his claimed injuries in this lawsuit in order to discuss such a prior factual event. No case cited by Plaintiff holds or suggests otherwise.

Contrary to Plaintiff's argument, it was not strictly "evidence of a prior injury" that Defendant was prohibited by this Court from discussing. (Opp'n, p. 34 (citing *FGA, Inc. v. Giglio*, 128 Nev. 271, 284, 278 P.3d 490, 498 (2012)) (emphasis added)). Instead, Defendant was prohibited from discussing a highly relevant, objective, prior factual event from which Plaintiff suffered general damages that necessarily comingled with the Subject Accident. This Court's ruling to prohibit Defendant from discussing the prior factual event of Plaintiff's second accident is unsupported by Nevada law and misapplies the same. It is instead an abuse of discretion as arbitrary and capricious, warranting a new trial or else subject to reversal on appeal. NRCP 59(a)(1)(G); *In re Eric A.L.*, 123 Nev. 26, 33, 153 P.3d 32, 36-37 (2007) (district court abuses its discretion where the "court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason.").

**C. REMITTITUR IS WARRANTED AND SHOULD BE GRANTED AS AN ALTERNATIVE TO A NEW TRIAL**

Plaintiff does not contest remittitur's second prong that this case would be appropriate for granting a motion for a new trial limited to damages, as he asserts no argument to the contrary. (Opp'n, pp. 35-36.) Plaintiff instead argues against remittitur on the premise that the damages awarded to him were not excessive.

Plaintiff is wrong. As set forth above, and in Defendant's Motion, Plaintiff was awarded \$3.1M in damages for future pain and suffering that was unsupported by the evidence. Plaintiff was awarded \$200,000 in past medical damages where he neither requested this amount nor presented any evidence to support it. Plaintiff was also awarded \$1.5M in future medical damages where, based upon Plaintiff's own numbers and the limited evidence presented, the jury necessarily awarded this amount through unsupported speculation, without even knowing what it was awarding these expenses for.

The damages awarded to Plaintiff are excessive. Remittitur is appropriate as an alternative remedy. *Drummond v. Mid-W. Growers Co-op. Corp.*, 91 Nev. 698, 712, 542 P.2d 198, 208 (1975).

1 **III. CONCLUSION**

2 As argued above, and in Defendant's Motion, multiple grounds exist to grant Defendants'  
3 NRCP 50(b) Motion for Judgment as a Matter of Law regarding Plaintiff's past medical damages as  
4 well as his future medical damages. Moreover, multiple grounds exist to grant Defendants a new  
5 trial. The jury's award appears on its face to be made with a manifest disregard of the instructions of  
6 this Court and as a result of passion and prejudice. Therefore, Defendants respectfully asks this Court  
7 to grant their Motion for Judgment as a Matter of Law, and their Motion for a New Trial, or in the  
8 alternative to grant remittitur.

9 DATED this 12th day of July, 2024.

10 **MESSNER REEVES LLP**

11 /s/ Steven Knauss  
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21 *and Second Opinion Plumbing, LLC*  
22  
23  
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**CERTIFICATE OF SERVICE**

On this 12th day of July, 2024, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANTS' REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO NRCP 50(b), AND MOTION FOR NEW TRIAL PURSUANT TO NRCP 59, OR ALTERNATIVELY FOR REMITTITUR** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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**EXHIBIT “11”**

**EXHIBIT “11”**

**ODM**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JARED MOSS, individually,

Plaintiff,

v.

SEAN EDWARD TOMESCO,  
individually; SECOND OPINION  
PLUMBING, LLC, a domestic limited  
liability company; DOES I through X,  
inclusive; ROE CORPORATIONS XI  
through XX, inclusive,

Defendants.

Case No. A-21-840372-C

Dept. No. 20

**ORDER DENYING  
DEFENDANTS' RENEWED  
MOTION FOR JUDGMENT AS A  
MATTER OF LAW PURSUANT  
TO NRCP 50(b), AND NRCP 59,  
OR ALTERNATIVELY, FOR  
REMITTITUR**

Hearing Date: July 23, 2024

Hearing Time: 11:00 a.m.

1           The Court, having considered Defendants' Renewed Motion for Judgment  
2 as a Matter of Law Pursuant to NRCP 50(b), and NRCP 59, or Alternatively, for  
3 Remittitur, Plaintiff's opposition, Defendants' reply, and the argument of counsel  
4 at the time of the hearing, hereby orders as follows:

5           1.       Defendants' Renewed Motion for Judgment as a Matter of Law  
6 Pursuant to NRCP 50(b), and NRCP 59, or Alternatively, for Remittitur is hereby  
7 DENIED.

8           2.       On March 29, 2024, at the conclusion of the trial, just after the  
9 verdict and outside the presence of the jury, the Court invited Defendants to file  
10 a post-trial motion on the amounts of the jury's verdict, while staying the entry  
11 of judgment on the jury's verdict. *See* Jury Trial Day 4, March 29, 2024 (filed on  
12 May 13, 2024), at 178-80.

13           3.       On April 26, 2024, Defendants filed their Renewed Motion for  
14 Judgment as a Matter of Law Pursuant to NRCP 50(b), and Motion for New Trial  
15 Pursuant to NRCP 59, or Alternatively for Remittitur. In their motion,  
16 Defendants offer the following main arguments:

17               a.       The Court should grant directed verdict in favor of  
18 Defendants as to past medical damages because Plaintiff failed to lay foundation  
19 for, or admit any, medical bills, aside from his chiropractor, and instead  
20 improperly relied on a demonstrative chart.

21               b.       The Court should grant directed verdict in favor of  
22 Defendants as to future medical damages because Plaintiff failed to admit Dr.  
23 Muir's life care plan detailing/itemizing nearly 40 years of care.  
24

1           c.     The jury award of \$200,000 for past medical damages was  
2 unsupported by the evidence.

3           d.     The jury award of \$3,100,000 for future general damages  
4 appears to have been the result of passion or prejudice, and not reasoned decision  
5 making.

6           e.     Defendants were barred from presenting evidence of  
7 Plaintiff's second vehicle vs. pedestrian accident even though the door was opened  
8 by Plaintiff's expert.

9           f.     Remittitur is warranted and should be granted as an  
10 alternative to a new trial.

11           4.     On May 31, 2024, Plaintiff filed his opposition to Defendants' motion.  
12 In his opposition, Plaintiff offer the following main arguments:

13           a.     Since the jury has rendered its verdict in Plaintiff's favor, the  
14 law requires the Court to presume that the jury believed Plaintiff's version of the  
15 evidence. The same presumption favoring Plaintiff applies to Defendants' motion  
16 for judgment as a matter of law under NRCP 50(b).

17           b.     Defendants have not presented a complete statement of the  
18 standards under NRCP 50(b) for this Court to grant judgment as a matter of law.  
19 Under the complete and proper standards, Defendants' renewed arguments fail  
20 both procedurally and substantively.

21           (i)     The complete and proper standards under NRCP 50(b)  
22 are fatal to Defendants' argument for judgment as a matter of law.

1 (ii) By making an NRCP 50(a) oral motion for directed  
2 verdict devoid of any “controlling law,” Defendants have not preserved their  
3 arguments for judgment as a matter of law under NRCP 50(b).

4 (iii) Even if the Court were to consider Defendants’  
5 unpreserved arguments, Defendants have not presented the Court with any  
6 “controlling law” to support their arguments for judgment as a matter of law  
7 under NRCP 50(b).

8 (iv) Under Nevada law, expert testimony is sufficient to  
9 support the jury’s award of Plaintiff’s past and future medical expenses.

10 (v) Nevada law also does not require demonstrative  
11 exhibits to be admitted as evidence, particularly when supported by expert  
12 testimony.

13 (vi) Once again, Defendants offer no “controlling law” that  
14 Plaintiff somehow had an obligation to challenge his own evidence of future  
15 medical expenses.

16 c. Although Defendants mention portions of the proper  
17 standards for a new trial under NRCP 59(a), they fail to argue or demonstrate  
18 that their substantial rights have been materially affected. Thus, the entirety of  
19 Defendants’ new trial arguments, at most, fall under harmless error, as outlined  
20 in NRCP 61.

21 d. As a matter of Nevada law, sufficient evidence supports the  
22 jury’s award of Plaintiff’s past medical expenses, such that Defendants are not  
23  
24



1 entitled to a new trial under the NRCP 59(a)(1)(E) standard for manifest  
2 disregard of the jury instructions.

3 e. Defendants did not properly challenge the sufficiency of the  
4 evidence to support the jury's award to Plaintiff for future physical and mental  
5 pain, suffering, anguish, disability, and loss of enjoyment of life. In any event, an  
6 award of pain and suffering is within the exclusive province of the jury and cannot  
7 be disturbed or second-guessed, particularly since Defendants' argument  
8 regarding punishment is not legally supported.

9 f. Contrary to Defendants' argument, Dr. William Muir's trial  
10 testimony confirms that he did not "open the door" for Defendants to offer  
11 speculative argument regarding causation for Plaintiff's back injury as it relates  
12 to the subsequent accident. Defendants' own expert, Dr. Jeffrey Wang, did not  
13 relate any of Plaintiff's injuries caused by Defendants in this case to Plaintiff's  
14 subsequent accident, as this Court previously recognized.

15 g. Defendants have not offered any legal reason for this Court to  
16 disturb the jury's verdict with remittitur, or alternatively, a new trial on damages.  
17 Defendants' mere label of "excessive" damages awarded by the jury is insufficient  
18 to satisfy the remittitur standard. Indeed, Defendants do not even suggest a  
19 remittitur amount. Thus, the Court should reject Defendants' bare request for  
20 remittitur.

21 5. Defendants filed their reply on July 12, 2024. In their reply,  
22 Defendants offer the following main arguments:  
23  
24

1           a.     Plaintiff failed to prove his claim for past medical damages,  
2 warranting judgment as a matter of law.

3                 (i)     Plaintiff failed to establish the amount of his past  
4 medical expenses as a matter of law.

5                     A.     Under Nevada's best evidence rule, Plaintiff  
6 failed to present any admissible and competent evidence establishing the amount  
7 of his past medical expenses.

8                     B.     Dr. Muir's testimony is insufficient to establish  
9 the amount of Plaintiff's past medical expenses.

10                 (ii)     Plaintiff failed to establish that his past medical bills  
11 were reasonable and necessary.

12           b.     Plaintiff failed to prove his claim for future medical damages,  
13 warranting judgment as a matter of law.

14           c.     The jury award of \$200,000 for past medical damages was  
15 unsupported by the evidence.

16           d.     The jury award of \$3,100,000 for future general damages  
17 appears to have been the result of passion or prejudice, and not reasoned decision  
18 making.

19           e.     Defendants were barred from presenting highly relevant  
20 evidence of Plaintiff's second vehicle vs. pedestrian accident even though the door  
21 was opened by Plaintiff's expert.

22           f.     Remittitur is warranted and should be granted as an  
23 alternative to a new trial.  
24

1           6.     At the hearing on Defendants’ motion, the Court heard argument  
2 from counsel for both Defendants and Plaintiff, and also questioned counsel on  
3 several main arguments presented in the briefing.

4           7.     Ultimately, the Court agrees with Plaintiff’s arguments and  
5 concludes that Defendants’ arguments are largely unpreserved for failure to  
6 properly object during trial. For example, Defendants could have objected to Dr.  
7 Muir giving a summary based on hearsay, and Plaintiff could have gotten into  
8 the underlying medical records that were the basis of his opinions. Plaintiff also  
9 could have introduced his medical records, if there had been a proper objection.

10          8.     The Court concludes that the best evidence rule does not apply  
11 under NRS 52.255, which Defendants argued in their reply brief, because  
12 Defendants did not challenge the medical records as true and accurate copies.  
13 *See Lagrange Constr. v. Kent Corp.*, 88 Nev. 271, 496 P.2d 766 (1972).

14          9.     Although Defendants now object to Dr. Muir’s testimony that  
15 Plaintiff’s medical expenses were reasonable and customary, Defendants did not  
16 properly contest this testimony during trial. The Court concludes that Dr. Muir’s  
17 trial testimony is evidence, which was sufficient to support Plaintiff’s requested  
18 medical expenses. *See Curti v. Franceschi*, 60 Nev. 422, 111 P.2d 53 (1941); *Taylor*  
19 *v. Brill*, 139 Nev. \_\_\_, 539 P.3d 1188 (2023).

20          10.    The fact that Defendants’ expert Dr. Wang offered contrary  
21 testimony about Plaintiff’s necessary and reasonable medical treatment does not  
22 change the Court’s analysis because it just means that the jury believed Dr. Muir  
23 and did not believe Dr. Wang. *See Powers v. United Servs. Auto. Ass’n*, 114 Nev.  
24

1 690, 702, 962 P.2d 596, 604 (1998) (“[T]his court must presume that the jury  
2 believed evidence favorable to that prevailing party and drew inferences in that  
3 party’s favor.”); *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661,  
4 664 (1998) (noting that courts are “not at liberty to weigh the evidence anew, and  
5 where conflicting evidence exists, all favorable inferences must be drawn towards  
6 the prevailing party”); *Countrywide Home Loans v. Thitchener*, 124 Nev. 725, 739,  
7 192 P.3d 243, 252 (2008) (same).

8 11. Defendants also could have cross-examined Dr. Muir more  
9 extensively at trial had they wanted to get into more specific information from  
10 Dr. Muir’s reports. *See, e.g., Robinson v. G.G.C., Inc.*, 107 Nev. 135, 143, 808 P.2d  
11 522, 527 (1991) (outlining the constitutional right of cross-examination in both  
12 criminal and civil cases).

13 12. On the issue of future medical expenses, the Court likewise finds  
14 that Dr. Muir’s testimony was sufficient evidence, even without admitting  
15 portions of his life care plan, which the Court concludes would not be the general  
16 practice in the Court’s nine years of experience as a District Court Judge. *See,*  
17 *e.g., Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 396 P.3d 783 (2017). Once  
18 again, Defendants could have gotten into more of the details of Dr. Muir’s life care  
19 plan at trial in cross-examination but elected not to. *See Robinson*, 107 Nev. at  
20 143, 808 P.2d at 527.

21 13. On the issue of the jury’s awards to Plaintiff for past and future pain  
22 and suffering, the Court finds that there was sufficient evidence of Plaintiff’s  
23 suffering presented at trial, including a permanent injury. On the amount of pain  
24

1 and suffering damages awarded by the jury, the Court appropriately defers to the  
2 jury's verdict. *See, e.g., Stackiewicz v. Nissan Motor Corp.*, 100 Nev. 443, 454-55,  
3 686 P.2d 925, 932 (1984) ("The elements of pain and suffering are wholly  
4 subjective. It can hardly be denied that, because of their very nature, a  
5 determination of their monetary compensation falls peculiarly within the  
6 province of the jury. . . . We may not invade the province of the fact-finder by  
7 arbitrarily substituting a monetary judgment in a specific sum felt to be more  
8 suitable."); [Courts] may not invade the province of the fact-finder by arbitrarily  
9 substituting a monetary judgment in a specific sum felt to be more suitable.").

10 14. The Court disagrees with Defendants' argument that Dr. Muir  
11 "opened the door" regarding Plaintiff's second, subsequent accident because  
12 Defendants never had any causation evidence relative to this second accident,  
13 even from Defendants' own expert Dr. Wang. *See Williams v. Eighth Judicial Dist.*  
14 *Court of Nevada*, 127 Nev. 518, 532, 262 P.3d 360, 369 (2011) ("[A]n expert for  
15 the defense is precluded from engaging in speculation or conjecture with respect  
16 to possible causes."). In any event, Defendants were able to get into the details  
17 of Plaintiff's second accident at trial with Dr. Muir much more than the Court  
18 would have allowed, but Plaintiff did not object to this line of cross-examination.

19 15. On the issue of the jury's award of past medical expenses to Plaintiff,  
20 the Court disagrees with Defendants' characterization that the jury "fabricated"  
21 the award based upon the evidence presented at trial. In his opposition, Plaintiff  
22 argued, in the alternative, that the jury's \$200,000 award of past medical  
23 expenses was based upon a shift in the timing since Dr. Muir's division of past  
24

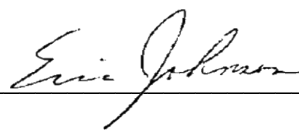
1 medical expenses and future medical expenses was approximately two years old  
2 at the time of trial. In other words, when Dr. Muir calculated Plaintiff's medical  
3 expenses in his report, some of those expenses would have become past medical  
4 expenses with the passage of two years between Dr. Muir's report and his trial  
5 testimony. Because of this time difference, Plaintiff, alternatively, asked the  
6 Court to reduce the jury's \$200,000 award of past medical expenses to \$161,545,  
7 consistent with Dr. Muir's trial testimony, while also increasing the jury's award  
8 of future medical expenses from \$1,500,000 to \$1,539,710, which was also  
9 consistent with Dr. Muir's trial testimony. Plaintiff further noted in his  
10 opposition that a juror asked a question during trial about the time difference of  
11 Plaintiff's requested medical expenses.

12 After reviewing the relevant trial testimony, the Court grants Plaintiff's  
13 alternative request, in part. The Court reduces the jury's award of past medical  
14 expenses from \$200,000 to \$161,545, which is consistent with evidence presented  
15 at trial. However, the Court declines Plaintiff's invitation to increase the jury's  
16 award of future medical expenses to Plaintiff. This reduced amount of Plaintiff's  
17 past medical expenses will be reflected in the judgment.

18 16. The Court denies all other relief that Defendants request in their  
19 motion, which was not specifically addressed at the hearing or is not specifically  
20 addressed in this order.

21 IT IS SO ORDERED.

Dated this 19th day of September, 2024

22   
23

24 D19 682 B119 6C4C  
Eric Johnson  
District Court Judge

1 Submitted by:

2 **CLAGGETT & SYKES LAW FIRM**

3 /s/ Micah S. Echols

4 \_\_\_\_\_  
Micah S. Echols, Esq.  
David P. Snyder, Esq.  
5 Charles L. Finlayson, Esq.

6 ALISON M. BRASIER, ESQ.  
BETSY C. JEFFERIS-AGUILAR, ESQ.  
7 **HICKS & BRASIER, PLLC**  
*Attorneys for Plaintiff*

8  
9 Approved by:

10 MESSNER REEVES LLP

11 /s/ Steven G. Knauss

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17 Las Vegas, Nevada 89148  
(702) 363-5100 – Telephone  
18 *Attorneys for Defendants*

19  
20 [Moss v. Tomesco, Order Denying Defendants' Renewed Motion for Judgment as  
21 a Matter of Law Pursuant to NRCP 50(b), and NRCP 59, or Alternatively, for  
22 Remittitur, Case No. A-21-840372-C]  
23  
24

Monday, September 16, 2024 at 13:31:15 Pacific Daylight Time

---

**Subject:** RE: Moss v Tomesco - DRAFT Judgment and DRAFT Order Denying Defendants' Motion for Renewed JMOL/New Trial  
**Date:** Friday, September 13, 2024 at 4:03:44 PM Pacific Daylight Time  
**From:** Steven G. Knauss  
**To:** Micah Echols  
**CC:** Alison M. Brasier, BETSY C. JEFFERIS-AGUILAR ESQ (baguilar@lvattorneys.com), Danielle Alvarado, Anna Gresl, Rhonda Onorato, James Alvarado  
**Attachments:** image001.png

Micah – Please add my e-signature to both the judgment and order, and submit to chambers.  
Thanks,

**STEVEN G. KNAUSS**

Partner

**Messner Reeves LLP**

O: 702.363.5100 E: [sknauss@messner.com](mailto:sknauss@messner.com)

8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

---

**From:** Micah Echols <[Micah@claggettlaw.com](mailto:Micah@claggettlaw.com)>  
**Sent:** Wednesday, September 4, 2024 5:57 PM  
**To:** Steven G. Knauss <[sknauss@messner.com](mailto:sknauss@messner.com)>; James Alvarado <[jalvarado@messner.com](mailto:jalvarado@messner.com)>; Rhonda Onorato <[ROnorato@messner.com](mailto:ROnorato@messner.com)>; Cheryl Bradford <[CBradford@messner.com](mailto:CBradford@messner.com)>  
**Cc:** Alison M. Brasier <[abrasier@lvattorneys.com](mailto:abrasier@lvattorneys.com)>; BETSY C. JEFFERIS-AGUILAR ESQ (<[baguilar@lvattorneys.com](mailto:baguilar@lvattorneys.com)> <[baguilar@lvattorneys.com](mailto:baguilar@lvattorneys.com)>; Danielle Alvarado <[Danielle@lvattorneys.com](mailto:Danielle@lvattorneys.com)>; Anna Gresl <[Anna@claggettlaw.com](mailto:Anna@claggettlaw.com)>  
**Subject:** Moss v Tomesco - DRAFT Judgment and DRAFT Order Denying Defendants' Motion for Renewed JMOL/New Trial

**[ EXTERNAL EMAIL ]**

---

Good evening, here are drafts of the judgment and the order denying Defendants' Renewed JMOL/New Trial. We have calculated interest on the judgment to be entered on Friday this week. If you need more time to review the judgment, let us know, and we can adjust the judgment calculation.

Micah Echols, Esq.  
Partner, Appellate Division

---



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Jared Moss, Plaintiff(s)

CASE NO: A-21-840372-C

7 vs.

DEPT. NO. Department 20

8 Sean Tomesco, 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 Denying Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/19/2024

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22 Danielle Alvarado

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23 Appeals Team

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24 Betsy Jefferis Aguilar

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25 Cheryl Bradford

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Administrative Copy  
Emely Portillo

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**EXHIBIT “12”**

**EXHIBIT “12”**

**NEOJ**

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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JARED MOSS, individually,

Plaintiff,

vs.

SEAN EDWARD TOMESCO,  
individually; SECOND OPINION  
PLUMBING, LLC., a domestic limited  
liability company; DOES I through X,  
inclusive; ROE CORPORATIONS XI  
through XX, inclusive,

Defendants.

Case No. A-21-840372-C

Dept. No. 20

**NOTICE OF ENTRY OF ORDER  
DENYING DEFENDANTS'  
RENEWED MOTION FOR  
JUDGMENT AS A MATTER OF  
LAW PURSUANT TO NRCP  
50(b), AND NRCP 59, OR  
ALTERNATIVELY, FOR  
REMITTITUR**

1 PLEASE TAKE NOTICE that this Court entered an *Order Denying*  
2 *Defendants' Renewed Motion for Judgment as a Matter of Law Pursuant to NRCP*  
3 *50(b), and NRCP 59, or Alternatively, for Remittitur*, in the instant matter on  
4 September attaching a true and accurate copy to this notice.

5 Dated this 19th day of September 2024.

6 CLAGGETT & SYKES LAW FIRM

7 /s/ Micah S. Echols

8 Micah S. Echols, Esq.

9 David P. Snyder, Esq.

Charles L. Finlayson, Esq.

10 HICKS & BRASIER, PLLC

11 Alison M. Brasier, Esq.

Betsy C. Jefferis-Aguilar, Esq.

12 *Attorneys for Plaintiff*  
13  
14  
15  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of September 2024, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO NRCP 50(b), AND NRCP 59, OR ALTERNATIVELY, FOR REMITTITUR** upon the following persons by the following methods pursuant to NRCP 5(b) and NEFCR 9:

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/s/ Anna Gresl

\_\_\_\_\_  
Anna Gresl, an employee of  
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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JARED MOSS, individually,

Plaintiff,

v.

SEAN EDWARD TOMESCO,  
individually; SECOND OPINION  
PLUMBING, LLC, a domestic limited  
liability company; DOES I through X,  
inclusive; ROE CORPORATIONS XI  
through XX, inclusive,

Defendants.

Case No. A-21-840372-C

Dept. No. 20

**ORDER DENYING  
DEFENDANTS' RENEWED  
MOTION FOR JUDGMENT AS A  
MATTER OF LAW PURSUANT  
TO NRCP 50(b), AND NRCP 59,  
OR ALTERNATIVELY, FOR  
REMITTITUR**

Hearing Date: July 23, 2024

Hearing Time: 11:00 a.m.

1           The Court, having considered Defendants' Renewed Motion for Judgment  
2 as a Matter of Law Pursuant to NRCP 50(b), and NRCP 59, or Alternatively, for  
3 Remittitur, Plaintiff's opposition, Defendants' reply, and the argument of counsel  
4 at the time of the hearing, hereby orders as follows:

5           1.       Defendants' Renewed Motion for Judgment as a Matter of Law  
6 Pursuant to NRCP 50(b), and NRCP 59, or Alternatively, for Remittitur is hereby  
7 DENIED.

8           2.       On March 29, 2024, at the conclusion of the trial, just after the  
9 verdict and outside the presence of the jury, the Court invited Defendants to file  
10 a post-trial motion on the amounts of the jury's verdict, while staying the entry  
11 of judgment on the jury's verdict. *See* Jury Trial Day 4, March 29, 2024 (filed on  
12 May 13, 2024), at 178-80.

13           3.       On April 26, 2024, Defendants filed their Renewed Motion for  
14 Judgment as a Matter of Law Pursuant to NRCP 50(b), and Motion for New Trial  
15 Pursuant to NRCP 59, or Alternatively for Remittitur. In their motion,  
16 Defendants offer the following main arguments:

17               a.       The Court should grant directed verdict in favor of  
18 Defendants as to past medical damages because Plaintiff failed to lay foundation  
19 for, or admit any, medical bills, aside from his chiropractor, and instead  
20 improperly relied on a demonstrative chart.

21               b.       The Court should grant directed verdict in favor of  
22 Defendants as to future medical damages because Plaintiff failed to admit Dr.  
23 Muir's life care plan detailing/itemizing nearly 40 years of care.  
24



1           c.     The jury award of \$200,000 for past medical damages was  
2 unsupported by the evidence.

3           d.     The jury award of \$3,100,000 for future general damages  
4 appears to have been the result of passion or prejudice, and not reasoned decision  
5 making.

6           e.     Defendants were barred from presenting evidence of  
7 Plaintiff's second vehicle vs. pedestrian accident even though the door was opened  
8 by Plaintiff's expert.

9           f.     Remittitur is warranted and should be granted as an  
10 alternative to a new trial.

11           4.     On May 31, 2024, Plaintiff filed his opposition to Defendants' motion.  
12 In his opposition, Plaintiff offer the following main arguments:

13           a.     Since the jury has rendered its verdict in Plaintiff's favor, the  
14 law requires the Court to presume that the jury believed Plaintiff's version of the  
15 evidence. The same presumption favoring Plaintiff applies to Defendants' motion  
16 for judgment as a matter of law under NRCP 50(b).

17           b.     Defendants have not presented a complete statement of the  
18 standards under NRCP 50(b) for this Court to grant judgment as a matter of law.  
19 Under the complete and proper standards, Defendants' renewed arguments fail  
20 both procedurally and substantively.

21           (i)     The complete and proper standards under NRCP 50(b)  
22 are fatal to Defendants' argument for judgment as a matter of law.

1 (ii) By making an NRCP 50(a) oral motion for directed  
2 verdict devoid of any “controlling law,” Defendants have not preserved their  
3 arguments for judgment as a matter of law under NRCP 50(b).

4 (iii) Even if the Court were to consider Defendants’  
5 unpreserved arguments, Defendants have not presented the Court with any  
6 “controlling law” to support their arguments for judgment as a matter of law  
7 under NRCP 50(b).

8 (iv) Under Nevada law, expert testimony is sufficient to  
9 support the jury’s award of Plaintiff’s past and future medical expenses.

10 (v) Nevada law also does not require demonstrative  
11 exhibits to be admitted as evidence, particularly when supported by expert  
12 testimony.

13 (vi) Once again, Defendants offer no “controlling law” that  
14 Plaintiff somehow had an obligation to challenge his own evidence of future  
15 medical expenses.

16 c. Although Defendants mention portions of the proper  
17 standards for a new trial under NRCP 59(a), they fail to argue or demonstrate  
18 that their substantial rights have been materially affected. Thus, the entirety of  
19 Defendants’ new trial arguments, at most, fall under harmless error, as outlined  
20 in NRCP 61.

21 d. As a matter of Nevada law, sufficient evidence supports the  
22 jury’s award of Plaintiff’s past medical expenses, such that Defendants are not  
23  
24

1 entitled to a new trial under the NRCP 59(a)(1)(E) standard for manifest  
2 disregard of the jury instructions.

3 e. Defendants did not properly challenge the sufficiency of the  
4 evidence to support the jury's award to Plaintiff for future physical and mental  
5 pain, suffering, anguish, disability, and loss of enjoyment of life. In any event, an  
6 award of pain and suffering is within the exclusive province of the jury and cannot  
7 be disturbed or second-guessed, particularly since Defendants' argument  
8 regarding punishment is not legally supported.

9 f. Contrary to Defendants' argument, Dr. William Muir's trial  
10 testimony confirms that he did not "open the door" for Defendants to offer  
11 speculative argument regarding causation for Plaintiff's back injury as it relates  
12 to the subsequent accident. Defendants' own expert, Dr. Jeffrey Wang, did not  
13 relate any of Plaintiff's injuries caused by Defendants in this case to Plaintiff's  
14 subsequent accident, as this Court previously recognized.

15 g. Defendants have not offered any legal reason for this Court to  
16 disturb the jury's verdict with remittitur, or alternatively, a new trial on damages.  
17 Defendants' mere label of "excessive" damages awarded by the jury is insufficient  
18 to satisfy the remittitur standard. Indeed, Defendants do not even suggest a  
19 remittitur amount. Thus, the Court should reject Defendants' bare request for  
20 remittitur.

21 5. Defendants filed their reply on July 12, 2024. In their reply,  
22 Defendants offer the following main arguments:  
23  
24

1           a.     Plaintiff failed to prove his claim for past medical damages,  
2 warranting judgment as a matter of law.

3                 (i)     Plaintiff failed to establish the amount of his past  
4 medical expenses as a matter of law.

5                     A.     Under Nevada's best evidence rule, Plaintiff  
6 failed to present any admissible and competent evidence establishing the amount  
7 of his past medical expenses.

8                     B.     Dr. Muir's testimony is insufficient to establish  
9 the amount of Plaintiff's past medical expenses.

10                 (ii)     Plaintiff failed to establish that his past medical bills  
11 were reasonable and necessary.

12           b.     Plaintiff failed to prove his claim for future medical damages,  
13 warranting judgment as a matter of law.

14           c.     The jury award of \$200,000 for past medical damages was  
15 unsupported by the evidence.

16           d.     The jury award of \$3,100,000 for future general damages  
17 appears to have been the result of passion or prejudice, and not reasoned decision  
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19           e.     Defendants were barred from presenting highly relevant  
20 evidence of Plaintiff's second vehicle vs. pedestrian accident even though the door  
21 was opened by Plaintiff's expert.

22           f.     Remittitur is warranted and should be granted as an  
23 alternative to a new trial.  
24

1           6.     At the hearing on Defendants’ motion, the Court heard argument  
2 from counsel for both Defendants and Plaintiff, and also questioned counsel on  
3 several main arguments presented in the briefing.

4           7.     Ultimately, the Court agrees with Plaintiff’s arguments and  
5 concludes that Defendants’ arguments are largely unpreserved for failure to  
6 properly object during trial. For example, Defendants could have objected to Dr.  
7 Muir giving a summary based on hearsay, and Plaintiff could have gotten into  
8 the underlying medical records that were the basis of his opinions. Plaintiff also  
9 could have introduced his medical records, if there had been a proper objection.

10          8.     The Court concludes that the best evidence rule does not apply  
11 under NRS 52.255, which Defendants argued in their reply brief, because  
12 Defendants did not challenge the medical records as true and accurate copies.  
13 *See Lagrange Constr. v. Kent Corp.*, 88 Nev. 271, 496 P.2d 766 (1972).

14          9.     Although Defendants now object to Dr. Muir’s testimony that  
15 Plaintiff’s medical expenses were reasonable and customary, Defendants did not  
16 properly contest this testimony during trial. The Court concludes that Dr. Muir’s  
17 trial testimony is evidence, which was sufficient to support Plaintiff’s requested  
18 medical expenses. *See Curti v. Franceschi*, 60 Nev. 422, 111 P.2d 53 (1941); *Taylor*  
19 *v. Brill*, 139 Nev. \_\_\_, 539 P.3d 1188 (2023).

20          10.    The fact that Defendants’ expert Dr. Wang offered contrary  
21 testimony about Plaintiff’s necessary and reasonable medical treatment does not  
22 change the Court’s analysis because it just means that the jury believed Dr. Muir  
23 and did not believe Dr. Wang. *See Powers v. United Servs. Auto. Ass’n*, 114 Nev.  
24

1 690, 702, 962 P.2d 596, 604 (1998) (“[T]his court must presume that the jury  
2 believed evidence favorable to that prevailing party and drew inferences in that  
3 party’s favor.”); *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661,  
4 664 (1998) (noting that courts are “not at liberty to weigh the evidence anew, and  
5 where conflicting evidence exists, all favorable inferences must be drawn towards  
6 the prevailing party”); *Countrywide Home Loans v. Thitchener*, 124 Nev. 725, 739,  
7 192 P.3d 243, 252 (2008) (same).

8 11. Defendants also could have cross-examined Dr. Muir more  
9 extensively at trial had they wanted to get into more specific information from  
10 Dr. Muir’s reports. *See, e.g., Robinson v. G.G.C., Inc.*, 107 Nev. 135, 143, 808 P.2d  
11 522, 527 (1991) (outlining the constitutional right of cross-examination in both  
12 criminal and civil cases).

13 12. On the issue of future medical expenses, the Court likewise finds  
14 that Dr. Muir’s testimony was sufficient evidence, even without admitting  
15 portions of his life care plan, which the Court concludes would not be the general  
16 practice in the Court’s nine years of experience as a District Court Judge. *See,*  
17 *e.g., Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 396 P.3d 783 (2017). Once  
18 again, Defendants could have gotten into more of the details of Dr. Muir’s life care  
19 plan at trial in cross-examination but elected not to. *See Robinson*, 107 Nev. at  
20 143, 808 P.2d at 527.

21 13. On the issue of the jury’s awards to Plaintiff for past and future pain  
22 and suffering, the Court finds that there was sufficient evidence of Plaintiff’s  
23 suffering presented at trial, including a permanent injury. On the amount of pain  
24

1 and suffering damages awarded by the jury, the Court appropriately defers to the  
2 jury's verdict. *See, e.g., Stackiewicz v. Nissan Motor Corp.*, 100 Nev. 443, 454-55,  
3 686 P.2d 925, 932 (1984) ("The elements of pain and suffering are wholly  
4 subjective. It can hardly be denied that, because of their very nature, a  
5 determination of their monetary compensation falls peculiarly within the  
6 province of the jury. . . . We may not invade the province of the fact-finder by  
7 arbitrarily substituting a monetary judgment in a specific sum felt to be more  
8 suitable."); [Courts] may not invade the province of the fact-finder by arbitrarily  
9 substituting a monetary judgment in a specific sum felt to be more suitable.").

10 14. The Court disagrees with Defendants' argument that Dr. Muir  
11 "opened the door" regarding Plaintiff's second, subsequent accident because  
12 Defendants never had any causation evidence relative to this second accident,  
13 even from Defendants' own expert Dr. Wang. *See Williams v. Eighth Judicial Dist.*  
14 *Court of Nevada*, 127 Nev. 518, 532, 262 P.3d 360, 369 (2011) ("[A]n expert for  
15 the defense is precluded from engaging in speculation or conjecture with respect  
16 to possible causes."). In any event, Defendants were able to get into the details  
17 of Plaintiff's second accident at trial with Dr. Muir much more than the Court  
18 would have allowed, but Plaintiff did not object to this line of cross-examination.

19 15. On the issue of the jury's award of past medical expenses to Plaintiff,  
20 the Court disagrees with Defendants' characterization that the jury "fabricated"  
21 the award based upon the evidence presented at trial. In his opposition, Plaintiff  
22 argued, in the alternative, that the jury's \$200,000 award of past medical  
23 expenses was based upon a shift in the timing since Dr. Muir's division of past  
24

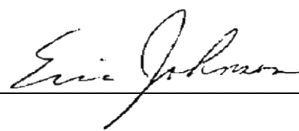
1 medical expenses and future medical expenses was approximately two years old  
2 at the time of trial. In other words, when Dr. Muir calculated Plaintiff's medical  
3 expenses in his report, some of those expenses would have become past medical  
4 expenses with the passage of two years between Dr. Muir's report and his trial  
5 testimony. Because of this time difference, Plaintiff, alternatively, asked the  
6 Court to reduce the jury's \$200,000 award of past medical expenses to \$161,545,  
7 consistent with Dr. Muir's trial testimony, while also increasing the jury's award  
8 of future medical expenses from \$1,500,000 to \$1,539,710, which was also  
9 consistent with Dr. Muir's trial testimony. Plaintiff further noted in his  
10 opposition that a juror asked a question during trial about the time difference of  
11 Plaintiff's requested medical expenses.

12 After reviewing the relevant trial testimony, the Court grants Plaintiff's  
13 alternative request, in part. The Court reduces the jury's award of past medical  
14 expenses from \$200,000 to \$161,545, which is consistent with evidence presented  
15 at trial. However, the Court declines Plaintiff's invitation to increase the jury's  
16 award of future medical expenses to Plaintiff. This reduced amount of Plaintiff's  
17 past medical expenses will be reflected in the judgment.

18 16. The Court denies all other relief that Defendants request in their  
19 motion, which was not specifically addressed at the hearing or is not specifically  
20 addressed in this order.

21 IT IS SO ORDERED.

Dated this 19th day of September, 2024

22   
23

24 D19 682 B119 6C4C  
Eric Johnson  
District Court Judge



1 Submitted by:

2 **CLAGGETT & SYKES LAW FIRM**

3 /s/ Micah S. Echols

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8  
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11 /s/ Steven G. Knauss

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19  
20 [Moss v. Tomesco, Order Denying Defendants' Renewed Motion for Judgment as  
21 a Matter of Law Pursuant to NRCP 50(b), and NRCP 59, or Alternatively, for  
22 Remittitur, Case No. A-21-840372-C]  
23  
24

Monday, September 16, 2024 at 13:31:15 Pacific Daylight Time

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**Subject:** RE: Moss v Tomesco - DRAFT Judgment and DRAFT Order Denying Defendants' Motion for Renewed JMOL/New Trial  
**Date:** Friday, September 13, 2024 at 4:03:44 PM Pacific Daylight Time  
**From:** Steven G. Knauss  
**To:** Micah Echols  
**CC:** Alison M. Brasier, BETSY C. JEFFERIS-AGUILAR ESQ (baguilar@lvattorneys.com), Danielle Alvarado, Anna Gresl, Rhonda Onorato, James Alvarado  
**Attachments:** image001.png

Micah – Please add my e-signature to both the judgment and order, and submit to chambers.  
Thanks,

**STEVEN G. KNAUSS**

Partner

**Messner Reeves LLP**

O: 702.363.5100 E: [sknauss@messner.com](mailto:sknauss@messner.com)

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---

**From:** Micah Echols <[Micah@claggettlaw.com](mailto:Micah@claggettlaw.com)>

**Sent:** Wednesday, September 4, 2024 5:57 PM

**To:** Steven G. Knauss <[sknauss@messner.com](mailto:sknauss@messner.com)>; James Alvarado <[javarado@messner.com](mailto:javarado@messner.com)>; Rhonda Onorato <[ROnorato@messner.com](mailto:ROnorato@messner.com)>; Cheryl Bradford <[CBradford@messner.com](mailto:CBradford@messner.com)>

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**Subject:** Moss v Tomesco - DRAFT Judgment and DRAFT Order Denying Defendants' Motion for Renewed JMOL/New Trial

**[ EXTERNAL EMAIL ]**

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Good evening, here are drafts of the judgment and the order denying Defendants' Renewed JMOL/New Trial. We have calculated interest on the judgment to be entered on Friday this week. If you need more time to review the judgment, let us know, and we can adjust the judgment calculation.

Micah Echols, Esq.

Partner, Appellate Division

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Jared Moss, Plaintiff(s)

CASE NO: A-21-840372-C

7 vs.

DEPT. NO. Department 20

8 Sean Tomesco, 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 Denying Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/19/2024

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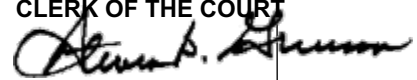
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**EXHIBIT “13”**

**EXHIBIT “13”**



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*Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

JARED MOSS, individually,  
Plaintiff,  
vs.

SEAN EDWARD TOMESCO,  
individually; SECOND OPINION  
PLUMBING, LLC., a domestic limited  
liability company; DOES I through X,  
inclusive; ROE CORPORATIONS XI  
through XX, inclusive,  
Defendants.

Case No. A-21-840372-C

Dept. No. 20

**PLAINTIFF'S MOTION FOR  
ATTORNEY FEES, COSTS, AND  
INTEREST**

**HEARING REQUESTED**

1 Plaintiff, Jared Moss (“Plaintiff”), hereby files this Motion for Attorney  
2 Fees, Costs, and Interest. Plaintiff moves this Court for relief based on the  
3 papers and pleadings on file herein, the attached memorandum of points and  
4 authorities, and any oral argument this Court may entertain during the hearing.

### 5 INTRODUCTION

6 Plaintiff filed his complaint against Defendants, Sean Tomesco and  
7 Second Opinion Plumbing, LLC (collectively “Defendants”), in August 2021 and  
8 has gone through over three years of arduous litigation to obtain justice through  
9 the jury’s verdict and recently defeated Defendants’ post-trial motions. The jury  
10 rendered its verdict on March 29, 2024 in favor of Plaintiff and against  
11 Defendants. *See Exhibit 1* (Special Verdict Form), filed on March 29, 2024. The  
12 Court also recently entered judgment upon the jury verdict against Defendants  
13 for a total of \$5,071,167.43. *See Exhibit 2* (Judgment Upon the Jury Verdict),  
14 filed on September 19, 2024. Additionally, Plaintiff has filed a memorandum of  
15 costs requesting \$41,102.61 in costs. Thus, the combined judgment with  
16 requested costs amounts to \$5,112,270.04 (not including the accrual of post-  
17 judgment interest).

18 Upon this \$5,112,270.04 amount, Plaintiff now requests an award of  
19 attorney fees against Defendants in the amount of \$2,556,135.02 based upon  
20 rejected offers of judgment for only \$1,000,000 on January 27, 2022 (**Exhibit 3**);  
21 \$800,000 on May 22, 2023 (**Exhibit 4**); \$600,000 on November 9, 2023  
22  
23  
24

(**Exhibit 5**); and \$375,000 on March 4, 2024 (**Exhibit 6**).<sup>1</sup> Plaintiff's requested award of attorney fees of 50% of the total recovered amount is based upon the contingency fee agreements he signed. *See Exhibit 7* (Hicks & Brasier Fee Agreement) and **Exhibit 8** (Claggett & Sykes Law Firm Fee Agreement).<sup>2</sup> The subtotal of Plaintiff's requested costs of \$41,102.61, and requested attorney fees of \$2,556,135.02, amounts to a total of \$2,597,237.63. Notably, as the judgment accrues post-judgment interest at the current rate of \$1,458.83 per day starting on September 17, 2024 (*see Exhibit 2*), and additional costs and interest accrue, Plaintiff will request a supplemental award of attorney fees and costs based upon the increased amount of the judgment, as this litigation continues.<sup>3</sup> Thus, Plaintiff's requested award of attorney fees is only based upon the amounts that have accrued in the current judgment and the current amounts in costs, without taking into account additional amounts that continue to accrue.

In summary, by this motion, Plaintiff requests costs and attorney fees to be awarded in his favor and against Defendants in the following amounts:

|    |                |                       |
|----|----------------|-----------------------|
| 1. | Costs:         | \$41,102.61; and      |
| 2. | Attorney Fees: | <u>\$2,556,135.02</u> |
|    | <b>TOTAL:</b>  | <b>\$2,597,237.63</b> |

---

<sup>1</sup> According to NRCP 68(f)(2), the Court can consider each of these offers for purposes of enforcing the penalty provisions of this rule against Defendants.

<sup>2</sup> These fee agreements are prefaced with the declaration of counsel to comply with NRCP 54(d)(2)(B)(v)(a).

<sup>3</sup> *See In re Estate & Living Trust of Miller*, 125 Nev. 550, 555, 216 P.3d 239, 243 (2009) ("We therefore hold that the fee-shifting provisions in NRCP 68 and NRS 17.115 extend to fees incurred on and after appeal."); NRS 18.060 (allowing for the recovery of costs on appeal).



1 Additionally, as a matter of law, the Court should also order post-judgment  
2 interest to accrue on this entire award until satisfied, due to Plaintiff's loss of  
3 use of the funds. *See, e.g., Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 26, 125 P.3d  
4 1160, 1167 (2006) ("We explained that 'the purpose of post-judgment interest is  
5 to compensate the plaintiff for loss of the use of the money awarded in the  
6 judgment' without regard to the various elements that make up the judgment.  
7 For the same reason, we conclude that the prevailing party may recover post-  
8 judgment interest on an attorney fees award.") (citation omitted).

## 9 LEGAL ARGUMENT

### 10 I. AS THE PREVAILING PARTY, PLAINTIFF IS ENTITLED 11 TO RECOVER HIS COSTS AGAINST DEFENDANTS.

12 As the prevailing party, Plaintiff is entitled to recover his costs against  
13 Defendants. As a matter of Nevada law, Plaintiff is the prevailing party based  
14 upon the jury's verdict and the subsequent judgment. *See Valley Elec. Ass'n v.*  
15 *Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) ("A party prevails if it  
16 succeeds on any significant issue in litigation which achieves some of the benefit  
17 it sought."). Plaintiff's prevailing-party status now entitles him to recover costs  
18 against Defendants according to NRS 18.020(3), which states: "Costs must be  
19 allowed of course to the prevailing party against any adverse party against  
20 whom judgment is rendered, in the following cases . . . [i]n an action for the  
21 recovery of money or damages, where the plaintiff seeks to recover more than  
22 \$2,500." (emphasis added). The word "must" imposes a mandatory requirement.  
23 *See, e.g., Pasillas v. HSBC Bank USA*, 127 Nev. 462, 466, 255 P.3d 1281, 1285  
24

(2011). The requested costs must be “reasonable, necessary, and actually incurred.” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). The requested costs must also be supported by documentation. *Id.*, 131 Nev. at 121, 345 P.3d 1049 at 1054.

In the instant case, Plaintiff has filed his memorandum of costs required by NRS 18.110(1). The memorandum is verified by counsel and supported by documentation to comply with *Cadle Co.* and other Nevada case law. *See, e.g., Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Vill. Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005). Also included with the memorandum is a matrix coordinating the statutory basis for each item of requested costs, along with a description, a charged amount, and the pages where the supporting documentation can be found. As the prevailing party in this litigation, Plaintiff asks the Court to award him the requested sum of \$41,102.61 in costs. The costs issues are further addressed in the briefing on Defendants’ motion to retax and Plaintiff’s opposition.

## **II. PLAINTIFF IS FURTHER ENTITLED TO RECOVER HIS ATTORNEY FEES BASED UPON REJECTED OFFERS OF JUDGMENT TO DEFENDANTS.**

Plaintiff is further entitled to recover his attorney fees based upon rejected offers of judgment to Defendants. “A party who makes an unimproved-upon offer of judgment—an offer that is more favorable to the opposing party than the judgment ultimately rendered by the district court—is entitled to recover costs and reasonable attorney fees incurred after making the offer of

1 judgment.” *Logan v. Abe*, 131 Nev. 260, 262, 350 P.3d 1139, 1140 (2015)  
2 (emphasis added); *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983)  
3 (“[T]he purpose of NRCP 68 is to encourage settlement. . . .”); *Waddell v. L.V.R.V.*  
4 *Inc.*, 122 Nev. 15, 24, 125 P.3d 1160, 1165–1166 (2006) (“NRCP 68(f) provides for  
5 penalties if the offeree rejects the offer, proceeds to trial, and fails to obtain a  
6 more favorable judgment.”) (emphasis and internal quotation marks omitted).

7 “The purpose of an offer of judgment under former NRS 17.115 and NRCP  
8 68 is to facilitate and encourage a settlement by placing a risk of loss on the  
9 offeree who fails to accept the offer, with no risk to the offeror, thus encouraging  
10 both offers and acceptance of offers.” *Mendenhall v. Tassinari*, 133 Nev. 614,  
11 625, 403 P.3d 364, 374 (2017) (citing *Matthews v. Collman*, 110 Nev. 940, 950,  
12 878 P.2d 971, 978 (1994); *see also Marek v. Chesny*, 473 U.S. 1, 5, 105 S.Ct. 3012  
13 (1985) (noting that the primary purpose behind offers of judgment is to  
14 encourage the compromise and settlement of litigation and that they “prompt []  
15 both parties to a suit to evaluate the risks and costs of litigation, and to balance  
16 them against the likelihood of success upon trial on the merits”); 12 Charles  
17 Alan Wright, Arthur R. Miller & Richard L. Marcus, *FEDERAL PRACTICE AND*  
18 *PROCEDURE* § 3001 (2014) (stating that by encouraging compromise, offers of  
19 judgment discourage both protracted litigation and vexatious lawsuits)); *Dillard*  
20 *Dep’t Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999)  
21 (highlighting that “[t]he purpose of . . . NRCP 68 is to save time and money” and  
22 to “reward a party who makes a reasonable offer and punish the party who  
23 refuses to accept such an offer”).  
24

1           **A. Plaintiff's Prevailing Offers of Judgment.**

2           Plaintiff issued offers of judgment to Defendants for only \$1,000,000 on  
3           January 27, 2022 (**Exhibit 3**); \$800,000 on May 22, 2023 (**Exhibit 4**); \$600,000  
4           on November 9, 2023 (**Exhibit 5**); and \$375,000 on March 4, 2024 (**Exhibit 6**).  
5           Importantly, the amounts of the offers of judgment included costs, prejudgment  
6           interest, and attorney fees. The total judgment, with prejudgment interest, is  
7           \$5,071,167.43. *See Exhibit 2.* The judgment, without prejudgment interest, is  
8           \$4,961,545. *Id.* Thus, Plaintiff's four offers of judgment are easily more favorable  
9           to Defendants than the judgment without interest. However, a true comparison  
10          of Plaintiff's offers of judgment to the judgment is even more distant when  
11          considering that Nevada law permits Plaintiff's "inclusive" offers of judgment to  
12          add pre-offer interest and pre-offer costs to the judgment for purposes of a  
13          comparison to determine a prevailing offer of judgment. "[P]re-offer prejudgment  
14          interest must be added to the judgment when comparing it to the offer of  
15          judgment, unless the offeror clearly intended to exclude prejudgment interest  
16          from its offer." *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 426, 132 P.3d 1022,  
17          1033 (2006) (citations omitted). NRCP 68(g) also allows for the addition of pre-  
18          offer costs to the judgment, when the offer of judgment includes costs, as in the  
19          instant case, for purposes of comparing the offers of judgment to the judgment.  
20          Thus, Plaintiff's offers of judgment issued to Defendants are more favorable than  
21          the jury's verdict.  
22  
23  
24

1           **B. Nevada Law Specifically Upholds Contingency Fee**  
2           **Agreements as a Measure for Awarding Attorney**  
3           **Fees.**

4           In *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 557–558, 429 P.3d  
5           664, 670 (Ct. App. 2018), the Nevada Court of Appeals held that billing records  
6           are not required to support an award of attorney fees. Indeed, the Court of  
7           Appeals explained that “attorney fees can be awarded when they are based  
8           upon contingency fee agreements.” *Id.* at 551, 429 P.3d at 666. The Court  
9           identified other jurisdictions that address awarding attorney fees based on a  
10          contingency fee agreement. *See McNeel v. Farm Bureau Gen. Ins. Co.*, 795  
11          N.W.2d 205, 220 (Mich. Ct. App. 2010) (holding that “[t]he trial court can  
12          certainly consider the type of case, the length of the trial, the difficulty of the  
13          case, the numbers and types of witnesses, as well as other relevant factors”);  
14          *Mardirossian & Assocs., Inc. v. Ersoff*, 62 Cal. Rptr. 3d 665, 676 (Ct. App. 2007)  
15          (concluding that the trial court did not abuse its discretion in an attorney fees  
16          award case, in part, because, despite a lack of billing records, the Mardirossian  
17          attorneys had personal knowledge of the legal work they performed and “each  
18          testified at length concerning the work he or she performed, the complexity of  
19          the issues and the extent of the work that was required”). Aside from the kinds  
20          of evidence allowed to support contingency fee awards, *O'Connell* explained that  
21          attorneys who work on a contingent basis take risks under such fee agreements,  
22          which should factor into the award of fees. *Id.* at 559, 429 P.3d at 671 (citing  
23          *King v. Fox*, 7 N.Y.3d 181, 851 N.E.2d 1184, 1191–1192, 818 N.Y.S.2d 833 (N.Y.  
24          2006) (“In entering into contingent fee agreements, attorneys risk their time

1 and resources in endeavors that may ultimately be fruitless. Moreover, it is  
2 well settled that the client may terminate [the contingency fee agreement] at  
3 any time, leaving the lawyer no cause of action for breach of contract[,] only  
4 quantum meruit.” (first alteration in original) (citation and internal quotation  
5 marks omitted)); *see also Scheme v. Reliable Collection Agency, Ltd.*, 96 Haw.  
6 408, 32 P.3d 52, 96–97 (Haw. 2001) (concluding that fee awards can be justified  
7 based on the risks associated with accepting a case on a contingency fee basis).  
8 Courts should also account for the greater risk of nonpayment for attorneys who  
9 take contingency fee cases, in comparison to attorneys who bill and are paid on  
10 an hourly basis, as they normally obtain assurances they will receive payment.  
11 *O’Connell*, 134 Nev. at 559, 429 P.3d at 671 (citing *Rendine v. Pantzer*, 141 N.J.  
12 292, 661 A.2d 1202, 1228 (N.J. 1995) (recognizing that rewarding a lawyer for  
13 taking a case for which compensation is contingent on the outcome is based in  
14 part on providing a monetary incentive for taking such cases because an hourly  
15 fee is more attractive unless such an extra incentive exists)). Thus, in  
16 considering Plaintiff’s requested attorney fees of 50% of the total judgment and  
17 the recoverable costs against Defendants, the Court should consider the  
18 enormous risk undertaken by Plaintiff’s attorneys in this case.

19 The *O’Connell* court further noted that contingency fee agreements level  
20 the playing field for those who “cannot afford an attorney who bills at an hourly  
21 rate to secure legal representation.” *Id.* (citing *King*, 851 N.E.2d at 1191)  
22 (“Contingent fee agreements between attorneys and their clients . . . generally  
23 allow a client without financial means to obtain legal access to the civil justice  
24

1 system.”). In this case, Plaintiff would not be able to pursue this litigation  
2 against Defendants absent the contingency fee agreement.

3 With this established framework, the Court of Appeals provided  
4 additional guidance on determining an amount of attorney fees based upon a  
5 contingency fee agreement. The Court reiterated that hourly billing records are  
6 not required and identified several other factors. *O’Connell*, 134 Nev. at 560,  
7 429 P.3d at 672 (citing *Hsu v. Cty. of Clark*, 123 Nev. 625, 637, 173 P.3d 724,  
8 733 (2007) (remanding the issue of attorney fees to the district court to  
9 determine a starting point and adjust the fee accordingly based on several  
10 factors, including the “time taken away from other work,” case-imposed  
11 deadlines, how long the attorney worked with the client, the usual fee and  
12 awards in similar cases, if the fee was contingent or hourly, the amount of  
13 money at stake, and how desirable the case was to the attorneys involved); RPC  
14 1.5(a)(1)–(8)). The District Court’s own observations are also important in  
15 determining an amount of attorney fees to award. *O’Connell*, 134 Nev. at 561,  
16 429 P.3d at 672–673; *Herbst v. Humana Health Ins. of Nev., Inc.*, 105 Nev. 586,  
17 591, 781 P.2d 762, 765 (1989) (reviewing an attorney’s affidavit of the number of  
18 hours of work performed and concluding that this document, “combined with the  
19 fact that Herbst’s attorney worked for two years on the case, established 12  
20 volumes of records on appeal, and engaged in a five day trial should enable the  
21 court to make a reasonable determination of attorney’s fees”).

22 Since *O’Connell* was decided, other courts have unanimously cited it with  
23 approval. See, e.g., *Katz v. Incline Vill. Improvement Dist.*, Order of Affirmance,  
24

Dkt. No. 71493, at \*8 (Nev. 2019) (unpublished) (“[W]e conclude that the district court relied on sufficient evidence to calculate a reasonable amount for Brooke’s services.”) (citing *O’Connell*, 134 Nev. at 557–558, 429 P.3d at 670 (holding that billing records are not required to support an award of attorney fees so long as the court can calculate a reasonable fee)). More recently, the En Banc Nevada Supreme Court cited *O’Connell* with approval in *Capriati Constr. Corp., Inc. v. Yahyavi*, 137 Nev. 675, 498 P.3d 226 (2021). Therefore, the Court should be guided by *O’Connell* and *Yahyavi* in awarding Plaintiff his requested attorney fees of 50% of the total judgment and requested costs against Defendants.

**III. PLAINTIFF SATISFIES THE *BEATTIE/YAMAHA* FACTORS FOR AN AWARD OF ATTORNEY FEES BASED UPON REJECTED OFFERS OF JUDGMENT TO DEFENDANTS.**

In determining whether to award attorney fees under NRCP 68 based upon a rejected offer of judgment when the plaintiff is the offeror, a district court must evaluate the following factors:

- (1) whether the defendant’s defense was brought in good faith;
- (2) whether the plaintiffs’ offer of judgment was reasonable and in good faith in both its timing and amount;
- (3) whether the defendant’s decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and
- (4) whether the fees sought by the offeror are reasonable and justified in amount.

*Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998) (citing *Beattie v. Thomas*, 99 Nev. 579, 588–589, 668 P.2d 268, 274 (1983)). No one factor under this analysis is determinative, and a district court “has broad discretion to grant the request so long as all appropriate factors are considered.” *Yamaha Motor Co.*, 114 Nev. at 251 n.16, 955 P.2d at 673 n.16.



1           A.    Defendants’ Defenses Were Not Brought in Good  
2               Faith.

3           Plaintiff filed his complaint in August 2021 alleging negligence-related  
4           claims after he was hit as a pedestrian in a crosswalk by Defendant Sean  
5           Tomesco, the driver of a 2004 Ford Econoline van, while in the course and scope  
6           of his employment with Defendant Second Opinion Plumbing, LLC. In their  
7           answer filed in November 2021, Defendants generally denied the allegations.  
8           See **Exhibit 9** (Defendants’ Answer to Plaintiff’s Complaint), filed on November  
9           5, 2021. Within their answer, Defendants asserted a series of affirmative  
10          defenses claiming that there was some other source of Plaintiff’s injuries, such  
11          as preexisting injuries or unknown third parties, while also arguing that none of  
12          Plaintiff’s injuries were caused by the incident of this case. *Id.* at 10–11. By July  
13          2022, Defendants stipulated to liability (duty and breach only) and confirmed  
14          that they would not argue that Plaintiff was comparatively negligent.  
15          See **Exhibit 10** (Stipulation and Order Regarding Defendant Tomesco’s Breach  
16          of Duty), filed on July 5, 2022. Despite Defendants’ arguments regarding some  
17          other cause of Plaintiff’s injuries, they never presented a plausible defense. In  
18          fact, the Court ruled on multiple occasions that Defendants’ own expert, Dr.  
19          Wang, did not associate Plaintiff’s injuries with any subsequent accident. *See,*  
20          *e.g., Exhibit 11* (Order Denying Defendants’ Renewed Motion for Judgment as  
21          a Matter of Law Pursuant to NRCP 50(b), and NRCP 59, or Alternatively, for  
22          Remittitur), at 9, ¶ 14 (“Defendants never had any causation evidence relative  
23          to this second accident, even from Defendants’ own expert Dr. Wang.”).  
24

1 Despite Defendants' admission of liability, and the absence of expert  
2 testimony or other evidence suggesting there was some other cause of Plaintiff's  
3 injuries, Defendants pressed forward to trial without abandoning any defenses.  
4 *See Williams v. Eighth Judicial Dist. Court of Nevada*, 127 Nev. 518, 532, 262  
5 P.3d 360, 369 (2011) ("[A]n expert for the defense is precluded from engaging in  
6 speculation or conjecture with respect to possible causes."). Just prior to trial,  
7 Defendants continued to assert the same defenses in their answer and  
8 confirmed that they were not abandoning any defenses. *See Exhibit 12* (Joint  
9 Pre-Trial Memorandum), filed on March 15, 2024), at 2–3. In essence,  
10 Defendants relied upon their general denials, which is not good faith.

11 Importantly, Defendants did not meaningfully contest Plaintiff's  
12 requested damages throughout this litigation. Instead, Defendants relied upon  
13 their own unsupported arguments of counsel, which are not evidence. *See Jain v.*  
14 *McFarland*, 109 Nev. 465, 475–476, 851 P.2d 450, 457 (1993) ("Arguments of  
15 counsel are not evidence and do not establish the facts of the case."). However,  
16 given Plaintiff's extensive treatment and continuing pain, Defendants knew  
17 that Plaintiff would likely recover damages for pain and suffering, yet they  
18 completely discounted this entire aspect of the litigation. *See, e.g., Banks v.*  
19 *Sunrise Hosp.*, 120 Nev. 822, 842, 102 P.3d 52, 66 (2004) ("[I]n order to award  
20 damages for pain and suffering, a jury must find substantial evidence that the  
21 damages are probable."). Therefore, the Court should weigh this first factor in  
22 Plaintiff's favor and find that Defendants' defenses were not brought in good  
23 faith.  
24

1           B.    Plaintiff's Offers of Judgment to Defendants Were  
2               Reasonable and in Good Faith in Both Their Timing  
3               and Amount.

4           For this second factor, the Court usually looks at what was going on in the  
5           litigation at the time of the offers to ensure that the offeree had an adequate  
6           opportunity to assess the particular offer of judgment. Since Plaintiff issued four  
7           offers of judgment, the Court has options on which offer to enforce: \$1,000,000 on  
8           January 27, 2022 (**Exhibit 3**); \$800,000 on May 22, 2023 (**Exhibit 4**); \$600,000  
9           on November 9, 2023 (**Exhibit 5**); and \$375,000 on March 4, 2024 (**Exhibit 6**).  
10          Plaintiff urges the Court to consider enforcement of his first offer of judgment,  
11          then the subsequent offers of judgment, if necessary, in the event that the Court  
12          does not enforce his first offer.

13          When Plaintiff issued his first offer of judgment, Defendants had Dr.  
14          Muir's expert report, which outlined Plaintiff's medical treatment and the  
15          associated expenses. See **Exhibit 13**. Thus, as early as January 27, 2022,  
16          Defendants could have resolved this case for less than the medical  
17          expenses. Defendants simply took an unreasonable position, especially given  
18          that in each subsequent offer of judgment, Plaintiff lowered his demand, even  
19          though his damages remained the same.

20          Defendants had the information they needed to evaluate Plaintiff's offers  
21          of judgment based upon other information in the record. For example, on  
22          January 6, 2022 (which was prior to Plaintiff's first offer of judgment), Plaintiff  
23          served his Early Case Conference NRCP 16.1 disclosures, including Plaintiff's  
24          medical providers, Plaintiff's medical records corresponding to the disclosed

1 providers, a computation of past medical expenses of \$110,706, and a  
2 computation of future medical expenses of \$1,150,243. See **Exhibit 14**  
3 (Plaintiff's Early Case Conference List of Witnesses and Exhibits Pursuant to  
4 NRCP 16.1), served on January 6, 2022.

5 As the litigation continued, Defendants had the opportunity to depose  
6 Plaintiff on January 31, 2023, which was after Plaintiff's first offer of judgment,  
7 but before his second offer. See **Exhibit 15** (Cover Page for Plaintiff's  
8 Deposition), dated January 31, 2023. The parties also attended a mediation at  
9 Advanced Resolution Management ("ARM") in June 2023—after which Plaintiff  
10 issued his third and fourth offers of judgment for only \$600,000 and \$375,000—  
11 which were just a fraction of Plaintiff's medical expenses. See **Exhibit 16**  
12 (Invoice from ARM). In essence, to resolve this case, **Plaintiff was willing to**  
13 **bear the majority of the costs for his medical treatment, while completely**  
14 **waiving any compensation for pain and suffering.** Yet, Defendants rejected  
15 all four offers of judgment. Thus, Plaintiff's offers of judgment were reasonable  
16 in both timing and amount.

17 **C. Defendants' Decision to Reject Plaintiff's Offers of**  
18 **Judgment and Proceed to Trial Was Either Grossly**  
**Unreasonable or in Bad Faith.**

19 Defendants unreasonably chose to reject Plaintiff's offers of judgment and  
20 proceed to trial. As outlined in the first *Beattie/Yamaha* factor, Defendants'  
21 asserted defenses were without genuine merit. Essentially, Defendants  
22 proceeded to trial based upon factual positions that were not actually supported  
23 with evidence. The truth-seeking function of a trial revealed that Defendants  
24 should not have proceeded to trial. See, e.g., *Langley v. State*, 84 Nev. 295, 297,

1 439 P.2d 986, 988 (1968) (“[T]he purpose of trial is to ascertain and disclose the  
2 truth. . . .”). But Defendants knew that they should not have proceeded to trial  
3 at the time of the offers of judgment were received based upon the absence of  
4 support for their defenses. These circumstances demonstrate that Defendants’  
5 decision to reject Plaintiff’s offers of judgment was either grossly unreasonable  
6 or in bad faith. Therefore, the Court should weigh these first three  
7 *Beattie/Yamaha* factors in favor of Plaintiff to award his requested attorney fees.

8 **D. The Fees Sought by Plaintiff Are Reasonable and**  
9 **Justified in Amount.**

10 The reasonableness of Plaintiff’s requested attorney fees is subsumed by  
11 the *Brunzell* factors, which are outlined below. Plaintiff’s requested attorney  
12 fees of \$2,556,135.02 are reasonable under this fourth *Beattie/Yamaha* factor, as  
13 well as the *Brunzell* factors. Importantly, the Nevada Supreme Court has  
14 clarified that attorney fees requested under NRCP 68 based upon a contingency  
15 fee agreement can be awarded in the full amount requested because “the  
16 contingency fee does not vest until the plaintiff prevails.” *Yahyavi*, 137 Nev. at  
17 679, 498 P.3d at 231. The Court reasoned as follows:

18 We now clarify that a district court may award the entire  
19 contingency fee as post-offer attorney fees under NRCP 68  
20 because the contingency fee does not vest until the client prevails.  
21 *See Grash v. Grash*, 536 S.W.3d 191, 194 (Ky. 2017) (holding  
22 that “the attorney does not possess a vested right to the actual  
23 contingent fee itself until the case is won or settled”); *see also*  
24 *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 562 (Tex. 2006)  
(holding the same). A contingency fee is contingent on the plaintiff  
prevailing, which will happen only *after* an offer of judgment is  
rejected—never before. Our holding is consistent with public  
policy justifications supporting contingency-fee agreements, *see*  
*O’Connell*, 134 Nev. at 559-60, 429 P.3d at 671-72, as the

contingency-fee-based award properly serves as a punishment for rejecting a reasonable offer of judgment, *see MEI-GSR Holdings [LLC v. Peppermill Casinos, Inc.]*, 134 Nev. 235, ¶ 245, 416 P.3d 249, ¶ 258 (explaining that one purpose of NRCP 68 is to punish parties for not accepting a reasonable offer of judgment).

*Id.* at 680, 498 P.3d at 231–232 (italics in original).

As outlined by the Supreme Court, Plaintiff ***does not*** have to demonstrate the work done before an offer of judgment versus the work done after the rejected offer of judgment for the Court to award the full amount of the 50% contingency fee. Therefore, the Court should take into account this important holding in *Yahyavi* and weigh the *Brunzell* factors to award Plaintiff the full \$2,556,135.02 for his requested attorney fees.

**IV. PLAINTIFF’S REQUESTED ATTORNEY FEES ARE REASONABLE IN LIGHT OF THE *BRUNZELL* FACTORS, AS OUTLINED IN *O’CONNELL* AND *YAHYAVI*.**

Plaintiff’s requested attorney fees are reasonable in light of the *Brunzell* factors, as outlined in *O’Connell* and *Yahyavi*. To determine the reasonableness of the amount of Plaintiff’s requested attorney fees, Nevada caselaw requires this Court to weigh the four *Brunzell* factors: (1) qualities of the advocates: ability, training, education, experience, professional standing, and skill; (2) the character of the work: difficulty, intricacy, importance, time, skill required, and responsibility imposed; (3) the work actually performed: skill, time, and attention; and (4) the result: whether the attorney was successful and the benefits derived. *See Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349–350, 455 P.2d 31, 33 (1969). Plaintiff satisfies each of the *Brunzell* factors. Thus, the Court should conclude that Plaintiff’s requested attorney fees of \$2,556,135.02 are reasonable. In finding that Plaintiff’s requested attorney fees are reasonable,

1 the Court should also rely on its own observations of Plaintiff's attorneys and  
2 their work. *See O'Connell*, 134 Nev. at 561, 429 P.3d at 672–673; 429 P.3d at  
3 672–673.

4 **A. Qualities of the Advocates.**

5 **1. Alison M. Brasier, Esq.**

6 Alison Brasier has been licensed to practice law in Nevada since 2007.  
7 Prior to opening her own firm, Ms. Brasier worked for Nevada's largest  
8 Plaintiff's personal injury firm where she handled the firm's highest value cases.  
9 In 2015, she started her own personal injury firm, Hicks & Brasier. Ms. Brasier  
10 manages the firm's litigation and trial department. Since 2015, she has been  
11 part of trial teams that have obtained over \$41,000,000 in verdicts for their  
12 clients. Ms. Brasier was licensed to practice law in Utah in 2009 (currently on  
13 inactive status since 2024). While actively licensed in Utah, Ms. Brasier  
14 litigated and/or tried cases in both Utah state and federal courts.

15 Ms. Brasier has also successfully argued in front of the Nevada Court of  
16 Appeals and was on the trial team for (and participated in the appeal of) what is  
17 now known as *Khoury v. Seastrand*, one of the seminal cases in Nevada on  
18 medical liens and jury selection.

19 Ms. Brasier has been on the Board of Governors for Nevada Justice  
20 Association since 2006 and is currently President-Elect for the association.  
21 During her tenure with Nevada Justice Association, she has served as Secretary,  
22 Treasurer, and Vice-President. She has also served on the association's  
23 Women's Caucus, Leadership Development, and Membership committees. Ms.  
24 Brasier has presented CLEs regarding litigation strategies, trial preparation,

1 and pre-trial motion practice. She is also a frequent contributor to the Advocate,  
2 which is the Nevada Justice Association's magazine for plaintiff lawyers.

3 Ms. Brasier is the co-chair of the Civil Bill Review Committee for Nevada  
4 Justice Association. She has been involved in drafting proposed legislation and  
5 has frequently testified before the Nevada Legislature on a variety of issues  
6 affecting the civil litigation system and the rights of Nevadans.

7 Ms. Brasier was a contributor to the Nevada Jury Instructions: Civil  
8 (2018 edition) where she worked with other civil attorneys on jury instructions  
9 relating to personal injury trials.

10 Ms. Brasier graduated from University of Nevada, Las Vegas in 2001  
11 with a degree in Psychology. She then attended the William S. Boyd School of  
12 Law and graduated in 2007. Ms. Brasier served on the Alumni Association  
13 Board for Boyd Law School for a number of years and served as Vice-President  
14 of the Association during that time.

15 **2. Betsy C. Jefferis-Aguilar, Esq.**

16 Betsy received her undergraduate education from Southern Utah  
17 University where she completed her Bachelor of Arts Degree in both History  
18 and Political Science. Betsy received her Juris Doctor degree from Thurgood  
19 Marshall School of Law in Houston Texas where she served as her class  
20 historian for her 1L and 2L years. Betsy was admitted to the Nevada Bar in  
21 2013 and has been actively practicing since that time in insurance defense for  
22 eight years and plaintiff's personal injury for the last four years. Betsy has  
23 handled cases in both Nevada state and federal court including premises cases  
24



1 such as slip/trip and fall, falling merchandise, construction defect litigation,  
2 legal malpractice, medical malpractice, motor vehicle accident cases, product  
3 defect, breach of contract, first party UIM cases, and pro bono work in family  
4 law matters.

5 Betsy has not only defended multiple cases as a prior insurance defense  
6 attorney, but she has also participated in trials and has represented clients in  
7 both private mediations and settlement conferences in both state and federal  
8 courts securing successful settlements for both plaintiffs and defendants. Betsy  
9 has worked with a variety of corporations and clients and has vast experience in  
10 discovery motions in both state and federal court as well as successful  
11 dispositive motion practice. Betsy has also settled large cases in the hundreds of  
12 thousands of dollars whether formally or informally. Betsy has worked for  
13 multiple partners and has been responsible for the day-to-day handling of her  
14 assigned cases.

15 Betsy is currently in good standing with the Nevada State Bar and  
16 currently serves on the board for Southern Nevada Association of Women  
17 Attorneys and is also a member of the 2023 Nevada Justice Association  
18 Leadership Academy.

19 **3. Micah Echols, Esq.**

20 Mr. Echols heads up Claggett & Sykes Law Firm's appellate division. He  
21 is frequently brought into cases before or during trial to help prevent errors and  
22 preserve the record at trial. Mr. Echols has handled over 300 civil appellate  
23 matters in state and federal courts, with approximately 45 published opinions,  
24

1 and has represented injured plaintiffs, businesses, and government entities.  
2 Mr. Echols has argued cases in front of the Nevada Supreme Court and the  
3 Ninth Circuit Court of Appeals and is also licensed to practice before the United  
4 States Supreme Court, where he has handled several cases at the certiorari  
5 stage.

6 Mr. Echols has published numerous articles on appellate issues and  
7 developments in the law. He has also contributed to the Nevada Civil Appeal  
8 Checklist, which is a checklist for lawyers to navigate appeals in Nevada  
9 appellate courts. Mr. Echols also contributed to the Nevada Appellate Practice  
10 Manual. Mr. Echols is currently the editor of the *Advocate*, which is the Nevada  
11 Justice Association's magazine for plaintiff lawyers.

12 Mr. Echols graduated from Brigham Young University in 1999 with a  
13 major in Spanish. He then attended Brigham Young University, J. Reuben Clark  
14 Law School, and graduated in 2003.

15 **B. The Character of the Work.**

16 Although the underlying facts of this case are straightforward,  
17 Defendants' challenges to causation required trial counsel to present complicated  
18 medical testimony and evidence in a way that would be understandable to lay  
19 jurors. The Court has observed the dedication that Plaintiff's attorneys put into  
20 this case throughout the arduous discovery process, the extensive pretrial  
21 briefing and argument, and the trial "production" as reflected in the docket as a  
22 whole, as well as the quality of the individual filings. See **Exhibit 17** (District  
23 Court Docket). Each day of trial brought new factual and legal issues, along  
24

1 with the visual presentation of themes through witnesses and the attorneys.  
2 The post-trial briefing and the trial transcripts also reflect the numerous legal  
3 issues that Defendants raised before trial, throughout trial, and post-trial.

4 For this second *Brunzell* factor, equally important as the attorneys who  
5 represented Plaintiff are the attorneys who represented Defendants, including  
6 the law firm and the associated attorneys. In other words, this litigation and the  
7 jury trial were very difficult due to the skills and abilities of the defense. Each  
8 day during trial was met with new defense arguments, and numerous  
9 evidentiary and legal issues argued in bench conferences. That is, the skills and  
10 experience of the defense raised the bar on the character of the work for  
11 Plaintiff's attorneys.

12 Plaintiff's attorneys possess the skill required to successfully try a case to  
13 a jury based upon their education and experience. The entire trial team took  
14 upon distinct tasks in the days and weeks prior to trial, as well as every day and  
15 night during trial. The ability to try cases to a jury with the skill exhibited by  
16 Plaintiff's attorneys takes years of experience to perfect their craft.

17 The Court, since presiding over this case, has also observed firsthand the  
18 extensive post-trial briefing. Therefore, the Court should find that Plaintiff  
19 satisfies the second *Brunzell* factor for his requested award of attorney fees.

20 **C. The Work Actually Performed.**

21 The Court has observed firsthand the work performed by Plaintiff's  
22 attorneys. See *O'Connell*, 134 Nev. at 561, 429 P.3d at 672–673; *Herbst*, 105 Nev.  
23 at 591, 781 P.2d at 765. Because Plaintiff's law firms do not prepare invoices for  
24

1 contingency cases, the Court can take notice of the work performed by Plaintiff's  
2 attorneys, including the record as a whole. *Id.* And, the Nevada Supreme Court  
3 has held that a contingency fee “vests” after a verdict is entered, such that  
4 Plaintiff does not need to itemize his work done before an offer or judgment  
5 versus after an offer of judgment. *Yahyavi*, 137 Nev. at 679, 498 P.3d at 231.  
6 Rather, since Plaintiff has otherwise satisfied the *Brunzell* factors, the Court  
7 should award the full 50% of the total judgment amount as an award of attorney  
8 fees to Plaintiff.

9 Additionally, the Court's review of the work performed under the  
10 umbrella of an offer of judgment also includes work done after the verdict in  
11 post-trial proceedings, as well as any appellate proceedings. *See In re Estate &*  
12 *Living Trust of Miller*, 125 Nev. 550, 556, 216 P.3d 239, 243 (2009) (“[W]e  
13 reverse the judgment of the district court and remand for the award of  
14 reasonable attorney fees and costs under NRCP 68 and NRS 17.115. On remand,  
15 the district court should award reasonable post-rejection fees incurred at the  
16 district court and appellate levels both on this appeal and the prior appeal.”).

17 Plaintiff's attorneys, their trial teams, and their staff have literally spent  
18 hundreds of hours, collectively, litigating this case since it was filed in August  
19 2021. Additionally, the Court can consider the work of not only the attorneys  
20 present in this case, but also their paralegals and other legal professionals who  
21 have worked on this case. *See Las Vegas Metro. Police Dep't v. Yeghiazarian*, 129  
22 Nev. 760, 769–770, 312 P.3d 503, 510 (2013) (“[A] reasonable attorney's fee  
23 cannot have been meant to compensate only work performed personally by  
24

1 members of the bar. Rather, the term must refer to a reasonable fee for the  
2 work product of an attorney. Thus, the fee must take into account the work not  
3 only of attorneys, but also of secretaries, messengers, librarians, janitors, and  
4 others whose labor contributes to the work product for which an attorney bills  
5 her client . . . We thus take as our starting point the self-evident proposition that  
6 the reasonable attorney's fee provided for by statute should compensate the work  
7 of paralegals, as well as that of attorneys.") (citing *Missouri v. Jenkins*, 491 U.S.  
8 274, 285, 109 S.Ct. 2463, 2470 (1989)). Therefore, the Court should weigh this  
9 third *Brunzell* factor in Plaintiff's favor.

10 **D. The Result.**

11 The jury's verdict speaks for itself. See **Exhibit 1**. Plaintiff's attorneys'  
12 work also speaks for itself. This is a case where justice was truly done for  
13 Plaintiff. The current \$5,071,167.43 judgment is several times higher than  
14 Plaintiff's own offers of judgment. See **Exhibits 3–6**. Defendants simply refused  
15 to pay. Truly, the result obtained in this case was the product of the hard work  
16 of Plaintiff's attorneys, the staff working alongside them, and the numerous  
17 other legal professionals behind the scenes throughout the case.

18 The overall reasonableness of Plaintiff's requested attorney fees is  
19 confirmed by Plaintiff's reference to two additional cases. In *Martyn v. Nevins*,  
20 Order re: Plaintiff's Motion for Attorney's Fees and Costs, Case No. A-10-  
21 625101-C (July 11, 2022), Chief Judge Wiese awarded the plaintiff's request for  
22 a 50% contingency fee in a medical malpractice case. See **Exhibit 18** (Order re:  
23  
24

1 Plaintiff's Motion for Attorney's Fees and Costs filed in *Martyn v. Nevins*, Case  
2 No. A-10-625101-C), filed on July 11, 2022, at 15.

3 Similarly, in *Roybal v. Bellomo*, Order Granting Plaintiff's Motion for  
4 Attorney Fees, Costs, and Interest, Case No. A-18-778040-C (Mar. 15, 2023),  
5 Judge Clark Newberry awarded attorney fees based upon a 50% contingency fee  
6 agreement for a total attorney fees award of \$7,923,304.85 following a personal  
7 injury verdict of \$14.1 million before adding prejudgment interest and costs.  
8 See **Exhibit 19** (Order Granting Plaintiff's Motion for Attorney Fees, Costs, and  
9 Interest filed in *Roybal v. Bellomo*, Case No. A-18-778040-C), filed on March 15,  
10 2023, at 34. The attorney fees award in *Roybal* was based upon the total  
11 amount of the judgment plus costs and prejudgment interest on costs—which is  
12 the same relief that Plaintiff requests in this case.

13 Therefore, Plaintiff respectfully requests that this Court exercise its  
14 discretion under the guiding legal principles in *O'Connell*, *Yahyavi*, and the  
15 *Brunzell/Yamaha* factors to award Plaintiff's requested attorney fees of  
16 \$2,556,135.02 against Defendants.

17  
18 **V. PLAINTIFF IS ALSO ENTITLED TO RECOVER POST-  
19 JUDGMENT INTEREST ON THE ENTIRE AMOUNT OF  
HIS AWARD OF ATTORNEY FEES, COSTS, AND  
INTEREST.**

20 Plaintiff is also entitled to recover post-judgment interest on the entire  
21 amount of his award of attorney fees, costs, and interest. As a matter of Nevada  
22 law, Plaintiff is entitled to the accrual of post-judgment interest on the entire  
23 amount of the award of attorney fees, costs, and interest, regardless of the  
24

different components of the judgment. The stated “purpose of post-judgment interest is to compensate the plaintiff for loss of the use of the money awarded in the judgment without regard to the various elements that make up the judgment.” *Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 26, 125 P.3d 1160, 1167 (2006). Indeed, the Supreme Court clarified that “the prevailing party may recover post-judgment interest on an attorney fees award.” *Id.* Therefore, the Court’s order awarding attorney fees, costs, and interest to Plaintiff should also accrue post-judgment interest until the award is fully satisfied. *See also* NRS 15.040 (“Whenever an order for the payment of a sum of money is made by a court, it may be enforced by execution in the same manner as if it were a judgment.”).

### CONCLUSION

In summary, Plaintiff requests costs and attorney fees to be awarded against Defendants in the following amounts:

|               |                |                       |
|---------------|----------------|-----------------------|
| 1.            | Costs:         | \$41,102.61; and      |
| 2.            | Attorney Fees: | <u>\$2,556,135.02</u> |
| <b>TOTAL:</b> |                | <b>\$2,597,237.63</b> |

Dated this 10th day of October 2024.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

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Micah S. Echols, Esq.  
David P. Snyder, Esq.  
Charles L. Finlayson, Esq.

HICKS & BRASIER, PLLC  
Alison M. Brasier, Esq.  
Betsy C. Jefferis-Aguilar, Esq.  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10th day of October 2024, I served a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR ATTORNEY FEES, COSTS, AND INTEREST** upon the following persons by the following methods pursuant to NRCP 5(b) and NEFCR 9:

**HICKS & BRASIER, PLLC**

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*Attorneys for Defendants*

/s/ Anna Gresl

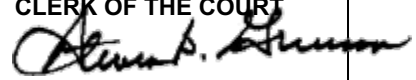
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Anna Gresl, an employee of  
CLAGGETT & SYKES LAW FIRM



**EXHIBIT “14”**

**EXHIBIT “14”**



**OPPM**

M. CALEB MEYER, ESQ.

Nevada Bar No. 13379

RENEE M. FINCH, ESQ.

Nevada Bar No. 13118

STEVEN G. KNAUSS, ESQ.

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*Attorneys for Defendants Sean Edward Tomesco*

*and Second Opinion Plumbing, LLC*

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

JARED MOSS, individually,

Plaintiff,

vs.

SEAN EDWARD TOMESCO, individually;  
SECOND OPINION PLUMBING, LLC, a  
domestic limited liability company; DOES I  
through X, inclusive; ROE CORPORATIONS XI  
through XX, inclusive,

Defendants.

Case No.: A-21-840372-C

Dept. No.: 20

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR ATTORNEY  
FEES, COSTS, AND INTEREST**

Defendants SEAN EDWARD TOMESCO and SECOND OPINION PLUMBING, LLC  
(collectively "Defendants"), by and through their attorneys of record, M. Caleb Meyer, Esq., Renee  
M. Finch, Esq., and Steven G. Knauss, Esq., of the law firm MESSNER REEVES LLP, hereby opposes  
*Plaintiff's Motion for Attorney Fees, Costs, and Interest* (hereafter "Plaintiff's Motion").

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1 This Opposition is based upon the following memorandum of points and authorities, all  
2 pleadings and papers on file with this Court, and any oral argument this Court may entertain at the  
3 hearing on this matter.

4 DATED this 24<sup>th</sup> day of October, 2024.

5 **MESSNER REEVES LLP**

6 /s/ Steven Knauss

7 M. CALEB MEYER, ESQ.

8 Nevada Bar No. 13379

9 RENEE M. FINCH, ESQ.

10 Nevada Bar No. 13118

11 STEVEN G. KNAUSS, ESQ.

12 Nevada Bar No. 12242

13 8945 W. Russell Road, Ste. 300

14 Las Vegas, Nevada 89148

15 *Attorneys for Defendants Sean Edward Tomesco*  
16 *and Second Opinion Plumbing, LLC*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 1. On or about July 9, 2020, Defendant Sean Tomesco, while in the course and scope of  
4 his employment, was driving a work van owned by Defendant Second Opinion Plumbing, when he  
5 struck Plaintiff Jared Moss was walking through the marked intersection at East Wigwam and South  
6 Maryland Parkway.

7 2. Upon information and belief, Plaintiff was involved in a second vehicle-versus-  
8 pedestrian accident, 3 months later, in October 2020.

9 3. On August 31, 2021, Plaintiff filed the instant action against Defendants Tomesco and  
10 Second Opinion Plumbing alleging Negligence, Negligence Per Se, Gross Negligence, Vicarious  
11 Liability and Negligent Hiring, Training, Supervision and Retention.<sup>1</sup>

12 4. On November 15, 2021, Plaintiff filed a Request for Exemption from Arbitration in  
13 which Plaintiff alleged \$110,706.00 in past medical specials and \$1,150,243.00 in unspecified  
14 “future” medical expenses.<sup>2</sup>

15 5. On January 6, 2022, Plaintiff served his Early Case Conference List of Witnesses and  
16 Exhibits Pursuant to N.R.C.P. 16.1 [hereinafter “Initial List”] which again listed Plaintiff’s past  
17 medical expenses as \$110,706.00.<sup>3</sup>

18 6. As part of the Initial List, Plaintiff disclosed a Medical Records Review from William  
19 Muir, MD, one of Plaintiff’s treating physicians, which stated: “The treatment of radiofrequency  
20 ablation is not considered to be a permanent treatment and there is a possibility that the patient’s  
21 lumbar facet injury will resolve with time and not require future treatments.”<sup>4</sup>

22 7. On January 27, 2022, pursuant to NRCP 68, Plaintiff made an Offer of Judgment in  
23 the amount of \$1,000,000.<sup>5</sup>

24  
25  
26 

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<sup>1</sup> See Complaint, on file herein.

27 <sup>2</sup> See Request for Exemption from Arbitration, on file herein.

28 <sup>3</sup> See Plaintiff’s Early Case Conference List of Witnesses and Exhibits, attached as **Exhibit A**.

<sup>4</sup> See Dr. William Muir Medical Records Review [LCP00002-08], attached as **Exhibit B**.

<sup>5</sup> See Plaintiff’s Motion at p.1.

1           8.       On August 8, 2022, Plaintiff served his First Supplemental Early Case Conference  
2 List of Witnesses and Exhibits Pursuant to N.R.C.P. 16.1 [hereinafter “First Supplement”] in which  
3 Plaintiff stated that his past medical specials were \$140,981.<sup>6</sup>

4           9.       As part of the disclosures, Plaintiff attached Dr. Muir’s treatment record relating to  
5 Plaintiff’s July 14, 2022 appointment which stated “He [Plaintiff] reports continued relief of his low  
6 back pain. He is not needing to take any more of the medication we prescribed for him. He reports he  
7 has been able to return to his normal activities with minimal discomfort.”<sup>7</sup>

8           10.      On August 8, 2022, Plaintiff made an Offer of Judgment of \$800,000.<sup>8</sup>

9           11.      On October 7, 2022, Jeffery C. Wang, MD of the USC Spine Center conducted an  
10 independent medical examination of Plaintiff. Pursuant to this examination, Dr. Wang issued a report  
11 in which he stated “I do not relate any ongoing subjective reports of spine symptoms, nor any future  
12 medical care for the spine, to be causally linked to the MVA of 7/9/20.”<sup>9</sup>

13          12.      On December 13, 2022, Plaintiff served his Second Supplemental Early Case  
14 Conference List of Witnesses and Exhibits Pursuant to N.R.C.P. 16.1 [hereinafter “Second  
15 Supplement”] which indicated no further medical treatment since the First Supplement.<sup>10</sup>

16          13.      On February 7, 2023, Plaintiff served his Third Supplemental Early Case Conference  
17 List of Witnesses and Exhibits Pursuant to N.R.C.P. 16.1 [hereinafter “Third Supplement”] which  
18 indicated Plaintiff underwent no further medical treatment since the previous disclosure.<sup>11</sup>

19          14.      On February 21, 2023, Plaintiff served his Fourt Supplemental Early Case Conference  
20 List of Witnesses and Exhibits Pursuant to N.R.C.P. 16.1 [hereinafter “Fourth Supplement”] which  
21 indicated Plaintiff underwent no further medical treatment.<sup>12</sup>

22  
23  
24  
25 \_\_\_\_\_  
<sup>6</sup> See Plaintiff’s 1st Supplement to Early Case Conference List of Witnesses and Exhibits, attached as **Exhibit C**.

26 <sup>7</sup> See Plaintiff’s Medical Records from Dr. William Muir [WM00121-25], attached as **Exhibit D**.

27 <sup>8</sup> See Plaintiff’s Motion at p.1.

<sup>9</sup> See Report of Jeffrey C. Wang, MD, attached as **Exhibit E**.

<sup>10</sup> See Plaintiff’s 2<sup>nd</sup> Supplement to Early Case Conference List of Witnesses and Exhibits, attached as **Exhibit F**.

28 <sup>11</sup> See Plaintiff’s 3<sup>rd</sup> Supplement to Early Case Conference List of Witnesses and Exhibits, attached as **Exhibit G**.

<sup>12</sup> See Plaintiff’s 4<sup>th</sup> Supplement to Early Case Conference List of Witnesses and Exhibits, attached as **Exhibit H**.

1           15.     On April 18, 2023, Plaintiff served Fifth Supplemental Early Case Conference List of  
2 Witnesses and Exhibits Pursuant to N.R.C.P. 16.1 [hereinafter “Fifth Supplement”] which indicated  
3 that Plaintiff prior medical expenses had been re-calculated and that they had decreased to  
4 \$132,571.00.<sup>13</sup>

5           16.     On July 7, 2023, Defendants made an Offer of Judgment for \$160,000.<sup>14</sup>

6           17.     On November 9, 2023, Plaintiff made an Offer of Judgment for \$600,000.<sup>15</sup>

7           18.     On November 27, 2023, Defendant made an Offer of Judgment for \$185,000.<sup>16</sup>

8           19.     On September 19, 2024, pursuant to a jury trial in this matter, the jury awarded  
9 judgment against Defendants in the amount of \$161,545 in past medical expenses, \$200,000 in past  
10 physical and mental pain and suffering, \$1,500,000 in future medical expenses and \$3,100,000 in  
11 future physical and mental pain and suffering for a total of \$4,961,545 plus \$109,622.43 in  
12 prejudgment interest for a total of \$5,071,167.43.<sup>17</sup>

13           Based on the expert medical opinions on both sides regarding Plaintiff’s future treatment, and  
14 based on the lack of evidence of Plaintiff’s general damages, as well as considering the 2<sup>nd</sup> and more  
15 severe accident that occurred 3 months after the subject accident, Defendants had a reasonable basis  
16 to believe that they would obtain a jury verdict in their favor less than \$185,000. Therefore, it is  
17 proper, and it is within the Court’s sound discretion, to deny Plaintiff’s request for fees, costs, and  
18 interest in this matter pursuant to NRCP 68.

19   **II.     LEGAL STANDARD**

20           It is within the discretion of the trial court judge to allow attorney's fees pursuant to Rule 68.  
21 *See. O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 554, 429 P.3d 664, 668 (2018). However,  
22 the Court does not have unfettered discretion to award a Plaintiff’s fees simply due to the rejection of  
23 an Offer of Judgment. Instead, the Court must evaluate the factors laid out in *Beattie v. Thomas*  
24 before deciding whether to award attorney fees pursuant to NRCP 68. *Frazier v. Drake*, 131 Nev.  
25 632, 641-42, 357 P.3d 365, 272 (Ct. App. 2015). In particular, in exercising that discretion, the trial

26           <sup>13</sup> See Plaintiff’s 5<sup>th</sup> Supplement to Early Case Conference List of Witnesses and Exhibits, attached as **Exhibit I**.

27           <sup>14</sup> See Defendant Offer of Judgment dated July 7, 2023, attached as **Exhibit J**.

28           <sup>15</sup> See Plaintiff’s Motion at p.1.

<sup>16</sup> See Defendant Offer of Judgment dated November 27, 2023, attached as **Exhibit K**.

<sup>17</sup> See Judgment Upon Jury Verdict, on file herein.

1 court must evaluate the following factors: (1) whether plaintiffs claim was brought in good faith; (2)  
2 whether plaintiffs offer of judgment was brought in good faith in both its timing and amount; (3)  
3 whether defendant's decision to reject the offer and proceed to trial was grossly unreasonable or in  
4 bad faith; and (4) whether fees sought by the offeror are reasonable and justified in amount. *Beattie*  
5 *v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983).

6 The fourth *Beattie* factor specifically requires the district court to consider whether the  
7 attorney fees sought “are reasonable and justified in amount.” *Beattie*, 99 Nev. at 589, 668 P.2d at  
8 274. In doing so, the Court is specifically required to evaluate the factors set forth in *Brunzell v.*  
9 *Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31. *O’Connell*, 134 Nev. at 555, 429 P.3d at 668.  
10 In particular, the court must evaluate the following *Brunzell* factors: (1) the qualities of the advocate:  
11 his ability, his training, education, experience, professional standing and skill; (2) the character of the  
12 work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility  
13 imposed and the prominence and character of the parties where they affect the importance of the  
14 litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the  
15 work; (4) the result: whether the attorney was successful and what benefits were derived. *Brunzell*,  
16 85 Nev. 345 at 349, 455 P.2d at 33.

### 17 **III. LEGAL ARGUMENT**

#### 18 **1. THE *BEATTIE* FACTORS SUPPORT DENIAL OF PLAINTIFF’S MOTION FOR FEES**

19 The Court should deny Plaintiff’s Motion for Attorneys Fees as Plaintiff failed to meet the  
20 *Beattie* factors for the award of attorney fees pursuant to NRCP 68. Plaintiff’s Offers of Judgment  
21 were not brought in good faith, taking into account their timing and amounts, and Defendants’  
22 rejection of the offers were reasonable, rendering the fees sought by Plaintiff as unreasonable.  
23 Therefore, Plaintiff is not entitled to attorney’s fees pursuant to Rule 68 and the instant motion should  
24 be denied.

#### 25 **A. Whether Plaintiff’s Claim was Brought in Good Faith**

26 Defendants concede that Plaintiff’s claim was brought in good faith. Plaintiff was injured due  
27 to the actions of Defendants and on July 1, 2022, the parties entered into a Stipulation and Order in  
28

1 which Defendants admitted liability (i.e. duty and breach elements of Plaintiff's negligence claim).<sup>18</sup>  
 2 Therefore, the sole issue for trial was the reasonableness and necessity of Plaintiff's past and future  
 3 medical treatment.

4 **B. Whether Plaintiff's Offer of Judgment was Brought in Good Faith**

5 Plaintiff's Offers of Judgment were not brought in good faith given the circumstances  
 6 surrounding each offer. Plaintiff failed to provide justification for the offers and Plaintiff's own  
 7 physicians provided contrary assessments of Plaintiff's need for further treatment. Therefore,  
 8 Plaintiff's offers were not good faith offers given the information that had been disclosed.

9 As to the January 27, 2022, Offer of Judgment for \$1,000,000, Plaintiff has disclosed past  
 10 medical expenses of only \$110,706. Plaintiff had not provided any justification for future medical  
 11 needs (which were 10x current treatment) and Plaintiff's own doctor, Dr. Muir, stated in his treatment  
 12 notes that *there was a possibility that future treatment would not be needed.* Moreover, Plaintiff  
 13 had been involved in another, and more severe, pedestrian-versus-vehicle accident which likely  
 14 contributed to, or exacerbated, his symptoms. Therefore, it was unreasonable for Plaintiff to  
 15 essentially ask for pain and suffering in the order of nearly 10x current medical specials. It is also  
 16 unreasonable that Defendant would agree to settle for \$1,000,000 based on medical specials of  
 17 slightly more than \$100,000. Therefore, this Offer of Judgment was not made in good faith.

18 As to the August 8, 2022, Offer of Judgment for \$800,000, Plaintiff had still not disclosed any  
 19 future treatment justifying this settlement valuation of approximately 6x past medical specials. While  
 20 Plaintiff's medical specials had risen to \$140,981, they were still well below the \$800,000 settlement  
 21 offer. Moreover, Plaintiff's treating and expert witness Dr. Muir, in his treatment notes from July 14,  
 22 2022, stated that Plaintiff continued to experience relief from his low back pain. Therefore, Plaintiff's  
 23 offer was based on past medical specials approximately 1/8 of the settlement offer and Dr. Muir  
 24 stating that Plaintiff was continuing to have relief (thereby placing any future medical treatment in  
 25 doubt). Once again, this offer was made in bad faith.

26 Plaintiff's final offer on November 9, 2023, for \$600,000, was likewise made in bad faith  
 27 given the chronology of events after the August 8, 2022, Offer of Judgment. First, Dr. Wang's

28 <sup>18</sup> See Stipulation and Order dated July 1, 2022, on file herein.



independent medical examination of Plaintiff in October 2022 indicated that Plaintiff needed no further treatment related to the subject accident. In addition, Plaintiff underwent no further treatment between August 8, 2022 and April 18, 2023, according to Plaintiff's disclosures. In fact, Plaintiff's Fifth Supplement indicated that Plaintiff had actually overstated his past medical specials by \$8,000. Plaintiff had stopped treating and actually had lower past medical specials yet Plaintiff continued to seek future medical treatment. It was bad faith for Plaintiff to have made the offer of judgment on November 9, 2023, and therefore Plaintiff's request for fees fails the second prong of the *Beattie* factors.

**C. Whether Defendants' Rejection of the Offer was Grossly Unreasonable**

Plaintiff also fails to meet the third *Beattie* factor as Defendants' rejection of the three offers of judgment was not grossly unreasonable given the circumstances at the time. Plaintiff argues that the Court should look at the end verdict and compare that number to the various offers to determine reasonableness of the rejections. However, the Court must instead look at the circumstances at the time of the offer to determine reasonableness. Given the disparity between Plaintiff's actual incurred damages and the offers, it was reasonable for Defendants to have rejected them.

The crux of the disagreement between the parties related to Plaintiff's past medical treatment versus projected future recommendations. Plaintiff's past medical treatment was one-tenth of the amount of alleged future treatment recommendations. Moreover, Plaintiff's treatment appeared to cease in 2022, yet Plaintiff was claiming over \$1,000,000 in future damages. Add to this, Plaintiff's own expert Dr. Muir, who was also his treating physician and sole medical expert to testify at trial, repeatedly stated in his own treatment notes and his Medical Records Review that Plaintiff was experiencing continuing back pain relief and that Plaintiff's symptoms might resolve on their own without the need for surgery.

Given those factors, it was not unreasonable for Defendants to reject the need for \$1,000,000 in future medical expenses and to base any settlement on Plaintiff's past medical expenses. On February 2, 2022, Defendants made an Offer of Judgment of \$117,000 which fully covered Plaintiff's past medical specials.<sup>19</sup> On July 7, 2023, Defendants made a second Offer of Judgment for \$160,000

<sup>19</sup> See Offer of Judgment dated February 2, 2022, attached as **Exhibit L**.

which again covered Plaintiff's incurred medical specials. Therefore, Defendants reasonably focused on Plaintiff's concrete damages and sought to settle to cover those expenses. Therefore, Defendant was not grossly unreasonable in rejecting Plaintiff's offers.

**D. Whether the Fees Sought by Plaintiff are Reasonable and Justified**

Plaintiff also this fourth prong of *Beattie* as the fees sought are neither reasonable nor justified. Plaintiff's argument that since Plaintiff signed a contingency fee agreement, the Court must "take it or leave it" as to the terms is incorrect and does not reflect current law. As Plaintiff has failed to justify the fees charged, the Court must find that they are not reasonable.

A contingency fee agreement *may* be used to determine the reasonableness of attorney fees actually incurred post-offer. *Capriati Construction Corp. v. Yahyavi*, 137 Nev. 675, 498 P.3d 226 (emphasis added). However, the Court is still bound to consider the *Brunzel* factors and therefore the requesting attorney must still submit the reasonableness of the fees sought. *Capriati Construction Corp.*, 137 Nev. at 683, 498 P.3d at 234.

Ultimately, a party seeking attorney fees based on a contingency fee agreement must provide or point to substantial evidence of counsel's efforts to satisfy the *Beattie* and *Brunzell* factors. If counsel cannot provide substantial evidence of the time reasonably spent on this case, the district court can exercise its discretion to adjust the fee accordingly, while also being mindful of all applicable considerations. *See Hsu v. County of Clark*, 123 Nev. 625, 637, 173 P.3d 724, 733 (2007); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (explaining, in using the lodestar method, that the district court may reduce an attorney fees award if the documentation of the hours reasonably expended on the litigation is inadequate); *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 562, 429 P.3d 664, 673 (2018).

Even assuming, *arguendo*, that Plaintiff is permitted to recover his reasonable attorney fees (Plaintiff is not), this Court should still reject Plaintiff's request for an award of the full 50% contingency fee in the amount of \$2.56M. This is because Plaintiff has failed to present any substantial evidence of the time his counsel reasonably spent on this case, precluding his recovery of the full 50% contingency fee amount.

Plaintiff premises his request for the full 50% contingency fee on the arguments that: (1) Nevada law permits an award of attorney fees based on contingency fee agreements even without hourly billing records; and (2) a district court may award an entire contingency fee as post-offer attorney fees under NRCP 68 because the contingency fee does not vest until the plaintiff prevails. (Mot., pp., 7-10, 15-16.) But Plaintiff overlooks a critical point. While attorney fees are awardable under NRCP 68 for contingency fee agreements and hourly billing records are not required to establish a reasonable fee amount, Nevada law still requires a party requesting attorney fees based on a contingency fee agreement to “provide substantial evidence of the time reasonably spent on [a] case.” *O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 562-63, 429 P.3d 664, 673-74 (Nev. App. 2018).

Plaintiff has not and cannot cite any case holding or suggesting to the contrary. Simply stated: Plaintiff is not entitled to recover the entire 50% contingency fee amount as a matter of course. Instead, to recover attorney fees based on a contingency fee agreement without hourly billing records, Nevada law unequivocally requires Plaintiff to present “substantial evidence of the time reasonably spent on [a] case[.]” by his counsel. *O’Connell*, 134 Nev. at 562-63, 429 P.3d at 673-74.

This evidence can include, for example, an attorney affidavit setting forth the specific number of hours of work performed. *Herbst v. Humana Health Ins. of Nevada, Inc.*, 105 Nev. 586, 591, 781 P.2d 762, 765 (1989) (rejecting argument that the failure by a party requesting attorney fees to “provide the court with a detailed breakdown of his fees” warranted a fee reduction where an affidavit was submitted that “attorney performed 439.5 hours of work and that 359.5 hours of work was performed by legal assistants.”). It can also include evidence or testimony providing a specific estimate of the number of hours of work performed on a case along with evidence or testimony regarding the specific tasks involved in that work. *See O’Connell*, 134 Nev. at 561, 429 P.3d at 673 (citing with approval *Mardirossian & Assocs., Inc. v. Ersoff*, 153 Cal.App.4th 257, 62 Cal.Rptr.3d 665, 676 (2007), where the lawyers from Mardirosian & Associates had presented testimony with specific estimates of the numbers of hours of work they had spent on the case along with testimony regarding the specific corresponding tasks involved in that work). It can further include evidence or testimony regarding “the time and work required[.]” “the amount of time taken away from other

work[.]” and “the time limitations imposed on the attorney by the case[.]” *Hsu v. Cnty. of Clark*, 123 Nev. 625, 637, 173 P.3d 724, 733 (2007).

But regardless of the type of evidence presented, there must at minimum be “substantial evidence of the time reasonably spent on [a] case.” *O’Connell*, 134 Nev. at 562-63, 429 P.3d at 673-74. This comports with *Brunzell’s* clear instruction that courts should analyze the “time and skill” required by a case in evaluating *Brunzell’s* second factor regarding the character of the work to be done and analyze “the skill, time and attention given to the work” in evaluating *Brunzell’s* third factor regarding the work actually performed by the lawyer. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (emphasis added).

Here, Plaintiff has failed to present any substantial evidence of the time his counsel reasonably spent on this case. Plaintiff instead asserts a conclusory argument, without any evidence, that “Plaintiff’s attorneys, their trial teams, and their staff have literally spent hundreds of hours, collectively, litigating this case since it was filed in August 2021.” (Mot., p. 22.) Apparently conceding his lack of evidence, Plaintiff contends that “[this] Court has observed firsthand the work performed by Plaintiff’s attorneys[.]” such that, according to Plaintiff, “the Court can take notice of the work performed by Plaintiff’s attorneys, including the record as a whole.” (Mot., pp. 21-22.) But the mere fact of this lawsuit is not substantial evidence of the time Plaintiff’s counsel reasonably spent on this case as necessary to support a fee award based on a contingency fee agreement in the absence of hourly billing records. *O’Connell*, 134 Nev. at 562-63, 429 P.3d at 673-74.

Plaintiff has failed to present any evidence, by affidavit or otherwise, providing a specific estimate of the number of hours of work performed by his counsel and further failed to present any evidence regarding the tasks involved in that work. *Herbst*, 105 Nev. at 591, 781 P.2d at 765; *O’Connell*, 134 Nev. at 561, 429 P.3d at 673. Plaintiff has failed to even present any evidence of “the time and work required” on this case, “the amount of time taken away from other work[.]” and “the time limitations imposed on the attorney by the case[.]” *Hsu*, 123 Nev. 625, 637, 173 P.3d 724, 733 (2007). This is dispositive.

Plaintiff is required to “provide substantial evidence of the time reasonably spent on the case[.]” by his counsel in order to recover attorney fees based on a contingency fee award in the

absence of hourly billing records. *O'Connell*, 134 Nev. at 562-63, 429 P.3d at 673-74. Further, a court's attorney fee award must be "supported by substantial evidence[]" to avoid an abuse of discretion. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). As set forth above, Plaintiff has failed to present any substantial evidence of the time his counsel reasonably spent on this case. Plaintiff's evidentiary failure requires this Court to reject Plaintiff's request for an award of the full 50% contingency fee. *O'Connell*, 134 Nev. at 562-63, 429 P.3d at 673-74.

Therefore, Plaintiff has failed to meet the criteria of *Beattie* and *Brunzell* and the instant motion for attorney's fees and costs should be denied.

#### IV. CONCLUSION

For the foregoing reasons, Defendants request that the Court deny Plaintiff's Motion for Attorney's Fees, Costs and Interest.

DATED this 24<sup>th</sup> day of October, 2024.

**MESSNER REEVES LLP**

/s/ Steven Knauss  
M. CALEB MEYER, ESQ.  
Nevada Bar No. 13379  
RENEE M. FINCH, ESQ.  
Nevada Bar No. 13118  
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8945 W. Russell Road, Ste. 300  
Las Vegas, Nevada 89148  
Attorneys for Defendants Sean Edward Tomesco  
and Second Opinion Plumbing, LLC

**CERTIFICATE OF SERVICE**

On this 24<sup>th</sup> day of October, 2024, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY FEES, COSTS, AND INTEREST** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

Alison M. Braiser, Esq.  
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*Attorneys for Plaintiffs*

/s/ James Alvarado  
Employee of MESSNER REEVES LLP

**EXHIBIT “A”**

**EXHIBIT “A”**

**ECC**  
JUSTIN W. WILSON, ESQ.  
Nevada Bar No. 14646  
**HICKS & BRASIER, PLLC**  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146  
Phone: (702) 628-9888  
Fax: (702) 960-4118  
E-Mail: jwilson@lvattorneys.com  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**DISTRICT OF NEVADA**

|                                            |   |                         |
|--------------------------------------------|---|-------------------------|
| JARED MOSS, individually,                  | ) | CASE NO.: A-21-840372-C |
|                                            | ) | DEPT. NO.: 20           |
| Plaintiff,                                 | ) |                         |
| vs.                                        | ) |                         |
|                                            | ) |                         |
| SEAN EDWARD TOMESCO, individually;         | ) |                         |
| SECOND OPINION PLUMBING, LLC., a           | ) |                         |
| domestic limited liability company; DOES I | ) |                         |
| through X, inclusive; ROE CORPORATIONS     | ) |                         |
| XI through XX, inclusive,                  | ) |                         |
|                                            | ) |                         |
| Defendants.                                | ) |                         |

**PLAINTIFF'S EARLY CASE CONFERENCE LIST OF WITNESSES AND EXHIBITS**

**PURSUANT TO N.R.C.P. 16.1**

Pursuant to NRCP 16.1, Plaintiff JARED MOSS, by and through his attorney, JUSTIN W. WILSON, ESQ., of HICKS & BRASIER PLLC, hereby discloses Plaintiff's Early Case Conference List of Witnesses and Exhibits Pursuant to N.R.C.P. 16.1.

**LIST OF WITNESSES**

1. JARED MOSS  
c/o Justin W. Wilson, Esq.  
HICKS & BRASIER, PLLC  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146

Plaintiff is expected to testify regarding the facts and circumstances surrounding the



1 subject incident and/or matters set forth in the pleading(s) filed in this matter.

- 2 2. Sean Edward Tomesco, Defendant  
3 c/o M. Caleb Meyer, Esq.  
4 c/o Renee M. Finch, Esq.  
5 c/o Christine L. Atwood, Esq.  
6 MESSNER REEVES, LLP.  
8945 W. Russell Road, Suite 300  
Las Vegas, NV 89148

7 Defendant is expected to testify regarding the facts and circumstances surrounding the  
8 subject incident and/or matters set forth in the pleading(s) filed in this matter.

- 9 3. Person Most Knowledgeable for Defendant, SECOND OPINION PLUMBING,  
10 INC.  
11 c/o M. Caleb Meyer, Esq.  
12 c/o Renee M. Finch, Esq.  
13 c/o Christine L. Atwood, Esq.  
14 MESSNER REEVES, LLP.  
8945 W. Russell Road, Suite 300  
Las Vegas, NV 89148

15 Defendant is expected to testify regarding the facts and circumstances surrounding the  
16 subject incident and/or matters set forth in the pleading(s) filed in this matter.

17 **PLAINTIFF'S HEALTH CARE PROVIDERS**

- 18 1. Jared T. Martin, D.O., and/or  
19 Brandon Purser, R.N., and/or  
20 Sudipkumar K. Bhanderi, and/or  
21 Person(s) Most Knowledgeable and/or Custodian of Records at  
Henderson Hospital  
1050 W. Galleria Drive  
Henderson, NV 89011

22  
23 Jared T. Martin, D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi,  
24 and/or Person(s) Most Knowledgeable and/or Custodian of Records at Henderson Hospital is  
25 one of Plaintiff's treating medical providers and is expected to testify to all of their opinions to a  
26 reasonable degree of medical probability. Jared T. Martin, D.O., and/or Brandon Purser, R.N.,  
27 and/or Sudipkumar K. Bhanderi, and/or Person(s) Most Knowledgeable and/or Custodian of  
28 Records at Henderson Hospital is expected to testify to any and all opinions formed during their

1 course of treatment of Plaintiff, to a reasonable degree of medical probability. Jared T. Martin,  
2 D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi, and/or Person(s) Most  
3 Knowledgeable and/or Custodian of Records at Henderson Hospital is expected to testify that  
4 they reviewed the records of Plaintiff's medical providers during the course of treatment.

5 Jared T. Martin, D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi,  
6 and/or Person(s) Most Knowledgeable and/or Custodian is expected to testify about the course  
7 of treatment at Henderson Hospital for Plaintiff Jared Moss on, or about, July 9, 2020, which  
8 included: physical examination, review of subjective complaints, and Jared Moss's reports of  
9 mechanism of injuries.

10 Jared T. Martin, D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi,  
11 and/or Person(s) Most Knowledgeable and/or Custodian of Records at Henderson Hospital is  
12 expected to testify that Plaintiff's treatment was medically reasonable and necessary and a result  
13 of the subject motor vehicle collision involving Defendant on July 9, 2020 Jared T. Martin,  
14 D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi, and/or Person(s) Most  
15 Knowledgeable and/or Custodian of Records is expected to testify that the charges, which total  
16 \$28,864.00, for Henderson Hospital and all accompanying charges stemming on July 9, 2020,  
17 visits (including physician charges), for Plaintiff's treatment were reasonable and customary.  
18 Debra Harman, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at  
19 Henderson Hospital is expected to testify that Plaintiff's injuries were caused by the subject  
20 motor vehicle collision involving Defendants on July 9, 2020.

21  
22 2. Jared T. Martin, D.O., and/or  
23 Person(s) Most Knowledgeable and/or Custodian of Records at  
24 Shadow Emergency Physicians  
P.O. Box 13917  
Philadelphia, PA 19101-3917

25 Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of  
26 Records at Shadow Emergency Physicians is one of Plaintiff's treating medical providers and is  
27 expected to testify to all of their opinions to a reasonable degree of medical probability. Jared T.  
28 Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Shadow

Emergency Physicians is expected to testify to any and all opinions formed during their course of treatment of Plaintiff, to a reasonable degree of medical probability. Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Shadow Emergency Physicians is expected to testify that they reviewed the records of Plaintiff's medical providers during the course of treatment.

Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Shadow Emergency Physicians is expected to testify about the course of treatment for Plaintiff Jared Moss which included: physical examination, and review of subjective complaints.

Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Shadow Emergency Physicians is expected to testify that Plaintiff's treatment was medically reasonable and necessary and a result of the subject motor vehicle collision involving Defendant on July 9, 2020. Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records is expected to testify that the charges, which total \$1,335.00, for Shadow Emergency Physicians and all accompanying charges stemming from July 9, 2020, visit (including physician charges), for Plaintiff's treatment were reasonable and customary. Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Shadow Emergency Physicians is expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision involving Defendants on July 9, 2020.

3. Varun Mitroo, M.D., and/or  
Sudipkumar Bhanseri, M.D., and/or  
Person(s) Most Knowledgeable and/or Custodian of Records at  
Desert Radiology  
P.O. Box 3057  
Indianapolis, IN 46206-3057

Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Desert Radiology is one of Plaintiff's treating medical providers and is expected to testify to all of his opinions to a reasonable degree of medical probability. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Desert Radiology, is expected to testify to

1 any and all opinions formed during their course of treatment of Plaintiff, to a reasonable degree  
2 of medical probability. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or  
3 Person(s) Most Knowledgeable and/or Custodian of Records at Desert Radiology, is expected to  
4 testify that they reviewed the records of Plaintiff's medical providers during the course of  
5 treatment.

6 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or Person(s) Most  
7 Knowledgeable and/or Custodian of Records at Desert Radiology is expected to testify about  
8 the course of treatment Plaintiff Jared Moss on, or about, July 9, 2020, which included:  
9 subjective reporting, objective observations and findings, diagnoses, and assessments.

10 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or Person(s) Most  
11 Knowledgeable and/or Custodian of Records Desert Radiology is expected to testify that  
12 Plaintiff's treatment was medically reasonable and necessary and a result of the subject motor  
13 vehicle collision involving Defendant on July 9, 2020. Varun Mitroo, M.D., and/or Sudipkumar  
14 Bhanseri, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Desert  
15 Radiology is expected to testify that the charges for Plaintiff's treatment, which totaled  
16 \$1,604.00, were reasonable and customary. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri,  
17 M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Desert Radiology  
18 is expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
19 involving Defendant on July 9, 2020.

20 4. Alexander S. Janda, D.C., and/or  
21 Person(s) Most Knowledgeable and/or Custodian of Records at  
22 Advanced Spine & Rehabilitation  
23 715 Mall Ring Circle, Suite 205  
Henderson, NV 89014

24 Alexander S. Janda, D.C., and/or Person(s) Most Knowledgeable and/or Custodian of  
25 Records at Advanced Spine & Rehabilitation is one of Plaintiff's treating medical providers and  
26 is expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
27 to a reasonable degree of medical probability. Alexander S. Janda, D.C., and/or Person(s) Most  
28 Knowledgeable and/or Custodian of Records at Advanced Spine & Rehabilitation is expected to

1 testify that they reviewed the records of Plaintiff's medical providers during the course of  
2 treatment.

3 Alexander S. Janda, D.C., and/or Person(s) Most Knowledgeable and/or Custodian of  
4 Records is expected to testify about the course of treatment at Advanced Spine & Rehabilitation  
5 for Plaintiff Jared Moss, on, or about, March 29, 2021, which included an MRI of the cervical  
6 spine.

7 Alexander S. Janda, D.C., and/or Person(s) Most Knowledgeable and/or Custodian of  
8 Records at Advanced Spine & Rehabilitation is expected to testify that Plaintiff's treatment was  
9 medically reasonable and necessary and a result of the subject motor vehicle collision involving  
10 Defendant on July 9, 2020. Alexander S. Janda, D.C., and/or Person(s) Most Knowledgeable  
11 and/or Custodian of Records at Advanced Spine & Rehabilitation is expected to testify that the  
12 charges for Plaintiff's treatment, which totaled \$7,262.00, were reasonable and customary.  
13 Alexander S. Janda, D.C., and/or Person(s) Most Knowledgeable and/or Custodian of Records  
14 at Advanced Spine & Rehabilitation is expected to testify that Plaintiff's injuries were caused  
15 by the subject motor vehicle collision involving Defendant on July 9, 2020.

16 5. William Muir, M.D., and/or  
17 Person(s) Most Knowledgeable and/or Custodian of Records at  
18 653 N. Town Center Drive, Suite 210  
Las Vegas, NV 89144

19 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of  
20 Records is one of Plaintiff's treating medical providers and is expected to testify to any and all  
21 opinions formed during their course of treatment of Plaintiff, to a reasonable degree of medical  
22 probability. William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of  
23 Records is expected to testify that they reviewed the records of Plaintiff's medical providers  
24 during the course of treatment.

25 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of  
26 Records is expected to testify about the course of treatment for Plaintiff Jared Moss, on, or  
27 about, July 23, 2021, through July 6, 2021, which included: subjective reporting, objective  
28 observations and findings, diagnoses, and assessments.

1 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of  
2 Records is expected to testify that Plaintiff's treatment was medically reasonable and necessary  
3 and a result of the subject motor vehicle collision involving Defendant on July 9, 2020.  
4 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records is  
5 expected to testify that the charges for Plaintiff's treatment, which totaled \$67,841.00, were  
6 reasonable and customary. William Muir, M.D., and/or Person(s) Most Knowledgeable and/or  
7 Custodian of Records is expected to testify that Plaintiff's injuries were caused by the subject  
8 motor vehicle collision involving Defendant on July 9, 2020.

9 6. Justin Puopolo, D.O., and/or  
10 Person(s) Most Knowledgeable and/or Custodian of Records at  
11 Pueblo Medical Imaging  
12 8551 W. Lake Mead Blvd., Suite 150  
Las Vegas, NV 89128

13 Justin Puopolo, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of  
14 Records at Pueblo Medical Imaging is one of Plaintiff's treating medical providers and is  
15 expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
16 to a reasonable degree of medical probability. Justin Puopolo, D.O., and/or Person(s) Most  
17 Knowledgeable and/or Custodian of Records at Pueblo Medical Imaging is expected to testify  
18 that they reviewed the records of Plaintiff's medical providers during the course of treatment.

19 Justin Puopolo, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of  
20 Records is expected to testify about the course of treatment at Pueblo Medical Imaging for  
21 Plaintiff Jared Moss, on, or about, July 30, 2020, and September 12, 2020, which included X-  
22 ray of the right knee.

23 Justin Puopolo, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of  
24 Records Pueblo Medical Imaging is expected to testify that Plaintiff's treatment was medically  
25 reasonable and necessary and a result of the subject motor vehicle collision involving Defendant  
26 on July 9, 2020. Justin Puopolo, D.O., and/or Person(s) Most Knowledgeable and/or Custodian  
27 of Records at Pueblo Medical Imaging is expected to testify that the charges for Plaintiff's  
28 treatment, which totaled \$1,800.00, were reasonable and customary. Justin Puopolo, D.O.,

1 and/or Person(s) Most Knowledgeable and/or Custodian of Records at Pueblo Medical Imaging  
2 is expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
3 involving Defendant on July 9, 2020.

4 7. Brian Hager, D.O., and/or  
5 Person(s) Most Knowledgeable and/or Custodian of Records at  
6 Anesthesia and Intensive Care Specialist  
7 P.O. Box 30102 Dept. 317  
8 Salt Lake City, UT 84130-0102

9 Brian Hager, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records  
10 at Anesthesia and Intensive Care Specialist is one of Plaintiff's treating medical providers and is  
11 expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
12 to a reasonable degree of medical probability. Brian Hager, D.O., and/or Person(s) Most  
13 Knowledgeable and/or Custodian of Records at Anesthesia and Intensive Care Specialist is  
14 expected to testify that they reviewed the records of Plaintiff's medical providers during the  
15 course of treatment.

16 Brian Hager, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records  
17 is expected to testify about the course of treatment at Anesthesia and Intensive Care Specialist  
18 for Plaintiff Jared Moss, on, or about, July 30, 2020, and September 12, 2020, which included:  
19 subjective reporting, objective observations and findings, diagnoses, and assessments.

20 Brian Hager, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records  
21 of Anesthesia and Intensive Care Specialist is expected to testify that Plaintiff's treatment was  
22 medically reasonable and necessary and a result of the subject motor vehicle collision involving  
23 Defendant on July 9, 2020. Brian Hager, D.O., and/or Person(s) Most Knowledgeable and/or  
24 Custodian of Records at Anesthesia and Intensive Care Specialist is expected to testify that the  
25 charges for Plaintiff's treatment, which totaled \$1,750.00, were reasonable and customary.  
26 Brian Hager, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at  
27 Anesthesia and Intensive Care is expected to testify that Plaintiff's injuries were caused by the  
28 subject motor vehicle collision involving Defendant on July 9, 2020.

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1           The aforementioned medical care providers will opine regarding future treatment,  
2 including but not limited to, spinal cord stimulators, chiropractic care, physical therapy,  
3 rehabilitative care, fusion surgery, and/or therapeutic and/or diagnostic injections of the facets,  
4 nerve roots, and/or medial branches. Said doctors will also opine regarding other pain  
5 management procedures such as radiofrequency ablations, occipital blocks and any other  
6 foreseeable medical treatment. Said doctors will also opine regarding all of the treatment in  
7 this case as it pertains to defending their opinions, to include any and all medical treatment as a  
8 result of the incident at issue, any and all medical treatment prior to the incident at issue, any  
9 and all depositions of other medical providers or defense experts, and any and all defense  
10 medical reports prepared to attack said doctors' opinions.  
11

12  
13           Plaintiff reserves the right to call as potential experts any and all examining and/or  
14 treating physicians and/or psychiatrists and/or any health care professionals to testify  
15 concerning any and all aspects of the case, including the issues of standard of care, causation  
16 and damages. Any witness identified by any other party to this action.  
17

18           CUSTODIAN OF RECORDS for all treating physicians and medical providers listed  
19 by Plaintiff herein and supplements hereto, are expected to testify as to the medical treatment  
20 and resulting bills provided to the Plaintiff.  
21

22           PERSONS MOST KNOWLEDGEABLE for all medical facilities and treating  
23 physicians listed by Plaintiff herein and supplements hereto, are expected to testify as expert  
24 witnesses about the injuries sustained by Plaintiff and the past, present and future medical  
25 treatment, bills, injuries, past and future pain, suffering, disfigurement and disability as a result  
26 of this incident.  
27

28           Plaintiff hereby reserves the right to call any and all witnesses identified by any



1 Defendant or any other parties to this action at the time of trial of this matter.

2 All witnesses identified during discovery and or deposed during discovery of this  
3 litigation.

4 Rebuttal and/or impeachment witnesses.

5 Medical, biomechanical, economic, vocational and accident reconstruction experts  
6 unknown at this time.

7  
8 **LIST OF DOCUMENTS**

- 9
- 10 1. Medical and billing records from Henderson Hospital. Bates Stamped Nos.  
11 HH00001 – HH00079.
  - 12 2. Medical billing records from Shadow Emergency Physicians. Bates Stamped  
13 Nos. SER00001.
  - 14 3. Medical billing records from Desert Radiology. Bates Stamped Nos. DR00001  
15 – DR00003.
  - 16 4. Medical and billing records from Advanced Spine Rehabilitation. Bates  
17 Stamped Nos. ASR00001 – ASR00211.
  - 18 5. Medical and billing records from Dr. William Muir. Bates Stamped Nos.  
19 WM00001 – WM00113.
  - 20 6. Medical and billing records from Pueblo Medical Imaging. Bates Stamped Nos.  
21 PMI00001 – PMI00018.
  - 22 7. Medical and billing records from Anesthesia & Intensive Care. Bates Stamped  
23 Nos. AIC00001 – AIC00010.
  - 24 8. Life Care Plan by Dr. William Muir. Bates Stamped Nos. LCP00001 –  
25 LCP00015.
  - 26 9. Traffic Accident Report. Bates Stamped Nos. TAR00001 – TAR00008.
  - 27 10. Disc containing 911 audio calls regarding subject incident. (Sent by U.S. mail)
  - 28

- 1 All exhibits listed by any other party to this litigation.
- 2 All documents identified during discovery in this litigation.
- 3 All pleadings filed in the case.
- 4 All responses to any Interrogatories and/or Request for Admissions by any Defendant
- 5 in this litigation.
- 6 All depositions including exhibits.
- 7 Rebuttal and/or impeachment documents.

**COMPUTATION OF SPECIALS / DAMAGES**

| PROVIDER                           | DATE OF SERVICE    | AMOUNT                |
|------------------------------------|--------------------|-----------------------|
| 1. Henderson Hospital              | 07/09/2020         | \$25,864.00           |
| 2. Shadow Emergency Physicians     | 07/09/2020         | \$1,335.00            |
| 3. Desert Radiology                | 07/09/20           | \$1,604.00            |
| 4. Advanced Spine & Rehabilitation | 7/10/20 – 01/06/21 | \$7,262.00            |
| 5. Dr. William S. Muir             | 7/23/20 – 07/06/21 | \$67,841.00           |
| 6. Pueblo Medical Imaging          | 7/30/20 – 9/12/20  | \$1,800.00            |
| 7. Anesthesia and Intensive Care   | 10/06/20 – 4/6/21  | \$5,000.00            |
| <b>TOTAL SPECIALS</b>              |                    | <b>\$110,706.00</b>   |
| <b>FUTURE MEDICAL SPECIALS</b>     |                    | <b>\$1,150,243.00</b> |

Plaintiff hereby reserves the right to supplement this Initial Disclosure List of Witnesses and Documents and/or the above computation of damages, should additional documentation or witnesses become known.

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**INSURANCE AGREEMENTS**

Plaintiff reserves the right to supplement this section as the discovery process continues.

DATED THIS 6<sup>th</sup> day of January, 2022.

**HICKS & BRASIER, PLLC**  
  
/s/ Justin W. Wilson  
JUSTIN W. WILSON, ESQ.  
Nevada Bar No. 14646  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146  
*Attorneys for Plaintiff*

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under penalty of perjury that I am an employee of HICKS & BRASIER, PLLC, and that on the 6<sup>th</sup> day of January, 2022, the foregoing **PLAINTIFF'S EARLY CASE CONFERENCE LIST OF WITNESSES AND EXHIBITS PURSUANT TO N.R.C.P. 16.1** a copy of which is attached hereto, was served via facsimile and U.S. Mail to all parties as follows:

M. Caleb Meyer, Esq.  
Renee M. Finch, Esq.  
Christine L. Atwood, Esq.  
MESSNER REEVES, LLP.  
8945 W. Russell Road, Suite 300  
Las Vegas, NV 89148  
*Attorneys for Defendants*

/s/ Alisha Ricketts  
An employee of HICKS & BRASIER PLLC

**EXHIBIT “B”**

**EXHIBIT “B”**



653 N Town Center Drive, Suite 210  
Las Vegas, NV 89144  
(702)254-3020 office  
(702)255-2620 fax

Spine Surgery



## **MEDICAL RECORDS REVIEW**

**Patient:** Jared Moss  
**Date of Injury:** 7/9/2020  
**Type of injury:** Ped vs Auto  
**Date of review:** 7/5/2021  
**Time involved in review/report:** 5 hrs.

### **Medical Records**

1. Henderson Hospital
2. Shadow Emergency Physicians
3. Desert Radiologist
4. Advanced Spine & Rehabilitation
5. William Muir, MD
6. Pueblo Medical Imaging
7. Anesthesia and Intensive Care
8. Community Ambulance
9. Sunrise Hospital
10. Fremont Emergency Services
11. Radiology Specialists

### **1. Henderson Hospital**

**7/9/2020: ER Visit**

**Chief Complaint:** S/p fall. Right buttock pain, swelling

**History of Present Illness:** The patient presents with complaints of right buttock pain status post fall backwards after being hit by a car. He also reports low back pain that gradually started after he fell. He states that the car had been stopped and then started to go to make a left-hand turn and hit him in the intersection. He said that the car hit his hands and he fell backwards onto his buttock and back. He denies hitting his head. He has been ambulatory all day but stated that he really only noticed pain in the buttock when he got into the family members car and noticed that there was a bunch of swelling as well.

**Exam:** Mild to moderate diffuse mid to lower lumbar tenderness. Normal, painless ROM of both hips and knees although with extremes of flexion there is worsening of his low back pain complaints. Large hematoma affecting the right buttock with minimal overlying superficial abrasion. No tenderness of the hands or wrists. No motor or sensory deficits noted.

**CT Abdomen/Pelvis:** Soft tissue hematoma of the right posterior buttock, superficial to the muscle in the subcutaneous tissues, measuring 2.7 x 6.0 x 12.0 cm in dimension

**CT Lumbar Spine:** Unremarkable

**Impression:** Pedestrian injured in traffic accident. Lumbar contusion. Traumatic hematoma of buttock

**Plan:** Rx Ibuprofen, APAP. D/c home

*Medical bills were reviewed and \$25,864.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

**LCP00002**

## **2. Shadow Emergency Physicians**

**7/9/2020: Emergency Evaluation & Management \$1335**

Provider: Dr. Martin

*Medical bills were reviewed and \$1,335.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **3. Desert Radiologist**

**7/9/2020: CT Lumbar Spine \$556**

Unremarkable

**7/9/2020: CT Abdomen and Pelvis \$1048**

Soft tissue hematoma of the right posterior buttock, superficial to the muscle in the subcutaneous tissues, measuring 2.7 x 6.0 x 12.0 cm in dimension

No acute traumatic injury identified within the peritoneal cavity or retroperitoneum

*Medical bills were reviewed and \$1,604.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **4. Advanced Spine & Rehabilitation**

**Treatment Dates: 7/10/2020-1/6/2021 (31 Sessions)**

**7/10/2020: Initial Report**

**Chief Complaints:** Low back pain, Right buttock/hip pain, Right knee pain, Sleeplessness

**History of Injury:** The patient was a pedestrian and a marked crosswalk and an intersection when a driver of a full-size van failed to yield and struck the patient, knocking him to the ground. He was unable to get out of the way of the Van and reports landing on his right side. He states the offending driver fled the scene. The patient presented to the ER for evaluation where he underwent CTs. He presents today with lower back pain as well as right knee pain and right buttock pain currently rated 8/10.

**Past Medical History:** Noncontributory

**Medications:** Methadone

**Exam:** Notable difficulty with prolonged sitting. Transition from a seated position was guarded. Palpation revealed spasms and marked tenderness along the lumbar paraspinal musculature bilaterally. Marked tenderness at the lower lumbar facets and SI joints, greater on the right. ROM significantly reduced in the lumbar spine. Positive standing Kemp's test, Sitting Kemp's, Farfan Torsion and Compression, SI Compression, Hibb's on the right. Large hematoma with associated swelling in the right hip buttock region with marked tenderness in the posterior hip. Positive tenderness in the posterior aspect of the right knee. ROM within normal limits.

**10/5/2020:** Reports gradual overall improvement of his right hip. He does have some continued lower back pain and tightness and is scheduled for injections tomorrow. The patient received 31 sessions of chiropractic treatment with the last session on 1/6/21. At that time the patient did have hypertonicity in the lumbar musculature and the current radiating pain was 0-3/10 with overall improvement of 90%.

**10/28/2020:** Patient reports he was struck by a car on 10/22/2020. He was transported to sunrise Hospital and hospitalized due to TBI symptomatology including blunt head trauma and loss of consciousness. He reports no increased symptomatology in regards to his chief complaints related to the MVA versus pedestrian collision from 7/9/20.

**12/2/2020:** Patient reports overall 70% improvement of his low back pain since starting treatment. He does feel that his pain is starting to increase him that his injection response is starting to wear off. Current pain 3-5/10. He reports increased pain with prolonged sitting and daily activities. He does report his right buttock/hip pain and sleeplessness have resolved.

**1/6/2021: Final Report**

Patient reports 90% overall improvement of his low back pain complaints since beginning treatment. Current pain intensity radiating over the past week is 0-3/10. He does continue to have slightly increased pain and/or symptoms with travel, work,

LEP00003

rotation, lifting, walking and standing.

**Exam:** Hypertonicity in the lower lumbar musculature with mild tenderness. ROM was within normal limits.

*Medical bills were reviewed and \$7,262.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

## **5. William Muir, MD**

### **7/23/2020: Initial Visit**

**Chief Complaints:** Low back pain

**History of Injury:** On 7/9/2020, the patient was a pedestrian crossing a marked crosswalk at the intersection of Maryland and Wigwam, when a driver of a vehicle failed to yield, hitting and knocking the patient to the ground. He was evaluated in the ER.

**Medical History:** None

**Past Surgical History:** None

**Lumbar Exam:** ROM-flexion 100%, extension 90%, lateral flexion 100% all with pain. Sensation and strength intact and full. Mild to moderate tenderness in the lumbar paraspinals and right buttock and SI joint and moderate muscle tightness

**Impression:** Sprain/strain with possible additional injuries, Right buttock contusion/hematoma

**Plan:** Refer for MRI if pain persists

### **8/10/2020: Followup Visit**

Presents for a follow-up via telemedicine. Reports he continues to attend therapy with noted benefit as his overall pain has decreased. He is no longer having the sharp pains and is now only having that of a intermittent discomfort depending on his activity.

**Plan:** Continue therapy as beneficial

### **9/9/2020: Followup Visit**

Telemedicine follow up. Overall condition remains the same. He does take methadone chronically but despite medications still feels the low back pain.

**Plan:** Refer for MRI lumbar spine

### **9/16/2020: Followup Visit**

Presents for follow-up and for review of his recent lumbar spine MRI. He reports he continues to attend therapy with noted temporary benefit however his overall progress has somewhat plateaued and he continues to experience low back pain.

**MRI:** Facet hypertrophy and disc height narrowing L4-S1

**Plan:** Candidate for bilateral L4-S1 facet injections

### **10/6/2020: Procedure: Bilateral L4-S1 Facet Injections**

Pre-Procedure Pain: 3/10

Post-Procedure Pain: 0/10

### **1/12/2021: Followup Visit**

Follow-up via telemedicine and status post bilateral L4-S1 facet injections which occurred on 10/6/2020. The patient reports up until 2 weeks ago he had what he described as 100% pain relief with only some mild tightness. Over the last 1-2 weeks he has noted a slight and progressive return of pain.

**Subsequent injuries** (new since problem for which being seen):

Ped vs auto in late 10/2020. Suffered head injury. Denies injury to low back or increase of symptoms

**Plan:** Candidate for bilateral L3, L4, L5 MBB for consideration of an RFA

### **1/19/2021: Procedure: Bilateral L3, L4, L5 MBB**

Pre-Procedure Pain: 3/10

Post-Procedure Pain: 2-3/10

### **2/3/2021: Followup Visit**

Telemedicine followup and s/p bilateral L3, L4, L5 MBB from 1/19/2021. The patient reports again 100% pain relief with the injections.

**Plan:** Candidate for RFA if pain returns. No if no return of pain likely would be at MMI

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**3/3/2021: Followup Visit**

Telemedicine followup. Reports that he has continued to remain pain free since his lumbar MBB, although has noted some return of the "tightness" and "stiffness" in his low back of which usually precedes the return of pain. He does admit that he currently he is in school and does sit for long periods of time after which he will notice more tightness, but with activity will improve and nearly resolve. Discussed HEP and stretching as well as breaks from a seated position.

Plan: Candidate for RFA if pain returns. No if no return of pain likely would be at MMI

**3/31/2021: Followup Visit**

Telemedicine follow up. Reports that the very positive therapeutic response from the January medial branch block injection has now worn off. He is miserable with his low back pain and wishes to discuss options and in particular radiofrequency ablation which he has researched online.

Plan: Candidate for bilateral L3, L4, L5 RFA

**4/6/2021: Procedure: Bilateral L3, L4, L5 RFA****4/21/2021: Followup Visit**

Telemedicine followup s/p bilateral L3, L4, L5 RFA which took place on 4/6/2021. The patient reports he is doing very well and has already noted complete relief of his low back pain and symptoms.

Plan: If no return of pain or symptoms at next visit, would be at MMI

**5/19/2021: Followup Visit**

Telemedicine followup. Continues to do very well since his RFA and has not noted any return of pain/

Plan: At MMI

*Medical bills were reviewed and \$59,791.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

**6. Pueblo Medical Imaging****7/3/2020: Xray Right Knee \$150**

Unremarkable

**9/12/2020: MRI Lumbar Spine (No billing)**

L1-2: Unremarkable

L2-3: Unremarkable

L3-4: Unremarkable

L4-5: Bilateral facet hypertrophy

L5-S1: Disc height narrowing

*Medical bills were reviewed and \$150.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

**7. Anesthesia and Intensive Care****10/6/2020: Anesthesia Coverage \$1750**

Procedure: Bilateral L4-S1 Facet Injections

**1/19/2021: Anesthesia Coverage (No billing)**

Procedure: Bilateral L3, L4, L5 MBB

**4/6/2021: Anesthesia Coverage \$1750**

Procedure: Bilateral L3, L4, L5 RFA

*Medical bills (Incomplete) were reviewed and \$3,500.00 was found to be reasonable, customary, and directly related to the injury on 7/9/2020.*

**8. Community Ambulance**

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**10/17/2020: EMS Transport to Sunrise Hospital \$1266.60**

**Narrative:** 39-year-old male involved in an auto vs pedestrian accident. Upon arrival patient was found sitting upright and appeared to be in distress. The patient's girlfriend states that the patient was struck by a sedan with its 305 off while the patient was on the side of the road. The car fled the scene after the accident. Per the patient's girlfriend he was launched in the air and fell head first into the asphalt and was not alert for approximately 30 seconds. He was initially found to be alert and oriented x3 with a GCS of 14. The patient however was noted to be sluggish to respond to simple questions but was able to once given a painful stimuli. Patient chief complaint of pain is to his head and he does not remember the accident. Denies abdominal pain, visual changes, nausea vomiting. Patient showed no acute changes in route to sunrise and was stable in transport.

**Exam:** Patient's head showed a contusion to his right occipital region with abrasion, no active bleeding. Abrasion to the right eyebrow and right cheek. Small abrasion to the left knee. Back was unremarkable.

**9. Sunrise Hospital**

**Admission: 10/17/2020-10/19/2020 \$117469**

**10/17/2020: Admission/ER Note**

**Chief Complaint:** Patient arrived by EMS with head pain, neck pain, extremity pain

**History of Present Illness:** 39-year-old male presents to the ED in c-collar with face pain, right shoulder pain, left knee pain, abdominal pain, left toe/foot pain that began today status post auto versus speed. Patient was struck during a hit and run an unknown speed with positive LOC.

**Exam:** Awake, alert. Abrasion to right side of the face. Scalp hematoma with laceration. Pupils equal and reactive. Immobilized in a C-collar. Abdominal diffuse tenderness. Back atraumatic. Abrasion to right shoulder. Abrasion to left knee. Abrasion to left toe. No motor or sensory deficits noted.

**Imaging:**

CT Cervical Spine: No evidence of acute injury

CT Facial Bones: No acute facial bone fractures

CT Brain: No evidence of acute intracranial hemorrhage

CT Thorax: No evidence of acute traumatic injury in the chest

CT Abdomen and Pelvis: No acute traumatic injury in the abdomen or pelvis

Xray Right Shoulder: No acute injury

Chest xray: Unremarkable

Xray Femur Bilateral: Unremarkable

Xray Tib-Fib Right: Unremarkable

Xray Hands Bilateral: No acute injury

Impression: Altered Mental Status, Abrasion, Contusion

Plan: Admit

**10/19/2020: Discharge Note**

39-year-old male with unknown past medical history presented on 10/17/2020 after being hit by a motor vehicle. Currently patient is alert and oriented x1-2, poor historian and not answering questions appropriately therefore HPI obtained by ER provider. It was reported that the patient was hit by a motor vehicle while crossing the road. Per EMS, the patient is taking methadone. There was no other information reported. Patient was admitted and monitored. No fracture seen on x-ray. Patient now more alert and awake. Able to work with PT and has been cleared for home.

**Discharge Diagnosis:** Altered mental status, Motor vehicle accident, injury. head contusion. Polysubstance abuse

**10. Fremont Emergency Services**

**10/17/2020: Critical Care Evaluation and Management \$1899**

Provider: Brett Michael Hansen, MD

**11. Radiology Specialists**

**10/17/2020: CT Cervical Spine \$189**

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No evidence of acute injury

**10/17/2020: CT Facial Bones \$174**

No acute facial bone fractures

**10/17/2020: CT Brain \$156**

No evidence of acute intracranial hemorrhage

**10/17/2020: CT Thorax \$212**

No evidence of acute traumatic injury in the chest

**10/17/2020: CT Abdomen and Pelvis \$271**

No acute traumatic injury in the abdomen or pelvis

**10/17/2020: Xray Right Shoulder \$39**

No acute injury

**10/17/2020: Chest xray \$29**

Unremarkable

**10/17/2020: Xray Femur Bilateral \$39**

Unremarkable

**10/17/2020: Xray Tib-Fib Right \$29**

Unremarkable

**10/17/2020: Xray Hands Bilateral \$30**

No acute injury

## **Summary**

On **7/9/20** the patient was a pedestrian walking in a marked crosswalk at an intersection when a driver of a full-size van struck the patient impacting his hands, knocking him backwards to the ground landing on his back and buttocks.. The patient indicated he was unable to get out of the way of the van and after being struck landed on his right side. The patient was taken to **Henderson Hospital Emergency Room**. His chief complaints were right buttocks pain and swelling. On examination the patient had diffuse lower lumbar tenderness and a large hematoma over the right buttocks with minimal overlying superficial abrasion. Neurologically the patient was intact. A CT scan was obtained of the pelvis showing a soft tissue hematoma in the right posterior buttocks. A CT scan of the lumbar spine was taken as well. The patient was provided ibuprofen, aspirin, and was discharged to home.

The patient was evaluated at **Advanced Spine and Rehabilitation** on 7/10/20 with chief complaints of low back, right buttocks/hip, right knee pain. The patient also complained of difficulty sleeping. Initial examination was done which was abnormal regarding the lumbar spine joining significantly reduced lumbar range of motion, **Marked tenderness to the lower lumbar facets**, and a large hematoma with associated swelling in the right buttocks, as well as tenderness to the posterior aspect of the right knee. However the right knee range of motion was normal. The patient received 31 sessions of chiropractic treatment with the final report on 1/6/21. At that time the patient had been doing very well since his lumbar injection and was discharged from chiropractic treatment.

The patient was referred to evaluated by **William Muir M.D.**, Orthopedic Spine Surgeon, on 7/23/20 with chief complaint of low back pain. On examination the patient had painful lumbar range of motion with mild to moderate tenderness in the paraspinal lumbar muscles. The patient also complained of **sharp pains which are consistent with lumbar facet mediated pain**. A lumbar MRI scan was ordered and done on 9/12/20. The lumbar **MRI scan of the lumbar spine at Pueblo Medical Imaging** which was essentially fairly unremarkable with disc height narrowing at L5-S1 and bilateral facet hypertrophy at L4-5. The patient continued with his therapy however had somewhat plateaued. After discussing options the patient chose to proceed with the option of bilateral L4 to S1 facet injections. The patient's preinjection pain level is 3/10 and post level 0/10 which was diagnostic and very therapeutic. The patient returned three months later reporting that he had **100% pain relief** with only some mild tightness however recently the low back pain was returning. He also reported another pedestrian versus auto injury in October in which he suffered a head injury but denied any injury to the low back nor any increase of his lumbar symptoms. Subsequently in January 2021 the patient underwent bilateral L3, L4, L5 medial branch block injection which again provided 100% relief of pain from the injection. By March 2021 the patient noted some return of

LCP00007

lumbar symptomatology. By the end of March the positive benefit of the injection had worn off. On 4/6/21 the patient underwent bilateral radiofrequency ablations for the L4 to S1 levels. At follow-up, 15 days later, the patient noted complete relief of his low back pain and symptoms. The patient followed up again on 5/19/21 still reporting complete relief of his lumbar symptoms from the radiofrequency ablation. The patient was instructed to return for follow-up as needed.

As referenced above, on 10/7/20 the patient was involved in **another pedestrian versus automobile accident**. **Community Ambulance** reported to the scene and the patient appeared to be in distress. His girlfriend indicates that he was struck by another vehicle which resulting in the patient being launched in the air and following head first into the asphalt. The patient was not alert for approximately 30 seconds. The patient was found to be sluggish in response to simple questions. The patient's chief complaint was pain in the head. The patient was found to have a contusion to the right occipital region within the abrasion as well as an abrasion in the right eyebrow and right cheek. The patient was taken to **Sunrise Hospital** with chief complaints of head, neck, and extremity pain. On examination the patient was found to have an abrasion in the right side of his face, scalp hematoma, and laceration. *The patient was assessed as having no trauma to the low back.* CT scans were obtained of the cervical, face, brain, thorax, and abdomen all showing no acute traumatic injuries visible on CT scan. Impression was status post MVA with altered mental status, abrasion, and contusion. The patient was admitted to the hospital and discharged two days later. The patient's discharge diagnosis was motor vehicle accident with resulting altered mental status and head contusion. *There is no evidence that the patient sustained an exacerbation of low back pain neither in the medical records reviewed nor from the patient pertaining to the 10/7/20 accident.*

Due to the pedestrian versus automobile accident on 7/9/20 the patient sustained injury to his **lower lumbar facets**. The patient's symptoms included sharp pain with movements which is consistent with facet mediated pain. The patient underwent 2 lumbar injections that provided 100% relief of symptoms temporarily. The patient subsequently underwent radiofrequency ablation approximately 3 months ago which resulted in at least a temporary resolution of symptoms. The treatment rendered subsequent to the 7/9/20 MVA was reasonable, customary, and directly related to the injury. There are no prior medical records or history of the patient having lower lumbar facet mediated symptoms prior to the 7/9/20 injury. The patient did sustain an additional injury on 10/7/20 however the medical records are clear that this did not result in an exacerbation or new lumbar symptomatology. Due to the chronicity of the lumbar spine most likely the patient's low back pain will return and he most likely will benefit from future medical visits, therapy for acute exacerbations, imaging to rule out other new pathology, and repeat radiofrequency ablations. The need for such treatment is directly related to the 7/9/20 injury. The treatment of radiofrequency ablation is not considered to be a permanent treatment and there is a possibility that the patient's lumbar facet injury will resolve with time and not require future treatments.

These opinions are stated to a reasonable degree of medical probability and are based upon my evaluations of the patient and the medical records that I have reviewed. Opinions may change based upon the medical records or additional information.



William S. Muir, M.D.  
Orthopedic Spine Surgeon  
Diplomate, American Board of Orthopedic Surgeons  
Fellow, American Academy of Orthopedic Surgeons

**EXHIBIT “C”**

**EXHIBIT “C”**

**SUPP**

JUSTIN W. WILSON, ESQ.  
Nevada Bar No. 14646  
**HICKS & BRASIER, PLLC**  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146  
Phone: (702) 628-9888  
Fax: (702) 960-4118  
E-Mail: jwilson@lvattorneys.com  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**DISTRICT OF NEVADA**

|                                            |   |                         |
|--------------------------------------------|---|-------------------------|
| JARED MOSS, individually,                  | ) | CASE NO.: A-21-840372-C |
|                                            | ) | DEPT. NO.: 20           |
| Plaintiff,                                 | ) |                         |
| vs.                                        | ) |                         |
|                                            | ) |                         |
| SEAN EDWARD TOMESCO, individually;         | ) |                         |
| SECOND OPINION PLUMBING, LLC., a           | ) |                         |
| domestic limited liability company; DOES I | ) |                         |
| through X, inclusive; ROE CORPORATIONS     | ) |                         |
| XI through XX, inclusive,                  | ) |                         |
|                                            | ) |                         |
| Defendants.                                | ) |                         |

**PLAINTIFF'S FIRST SUPPLEMENT TO EARLY CASE CONFERENCE LIST OF  
WITNESSES AND EXHIBITS PURSUANT TO N.R.C.P. 16.1**

Pursuant to NRCP 16.1, Plaintiff JARED MOSS, by and through his attorney, JUSTIN W. WILSON, ESQ., of HICKS & BRASIER PLLC, hereby discloses Plaintiff's First Supplement to Early Case Conference List of Witnesses and Exhibits Pursuant to N.R.C.P. 16.1. (new information is presented in bold print)

**LIST OF WITNESSES**

1. JARED MOSS  
c/o Justin W. Wilson, Esq.  
HICKS & BRASIER, PLLC  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146

1 Plaintiff is expected to testify regarding the facts and circumstances surrounding the  
2 subject incident and/or matters set forth in the pleading(s) filed in this matter.

3 2. Sean Edward Tomesco, Defendant  
4 c/o M. Caleb Meyer, Esq.  
5 c/o Renee M. Finch, Esq.  
6 c/o Christine L. Atwood, Esq.  
7 MESSNER REEVES, LLP.  
8 8945 W. Russell Road, Suite 300  
9 Las Vegas, NV 89148

10 Defendant is expected to testify regarding the facts and circumstances surrounding the  
11 subject incident and/or matters set forth in the pleading(s) filed in this matter.

12 3. Person Most Knowledgeable for Defendant, SECOND OPINION PLUMBING,  
13 INC.  
14 c/o M. Caleb Meyer, Esq.  
15 c/o Renee M. Finch, Esq.  
16 c/o Christine L. Atwood, Esq.  
17 MESSNER REEVES, LLP.  
18 8945 W. Russell Road, Suite 300  
19 Las Vegas, NV 89148

20 Defendant is expected to testify regarding the facts and circumstances surrounding the  
21 subject incident and/or matters set forth in the pleading(s) filed in this matter.

22 4. **Officer Paul Viray #9981**  
23 **Las Vegas Metropolitan Police Department**  
24 **400 South Martin Luther King Blvd., Las Vegas, Nevada 89106**

25 **Officer Paul Viray #9981 is one of the responding Officers and is expected to testify**  
26 **as to his knowledge of the facts and circumstances surrounding the subject incident and**  
27 **any and all investigations conducted by him relating to the same.**

28 5. **Officer Bryan Meyer**  
**Las Vegas Metropolitan Police Department**  
**400 South Martin Luther King Blvd., Las Vegas, Nevada 89106**

**Officer Bryan Meyer is one of the responding Officers and is expected to testify as**  
**to his knowledge of the facts and circumstances surrounding the subject incident and any**  
**and all investigations conducted by him relating to the same.**

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visits (including physician charges), for Plaintiff's treatment were reasonable and customary. Debra Harman, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Henderson Hospital is expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision involving Defendants on July 9, 2020.

2. Jared T. Martin, D.O., and/or  
Person(s) Most Knowledgeable and/or Custodian of Records at  
Shadow Emergency Physicians  
P.O. Box 13917  
Philadelphia, PA 19101-3917

Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Shadow Emergency Physicians is one of Plaintiff's treating medical providers and is expected to testify to all of their opinions to a reasonable degree of medical probability. Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Shadow Emergency Physicians is expected to testify to any and all opinions formed during their course of treatment of Plaintiff, to a reasonable degree of medical probability. Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Shadow Emergency Physicians is expected to testify that they reviewed the records of Plaintiff's medical providers during the course of treatment.

Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Shadow Emergency Physicians is expected to testify about the course of treatment for Plaintiff Jared Moss which included: physical examination, and review of subjective complaints.

Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Shadow Emergency Physicians is expected to testify that Plaintiff's treatment was medically reasonable and necessary and a result of the subject motor vehicle collision involving Defendant on July 9, 2020. Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records is expected to testify that the charges, which total \$1,335.00, for Shadow Emergency Physicians and all accompanying charges stemming from July 9, 2020, visit (including physician charges), for Plaintiff's treatment were reasonable and customary.

1 Jared T. Martin, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at  
2 Shadow Emergency Physicians is expected to testify that Plaintiff's injuries were caused by the  
3 subject motor vehicle collision involving Defendants on July 9, 2020.

4 3. Varun Mitroo, M.D., and/or  
5 Sudipkumar Bhanseri, M.D., and/or  
6 Person(s) Most Knowledgeable and/or Custodian of Records at  
7 Desert Radiology  
8 P.O. Box 3057  
9 Indianapolis, IN 46206-3057

10 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or Person(s) Most  
11 Knowledgeable and/or Custodian of Records at Desert Radiology is one of Plaintiff's treating  
12 medical providers and is expected to testify to all of his opinions to a reasonable degree of  
13 medical probability. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or Person(s)  
14 Most Knowledgeable and/or Custodian of Records at Desert Radiology, is expected to testify to  
15 any and all opinions formed during their course of treatment of Plaintiff, to a reasonable degree  
16 of medical probability. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or  
17 Person(s) Most Knowledgeable and/or Custodian of Records at Desert Radiology, is expected to  
18 testify that they reviewed the records of Plaintiff's medical providers during the course of  
19 treatment.

20 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or Person(s) Most  
21 Knowledgeable and/or Custodian of Records at Desert Radiology is expected to testify about  
22 the course of treatment Plaintiff Jared Moss on, or about, July 9, 2020, which included:  
23 subjective reporting, objective observations and findings, diagnoses, and assessments.

24 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or Person(s) Most  
25 Knowledgeable and/or Custodian of Records Desert Radiology is expected to testify that  
26 Plaintiff's treatment was medically reasonable and necessary and a result of the subject motor  
27 vehicle collision involving Defendant on July 9, 2020. Varun Mitroo, M.D., and/or Sudipkumar  
28 Bhanseri, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Desert  
Radiology is expected to testify that the charges for Plaintiff's treatment, which totaled  
\$1,604.00, were reasonable and customary. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri,

1 M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at Desert Radiology  
2 is expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
3 involving Defendant on July 9, 2020.

- 4 4. Alexander S. Janda, D.C., and/or  
5 Person(s) Most Knowledgeable and/or Custodian of Records at  
6 Advanced Spine & Rehabilitation  
7 715 Mall Ring Circle, Suite 205  
8 Henderson, NV 89014

9 Alexander S. Janda, D.C., and/or Person(s) Most Knowledgeable and/or Custodian of  
10 Records at Advanced Spine & Rehabilitation is one of Plaintiff's treating medical providers and  
11 is expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
12 to a reasonable degree of medical probability. Alexander S. Janda, D.C., and/or Person(s) Most  
13 Knowledgeable and/or Custodian of Records at Advanced Spine & Rehabilitation is expected to  
14 testify that they reviewed the records of Plaintiff's medical providers during the course of  
15 treatment.

16 Alexander S. Janda, D.C., and/or Person(s) Most Knowledgeable and/or Custodian of  
17 Records is expected to testify about the course of treatment at Advanced Spine & Rehabilitation  
18 for Plaintiff Jared Moss, on, or about, March 29, 2021, which included an MRI of the cervical  
19 spine.

20 Alexander S. Janda, D.C., and/or Person(s) Most Knowledgeable and/or Custodian of  
21 Records at Advanced Spine & Rehabilitation is expected to testify that Plaintiff's treatment was  
22 medically reasonable and necessary and a result of the subject motor vehicle collision involving  
23 Defendant on July 9, 2020. Alexander S. Janda, D.C., and/or Person(s) Most Knowledgeable  
24 and/or Custodian of Records at Advanced Spine & Rehabilitation is expected to testify that the  
25 charges for Plaintiff's treatment, which totaled \$7,262.00, were reasonable and customary.  
26 Alexander S. Janda, D.C., and/or Person(s) Most Knowledgeable and/or Custodian of Records  
27 at Advanced Spine & Rehabilitation is expected to testify that Plaintiff's injuries were caused  
28 by the subject motor vehicle collision involving Defendant on July 9, 2020.

5. William Muir, M.D., and/or  
Person(s) Most Knowledgeable and/or Custodian of Records at

1 653 N. Town Center Drive, Suite 210  
2 Las Vegas, NV 89144

3 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of  
4 Records is one of Plaintiff's treating medical providers and is expected to testify to any and all  
5 opinions formed during their course of treatment of Plaintiff, to a reasonable degree of medical  
6 probability. William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of  
7 Records is expected to testify that they reviewed the records of Plaintiff's medical providers  
8 during the course of treatment.

9 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of  
10 Records is expected to testify about the course of treatment for Plaintiff Jared Moss, on, or  
11 about, July 23, 2021, through **July 14, 2022**, which included: subjective reporting, objective  
12 observations and findings, diagnoses, and assessments.

13 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of  
14 Records is expected to testify that Plaintiff's treatment was medically reasonable and necessary  
15 and a result of the subject motor vehicle collision involving Defendant on July 9, 2020.  
16 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records is  
17 expected to testify that the charges for Plaintiff's treatment, which totaled **\$98,116.00**, were  
18 reasonable and customary. William Muir, M.D., and/or Person(s) Most Knowledgeable and/or  
19 Custodian of Records is expected to testify that Plaintiff's injuries were caused by the subject  
20 motor vehicle collision involving Defendant on July 9, 2020.

21 6. Justin Puopolo, D.O., and/or  
22 Person(s) Most Knowledgeable and/or Custodian of Records at  
23 Pueblo Medical Imaging  
24 8551 W. Lake Mead Blvd., Suite 150  
25 Las Vegas, NV 89128

26 Justin Puopolo, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of  
27 Records at Pueblo Medical Imaging is one of Plaintiff's treating medical providers and is  
28 expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
to a reasonable degree of medical probability. Justin Puopolo, D.O., and/or Person(s) Most

1 Knowledgeable and/or Custodian of Records at Pueblo Medical Imaging is expected to testify  
2 that they reviewed the records of Plaintiff's medical providers during the course of treatment.

3 Justin Puopolo, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of  
4 Records is expected to testify about the course of treatment at Pueblo Medical Imaging for  
5 Plaintiff Jared Moss, on, or about, July 30, 2020, and September 12, 2020, which included X-  
6 ray of the right knee.

7 Justin Puopolo, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of  
8 Records Pueblo Medical Imaging is expected to testify that Plaintiff's treatment was medically  
9 reasonable and necessary and a result of the subject motor vehicle collision involving Defendant  
10 on July 9, 2020. Justin Puopolo, D.O., and/or Person(s) Most Knowledgeable and/or Custodian  
11 of Records at Pueblo Medical Imaging is expected to testify that the charges for Plaintiff's  
12 treatment, which totaled \$1,800.00, were reasonable and customary. Justin Puopolo, D.O.,  
13 and/or Person(s) Most Knowledgeable and/or Custodian of Records at Pueblo Medical Imaging  
14 is expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
15 involving Defendant on July 9, 2020.

16 7. Brian Hager, D.O., and/or  
17 Person(s) Most Knowledgeable and/or Custodian of Records at  
18 Anesthesia and Intensive Care Specialist  
19 P.O. Box 30102 Dept. 317  
Salt Lake City, UT 84130-0102

20 Brian Hager, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records  
21 at Anesthesia and Intensive Care Specialist is one of Plaintiff's treating medical providers and is  
22 expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
23 to a reasonable degree of medical probability. Brian Hager, D.O., and/or Person(s) Most  
24 Knowledgeable and/or Custodian of Records at Anesthesia and Intensive Care Specialist is  
25 expected to testify that they reviewed the records of Plaintiff's medical providers during the  
26 course of treatment.

27 Brian Hager, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records  
28 is expected to testify about the course of treatment at Anesthesia and Intensive Care Specialist

1 for Plaintiff Jared Moss, on, or about, July 30, 2020, and September 12, 2020, which included:  
2 subjective reporting, objective observations and findings, diagnoses, and assessments.

3 Brian Hager, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records  
4 of Anesthesia and Intensive Care Specialist is expected to testify that Plaintiff's treatment was  
5 medically reasonable and necessary and a result of the subject motor vehicle collision involving  
6 Defendant on July 9, 2020. Brian Hager, D.O., and/or Person(s) Most Knowledgeable and/or  
7 Custodian of Records at Anesthesia and Intensive Care Specialist is expected to testify that the  
8 charges for Plaintiff's treatment, which totaled \$1,750.00, were reasonable and customary.  
9 Brian Hager, D.O., and/or Person(s) Most Knowledgeable and/or Custodian of Records at  
10 Anesthesia and Intensive Care is expected to testify that Plaintiff's injuries were caused by the  
11 subject motor vehicle collision involving Defendant on July 9, 2020.

12 The aforementioned medical care providers will opine regarding future treatment,  
13 including but not limited to, spinal cord stimulators, chiropractic care, physical therapy,  
14 rehabilitative care, fusion surgery, and/or therapeutic and/or diagnostic injections of the facets,  
15 nerve roots, and/or medial branches. Said doctors will also opine regarding other pain  
16 management procedures such as radiofrequency ablations, occipital blocks and any other  
17 foreseeable medical treatment. Said doctors will also opine regarding all of the treatment in  
18 this case as it pertains to defending their opinions, to include any and all medical treatment as a  
19 result of the incident at issue, any and all medical treatment prior to the incident at issue, any  
20 and all depositions of other medical providers or defense experts, and any and all defense  
21 medical reports prepared to attack said doctors' opinions.

22 Plaintiff reserves the right to call as potential experts any and all examining and/or  
23 treating physicians and/or psychiatrists and/or any health care professionals to testify  
24 concerning any and all aspects of the case, including the issues of standard of care, causation  
25 and damages. Any witness identified by any other party to this action.

26 CUSTODIAN OF RECORDS for all treating physicians and medical providers listed  
27 by Plaintiff herein and supplements hereto, are expected to testify as to the medical treatment  
28 and resulting bills provided to the Plaintiff.

1 PERSONS MOST KNOWLEDGEABLE for all medical facilities and treating  
2 physicians listed by Plaintiff herein and supplements hereto, are expected to testify as expert  
3 witnesses about the injuries sustained by Plaintiff and the past, present and future medical  
4 treatment, bills, injuries, past and future pain, suffering, disfigurement and disability as a result  
5 of this incident.

6 Plaintiff hereby reserves the right to call any and all witnesses identified by any  
7 Defendant or any other parties to this action at the time of trial of this matter.

8 All witnesses identified during discovery and or deposed during discovery of this  
9 litigation.

10 Rebuttal and/or impeachment witnesses.

11 Medical, biomechanical, economic, vocational and accident reconstruction experts  
12 unknown at this time.

### 13 LIST OF DOCUMENTS

- 14 1. Medical and billing records from Henderson Hospital. Bates Stamped Nos.  
15 HH00001 – HH00079;
- 16 2. Medical billing records from Shadow Emergency Physicians. Bates Stamped  
17 Nos. SER00001;
- 18 3. Medical billing records from Desert Radiology. Bates Stamped Nos. DR00001  
19 – DR00003;
- 20 4. Medical and billing records from Advanced Spine Rehabilitation. Bates  
21 Stamped Nos. ASR00001 – ASR00211;
- 22 5. Medical and billing records from Dr. William Muir. Bates Stamped Nos.  
23 WM00001 – WM00113; **WM00114-WM00142;**
- 24 6. Medical and billing records from Pueblo Medical Imaging. Bates Stamped Nos.  
25 PMI00001 – PMI00018;
- 26 7. Medical and billing records from Anesthesia & Intensive Care. Bates Stamped  
27 Nos. AIC00001 – AIC00010; **AIC00011;**  
28

8. Life Care Plan by Dr. William Muir. Bates Stamped Nos. LCP00001 – LCP00015; **LCP00016-LCP00028;**
9. Traffic Accident Report. Bates Stamped Nos. TAR00001 – TAR00008;
10. Disc containing 911 audio calls regarding subject incident. (Sent by U.S. mail);
- 11. Body Cam Footage from LVMPD (sent via e-mail);**
- All exhibits listed by any other party to this litigation.
- All documents identified during discovery in this litigation.
- All pleadings filed in the case.
- All responses to any Interrogatories and/or Request for Admissions by any Defendant in this litigation.
- All depositions including exhibits.
- Rebuttal and/or impeachment documents.

**COMPUTATION OF SPECIALS / DAMAGES**

| PROVIDER                           | DATE OF SERVICE    | AMOUNT                |
|------------------------------------|--------------------|-----------------------|
| 1. Henderson Hospital              | 07/09/2020         | \$25,864.00           |
| 2. Shadow Emergency Physicians     | 07/09/2020         | \$1,335.00            |
| 3. Desert Radiology                | 07/09/20           | \$1,604.00            |
| 4. Advanced Spine & Rehabilitation | 7/10/20 – 01/06/21 | \$7,262.00            |
| 5. Dr. William S. Muir             | 7/23/20 – 7/14/22  | <b>\$98,116.00</b>    |
| 6. Pueblo Medical Imaging          | 7/30/20 – 9/12/20  | \$1,800.00            |
| 7. Anesthesia and Intensive Care   | 10/06/20 – 4/6/21  | \$5,000.00            |
| <b>TOTAL SPECIALS</b>              |                    | <b>\$140,981.00</b>   |
| <b>PAST PAIN AND SUFFERING</b>     |                    | <b>\$284,865.04</b>   |
| <b>FUTURE MEDICAL SPECIALS</b>     |                    | <b>\$1,539,710.00</b> |
| <b>FUTURE PAIN AND SUFFERING</b>   |                    | <b>\$4,619,130.46</b> |

Plaintiff hereby reserves the right to supplement this Initial Disclosure List of Witnesses and Documents and/or the above computation of damages, should additional documentation or witnesses become known.



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**INSURANCE AGREEMENTS**

Plaintiff reserves the right to supplement this section as the discovery process continues.

DATED THIS 8th day of August, 2022.

**HICKS & BRASIER, PLLC**

/s/ Justin W. Wilson  
JUSTIN W. WILSON, ESQ.  
Nevada Bar No. 14646  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146  
*Attorneys for Plaintiff*

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under penalty of perjury that I am an employee of HICKS & BRASIER, PLLC, and that on the 8th day of August, 2022, the foregoing **PLAINTIFF'S FIRST SUPPLEMENTAL EARLY CASE CONFERENCE LIST OF WITNESSES AND EXHIBITS PURSUANT TO N.R.C.P. 16.1** a copy of which is attached hereto, was served via facsimile and U.S. Mail to all parties as follows:

M. Caleb Meyer, Esq.  
Renee M. Finch, Esq.  
Jason G. Martinez, Esq.  
MESSNER REEVES, LLP.  
8945 W. Russell Road, Suite 300  
Las Vegas, NV 89148  
*Attorneys for Defendants*

/s/ Alyssa Malavong  
An employee of HICKS & BRASIER PLLC

**EXHIBIT “D”**

**EXHIBIT “D”**



653 N Town Center Drive, Suite 210  
Las Vegas, NV 89144  
(702)254-3020 office  
(702)255-2620 fax

Spine Surgery



### **Follow-up visit:**

Name: **Jared Moss**  
Date of visit: 7/14/2022  
Date of birth:  
Age: 40 year(s)  
Gender: male

### **Chief complaint(s):**

low back pain

### **History of injury:**

Date of MVA: 07/09/2020  
Description of injury: Patient was a pedestrian crossing a marked crosswalk at the intersection of Maryland and Wigwam, the driver failed to yield knocking the patient to the ground  
Degree of damage to vehicles n/a  
Awareness/body position n/a  
Other factors n/a  
Injuries/Pain: low back  
Initial action taken: patient went to ER @ Green Valley by private vehicle the day of the accident  
Subsequent physician visit: Advanced Spine & Rehabilitation

### **Prior Injuries:**

none

### **Subsequent injuries (new since problem for which being seen):**

Ped vs auto in late 10/2020. Suffered head injury. Denies injury to low back or increase of symptoms

### **Initial Visit Problem(s):**

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Onset/Inciting event:      | <b>see above</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Area(s) affected:          | low back                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Pain Quality/Duration:     | sharp, shooting; intermittent                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Motor symptoms             | none                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Sensory/Radiating symptoms | none                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Aggravating factors:       | movements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Alleviating factors:       | chiropractic treatments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Pain Severity:             | Current= 3/10    Average= 4-5/10    Highest= 8/10    Lowest= 2/10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Functional limitations:    | movements<br>Functional interference score= 4-5 (0=None, 10=Complete)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Other information:         | The patient presents for an initial consultation with complaints of low back pain and right buttock pain that began following an accident and fall which occurred on 7/9/2020. No emergency care was needed at the scene of the accident however the patient did present to the ER that day for evaluation or imaging was obtained and eventually he was released. He subsequently began and has continued therapy at Advanced Spine and Rehabilitation where he has noted overall improvement. He denies a radicular symptoms into the lower extremities or any other neurologic symptoms at this time. |

### **Studies/tests:**

Pending:

WM00121

none

Previous:

07/09/2020 CT Lumbar ER @ Green Valley  
07/09/2020 CT Abdomen Pelvis ER @ Green Valley  
9/12/2020 MRI Lumbar Spine PMI

### **Treatments:**

**Pending:**

none

**Ongoing:**

none

**Completed:**

Advanced Spine & Rehabilitation  
10/6/2020 Bilateral L4-S1 Facet injections Dr. Muir Pre-pain: 3/10 Post-pain: 0/10 (100% benefit for 2 months)  
01/19/2021 Bilateral L3, L4, L5 MBB Dr. Muir Pre-pain: 3/10 Post-pain: 2/10 (100% benefit)  
04/06/2021 Bilateral L3, L4, L5 RFA Dr. Muir Pre-pain: 3-7/10 (100% benefit)  
05/17/2022 Bilateral L4, L5, S1 RFA Dr. Muir Pre-pain: 4/10 (%Benefit) Post-pain 0/10

### **Current Visit:**

New injury/symptoms:

**follow up**

Area(s) affected:

low back

Pain Quality/Duration:

none

Motor symptoms

none

Sensory/Radiating symptoms

none

Aggravating factors:

none

Alleviating factors:

medication

Pain Severity:

Current=Neck-0/10 Back-0/10 Other-0/10  
Average= Neck-0/10 Back-0/10 Other-0/10  
Highest= Neck-0/10 Back-0/10 Other-0/10  
Lowest= Neck-0/10 Back-0/10 Other- 0/10

Functional limitations:

n/a

Functional interference score= 0/10 Neck, Back 0/10 Other 0/10(0=None, 10=Complete)

**General Update:**

**The patient presents for a telemedicine follow up. He reports continued relief of his low back pain. He is not needing to take any more of the medication we prescribed for him. He reports he has been able to return to his normal activities with minimal discomfort.**

### **Medications (all current):**

methadone (Dosage: | Refills: 0)

### **Medical History:**

**Illnesses:**

.No Serious Illnesses Reported

**Surgeries:**

.No Surgery Reported

**Allergies:**

**Amoxicillin, Unknown**

**Penicillin, Unknown**

### **Social History:**

Alcohol - Denies

Caffeine

current cigarette smoker-1 pack per day

Drug Use - Denies

Education: HS Graduate - GED

Employment: Unemployed

Marital Status: Single

Right handed

Occupation: No data for Occupation

Work status: Not Employed

**Family History:**

.Family History Reviewed  
Parents: Father-Living  
Parents: Mother-Living

**Review of Systems:**

Constitutional Denies  
Gastrointestinal: Denies  
Genitourinary Denies  
Musculoskeletal: Denies  
Neurological: Denies

**Physical Examination:**General

Height: 6' 1"  
Weight: 185 lbs 0 oz  
A&Ox3. NAD. HEENT: unremarkable. PERRLA. Lungs: breathing comfortably on RA. Heart:  
RRR. Abdomen: benign. GU: Deferred. Extremities: pulses equal. SKIN: normal without  
lesions. Psychiatric: unremarkable. LYMPH NODES: normal.

**Lumbar Spine examination:****Last Visit:****Range of Motion**

Flexion: 100% of normal and painful  
Extension: 90% of normal and painful  
Lateral flexion: 90% of normal and painful

**Neurological**

## Reflexes:

Patellar (L3, L4): Symmetrical  
Achilles' (L5, S1):

Sensory: Intact to light touch  
Straight leg raise: negative  
Clonus: negative  
Babinski: Not tested

**Motor**

Hip flexors (L2, L3): 5/5  
Hip abductors (L5): 5/5  
Hip adductors (L4): 5/5  
Knee extensors (L3, L4): 5/5  
Knee flexors (S1): 5/5  
Dorsiflexors (L5): 5/5  
Plantar flexors (S1): 5/5

**Palpation**

Tenderness to palpation:  
Mild to moderate in the paraspinal muscles bilaterally.  
Muscle tightness to palpation:  
Mild to moderate in the paraspinal muscles bilaterally.  
Spinous Process Over-Pressure test (localization of problem):  
Lower Lumbar, Right buttock, SI joint

**Psychological**

Waddell's: 0/5

## **Imaging and special testing**

X-rays:

previously

CT Scan:

Date: 7/9/2020 Lumbar

Findings: Mild disc height narrowing L5-S1

CT Scan:

Date: 7/9/2020 Abdomen/Pelvis

Findings: Soft tissue hematoma of the right posterior buttock, superficial to the muscle in the subcutaneous tissues measuring 2.7 x 6 x 12 cm

MRI:

Date: 9/12/2020 Lumbar

Findings: L1-2: Unremarkable

L2-3: Unremarkable

L3-4: Unremarkable

L4-5: Bilateral facet hypertrophy

L5-S1: Disc height narrowing

## **Impression:**

1. MV vs Ped, 7/9/2020
2. Low back pain/Injury
3. Right buttock contusion/hematoma

**Causation:** *It is my opinion that the patient's symptoms for which I am seeing the patient are directly related to the accident described above. These opinions are stated to a reasonable medical probability and are based on available information. My opinion could change with additional information provided to me in the future.*

## **Diagnosis:**

M54.5-Low back pain

## **Discussion:**

### **1. Lumbar Spine:**

Source:

L4-S1 facet mediated pain

Right buttock contusion/hematoma

Supportive findings:

Exam and symptomatology

**CT findings of mild disc height narrowing L5-S1 as well as right buttock hematoma**

**diagnostic facet injections**

**Therapeutic response from RFA**

Significant factors:

Neurologically intact

No radicular complaints

**Therapeutic benefit with bilateral L4-S1 facet injections/MBB (100% benefit)**

**Therapeutic response with L4-S1 RFA (100% benefit) X 2**

Treatment options:

**General Options Include:**

WM00124

1. At MMI

The use and dangers of narcotics were discussed with the patient in detail.

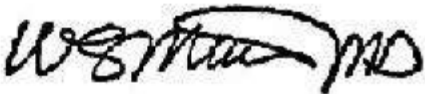
Treatment options, including conservative treatments, were explained and discussed with the patient in detail

**Plan:**

1. Additional diagnostic testing: None
2. Medication: Continue present medications
3. Therapy/modalities: Chiropractic care PRN, lumbar support for work
4. Interventional/Surgical procedures: None
5. Followup as needed



Javier Avila, PA-C  
NCCPA Board Certified



William S. Muir, M.D.  
Orthopedic Spine Surgeon  
Diplomate, American Board of Orthopedic Surgeons  
Fellow, American Academy of Orthopedic Surgeons  
*(signed but electronic voice recognition note may not yet be edited)*

CC: Janda Alexander  
Hicks and Braiser

Fax Created - Name: Hicks & Brasier Number: 7029604118 Dated 7/18/2022 12:49:40 PM

Fax Created - Name: Advanced Spine & Rehabilitation "Henderson" Number: 7029907711 Dated 7/18/2022 12:49:51 PM



**EXHIBIT “E”**

**EXHIBIT “E”**

## Comprehensive Medical Examination

Patient: Jared Moss

Date of Service: October 7, 2022

Date of Birth:

Date of Incident: July 9, 2020

I was asked to perform an examination and review the medical records of Jared Moss as they relate to the incident of 7/9/20.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. He states he was walking in a crosswalk and a plumbing van struck him on the left side, causing him to land on his butt and back. He denies any loss of consciousness, and he did not require any emergency care or transportation to the hospital by ambulance. He reports he had immediate pain in his lower back and hands. Currently, he has ongoing low back pain which does not radiate. He rates this pain at 4-5/10, and describes it as a deep-pressure and tightness. He has treated with PT, heat, ice, TENS, massage, medications, exercise, chiropractic care, and lower back injections. The pain is worse with over-exertion or repetitive motions. The pain is better with ablations, rest, and stretching. The pain limits him. His providers have not recommended any spine surgery for him. He denies any prior symptoms, and denies any prior accidents. He reports a subsequent MVA but does not know the date, and states it only injured his head and did not affect his lower back.

Past Surgical history: denies

Past Medical History: denies

Allergies: PCN, amoxicillin

Current Medications: denies

Social history: he works in shipping/receiving, at time of the accident he was a painter, he admits to smoking

Family history: denies

Review of systems: negative in detail

## Medical Time Line:

### Pre-Incident Medical Records:

2/14/16      Spring Valley Hospital – ER – chest pain, SOB for 1 day, PMH hepatitis C, methamphetamine abuse, has HA, fall 2 weeks ago landing on coccyx  
CXR  
xrays coccyx – no fracture

1/6/19 Desert Springs Hospital – ER – fevers, chills, PMH cirrhosis  
9/22/19 Henderson Hospital – ER – abdominal/groin pain, inguinal hernia

### **Incident**

**7/9/20 MVA – Traffic Accident Report – front right bumper of V1 struck P1’s left side causing him to fall in travel lane, declined medical transport, V1 Econoline, non-motorist Jared Moss**

### **Post-Incident Medical Records:**

7/9/20 Henderson Hospital – ER – s/p fall backwards after being hit by car, on methadone therapy, LBP and right buttock pain, started gradually after being knocked over by car today, car hit his hands and he fell backwards onto his buttock and back, did not hit head, hands bothering him, denies weakness or n/t, exam neck normal, mid to lower lumbar tenderness, neuro normal, smoker, high risk substance abuse current methamphetamines,  
CT lumbar spine – mild scoliosis, unremarkable  
CT abdomen/pelvis – right buttock soft tissue hematoma

7/10/20 chiro – initial report, LBP, right buttocks/hip, right knee, pedestrian in crosswalk, van struck him, knocking him to ground, landed on right side, heavy smoker

7/13/20 chiro

7/15/20 chiro – lumbar, right hip, right knee, right buttock contusion

7/17/20 chiro

7/23/20 Dr. Muir – LBP, pedestrian, hit by van, no radiation, neuro normal

7/24/20 chiro

7/27/20 chiro

7/30/20 xrays right knee - unremarkable

8/4/20 chiro

8/5/20 chiro

8/7/20 chiro

8/10/20 Dr. Muir – telemed f/u, pain decreased with therapy

8/12/20 chiro

8/14/20 chiro

8/17/20 chiro

8/19/20 chiro

8/21/20 chiro

8/24/20 chiro

8/26/20 chiro

8/31/20 chiro

9/2/20 chiro

9/9/20 Dr. Muir – telemed f/u, takes methadone chronically but still feels LBP, no radiation, smoker, not employed, neuro normal

9/12/20 MRI lumbar spine –  
T12-L1 unremarkable  
L1-2 unremarkable  
L2-3 unremarkable  
L3-4 unremarkable  
L4-5 FJ, LF  
L5-S1 unremarkable

9/16/20 chiro

10/5/20 chiro

10/6/20 Dr. Muir – bilateral L4-S1 facet injections, pain from 3 to 0/10

|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10/7/20         | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 10/14/20        | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>10/17/20</b> | <b>MVA vs pedestrian</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 10/17/20        | Ambulance – PMH heroin use history, taking methadone, struck by sedan, car fled, LOC, pain to head, right occipital contusion, facial abrasions                                                                                                                                                                                                                                                                                                                                                                                           |
| 10/17/20        | Sunrise Hospital – ER – via EMS, head, neck, extremity pain, pedestrian, pain in head, face, abdomen, right UE and left LE, LOC, right shoulder and left knee, s/p hit and run, patient on methadone<br>xrays bilateral femur – no injury<br>CXR<br>CT thorax – in acute traumatic injury<br>CT cervical spine – unremarkable<br>CT brain – unremarkable<br>xrays hands – retained metallic BB pellet<br>CT facial bones – unremarkable<br>CT abdomen/pelvis<br>xrays right shoulder – unremarkable<br>xrays right tib/fib - unremarkable |
| 10/28/20        | chiro – hit by car on 10/22/20, transported to Sunrise Hospital for TBI for head trauma and LOC, no increase in symptomatology, lumbar and right hip                                                                                                                                                                                                                                                                                                                                                                                      |
| 11/25/20        | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 12/2/20         | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 12/7/20         | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 12/30/20        | chiro                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 1/6/21          | chiro – final report – LBP 90% overall improvement since beginning of treatment, 0-3/10                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 1/12/21         | Dr. Muir – telemed, s/p facet injections on 10/6/20, had 100% relief until 2 weeks ago                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 1/19/21         | Dr. Muir – bilateral L3-5 MBB, pain from 3 to 2-3/10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 2/3/21          | Dr. Muir – telemed, 100% relief after injections                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 3/3/21          | Dr. Muir – telemed, return of tightness and stiffness in lower back                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 3/31/21         | Dr. Muir – telemed, LBP, wants RFA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 4/6/21          | Dr. Muir – bilateral L3-5 RFA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 4/21/21         | Dr. Muir – telemed, doing well with complete relief                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 5/19/21         | Dr. Muir – doing well with relief of pain                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 7/5/21          | Dr. Muir – reviewed records, injury to lumbar facets, had 2 lumbar injections with 100% relief, had additional injury on 10/7/20 which did not exacerbate lumbar symptoms, future care with future RFA, pain management, chiro, future imaging                                                                                                                                                                                                                                                                                            |
| 7/23/21         | Henderson Hospital – ER – referral from primary care doctor he saw today, left sided chest pain for one week, left lower chest without radiation, pain went to back, taking methadone, PMH hepatitis C, cirrhosis, neuro normal                                                                                                                                                                                                                                                                                                           |
| 11/22/21        | Dr. Muir – telemed, doing well, after 8 hours of sitting back bothers him<br>CXR                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 8/31/21         | Dr. Sood – abdominal pain, no medications regularly                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 9/16/21         | Henderson Hospital – endoscopy                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 11/22/21        | Dr. Muir – telemed, doing well from RFA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 12/21/21        | Dr. Muir – telemed, doing well                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 5/2/22          | Dr. Muir – LBP increased                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 5/17/22         | Dr. Muir – bilateral L3-5 RFA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

6/2/22 Dr. Muir – telemed f/u, continued relief of LBP, no more medications, able to return to normal activities with minimal discomfort  
6/30/22 Dr. Muir – telemed, minimal LBP  
7/6/22 Dr. Muir – life care plan, future care required and related  
7/14/22 Dr. Muir – telemed, ongoing relief of LBP  
8/10/22 Michael Walters – had Sean Tomesco yielded right of way to Jared Moss, this collision would not have occurred

Photos:

Right buttocks contusion

Imaging Studies:

7/9/20 CT lumbar spine – mild degenerative changes, L5-S1 disc narrowing with endplate changes, L4-5 endplate changes  
7/9/20 CT abdomen/pelvis  
7/30/20 xrays right knee  
9/12/20 MRI lumbar spine – mild narrowing L5-S1 with endplate changes  
7/23/21 CXR

Physical Examination:

General: The patient is awake, alert, oriented. The patient has intact recent and remote memory and is oriented to time, place and person. The patient has normal mood and affect. The patient is without any distress and has normal stature.

Musculoskeletal examination: The patient walks a normal gait, and is able to raise on the toes and heels, and balance.

Lumbar spine: The patient has no tenderness to light touch on the lumbar paraspinal areas. There is a normal range of motion of the lumbar spine, and no discomfort with movements.

Cervical spine: The patient has no tenderness to light touch in the cervical and thoracic areas. There is no limitation of motion of the cervical spine and no discomfort with movement.

Neurovascular examination: Lower extremities demonstrates 5/5 motor strength in the lower extremities. Sensation is intact to light touch throughout the bilateral lower extremities. Deep tendon reflexes are 0 and symmetrical in the lower extremities. There is no evidence of clonus. There is a negative straight-leg raise bilaterally.

Upper extremities demonstrate 5/5 motor strength in the bilateral upper extremities. Sensation is intact to light touch throughout the bilateral upper extremities. Deep tendon reflexes are 0 and symmetrical in the upper extremities without a Hoffmann's reflex.

Assessment / Opinions / Future Care:

All of my opinions below are based on my training, clinical teaching practice and the medical literature. I am currently a Professor of Orthopaedic Surgery and Neurosurgery at the USC Spine Center. My opinions are also based on a reasonable medical probability, however, are preliminary and subject to change based on future records/documents supplemented and reviewed. I am reviewing these records and performing an examination for evaluation purposes only. There is no doctor-patient relationship.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. He states he was walking in a crosswalk and a plumbing van struck him on the left side, causing him to land on his butt and back. He denies any loss of consciousness, and he did not require any emergency care or transportation to the hospital by ambulance. According to the records, he sought evaluation in the emergency room after the incident, with the records documenting pain in the lower back and right buttock, without radiation of the pain. He had a bruise on his buttocks. He had CT scans of the lumbar spine and abdomen and pelvis, which did not show any injuries. He started chiropractic treatments on 7/10/20, with documentation of lower back pain, right hip and buttocks pain, and right knee pain. He continued chiropractic care for about 3 months. On 9/12/20 he had an MRI of the lumbar spine, which did not show any injuries. On 10/6/20, he had lumbar facet injections.

He was involved in another accident, where he was hit by a vehicle as a pedestrian, on 10/17/20. He required ambulance transportation to the hospital, where he had a loss of consciousness and head injuries. He had CT scans of the cervical spine, thorax, abdomen, pelvis, facial bones, and radiographs of the chest, bilateral femurs, hands, right shoulder, and right lower leg. He re-started chiropractic care on 10/28/20, and continued further treatments for about 2 months, where he was 90% improved.

On 1/19/21 he had more lumbar facet injections, and on 4/6/21 he had facet ablations. On 5/17/22, he had more lumbar facet ablations.

I have some any pre-accident records. He is on methadone for prior methamphetamine abuse, and had a prior fall in 2016. He has hepatitis C with liver cirrhosis, and is a smoker.

This is a 41 year-old male, who was involved in a pedestrian versus MVA on 7/9/20. There is no identified structural injury to the lumbar spine from the incident on any of the post-accident radiological studies. He had a soft tissue buttock contusion and a possible lumbar strain from the incident, which would warrant a reasonable amount of conservative soft tissue treatments. I would relate the need for the initial medical evaluations, the initial radiological studies of the spine, and the initial chiropractic treatments, to be associated with the incident. After allowing for a reasonable period of time for these strains to resolve, I could no longer relate any further medical care, to be linked to the incident. After the completion of about 3 months of chiropractic treatments in October 2020, I do not relate the need for any further medical treatments for the spine, to be linked to the incident of 7/9/20. I do not relate the spinal injections nor the lumbar facet ablations, to be linked to the MVA, as the structures injected or ablated, were not injured or altered by the incident. I would relate the conservative care, with the exception of the facet injections, up to the subsequent accident in October 2020, to be connected to the incident of 7/9/20. I do not relate any ongoing subjective reports of spine symptoms, nor any future medical care for the spine, to be causally linked to the MVA of 7/9/20.

I would like to see more recent medical records, all of the imaging studies, and more detailed records prior to the incident, if they exist. I reserve the right to alter my opinions if more information is provided to me.

Sincerely,



Jeffrey C. Wang, MD  
Chief, Orthopaedic Spine Service  
Co-Director USC Spine Center  
Professor of Orthopaedic Surgery and Neurosurgery  
USC Spine Center

1520 San Pablo St., Suite 2000  
Los Angeles, CA 90033  
Office: (323) 442-5303

University of Southern California  
1,520 San Pablo Street, Suite 2000, Los Angeles, California 90033 • Tel: 323 442 5860 • Fax: 323 442 6990



**EXHIBIT “F”**

**EXHIBIT “F”**



1 **SUPP**

2 M. Caleb Meyer, Esq.

3 Nevada Bar No. 13379

4 Renee M. Finch, Esq.

5 Nevada Bar No. 13118

6 Jason G. Martinez, Esq.

7 Nevada Bar No. 13375

8 MESSNER REEVES LLP

9 8945 West Russell Road, Suite 300

10 Las Vegas, Nevada 89148

11 Telephone: (702) 363-5100

12 Facsimile: (702) 363-5101

13 E-mail: [cmeyer@messner.com](mailto:cmeyer@messner.com)

14 [rfinch@messner.com](mailto:rfinch@messner.com)

15 [jgmartinez@messner.com](mailto:jgmartinez@messner.com)

16 *Attorneys for Defendants*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JARED MOSS, individually

14 Plaintiff,

15 vs.

16 SEAN EDWARD TOMESCO,  
17 individually; SECOND OPINION  
18 PLUMBING, LLC., a domestic limited  
19 liability company; DOES I through X,  
20 inclusive; ROE CORPORATIONS XI  
21 through XX, inclusive,

22 Defendants.

Case No. A-21-840372-C

Dept. No. 20

**DEFENDANTS' SECOND SUPPLEMENTAL  
DISCLOSURES PURSUANT TO NRCP 16.1(b)**

23 COME NOW, Defendants SECOND OPINION PLUMBING, LLC and SEAN EDWARD  
24 TOMESCO by and through their attorneys of record, M. CALEB MEYER, ESQ., RENEE M.  
25 FINCH, ESQ., and JASON G. MARTINEZ ESQ., of MESSNER REEVES LLP, and hereby submit  
26 their Second Supplemental Disclosures, pursuant to NRCP 16.1 as follows (**supplements appear in**  
27 **bold**):

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**I.**

**WITNESSES**

1. Second Opinion Plumbing, LLC  
c/o M. Caleb Meyer, Esq.  
Renee M. Finch, Esq.  
Jason G. Martinez, Esq.  
MESSNER REEVES LLP  
8945 W Russell Road, Suite 300  
Las Vegas, NV 89148  
(702) 363-5100

Second Opinion Plumbing, LLC is a named Defendant in the action and has information concerning the circumstances surrounding the accident alleged in Plaintiffs' Complaint.

2. Sean Edward Tomesco  
c/o M. Caleb Meyer, Esq.  
Renee M. Finch, Esq.  
Jason G. Martinez, Esq.  
MESSNER REEVES LLP  
8945 W Russell Road, Suite 300  
Las Vegas, NV 89148  
(702) 363-5100

Sean Edward Tomesco is a named Defendant in the action and has information concerning the circumstances surrounding the accident alleged in Plaintiffs' Complaint.

3. Jared Moss  
c/o Justin W. Wilson, Esq.  
HICKS & BRASIER, PLLC  
2630 S. Jones Blvd.  
Las Vegas NV 89146

Jared Moss is a Plaintiff in the action and is believed to have information concerning the circumstances surrounding the accident alleged in the Plaintiff's Complaint, the injuries and damages being claimed, and his condition before and after the accident.

4. Investigator Paul Viray, ID #9981  
Las Vegas Metropolitan Police Department  
400 South Martin Luther King Blvd  
Las Vegas, NV 89106

Investigator Paul Viray, ID #9981 was the investigating officer at the scene. It is anticipated that it will testify regarding the subject accident, and all other relevant information.

5. Investigator Bryan Meyer  
Las Vegas Metropolitan Police Department  
400 South Martin Luther King Blvd  
Las Vegas, NV 89106

Investigator Bryan Meyer was a responding officer at the scene. It is anticipated that it will testify regarding the subject accident, and all other relevant information.

6. Any Witness listed by Plaintiff or any other party.
7. Various healthcare providers believed to have information concerning medical care predating the incident.

Defendants also reserve the right to adopt all witness designations made by any other party to this action and to supplement this list as discovery progresses.

## II.

### **MEDICAL PROVIDERS**

Person(s) Most Knowledgeable from the following facilities will testify regarding the nature of treatment rendered and the extent of injuries sustained by Plaintiff JARED MOSS and the authenticity of records produced regarding the same:

1. Person Most Knowledgeable/  
Custodian of Records  
Bhandari Sudipkumar, MD  
Desert Radiology  
PO Box 3057  
Indianapolis, IN 46206
2. Person Most Knowledgeable/  
Custodian of Records  
Alexander S. Janda, DC  
Advanced Spine & Rehabilitation LLC  
715 Mall Ring Circle, Suite 205  
Henderson, NV 89014

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3. Person Most Knowledgeable/  
Custodian of Records  
Kristie Coarasa, PA-C  
William Muir, MD  
653 N. Town Center Drive, Suite 210  
Las Vegas, NV 89144
4. Person Most Knowledgeable/  
Custodian of Records  
HHN ER at Green Valley Ranch  
2851 St. Rose Parkway  
Henderson, NV 89052
5. Person Most Knowledgeable/  
Custodian of Records  
Justin Puopolo, DO  
Pueblo Medical Imaging  
8551 W. Lake Mead Blvd., Suite 150  
Las Vegas, NV 89128
6. Person Most Knowledgeable/  
Custodian of Records  
Brandon Purser, RN  
Sudipkumar K. Bhandari  
Henderson Hospital  
1050 W. Galleria Drive  
Henderson, NV 89011
7. Person Most Knowledgeable/  
Custodian of Records  
Jared T. Martin, DO  
Shadow Emergency Physicians  
PO Box 13917  
Philadelphia, PA 19101
8. Person Most Knowledgeable/  
Custodian of Records  
Shadow Emergency Physicians  
PO Box 13917  
Philadelphia, PA 19101
9. Person Most Knowledgeable/  
Custodian of Records  
Brian Hager, DO  
Anesthesia and Intensive Care Specialist

PO Box 30102 Dept. 317  
Salt Lake City, UT 84130

10. Any other medical provider listed by Plaintiff.

11. Any other employment provider listed by Plaintiff.

Defendants also reserve the right to adopt all witness designations made by any other party to this action and to supplement this list as discovery progresses.

### III.

#### **EXHIBITS, DOCUMENTS AND TANGIBLE THINGS**

| <b>Exhibit</b> | <b>Document Description</b>                                                                                                                                       | <b>Bates Nos.</b>      |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 1.             | Defendants' Answer to Plaintiff's Complaint, filed November 5, 2021                                                                                               | DEF0001-DEF0013        |
| 2.             | State of Nevada Traffic Crash Report                                                                                                                              | DEF0014-DEF0019        |
| 3.             | Las Vegas Metropolitan Police Department Voluntary Statement of Jared Scott Moss, dated July 9, 2020                                                              | DEF0020                |
| 4.             | State Farm Mutual Automobile Insurance Company Declarations Page                                                                                                  | DEF0021-DEF0024        |
| 5.             | Custodian of Records Affidavit, Medical Records and Billing regarding Plaintiff from Advanced Spine and Rehabilitation, dates of service 7/13/20 through 12/30/20 | DEF0025-DEF0212        |
| 6.             | Custodian of Records Affidavit, Medical Records and Billing regarding Plaintiff from Henderson Hospital, dates of service 7/9/20; 7/23/2; 9/16/21                 | DEF0213-DEF0551        |
| 7.             | Custodian of Records Affidavit, Medical Records and Billing regarding Plaintiff from Anesthesia and Intensive Care, dates of service 10/6/20                      | DEF0552-DEF0559        |
| 8.             | Custodian of Records Affidavit, Medical Records and Billing regarding Plaintiff from William Muir MD, dates of service 7/23/20 through 7/14/22                    | DEF0560-DEF1164        |
| 9.             | Custodian of Records Affidavit and Medical Records regarding Plaintiff from Pueblo Medical Imaging, dates of service 7/30/20; 9/12/20                             | DEF1165-DEF1170        |
| 10.            | Custodian of Records Affidavit and Billing regarding Plaintiff from Pueblo Medical Imaging, dates of service 7/30/20; 9/12/20                                     | DEF1171-DEF1174        |
| 11.            | <b>Custodian of Records Certification and Imaging regarding Plaintiff from Henderson Hospital</b><br><i>*Disc of Imaging available from provider for a fee</i>    | <b>DEF1175-DEF1178</b> |
| 12.            | <b>Billing and Medical Records regarding Plaintiff from Shadow Emergency Physicians, dates of service 2/14/16 through 7/23/21</b>                                 | <b>DEF1179-DEF1288</b> |

|   |                                                                                                                                                                 |                     |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 1 | 13. Custodian of Records Certification and Imaging regarding Plaintiff from Pueblo Medical Imaging<br><i>*Disc of Imaging available from provider for a fee</i> | DEF1289-<br>DEF1291 |
| 2 |                                                                                                                                                                 |                     |
| 3 | Any documents listed by Plaintiff or any other party.                                                                                                           |                     |
| 4 |                                                                                                                                                                 |                     |

Defendants object as to genuineness, authentication and foundation of all of Plaintiff's medical providers and documents. Defendants also object to the genuineness, authentication, foundation and relevance of all correspondence disclosed by Plaintiff in his 16.1 Production of Documents and Witness List. Defendants also reserve the right to call any rebuttal witnesses as a result of any exhibits or witnesses listed or presented by Plaintiff.

Production of the above referenced documents does not constitute any stipulation and/or other agreement regarding admissibility of the same in any court proceeding. Defendants have just begun discovery and has not had a complete opportunity to obtain all information regarding Plaintiffs. Therefore, Defendants reserve the right to supplement these disclosures in accordance with Rule 16.1 and 26(e).

DATED this 17<sup>th</sup> day of October, 2022.

**MESSNER REEVES LLP**

/s/ Jason G. Martinez, Esq.

M. Caleb Meyer, Esq.

Nevada Bar No. 13379

Renee M. Finch, Esq.

Nevada Bar No. 13118

Jason G. Martinez, Esq.

Nevada Bar No. 13375

MESSNER REEVES LLP

8945 W. Russell Road, Ste 300

Las Vegas, Nevada 89148

*Attorneys for Defendants*

1 **CERTIFICATE OF SERVICE**

2 On this 17<sup>th</sup> day of October, 2022 pursuant to Administrative Order 14-2 and Rule 9 of the  
3 NEFCR, I caused the foregoing **DEFENDANTS' SECOND SUPPLEMENTAL DISCLOSURES**  
4 **PURSUANT TO NRCP 16.1(b)** to be transmitted to the person(s) identified in the E-Service List  
5 for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of  
6 Clark, State of Nevada. A service transmission report reported service as complete and a copy of the  
7 service transmission report will be maintained with the document(s) in this office.

8 Justin W. Wilson, Esq.  
9 HICKS & BRASIER, PLLC  
10 2630 S. Jones Blvd  
11 Las Vegas, Nevada 89146  
12 *Attorney for Plaintiff*

13  
14 /s/ Michael Madden  
Employee of MESSNER REEVES LLP

**EXHIBIT “G”**

**EXHIBIT “G”**



**SUPP**

CHARLES S. JACKSON, ESQ.

Nevada Bar No. 13158

**HICKS & BRASIER, PLLC**

2630 S. Jones Blvd.

Las Vegas, Nevada 89146

Phone: (702) 628-9888

Fax: (702) 960-4118

E-Mail: [cjackson@lvattorneys.com](mailto:cjackson@lvattorneys.com)

*Attorneys for Plaintiff*

**DISTRICT COURT**

**DISTRICT OF NEVADA**

JARED MOSS, individually,

Plaintiff,

vs.

SEAN EDWARD TOMESCO, individually;  
SECOND OPINION PLUMBING, LLC., a  
domestic limited liability company; DOES I  
through X, inclusive; ROE CORPORATIONS  
XI through XX, inclusive,

Defendants.

CASE NO.: A-21-840372-C

DEPT. NO.: 20

**PLAINTIFF'S THIRD SUPPLEMENT  
TO EARLY CASE CONFERENCE  
LIST OF WITNESSES AND  
EXHIBITS PURSUANT TO N.R.C.P.  
16.1**

Pursuant to NRCP 16.1, Plaintiff JARED MOSS, by and through his attorney, CHARLES S. JACKSON, ESQ., of HICKS & BRASIER PLLC, hereby discloses Plaintiff's Third Supplement to Early Case Conference List of Witnesses and Exhibits Pursuant to N.R.C.P. 16.1. (new information is presented in bold print)

**LIST OF WITNESSES**

1. JARED MOSS  
c/o Charles S. Jackson, Esq.  
HICKS & BRASIER, PLLC  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146

Plaintiff is expected to testify regarding the facts and circumstances surrounding the subject incident and/or matters set forth in the pleading(s) filed in this matter.

1           2.       Sean Edward Tomesco, Defendant  
2                   c/o M. Caleb Meyer, Esq.  
3                   c/o Renee M. Finch, Esq.  
4                   c/o Christine L. Atwood, Esq.  
5                   MESSNER REEVES, LLP.  
                  8945 W. Russell Road, Suite 300  
                  Las Vegas, NV 89148

6           Defendant is expected to testify regarding the facts and circumstances surrounding the  
7 subject incident and/or matters set forth in the pleading(s) filed in this matter.

8           3.       NRCP 30(b)(6) Witness(es), Defendant, SECOND OPINION PLUMBING,  
9                   INC.  
10                  c/o M. Caleb Meyer, Esq.  
11                  c/o Renee M. Finch, Esq.  
12                  c/o Christine L. Atwood, Esq.  
                  MESSNER REEVES, LLP.  
                  8945 W. Russell Road, Suite 300  
                  Las Vegas, NV 89148

13          Defendant is expected to testify regarding the facts and circumstances surrounding the  
14 subject incident and/or matters set forth in the pleading(s) filed in this matter.

15          4.       Officer Paul Viray #9981  
16                  Las Vegas Metropolitan Police Department  
17                  400 South Martin Luther King Blvd., Las Vegas, Nevada 89106

18          Officer Paul Viray #9981 is one of the responding Officers and is expected to testify as  
19 to his knowledge of the facts and circumstances surrounding the subject incident and any and all  
20 investigations conducted by him relating to the same.

21          5.       Officer Bryan Meyer  
22                  Las Vegas Metropolitan Police Department  
                  400 South Martin Luther King Blvd., Las Vegas, Nevada 89106

23          Officer Bryan Meyer is one of the responding Officers and is expected to testify as to his  
24 knowledge of the facts and circumstances surrounding the subject incident and any and all  
25 investigations conducted by him relating to the same.

26          6.       NRCP 30(b)(6) Witness(es)  
27                  Las Vegas Metropolitan Police Department  
                  400 South Martin Luther King Blvd., Las Vegas, Nevada 89106  
28

1           The NRCP 30(b)(6) Witness(es) for the Las Vegas Metropolitan Police Department are  
2 expected to testify as to his/her knowledge of the facts and circumstances surrounding the  
3 subject incident and any and all reports or body camera footage obtained from the subject  
4 incident.

5           7.       Annabelle (Last Name Unknown)

6           This witness is expected to testify as to her knowledge and observations of Plaintiff  
7 before and after the subject incident.

8           8.       Julie Rohrer

9           This witness is expected to testify as to her knowledge and observations of Plaintiff  
10 before and after the subject incident.

11           **9.       Jennifer Moss**  
12               **(702) 908-7907**

13           **This witness is a Plaintiff's wife and is expected to testify as to her knowledge of the**  
14 **facts and circumstances surrounding the subject incident. Her knowledge and**  
15 **observations of Plaintiff before and after the subject incident.**

16           **10.     Lorri Moss**  
17               **(702) 321-3320**

18           **This witness is a Plaintiff's mother and is expected to testify as to her knowledge of**  
19 **the facts and circumstances surrounding the subject incident. Her knowledge and**  
20 **observations of Plaintiff before and after the subject incident.**

21           **11.     Jim Moss**  
22               **(702) 232-4969**

23           **This witness is a Plaintiff's father and is expected to testify as to his knowledge of**  
24 **the facts and circumstances surrounding the subject incident. His knowledge and**  
25 **observations of Plaintiff before and after the subject incident.**

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1           **12.     Jessica Moss**  
2                   **(702) 338-3948**

3           **This witness is a Plaintiff's sister-in-law and is expected to testify as to her**  
4 **knowledge of the facts and circumstances surrounding the subject incident. Her**  
5 **knowledge and observations of Plaintiff before and after the subject incident.**

6           **13.     Kevin Moss**  
7                   **(702) 321-4192**

8           **This witness is a Plaintiff's brother and is expected to testify as to his knowledge of**  
9 **the facts and circumstances surrounding the subject incident. His knowledge and**  
10 **observations of Plaintiff before and after the subject incident.**

11           **14.     Daniel Quaranto**  
12                   **(702) 609-1255**

13           **This witness is a Plaintiff's boss and is expected to testify as to his knowledge of the**  
14 **facts and circumstances surrounding the subject incident. His knowledge and**  
15 **observations of Plaintiff before and after the subject incident.**

16           **15.     Jennifer Gum**  
17                   **(702) 510-5071**

18           **This witness is a Plaintiff's co-worker and is expected to testify as to his knowledge**  
19 **of the facts and circumstances surrounding the subject incident. His knowledge and**  
20 **observations of Plaintiff before and after the subject incident.**

21           **16.     Bradley Welch**  
22                   **(702) 443-1514**

23           **This witness is a Plaintiff's friend and is expected to testify as to his knowledge of**  
24 **the facts and circumstances surrounding the subject incident. His knowledge and**  
25 **observations of Plaintiff before and after the subject incident.**

1 **PLAINTIFF'S HEALTH CARE PROVIDERS**

- 2 1. Jared T. Martin, D.O., and/or  
3 Brandon Purser, R.N., and/or  
4 Sudipkumar K. Bhanderi, and/or  
5 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
6 Henderson Hospital  
1050 W. Galleria Drive  
Henderson, NV 89011

7 Jared T. Martin, D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi,  
8 and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Henderson Hospital is one of  
9 Plaintiff's treating medical providers and is expected to testify to all of their opinions to a  
10 reasonable degree of medical probability. Jared T. Martin, D.O., and/or Brandon Purser, R.N.,  
11 and/or Sudipkumar K. Bhanderi, and/or Person(s) Most Knowledgeable and/or Custodian of  
12 Records at Henderson Hospital is expected to testify to any and all opinions formed during their  
13 course of treatment of Plaintiff, to a reasonable degree of medical probability. Jared T. Martin,  
14 D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi, and/or Person(s) Most  
15 Knowledgeable and/or Custodian of Records at Henderson Hospital is expected to testify that  
16 they reviewed the records of Plaintiff's medical providers during the course of treatment.

17 Jared T. Martin, D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi,  
18 and/or NRCP 30(b)(6) Witness(es) and/or Custodian is expected to testify about the course of  
19 treatment at Henderson Hospital for Plaintiff Jared Moss on, or about, July 9, 2020, which  
20 included: physical examination, review of subjective complaints, and Jared Moss's reports of  
21 mechanism of injuries.

22 Jared T. Martin, D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi,  
23 and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Henderson Hospital is  
24 expected to testify that Plaintiff's treatment was medically reasonable and necessary and a result  
25 of the subject motor vehicle collision involving Defendant on July 9, 2020 Jared T. Martin,  
26 D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi, and/or NRCP 30(b)(6)  
27 Witness(es) and/or Custodian of Records is expected to testify that the charges, which total  
28 \$28,864.00, for Henderson Hospital and all accompanying charges stemming on July 9, 2020,

1 visits (including physician charges), for Plaintiff's treatment were reasonable and customary.  
2 Debra Harman, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at  
3 Henderson Hospital is expected to testify that Plaintiff's injuries were caused by the subject  
4 motor vehicle collision involving Defendants on July 9, 2020.

5       2.       Jared T. Martin, D.O., and/or  
6               NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
7               Shadow Emergency Physicians  
8               P.O. Box 13917  
9               Philadelphia, PA 19101-3917

10       Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
11 at Shadow Emergency Physicians is one of Plaintiff's treating medical providers and is  
12 expected to testify to all of their opinions to a reasonable degree of medical probability. Jared T.  
13 Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Shadow  
14 Emergency Physicians is expected to testify to any and all opinions formed during their course  
15 of treatment of Plaintiff, to a reasonable degree of medical probability. Jared T. Martin, D.O.,  
16 and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Shadow Emergency  
17 Physicians is expected to testify that they reviewed the records of Plaintiff's medical providers  
during the course of treatment.

18       Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
19 at Shadow Emergency Physicians is expected to testify about the course of treatment for  
20 Plaintiff Jared Moss which included: physical examination, and review of subjective  
21 complaints.

22       Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
23 at Shadow Emergency Physicians is expected to testify that Plaintiff's treatment was medically  
24 reasonable and necessary and a result of the subject motor vehicle collision involving Defendant  
25 on July 9, 2020. Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
26 Records is expected to testify that the charges, which total \$1,335.00, for Shadow Emergency  
27 Physicians and all accompanying charges stemming from July 9, 2020, visit (including  
28 physician charges), for Plaintiff's treatment were reasonable and customary. Jared T. Martin,

1 D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Shadow Emergency  
2 Physicians is expected to testify that Plaintiff's injuries were caused by the subject motor  
3 vehicle collision involving Defendants on July 9, 2020.

4 3. Varun Mitroo, M.D., and/or  
5 Sudipkumar Bhanseri, M.D., and/or  
6 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
7 Desert Radiology  
8 P.O. Box 3057  
9 Indianapolis, IN 46206-3057

10 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP 30(b)(6)  
11 Witness(es) and/or Custodian of Records at Desert Radiology is one of Plaintiff's treating  
12 medical providers and is expected to testify to all of his opinions to a reasonable degree of  
13 medical probability. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP  
14 30(b)(6) Witness(es) and/or Custodian of Records at Desert Radiology, is expected to testify to  
15 any and all opinions formed during their course of treatment of Plaintiff, to a reasonable degree  
16 of medical probability. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP  
17 30(b)(6) Witness(es) and/or Custodian of Records at Desert Radiology, is expected to testify  
18 that they reviewed the records of Plaintiff's medical providers during the course of treatment.

19 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP 30(b)(6)  
20 Witness(es) and/or Custodian of Records at Desert Radiology is expected to testify about the  
21 course of treatment Plaintiff Jared Moss on, or about, July 9, 2020, which included: subjective  
22 reporting, objective observations and findings, diagnoses, and assessments.

23 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP 30(b)(6)  
24 Witness(es) and/or Custodian of Records Desert Radiology is expected to testify that Plaintiff's  
25 treatment was medically reasonable and necessary and a result of the subject motor vehicle  
26 collision involving Defendant on July 9, 2020. Varun Mitroo, M.D., and/or Sudipkumar  
27 Bhanseri, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Desert  
28 Radiology is expected to testify that the charges for Plaintiff's treatment, which totaled  
\$1,604.00, were reasonable and customary. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri,  
M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Desert Radiology is

1 expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
2 involving Defendant on July 9, 2020.

3 4. Alexander S. Janda, D.C., and/or  
4 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
5 Advanced Spine & Rehabilitation  
6 715 Mall Ring Circle, Suite 205  
7 Henderson, NV 89014

8 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
9 Records at Advanced Spine & Rehabilitation is one of Plaintiff's treating medical providers and  
10 is expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
11 to a reasonable degree of medical probability. Alexander S. Janda, D.C., and/or NRCP 30(b)(6)  
12 Witness(es) and/or Custodian of Records at Advanced Spine & Rehabilitation is expected to  
13 testify that they reviewed the records of Plaintiff's medical providers during the course of  
14 treatment.

15 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
16 Records is expected to testify about the course of treatment at Advanced Spine & Rehabilitation  
17 for Plaintiff Jared Moss, on, or about, March 29, 2021, which included an MRI of the cervical  
18 spine.

19 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
20 Records at Advanced Spine & Rehabilitation is expected to testify that Plaintiff's treatment was  
21 medically reasonable and necessary and a result of the subject motor vehicle collision involving  
22 Defendant on July 9, 2020. Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es)  
23 and/or Custodian of Records at Advanced Spine & Rehabilitation is expected to testify that the  
24 charges for Plaintiff's treatment, which totaled \$7,262.00, were reasonable and customary.  
25 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
26 Advanced Spine & Rehabilitation is expected to testify that Plaintiff's injuries were caused by  
27 the subject motor vehicle collision involving Defendant on July 9, 2020.

28 5. William Muir, M.D., and/or  
NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
653 N. Town Center Drive, Suite 210  
Las Vegas, NV 89144



1 William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
2 one of Plaintiff's treating medical providers and is expected to testify to any and all opinions  
3 formed during their course of treatment of Plaintiff, to a reasonable degree of medical  
4 probability. William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
5 Records is expected to testify that they reviewed the records of Plaintiff's medical providers  
6 during the course of treatment.  
7

8 William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
9 expected to testify about the course of treatment for Plaintiff Jared Moss, on, or about, July 23,  
10 2021, through July 14, 2022, which included: subjective reporting, objective observations and  
11 findings, diagnoses, and assessments.

12 William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
13 expected to testify that Plaintiff's treatment was medically reasonable and necessary and a result  
14 of the subject motor vehicle collision involving Defendant on July 9, 2020. William Muir,  
15 M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is expected to testify that  
16 the charges for Plaintiff's treatment, which totaled \$98,116.00, were reasonable and customary.  
17 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records is  
18 expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
19 involving Defendant on July 9, 2020.

20 6. Justin Puopolo, D.O., and/or  
21 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
22 Pueblo Medical Imaging  
8551 W. Lake Mead Blvd., Suite 150  
Las Vegas, NV 89128

23 Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
24 Pueblo Medical Imaging is one of Plaintiff's treating medical providers and is expected to  
25 testify to any and all opinions formed during their course of treatment of Plaintiff, to a  
26 reasonable degree of medical probability. Justin Puopolo, D.O., and/or NRCP 30(b)(6)  
27 Witness(es) and/or Custodian of Records at Pueblo Medical Imaging is expected to testify that  
28 they reviewed the records of Plaintiff's medical providers during the course of treatment.

1 Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
2 expected to testify about the course of treatment at Pueblo Medical Imaging for Plaintiff Jared  
3 Moss, on, or about, July 30, 2020, and September 12, 2020, which included X-ray of the right  
4 knee.

5 Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
6 Pueblo Medical Imaging is expected to testify that Plaintiff's treatment was medically  
7 reasonable and necessary and a result of the subject motor vehicle collision involving Defendant  
8 on July 9, 2020. Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
9 Records at Pueblo Medical Imaging is expected to testify that the charges for Plaintiff's  
10 treatment, which totaled \$1,800.00, were reasonable and customary. Justin Puopolo, D.O.,  
11 and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Pueblo Medical Imaging is  
12 expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
13 involving Defendant on July 9, 2020.

14 7. Brian Hager, D.O., and/or  
15 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
16 Anesthesia and Intensive Care Specialist  
17 P.O. Box 30102 Dept. 317  
Salt Lake City, UT 84130-0102

18 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
19 Anesthesia and Intensive Care Specialist is one of Plaintiff's treating medical providers and is  
20 expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
21 to a reasonable degree of medical probability. Brian Hager, D.O., and/or NRCP 30(b)(6)  
22 Witness(es) and/or Custodian of Records at Anesthesia and Intensive Care Specialist is  
23 expected to testify that they reviewed the records of Plaintiff's medical providers during the  
24 course of treatment.

25 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
26 expected to testify about the course of treatment at Anesthesia and Intensive Care Specialist for  
27 Plaintiff Jared Moss, on, or about, July 30, 2020, and September 12, 2020, which included:  
28 subjective reporting, objective observations and findings, diagnoses, and assessments.

1 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records of  
2 Anesthesia and Intensive Care Specialist is expected to testify that Plaintiff's treatment was  
3 medically reasonable and necessary and a result of the subject motor vehicle collision involving  
4 Defendant on July 9, 2020. Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or  
5 Custodian of Records at Anesthesia and Intensive Care Specialist is expected to testify that the  
6 charges for Plaintiff's treatment, which totaled \$1,750.00, were reasonable and customary.  
7 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
8 Anesthesia and Intensive Care is expected to testify that Plaintiff's injuries were caused by the  
9 subject motor vehicle collision involving Defendant on July 9, 2020.

10 The aforementioned medical care providers will opine regarding future treatment,  
11 including but not limited to, spinal cord stimulators, chiropractic care, physical therapy,  
12 rehabilitative care, fusion surgery, and/or therapeutic and/or diagnostic injections of the facets,  
13 nerve roots, and/or medial branches. Said doctors will also opine regarding other pain  
14 management procedures such as radiofrequency ablations, occipital blocks and any other  
15 foreseeable medical treatment. Said doctors will also opine regarding all of the treatment in  
16 this case as it pertains to defending their opinions, to include any and all medical treatment as a  
17 result of the incident at issue, any and all medical treatment prior to the incident at issue, any  
18 and all depositions of other medical providers or defense experts, and any and all defense  
19 medical reports prepared to attack said doctors' opinions.

20 Plaintiff reserves the right to call as potential experts any and all examining and/or  
21 treating physicians and/or psychiatrists and/or any health care professionals to testify  
22 concerning any and all aspects of the case, including the issues of standard of care, causation  
23 and damages. Any witness identified by any other party to this action.

24 CUSTODIAN OF RECORDS for all treating physicians and medical providers listed  
25 by Plaintiff herein and supplements hereto, are expected to testify as to the medical treatment  
26 and resulting bills provided to the Plaintiff.

27 NRCP 30(B)(6) WITNESS(ES) for all medical facilities and treating physicians listed  
28 by Plaintiff herein and supplements hereto, are expected to testify as expert witnesses about the

1 injuries sustained by Plaintiff and the past, present and future medical treatment, bills, injuries,  
2 past and future pain, suffering, disfigurement and disability as a result of this incident.

3 Plaintiff hereby reserves the right to call any and all witnesses identified by any  
4 Defendant or any other parties to this action at the time of trial of this matter.

5 All witnesses identified during discovery and or deposed during discovery of this  
6 litigation.

7 Rebuttal and/or impeachment witnesses.

8 Medical, biomechanical, economic, vocational and accident reconstruction experts  
9 unknown at this time.

10 **LIST OF DOCUMENTS**

- 11 1. Medical and billing records from Henderson Hospital. Bates Stamped Nos.  
12 HH00001 – HH00079.
- 13 2. Medical billing records from Shadow Emergency Physicians. Bates Stamped  
14 Nos. SER00001.
- 15 3. Medical billing records from Desert Radiology. Bates Stamped Nos. DR00001  
16 – DR00003.
- 17 4. Medical and billing records from Advanced Spine Rehabilitation. Bates  
18 Stamped Nos. ASR00001 – ASR00211.
- 19 5. Medical and billing records from Dr. William Muir. Bates Stamped Nos.  
20 WM00001 – WM00113; WM00114-WM00142.
- 21 6. Medical and billing records from Pueblo Medical Imaging. Bates Stamped Nos.  
22 PMI00001 – PMI00018.
- 23 7. Medical and billing records from Anesthesia & Intensive Care. Bates Stamped  
24 Nos. AIC00001 – AIC00010.
- 25 8. Life Care Plan by Dr. William Muir. Bates Stamped Nos. LCP00001 –  
26 LCP00015; LCP00016-LCP00028.
- 27 9. Traffic Accident Report. Bates Stamped Nos. TAR00001 – TAR00008.
- 28 10. Disc containing 911 audio calls regarding subject incident. (Sent by U.S. mail).

11. Body Cam Footage from LVMPD (sent via email).
- All exhibits listed by any other party to this litigation.
- All documents identified during discovery in this litigation.
- All pleadings filed in the case.
- All responses to any Interrogatories and/or Request for Admissions by any Defendant in this litigation.
- All depositions including exhibits.
- Rebuttal and/or impeachment documents.

**COMPUTATION OF SPECIALS / DAMAGES**

| PROVIDER                           | DATE OF SERVICE    | AMOUNT                |
|------------------------------------|--------------------|-----------------------|
| 1. Henderson Hospital              | 07/09/2020         | \$25,864.00           |
| 2. Shadow Emergency Physicians     | 07/09/2020         | \$1,335.00            |
| 3. Desert Radiology                | 07/09/20           | \$1,604.00            |
| 4. Advanced Spine & Rehabilitation | 7/10/20 – 01/06/21 | \$7,262.00            |
| 5. Dr. William S. Muir             | 7/23/20 – 7/14/22  | \$98,116.00           |
| 6. Pueblo Medical Imaging          | 7/30/20 – 9/12/20  | \$1,800.00            |
| 7. Anesthesia and Intensive Care   | 10/06/20 – 4/6/21  | \$5,000.00            |
| <b>TOTAL SPECIALS</b>              |                    | <b>\$140,981.00</b>   |
| <b>FUTURE MEDICAL SPECIALS</b>     |                    | <b>\$1,539,710.00</b> |

Plaintiff hereby reserves the right to supplement this Initial Disclosure List of Witnesses and Documents and/or the above computation of damages, should additional documentation or witnesses become known.

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**INSURANCE AGREEMENTS**

Plaintiff reserves the right to supplement this section as the discovery process continues.

DATED THIS 7<sup>th</sup> day of February, 2023.

**HICKS & BRASIER, PLLC**  
  
\_\_\_\_\_  
CHARLES S. JACKSON, ESQ.  
Nevada Bar No. 13158  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146  
*Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under  
3 penalty of perjury that I am an employee of HICKS & BRASIER, PLLC, and that on the 7<sup>th</sup> day  
4 of February, 2023, the foregoing **PLAINTIFF'S THIRD SUPPLEMENTAL EARLY CASE**  
5 **CONFERENCE LIST OF WITNESSES AND EXHIBITS PURSUANT TO N.R.C.P. 16.1**

6 a copy of which is attached hereto, was served via facsimile and U.S. Mail to all parties as  
7 follows:

8 M. Caleb Meyer, Esq.  
9 Renee M. Finch, Esq.  
10 Jason G. Martinez, Esq.  
11 MESSNER REEVES, LLP.  
12 8945 W. Russell Road, Suite 300  
13 Las Vegas, NV 89148  
14 *Attorneys for Defendants*

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An employee of HICKS & BRASIER PLLC

**EXHIBIT “H”**

**EXHIBIT “H”**



**SUPP**

BETSY C. JEFFERIS-AGUILAR, ESQ.

Nevada Bar No. 12980

**HICKS & BRASIER, PLLC**

2630 S. Jones Blvd.

Las Vegas, Nevada 89146

Phone: (702) 628-9888

Fax: (702) 960-4118

E-Mail: [baguilar@lvattorneys.com](mailto:baguilar@lvattorneys.com)

*Attorneys for Plaintiff*

**DISTRICT COURT**

**DISTRICT OF NEVADA**

JARED MOSS, individually,

Plaintiff,

vs.

SEAN EDWARD TOMESCO, individually;  
SECOND OPINION PLUMBING, LLC., a  
domestic limited liability company; DOES I  
through X, inclusive; ROE CORPORATIONS  
XI through XX, inclusive,

Defendants.

CASE NO.: A-21-840372-C

DEPT. NO.: 20

**PLAINTIFF'S FOURTH  
SUPPLEMENT TO EARLY CASE  
CONFERENCE LIST OF WITNESSES  
AND EXHIBITS PURSUANT TO  
N.R.C.P. 16.1**

Pursuant to NRCP 16.1, Plaintiff JARED MOSS, by and through his attorney, **BETSY C. JEFFERIS-AGUILAR, ESQ.**, of HICKS & BRASIER PLLC, hereby discloses Plaintiff's Fourth Supplement to Early Case Conference List of Witnesses and Exhibits Pursuant to N.R.C.P. 16.1. (new information is presented in bold print)

**LIST OF WITNESSES**

1. JARED MOSS  
c/o **Betsy C. Jefferis-Aguilar, Esq.**  
HICKS & BRASIER, PLLC  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146

Plaintiff is expected to testify regarding the facts and circumstances surrounding the subject incident and/or matters set forth in the pleading(s) filed in this matter.

1           2.       Sean Edward Tomesco, Defendant  
2                   c/o M. Caleb Meyer, Esq.  
3                   c/o Renee M. Finch, Esq.  
4                   c/o Christine L. Atwood, Esq.  
5                   MESSNER REEVES, LLP.  
                  8945 W. Russell Road, Suite 300  
                  Las Vegas, NV 89148

6           Defendant is expected to testify regarding the facts and circumstances surrounding the  
7 subject incident and/or matters set forth in the pleading(s) filed in this matter.

8           3.       NRCP 30(b)(6) Witness(es), Defendant, SECOND OPINION PLUMBING,  
9                   INC.  
10                  c/o M. Caleb Meyer, Esq.  
11                  c/o Renee M. Finch, Esq.  
12                  c/o Christine L. Atwood, Esq.  
                  MESSNER REEVES, LLP.  
                  8945 W. Russell Road, Suite 300  
                  Las Vegas, NV 89148

13          Defendant is expected to testify regarding the facts and circumstances surrounding the  
14 subject incident and/or matters set forth in the pleading(s) filed in this matter.

15          4.       Officer Paul Viray #9981  
16                  Las Vegas Metropolitan Police Department  
17                  400 South Martin Luther King Blvd., Las Vegas, Nevada 89106

18          Officer Paul Viray #9981 is one of the responding Officers and is expected to testify as  
19 to his knowledge of the facts and circumstances surrounding the subject incident and any and all  
20 investigations conducted by him relating to the same.

21          5.       Officer Bryan Meyer  
22                  Las Vegas Metropolitan Police Department  
                  400 South Martin Luther King Blvd., Las Vegas, Nevada 89106

23          Officer Bryan Meyer is one of the responding Officers and is expected to testify as to his  
24 knowledge of the facts and circumstances surrounding the subject incident and any and all  
25 investigations conducted by him relating to the same.

26          6.       NRCP 30(b)(6) Witness(es)  
27                  Las Vegas Metropolitan Police Department  
                  400 South Martin Luther King Blvd., Las Vegas, Nevada 89106  
28

1           The NRCP 30(b)(6) Witness(es) for the Las Vegas Metropolitan Police Department are  
2 expected to testify as to his/her knowledge of the facts and circumstances surrounding the  
3 subject incident and any and all reports or body camera footage obtained from the subject  
4 incident.

5           7.       Annabelle (Last Name Unknown)

6           This witness is expected to testify as to her knowledge and observations of Plaintiff  
7 before and after the subject incident.

8           8.       Julie Rohrer

9           This witness is expected to testify as to her knowledge and observations of Plaintiff  
10 before and after the subject incident.

11          9.       Jennifer Moss  
12               (702) 908-7907

13          This witness is a Plaintiff's wife and is expected to testify as to her knowledge of the  
14 facts and circumstances surrounding the subject incident. Her knowledge and observations of  
15 Plaintiff before and after the subject incident.

16          10.      Lorri Moss  
17               (702) 321-3320

18          This witness is a Plaintiff's mother and is expected to testify as to her knowledge of the  
19 facts and circumstances surrounding the subject incident. Her knowledge and observations of  
20 Plaintiff before and after the subject incident.

21          11.      Jim Moss  
22               (702) 232-4969

23          This witness is a Plaintiff's father and is expected to testify as to his knowledge of the  
24 facts and circumstances surrounding the subject incident. His knowledge and observations of  
25 Plaintiff before and after the subject incident.

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1           12.     Jessica Moss  
2                     (702) 338-3948

3           This witness is a Plaintiff's sister-in-law and is expected to testify as to her knowledge  
4 of the facts and circumstances surrounding the subject incident. Her knowledge and  
5 observations of Plaintiff before and after the subject incident.

6           13.     Kevin Moss  
7                     (702) 321-4192

8           This witness is a Plaintiff's brother and is expected to testify as to his knowledge of the  
9 facts and circumstances surrounding the subject incident. His knowledge and observations of  
10 Plaintiff before and after the subject incident.

11           14.     Daniel Quaranto  
12                     (702) 609-1255

13           This witness is a Plaintiff's boss and is expected to testify as to his knowledge of the  
14 facts and circumstances surrounding the subject incident. His knowledge and observations of  
15 Plaintiff before and after the subject incident.

16           15.     Jennifer Gum  
17                     (702) 510-5071

18           This witness is a Plaintiff's co-worker and is expected to testify as to his knowledge of  
19 the facts and circumstances surrounding the subject incident. His knowledge and observations  
20 of Plaintiff before and after the subject incident.

21           16.     Bradley Welch  
22                     (702) 443-1514

23           This witness is a Plaintiff's friend and is expected to testify as to his knowledge of the  
24 facts and circumstances surrounding the subject incident. His knowledge and observations of  
25 Plaintiff before and after the subject incident.

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1 visits (including physician charges), for Plaintiff's treatment were reasonable and customary.  
2 Debra Harman, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at  
3 Henderson Hospital is expected to testify that Plaintiff's injuries were caused by the subject  
4 motor vehicle collision involving Defendants on July 9, 2020.

5       2.       Jared T. Martin, D.O., and/or  
6               NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
7               Shadow Emergency Physicians  
8               P.O. Box 13917  
9               Philadelphia, PA 19101-3917

10       Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
11       at Shadow Emergency Physicians is one of Plaintiff's treating medical providers and is  
12       expected to testify to all of their opinions to a reasonable degree of medical probability. Jared T.  
13       Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Shadow  
14       Emergency Physicians is expected to testify to any and all opinions formed during their course  
15       of treatment of Plaintiff, to a reasonable degree of medical probability. Jared T. Martin, D.O.,  
16       and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Shadow Emergency  
17       Physicians is expected to testify that they reviewed the records of Plaintiff's medical providers  
18       during the course of treatment.

19       Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
20       at Shadow Emergency Physicians is expected to testify about the course of treatment for  
21       Plaintiff Jared Moss which included: physical examination, and review of subjective  
22       complaints.

23       Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
24       at Shadow Emergency Physicians is expected to testify that Plaintiff's treatment was medically  
25       reasonable and necessary and a result of the subject motor vehicle collision involving Defendant  
26       on July 9, 2020. Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
27       Records is expected to testify that the charges, which total \$1,335.00, for Shadow Emergency  
28       Physicians and all accompanying charges stemming from July 9, 2020, visit (including  
physician charges), for Plaintiff's treatment were reasonable and customary. Jared T. Martin,

1 D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Shadow Emergency  
2 Physicians is expected to testify that Plaintiff's injuries were caused by the subject motor  
3 vehicle collision involving Defendants on July 9, 2020.

4 3. Varun Mitroo, M.D., and/or  
5 Sudipkumar Bhanseri, M.D., and/or  
6 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
7 Desert Radiology  
8 P.O. Box 3057  
9 Indianapolis, IN 46206-3057

10 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP 30(b)(6)  
11 Witness(es) and/or Custodian of Records at Desert Radiology is one of Plaintiff's treating  
12 medical providers and is expected to testify to all of his opinions to a reasonable degree of  
13 medical probability. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP  
14 30(b)(6) Witness(es) and/or Custodian of Records at Desert Radiology, is expected to testify to  
15 any and all opinions formed during their course of treatment of Plaintiff, to a reasonable degree  
16 of medical probability. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP  
17 30(b)(6) Witness(es) and/or Custodian of Records at Desert Radiology, is expected to testify  
18 that they reviewed the records of Plaintiff's medical providers during the course of treatment.

19 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP 30(b)(6)  
20 Witness(es) and/or Custodian of Records at Desert Radiology is expected to testify about the  
21 course of treatment Plaintiff Jared Moss on, or about, July 9, 2020, which included: subjective  
22 reporting, objective observations and findings, diagnoses, and assessments.

23 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP 30(b)(6)  
24 Witness(es) and/or Custodian of Records Desert Radiology is expected to testify that Plaintiff's  
25 treatment was medically reasonable and necessary and a result of the subject motor vehicle  
26 collision involving Defendant on July 9, 2020. Varun Mitroo, M.D., and/or Sudipkumar  
27 Bhanseri, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Desert  
28 Radiology is expected to testify that the charges for Plaintiff's treatment, which totaled  
\$1,604.00, were reasonable and customary. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri,  
M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Desert Radiology is

1 expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
2 involving Defendant on July 9, 2020.

3 4. Alexander S. Janda, D.C., and/or  
4 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
5 Advanced Spine & Rehabilitation  
6 715 Mall Ring Circle, Suite 205  
7 Henderson, NV 89014

8 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
9 Records at Advanced Spine & Rehabilitation is one of Plaintiff's treating medical providers and  
10 is expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
11 to a reasonable degree of medical probability. Alexander S. Janda, D.C., and/or NRCP 30(b)(6)  
12 Witness(es) and/or Custodian of Records at Advanced Spine & Rehabilitation is expected to  
13 testify that they reviewed the records of Plaintiff's medical providers during the course of  
14 treatment.

15 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
16 Records is expected to testify about the course of treatment at Advanced Spine & Rehabilitation  
17 for Plaintiff Jared Moss, on, or about, March 29, 2021, which included an MRI of the cervical  
18 spine.

19 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
20 Records at Advanced Spine & Rehabilitation is expected to testify that Plaintiff's treatment was  
21 medically reasonable and necessary and a result of the subject motor vehicle collision involving  
22 Defendant on July 9, 2020. Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es)  
23 and/or Custodian of Records at Advanced Spine & Rehabilitation is expected to testify that the  
24 charges for Plaintiff's treatment, which totaled \$7,262.00, were reasonable and customary.  
25 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
26 Advanced Spine & Rehabilitation is expected to testify that Plaintiff's injuries were caused by  
27 the subject motor vehicle collision involving Defendant on July 9, 2020.

28 5. William Muir, M.D., and/or  
NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
653 N. Town Center Drive, Suite 210  
Las Vegas, NV 89144



1 William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
2 one of Plaintiff's treating medical providers and is expected to testify to any and all opinions  
3 formed during their course of treatment of Plaintiff, to a reasonable degree of medical  
4 probability. William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
5 Records is expected to testify that they reviewed the records of Plaintiff's medical providers  
6 during the course of treatment.  
7

8 William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
9 expected to testify about the course of treatment for Plaintiff Jared Moss, on, or about, July 23,  
10 2021, through July 14, 2022, which included: subjective reporting, objective observations and  
11 findings, diagnoses, and assessments.

12 William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
13 expected to testify that Plaintiff's treatment was medically reasonable and necessary and a result  
14 of the subject motor vehicle collision involving Defendant on July 9, 2020. William Muir,  
15 M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is expected to testify that  
16 the charges for Plaintiff's treatment, which totaled \$98,116.00, were reasonable and customary.  
17 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records is  
18 expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
19 involving Defendant on July 9, 2020.

20 6. Justin Puopolo, D.O., and/or  
21 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
22 Pueblo Medical Imaging  
8551 W. Lake Mead Blvd., Suite 150  
Las Vegas, NV 89128

23 Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
24 Pueblo Medical Imaging is one of Plaintiff's treating medical providers and is expected to  
25 testify to any and all opinions formed during their course of treatment of Plaintiff, to a  
26 reasonable degree of medical probability. Justin Puopolo, D.O., and/or NRCP 30(b)(6)  
27 Witness(es) and/or Custodian of Records at Pueblo Medical Imaging is expected to testify that  
28 they reviewed the records of Plaintiff's medical providers during the course of treatment.

1 Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
2 expected to testify about the course of treatment at Pueblo Medical Imaging for Plaintiff Jared  
3 Moss, on, or about, July 30, 2020, and September 12, 2020, which included X-ray of the right  
4 knee.

5 Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
6 Pueblo Medical Imaging is expected to testify that Plaintiff's treatment was medically  
7 reasonable and necessary and a result of the subject motor vehicle collision involving Defendant  
8 on July 9, 2020. Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
9 Records at Pueblo Medical Imaging is expected to testify that the charges for Plaintiff's  
10 treatment, which totaled \$1,800.00, were reasonable and customary. Justin Puopolo, D.O.,  
11 and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Pueblo Medical Imaging is  
12 expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
13 involving Defendant on July 9, 2020.

14 7. Brian Hager, D.O., and/or  
15 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
16 Anesthesia and Intensive Care Specialist  
17 P.O. Box 30102 Dept. 317  
Salt Lake City, UT 84130-0102

18 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
19 Anesthesia and Intensive Care Specialist is one of Plaintiff's treating medical providers and is  
20 expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
21 to a reasonable degree of medical probability. Brian Hager, D.O., and/or NRCP 30(b)(6)  
22 Witness(es) and/or Custodian of Records at Anesthesia and Intensive Care Specialist is  
23 expected to testify that they reviewed the records of Plaintiff's medical providers during the  
24 course of treatment.

25 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
26 expected to testify about the course of treatment at Anesthesia and Intensive Care Specialist for  
27 Plaintiff Jared Moss, on, or about, July 30, 2020, and September 12, 2020, which included:  
28 subjective reporting, objective observations and findings, diagnoses, and assessments.

1 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records of  
2 Anesthesia and Intensive Care Specialist is expected to testify that Plaintiff's treatment was  
3 medically reasonable and necessary and a result of the subject motor vehicle collision involving  
4 Defendant on July 9, 2020. Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or  
5 Custodian of Records at Anesthesia and Intensive Care Specialist is expected to testify that the  
6 charges for Plaintiff's treatment, which totaled \$1,750.00, were reasonable and customary.  
7 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
8 Anesthesia and Intensive Care is expected to testify that Plaintiff's injuries were caused by the  
9 subject motor vehicle collision involving Defendant on July 9, 2020.

10 The aforementioned medical care providers will opine regarding future treatment,  
11 including but not limited to, spinal cord stimulators, chiropractic care, physical therapy,  
12 rehabilitative care, fusion surgery, and/or therapeutic and/or diagnostic injections of the facets,  
13 nerve roots, and/or medial branches. Said doctors will also opine regarding other pain  
14 management procedures such as radiofrequency ablations, occipital blocks and any other  
15 foreseeable medical treatment. Said doctors will also opine regarding all of the treatment in  
16 this case as it pertains to defending their opinions, to include any and all medical treatment as a  
17 result of the incident at issue, any and all medical treatment prior to the incident at issue, any  
18 and all depositions of other medical providers or defense experts, and any and all defense  
19 medical reports prepared to attack said doctors' opinions.

20 Plaintiff reserves the right to call as potential experts any and all examining and/or  
21 treating physicians and/or psychiatrists and/or any health care professionals to testify  
22 concerning any and all aspects of the case, including the issues of standard of care, causation  
23 and damages. Any witness identified by any other party to this action.

24 CUSTODIAN OF RECORDS for all treating physicians and medical providers listed  
25 by Plaintiff herein and supplements hereto, are expected to testify as to the medical treatment  
26 and resulting bills provided to the Plaintiff.

27 NRCP 30(B)(6) WITNESS(ES) for all medical facilities and treating physicians listed  
28 by Plaintiff herein and supplements hereto, are expected to testify as expert witnesses about the

1 injuries sustained by Plaintiff and the past, present and future medical treatment, bills, injuries,  
2 past and future pain, suffering, disfigurement and disability as a result of this incident.

3 Plaintiff hereby reserves the right to call any and all witnesses identified by any  
4 Defendant or any other parties to this action at the time of trial of this matter.

5 All witnesses identified during discovery and or deposed during discovery of this  
6 litigation.

7 Rebuttal and/or impeachment witnesses.

8 Medical, biomechanical, economic, vocational and accident reconstruction experts  
9 unknown at this time.

### 10 **LIST OF DOCUMENTS**

- 11 1. Medical and billing records from Henderson Hospital. Bates Stamped Nos.  
12 HH00001 – HH00079.
- 13 2. Medical billing records from Shadow Emergency Physicians. Bates Stamped  
14 Nos. SER00001.
- 15 3. Medical billing records from Desert Radiology. Bates Stamped Nos. DR00001  
16 – DR00003.
- 17 4. Medical and billing records from Advanced Spine Rehabilitation. Bates  
18 Stamped Nos. ASR00001 – ASR00211.
- 19 5. Medical and billing records from Dr. William Muir. Bates Stamped Nos.  
20 WM00001 – WM00113; WM00114-WM00142.
- 21 6. Medical and billing records from Pueblo Medical Imaging. Bates Stamped Nos.  
22 PMI00001 – PMI00018.
- 23 7. Medical and billing records from Anesthesia & Intensive Care. Bates Stamped  
24 Nos. AIC00001 – AIC00010.
- 25 8. Life Care Plan by Dr. William Muir. Bates Stamped Nos. LCP00001 –  
26 LCP00015; LCP00016-LCP00028.
- 27 9. Traffic Accident Report. Bates Stamped Nos. TAR00001 – TAR00008.
- 28 10. Disc containing 911 audio calls regarding subject incident. (Sent by U.S. mail).

11. Body Cam Footage from LVMPD (sent via email).

**12. Plaintiff's Notes from Deposition, NOTE0001**

All exhibits listed by any other party to this litigation.

All documents identified during discovery in this litigation.

All pleadings filed in the case.

All responses to any Interrogatories and/or Request for Admissions by any Defendant in this litigation.

All depositions including exhibits.

Rebuttal and/or impeachment documents.

**COMPUTATION OF SPECIALS / DAMAGES**

| PROVIDER                           | DATE OF SERVICE    | AMOUNT                |
|------------------------------------|--------------------|-----------------------|
| 1. Henderson Hospital              | 07/09/2020         | \$25,864.00           |
| 2. Shadow Emergency Physicians     | 07/09/2020         | \$1,335.00            |
| 3. Desert Radiology                | 07/09/20           | \$1,604.00            |
| 4. Advanced Spine & Rehabilitation | 7/10/20 – 01/06/21 | \$7,262.00            |
| 5. Dr. William S. Muir             | 7/23/20 – 7/14/22  | \$98,116.00           |
| 6. Pueblo Medical Imaging          | 7/30/20 – 9/12/20  | \$1,800.00            |
| 7. Anesthesia and Intensive Care   | 10/06/20 – 4/6/21  | \$5,000.00            |
| <b>TOTAL SPECIALS</b>              |                    | <b>\$140,981.00</b>   |
| <b>FUTURE MEDICAL SPECIALS</b>     |                    | <b>\$1,539,710.00</b> |

Plaintiff hereby reserves the right to supplement this Initial Disclosure List of Witnesses and Documents and/or the above computation of damages, should additional documentation or witnesses become known.

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**INSURANCE AGREEMENTS**

Plaintiff reserves the right to supplement this section as the discovery process continues.

DATED THIS 21st day of February, 2023.

**HICKS & BRASIER, PLLC**  
  
/s/ Betsy C. Jefferis-Aguilar  
BETSY C. JEFFERIS-AGUILAR, ESQ.  
Nevada Bar No. 12980  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146  
*Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under  
3 penalty of perjury that I am an employee of HICKS & BRASIER, PLLC, and that on the 21st  
4 day of February, 2023, the foregoing **PLAINTIFF'S FOURTH SUPPLEMENTAL EARLY**  
5 **CASE CONFERENCE LIST OF WITNESSES AND EXHIBITS PURSUANT TO**  
6 **N.R.C.P. 16.1** a copy of which is attached hereto, was served via facsimile and U.S. Mail to all  
7 parties as follows:

8 M. Caleb Meyer, Esq.  
9 Renee M. Finch, Esq.  
10 Jason G. Martinez, Esq.  
11 MESSNER REEVES, LLP.  
12 8945 W. Russell Road, Suite 300  
13 Las Vegas, NV 89148  
14 *Attorneys for Defendants*

15 /s/ Alyssa Malavong  
16 An employee of HICKS & BRASIER PLLC  
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**EXHIBIT “I”**

**EXHIBIT “I”**



**SUPP**

BETSY C. JEFFERIS-AGUILAR, ESQ.

Nevada Bar No. 12980

**HICKS & BRASIER, PLLC**

2630 S. Jones Blvd.

Las Vegas, Nevada 89146

Phone: (702) 628-9888

Fax: (702) 960-4118

E-Mail: [baguilar@lvattorneys.com](mailto:baguilar@lvattorneys.com)

*Attorneys for Plaintiff*

**DISTRICT COURT**

**DISTRICT OF NEVADA**

JARED MOSS, individually,

Plaintiff,

vs.

SEAN EDWARD TOMESCO, individually;  
SECOND OPINION PLUMBING, LLC., a  
domestic limited liability company; DOES I  
through X, inclusive; ROE CORPORATIONS  
XI through XX, inclusive,

Defendants.

CASE NO.: A-21-840372-C

DEPT. NO.: 20

**PLAINTIFF'S FIFTH SUPPLEMENT  
TO EARLY CASE CONFERENCE  
LIST OF WITNESSES AND  
EXHIBITS PURSUANT TO N.R.C.P.  
16.1**

Pursuant to NRCP 16.1, Plaintiff JARED MOSS, by and through his attorney, BETSY C. JEFFERIS-AGUILAR, ESQ., of HICKS & BRASIER PLLC, hereby discloses Plaintiff's Fifth Supplement to Early Case Conference List of Witnesses and Exhibits Pursuant to N.R.C.P.

**16.1. (new information is presented in bold print)**

**LIST OF WITNESSES**

1. JARED MOSS  
c/o Betsy C. Jefferis-Aguilar, Esq.  
HICKS & BRASIER, PLLC  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146

Plaintiff is expected to testify regarding the facts and circumstances surrounding the subject incident and/or matters set forth in the pleading(s) filed in this matter.

1           2.       Sean Edward Tomesco, Defendant  
2                   c/o M. Caleb Meyer, Esq.  
3                   c/o Renee M. Finch, Esq.  
4                   **c/o Jason G. Martinez, Esq.**  
5                   MESSNER REEVES, LLP.  
                  8945 W. Russell Road, Suite 300  
                  Las Vegas, NV 89148

6           Defendant is expected to testify regarding the facts and circumstances surrounding the  
7 subject incident and/or matters set forth in the pleading(s) filed in this matter.

8           3.       NRCP 30(b)(6) Witness(es), Defendant, SECOND OPINION PLUMBING,  
9                   INC.  
10                  c/o M. Caleb Meyer, Esq.  
11                  c/o Renee M. Finch, Esq.  
12                  **c/o Jason G. Martinez, Esq.**  
                  MESSNER REEVES, LLP.  
                  8945 W. Russell Road, Suite 300  
                  Las Vegas, NV 89148

13          Defendant is expected to testify regarding the facts and circumstances surrounding the  
14 subject incident and/or matters set forth in the pleading(s) filed in this matter.

15          4.       Officer Paul Viray #9981  
16                   Las Vegas Metropolitan Police Department  
17                   400 South Martin Luther King Blvd., Las Vegas, Nevada 89106

18          Officer Paul Viray #9981 is one of the responding Officers and is expected to testify as  
19 to his knowledge of the facts and circumstances surrounding the subject incident and any and all  
20 investigations conducted by him relating to the same.

21          5.       Officer Bryan Meyer  
22                   Las Vegas Metropolitan Police Department  
                  400 South Martin Luther King Blvd., Las Vegas, Nevada 89106

23          Officer Bryan Meyer is one of the responding Officers and is expected to testify as to his  
24 knowledge of the facts and circumstances surrounding the subject incident and any and all  
25 investigations conducted by him relating to the same.

26          6.       NRCP 30(b)(6) Witness(es)  
27                   Las Vegas Metropolitan Police Department  
28                   400 South Martin Luther King Blvd., Las Vegas, Nevada 89106

1           The NRCP 30(b)(6) Witness(es) for the Las Vegas Metropolitan Police Department are  
2 expected to testify as to his/her knowledge of the facts and circumstances surrounding the  
3 subject incident and any and all reports or body camera footage obtained from the subject  
4 incident.

5           7.       Annabelle (Last Name Unknown)

6           This witness is expected to testify as to her knowledge and observations of Plaintiff  
7 before and after the subject incident.

8           8.       Julie Rohrer

9           This witness is expected to testify as to her knowledge and observations of Plaintiff  
10 before and after the subject incident.

11          9.       Jennifer Moss  
12               (702) 908-7907

13          This witness is a Plaintiff's wife and is expected to testify as to her knowledge of the  
14 facts and circumstances surrounding the subject incident. Her knowledge and observations of  
15 Plaintiff before and after the subject incident.

16          10.      Lorri Moss  
17               (702) 321-3320

18          This witness is a Plaintiff's mother and is expected to testify as to her knowledge of the  
19 facts and circumstances surrounding the subject incident. Her knowledge and observations of  
20 Plaintiff before and after the subject incident.

21          11.      Jim Moss  
22               (702) 232-4969

23          This witness is a Plaintiff's father and is expected to testify as to his knowledge of the  
24 facts and circumstances surrounding the subject incident. His knowledge and observations of  
25 Plaintiff before and after the subject incident.

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1           12.     Jessica Moss  
2                     (702) 338-3948

3           This witness is a Plaintiff's sister-in-law and is expected to testify as to her knowledge  
4 of the facts and circumstances surrounding the subject incident. Her knowledge and  
5 observations of Plaintiff before and after the subject incident.

6           13.     Kevin Moss  
7                     (702) 321-4192

8           This witness is a Plaintiff's brother and is expected to testify as to his knowledge of the  
9 facts and circumstances surrounding the subject incident. His knowledge and observations of  
10 Plaintiff before and after the subject incident.

11           14.     Daniel Quaranto  
12                     (702) 609-1255

13           This witness is a Plaintiff's boss and is expected to testify as to his knowledge of the  
14 facts and circumstances surrounding the subject incident. His knowledge and observations of  
15 Plaintiff before and after the subject incident.

16           15.     Jennifer Gum  
17                     (702) 510-5071

18           This witness is a Plaintiff's co-worker and is expected to testify as to his knowledge of  
19 the facts and circumstances surrounding the subject incident. His knowledge and observations  
20 of Plaintiff before and after the subject incident.

21           16.     Bradley Welch  
22                     (702) 443-1514

23           This witness is a Plaintiff's friend and is expected to testify as to his knowledge of the  
24 facts and circumstances surrounding the subject incident. His knowledge and observations of  
25 Plaintiff before and after the subject incident.

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1           **17. William S. Muir, M.D.**  
2                   **653 N. Town Center Dr. #210**  
3                   **Las Vegas, NV 89144**  
                  **(702) 254-3020**

4           **Dr. Muir is Plaintiff's treating physician and is expected, but not limited to testify**  
5 **to a degree of medical probability to the opinions outlined in his records, to any**  
6 **additional opinions that result from the Plaintiff's continued treatment and will testify**  
7 **and give opinions regarding the care and treatment of the Plaintiff. His testimony and**  
8 **opinions will consist of the nature of the Plaintiff's injuries, Plaintiff's diagnosis and**  
9 **prognosis, the necessity of the medical treatment rendered, the necessity of future**  
10 **treatment to be rendered, and/or his opinion as to past and future restrictions of**  
11 **activities, including work activities, causally related to the Plaintiff's motor vehicle**  
12 **incident of July 9, 2020. Dr. Muir's testimony will also include authenticity of medical**  
13 **records, the cost of past and future medical care, the reasonableness of such costs, and**  
14 **that those medical costs are reasonable and customary for this community. His testimony**  
15 **will also address any referrals made to other providers and the billing and treatment of**  
16 **same; including any surgical recommendations. His testimony will also include opinions**  
17 **as to whether the Plaintiff has a diminished work life expectancy as a result of the subject**  
18 **incident. Dr. Muir will testify in accordance with his medical chart and regarding**  
19 **documents reviewed outside his medical chart; including the reports of retained defense**  
20 **experts; any additional medical experts designated by the defendants; and medical**  
21 **records produced throughout litigation in the course of providing treatment and/or**  
22 **defending his treatment and opinions against the criticisms of experts retained by the**  
23 **Defendant. The bases of Dr. Muir's opinions include, but are not limited to, his**  
24 **education, training and experience, the nature of the traumas Plaintiff was subjected to**  
25 **because of Defendants' negligence, Plaintiff's history, Plaintiff's symptoms, the diagnostic**  
26 **tests performed, his examinations of Plaintiff and his review of Plaintiff's medical and**  
27 **billing records, diagnostic tests, procedures, surgeries, medications and medical**  
28 **equipment.**

1           **18.     Trooper Michael J. Walters**  
2                     **4615 West Sunset Road**  
3                     **Las Vegas, NV 89118**  
                      **(702) 301-2889**

4           **Mr. Walters is a ten-year veteran of the Nevada Highway Patrol and is expected to**  
5 **testify as to his opinions in his report regarding his analysis and observations, including**  
6 **but not limited to his visit to the intersection where the subject crash occurred.**

7                             **PLAINTIFF'S HEALTH CARE PROVIDERS**

8           1.       Jared T. Martin, D.O., and/or  
9                     Brandon Purser, R.N., and/or  
10                    Sudipkumar K. Bhanderi, and/or  
11                    NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
12                    Henderson Hospital  
                      1050 W. Galleria Drive  
                      Henderson, NV 89011

13           Jared T. Martin, D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi,  
14 and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Henderson Hospital is one of  
15 Plaintiff's treating medical providers and is expected to testify to all of their opinions to a  
16 reasonable degree of medical probability. Jared T. Martin, D.O., and/or Brandon Purser, R.N.,  
17 and/or Sudipkumar K. Bhanderi, and/or Person(s) Most Knowledgeable and/or Custodian of  
18 Records at Henderson Hospital is expected to testify to any and all opinions formed during their  
19 course of treatment of Plaintiff, to a reasonable degree of medical probability. Jared T. Martin,  
20 D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi, and/or Person(s) Most  
21 Knowledgeable and/or Custodian of Records at Henderson Hospital is expected to testify that  
22 they reviewed the records of Plaintiff's medical providers during the course of treatment.

23           Jared T. Martin, D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi,  
24 and/or NRCP 30(b)(6) Witness(es) and/or Custodian is expected to testify about the course of  
25 treatment at Henderson Hospital for Plaintiff Jared Moss on, or about, July 9, 2020, which  
26 included: physical examination, review of subjective complaints, and Jared Moss's reports of  
27 mechanism of injuries.  
28

1           Jared T. Martin, D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi,  
2 and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Henderson Hospital is  
3 expected to testify that Plaintiff's treatment was medically reasonable and necessary and a result  
4 of the subject motor vehicle collision involving Defendant on July 9, 2020 Jared T. Martin,  
5 D.O., and/or Brandon Purser, R.N., and/or Sudipkumar K. Bhanderi, and/or NRCP 30(b)(6)  
6 Witness(es) and/or Custodian of Records is expected to testify that the charges, which total  
7 \$28,864.00, for Henderson Hospital and all accompanying charges stemming on July 9, 2020,  
8 visits (including physician charges), for Plaintiff's treatment were reasonable and customary.  
9 Debra Harman, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records at  
10 Henderson Hospital is expected to testify that Plaintiff's injuries were caused by the subject  
11 motor vehicle collision involving Defendants on July 9, 2020.

12           2.       Jared T. Martin, D.O., and/or  
13                   NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
14                   Shadow Emergency Physicians  
15                   P.O. Box 13917  
16                   Philadelphia, PA 19101-3917

17           Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
18 at Shadow Emergency Physicians is one of Plaintiff's treating medical providers and is  
19 expected to testify to all of their opinions to a reasonable degree of medical probability. Jared T.  
20 Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Shadow  
21 Emergency Physicians is expected to testify to any and all opinions formed during their course  
22 of treatment of Plaintiff, to a reasonable degree of medical probability. Jared T. Martin, D.O.,  
23 and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Shadow Emergency  
24 Physicians is expected to testify that they reviewed the records of Plaintiff's medical providers  
25 during the course of treatment.

26           Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
27 at Shadow Emergency Physicians is expected to testify about the course of treatment for  
28 Plaintiff Jared Moss which included: physical examination, and review of subjective  
complaints.

1           Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
2 at Shadow Emergency Physicians is expected to testify that Plaintiff's treatment was medically  
3 reasonable and necessary and a result of the subject motor vehicle collision involving Defendant  
4 on July 9, 2020. Jared T. Martin, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
5 Records is expected to testify that the charges, which total \$1,335.00, for Shadow Emergency  
6 Physicians and all accompanying charges stemming from July 9, 2020, visit (including  
7 physician charges), for Plaintiff's treatment were reasonable and customary. Jared T. Martin,  
8 D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Shadow Emergency  
9 Physicians is expected to testify that Plaintiff's injuries were caused by the subject motor  
10 vehicle collision involving Defendants on July 9, 2020.

11           3.       Varun Mitroo, M.D., and/or  
12                   Sudipkumar Bhanseri, M.D., and/or  
13                   NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
14                   Desert Radiology  
                    P.O. Box 3057  
                    Indianapolis, IN 46206-3057

15           Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP 30(b)(6)  
16 Witness(es) and/or Custodian of Records at Desert Radiology is one of Plaintiff's treating  
17 medical providers and is expected to testify to all of his opinions to a reasonable degree of  
18 medical probability. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP  
19 30(b)(6) Witness(es) and/or Custodian of Records at Desert Radiology, is expected to testify to  
20 any and all opinions formed during their course of treatment of Plaintiff, to a reasonable degree  
21 of medical probability. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP  
22 30(b)(6) Witness(es) and/or Custodian of Records at Desert Radiology, is expected to testify  
23 that they reviewed the records of Plaintiff's medical providers during the course of treatment.

24           Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP 30(b)(6)  
25 Witness(es) and/or Custodian of Records at Desert Radiology is expected to testify about the  
26 course of treatment Plaintiff Jared Moss on, or about, July 9, 2020, which included: subjective  
27 reporting, objective observations and findings, diagnoses, and assessments.  
28



1 Varun Mitroo, M.D., and/or Sudipkumar Bhanseri, M.D., and/or NRCP 30(b)(6)  
2 Witness(es) and/or Custodian of Records Desert Radiology is expected to testify that Plaintiff's  
3 treatment was medically reasonable and necessary and a result of the subject motor vehicle  
4 collision involving Defendant on July 9, 2020. Varun Mitroo, M.D., and/or Sudipkumar  
5 Bhanseri, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Desert  
6 Radiology is expected to testify that the charges for Plaintiff's treatment, which totaled  
7 \$1,604.00, were reasonable and customary. Varun Mitroo, M.D., and/or Sudipkumar Bhanseri,  
8 M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Desert Radiology is  
9 expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
10 involving Defendant on July 9, 2020.

11 4. Alexander S. Janda, D.C., and/or  
12 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
13 Advanced Spine & Rehabilitation  
14 715 Mall Ring Circle, Suite 205  
Henderson, NV 89014

15 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
16 Records at Advanced Spine & Rehabilitation is one of Plaintiff's treating medical providers and  
17 is expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
18 to a reasonable degree of medical probability. Alexander S. Janda, D.C., and/or NRCP 30(b)(6)  
19 Witness(es) and/or Custodian of Records at Advanced Spine & Rehabilitation is expected to  
20 testify that they reviewed the records of Plaintiff's medical providers during the course of  
21 treatment.

22 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
23 Records is expected to testify about the course of treatment at Advanced Spine & Rehabilitation  
24 for Plaintiff Jared Moss, on, or about, March 29, 2021, which included an MRI of the cervical  
25 spine.

26 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
27 Records at Advanced Spine & Rehabilitation is expected to testify that Plaintiff's treatment was  
28 medically reasonable and necessary and a result of the subject motor vehicle collision involving

1 Defendant on July 9, 2020. Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es)  
2 and/or Custodian of Records at Advanced Spine & Rehabilitation is expected to testify that the  
3 charges for Plaintiff's treatment, which totaled \$7,262.00, were reasonable and customary.  
4 Alexander S. Janda, D.C., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
5 Advanced Spine & Rehabilitation is expected to testify that Plaintiff's injuries were caused by  
6 the subject motor vehicle collision involving Defendant on July 9, 2020.

7 5. William Muir, M.D., and/or  
8 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
9 653 N. Town Center Drive, Suite 210  
Las Vegas, NV 89144

10 William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
11 one of Plaintiff's treating medical providers and is expected to testify to any and all opinions  
12 formed during their course of treatment of Plaintiff, to a reasonable degree of medical  
13 probability. William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
14 Records is expected to testify that they reviewed the records of Plaintiff's medical providers  
15 during the course of treatment.

16 William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
17 expected to testify about the course of treatment for Plaintiff Jared Moss, on, or about, July 23,  
18 2021, through July 14, 2022, which included: subjective reporting, objective observations and  
19 findings, diagnoses, and assessments.

20 William Muir, M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
21 expected to testify that Plaintiff's treatment was medically reasonable and necessary and a result  
22 of the subject motor vehicle collision involving Defendant on July 9, 2020. William Muir,  
23 M.D., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is expected to testify that  
24 the charges for Plaintiff's treatment, which totaled \$98,116.00, were reasonable and customary.  
25 William Muir, M.D., and/or Person(s) Most Knowledgeable and/or Custodian of Records is  
26 expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
27 involving Defendant on July 9, 2020.

28 6. Justin Puopolo, D.O., and/or

1 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
2 Pueblo Medical Imaging  
3 8551 W. Lake Mead Blvd., Suite 150  
Las Vegas, NV 89128

4 Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
5 Pueblo Medical Imaging is one of Plaintiff's treating medical providers and is expected to  
6 testify to any and all opinions formed during their course of treatment of Plaintiff, to a  
7 reasonable degree of medical probability. Justin Puopolo, D.O., and/or NRCP 30(b)(6)  
8 Witness(es) and/or Custodian of Records at Pueblo Medical Imaging is expected to testify that  
9 they reviewed the records of Plaintiff's medical providers during the course of treatment.

10 Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
11 expected to testify about the course of treatment at Pueblo Medical Imaging for Plaintiff Jared  
12 Moss, on, or about, July 30, 2020, and September 12, 2020, which included X-ray of the right  
13 knee.

14 Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records  
15 Pueblo Medical Imaging is expected to testify that Plaintiff's treatment was medically  
16 reasonable and necessary and a result of the subject motor vehicle collision involving Defendant  
17 on July 9, 2020. Justin Puopolo, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of  
18 Records at Pueblo Medical Imaging is expected to testify that the charges for Plaintiff's  
19 treatment, which totaled \$1,800.00, were reasonable and customary. Justin Puopolo, D.O.,  
20 and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at Pueblo Medical Imaging is  
21 expected to testify that Plaintiff's injuries were caused by the subject motor vehicle collision  
22 involving Defendant on July 9, 2020.

23 7. Brian Hager, D.O., and/or  
24 NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
25 Anesthesia and Intensive Care Specialist  
26 P.O. Box 30102 Dept. 317  
Salt Lake City, UT 84130-0102

27 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
28 Anesthesia and Intensive Care Specialist is one of Plaintiff's treating medical providers and is

1 expected to testify to any and all opinions formed during their course of treatment of Plaintiff,  
2 to a reasonable degree of medical probability. Brian Hager, D.O., and/or NRCP 30(b)(6)  
3 Witness(es) and/or Custodian of Records at Anesthesia and Intensive Care Specialist is  
4 expected to testify that they reviewed the records of Plaintiff's medical providers during the  
5 course of treatment.

6 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records is  
7 expected to testify about the course of treatment at Anesthesia and Intensive Care Specialist for  
8 Plaintiff Jared Moss, on, or about, July 30, 2020, and September 12, 2020, which included:  
9 subjective reporting, objective observations and findings, diagnoses, and assessments.

10 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records of  
11 Anesthesia and Intensive Care Specialist is expected to testify that Plaintiff's treatment was  
12 medically reasonable and necessary and a result of the subject motor vehicle collision involving  
13 Defendant on July 9, 2020. Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or  
14 Custodian of Records at Anesthesia and Intensive Care Specialist is expected to testify that the  
15 charges for Plaintiff's treatment, which totaled \$1,750.00, were reasonable and customary.  
16 Brian Hager, D.O., and/or NRCP 30(b)(6) Witness(es) and/or Custodian of Records at  
17 Anesthesia and Intensive Care is expected to testify that Plaintiff's injuries were caused by the  
18 subject motor vehicle collision involving Defendant on July 9, 2020.

19 The aforementioned medical care providers will opine regarding future treatment,  
20 including but not limited to, spinal cord stimulators, chiropractic care, physical therapy,  
21 rehabilitative care, fusion surgery, and/or therapeutic and/or diagnostic injections of the facets,  
22 nerve roots, and/or medial branches. Said doctors will also opine regarding other pain  
23 management procedures such as radiofrequency ablations, occipital blocks and any other  
24 foreseeable medical treatment. Said doctors will also opine regarding all of the treatment in  
25 this case as it pertains to defending their opinions, to include any and all medical treatment as a  
26 result of the incident at issue, any and all medical treatment prior to the incident at issue, any  
27 and all depositions of other medical providers or defense experts, and any and all defense  
28 medical reports prepared to attack said doctors' opinions.

1 Plaintiff reserves the right to call as potential experts any and all examining and/or  
2 treating physicians and/or psychiatrists and/or any health care professionals to testify  
3 concerning any and all aspects of the case, including the issues of standard of care, causation  
4 and damages. Any witness identified by any other party to this action.

5 CUSTODIAN OF RECORDS for all treating physicians and medical providers listed  
6 by Plaintiff herein and supplements hereto, are expected to testify as to the medical treatment  
7 and resulting bills provided to the Plaintiff.

8 NRCP 30(B)(6) WITNESS(ES) for all medical facilities and treating physicians listed  
9 by Plaintiff herein and supplements hereto, are expected to testify as expert witnesses about the  
10 injuries sustained by Plaintiff and the past, present and future medical treatment, bills, injuries,  
11 past and future pain, suffering, disfigurement and disability as a result of this incident.

12 Plaintiff hereby reserves the right to call any and all witnesses identified by any  
13 Defendant or any other parties to this action at the time of trial of this matter.

14 All witnesses identified during discovery and or deposed during discovery of this  
15 litigation.

16 Rebuttal and/or impeachment witnesses.

17 Medical, biomechanical, economic, vocational and accident reconstruction experts  
18 unknown at this time.

#### 19 **LIST OF DOCUMENTS**

- 20 1. Medical and billing records from Henderson Hospital. Bates Stamped Nos.  
21 HH00001 – HH00079.
- 22 2. Medical billing records from Shadow Emergency Physicians. Bates Stamped  
23 Nos. SER00001.
- 24 3. Medical billing records from Desert Radiology. Bates Stamped Nos. DR00001  
25 – DR00003.
- 26 4. Medical and billing records from Advanced Spine Rehabilitation. Bates  
27 Stamped Nos. ASR00001 – ASR00211.  
28

5. Medical and billing records from Dr. William Muir. Bates Stamped Nos. WM00001 – WM00113; WM00114-WM00142.
6. Medical and billing records from Pueblo Medical Imaging. Bates Stamped Nos. PMI00001 – PMI00018.
7. Medical and billing records from Anesthesia & Intensive Care. Bates Stamped Nos. AIC00001 – AIC00010.
8. Life Care Plan by Dr. William Muir. Bates Stamped Nos. LCP00001 – LCP00015; LCP00016-LCP00028.
9. Traffic Accident Report. Bates Stamped Nos. TAR00001 – TAR00008.
10. Disc containing 911 audio calls regarding subject incident. (Sent by U.S. mail).
11. Body Cam Footage from LVMPD (sent via email).
12. Plaintiff's Notes from Deposition, NOTE0001
13. **William S. Muir, MD's Curriculum Vitae, Testimony List and Fee Schedule, Bates Stamped Nos. MUIR0001-MUIR0026.**
14. **Michael J. Walters' Curriculum Vitae, Testimony List and Fee Schedule, Bates Stamped Nos. MJW0001-MJW0006.**
15. **Michael J. Walters' Expert Report, Bates Stamped Nos. MJW0007-MJW0023.**

All exhibits listed by any other party to this litigation.

All documents identified during discovery in this litigation.

All pleadings filed in the case.

All responses to any Interrogatories and/or Request for Admissions by any Defendant in this litigation.

All depositions including exhibits.

Rebuttal and/or impeachment documents.

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**COMPUTATION OF SPECIALS / DAMAGES**

| PROVIDER                           | DATE OF SERVICE    | AMOUNT                |
|------------------------------------|--------------------|-----------------------|
| 1. Henderson Hospital              | 07/09/2020         | \$25,864.00           |
| 2. Shadow Emergency Physicians     | 07/09/2020         | \$1,335.00            |
| 3. Desert Radiology                | 07/09/20           | \$1,604.00            |
| 4. Advanced Spine & Rehabilitation | 7/10/20 – 01/06/21 | \$7,262.00            |
| 5. Dr. William S. Muir             | 7/23/20 – 7/14/22  | <b>\$89,706.00</b>    |
| 6. Pueblo Medical Imaging          | 7/30/20 – 9/12/20  | \$1,800.00            |
| 7. Anesthesia and Intensive Care   | 10/06/20 – 4/6/21  | \$5,000.00            |
| <b>TOTAL SPECIALS</b>              |                    | <b>\$132,571.00</b>   |
| <b>FUTURE MEDICAL SPECIALS</b>     |                    | <b>\$1,539,710.00</b> |

Plaintiff hereby reserves the right to supplement this Initial Disclosure List of Witnesses and Documents and/or the above computation of damages, should additional documentation or witnesses become known.

**INSURANCE AGREEMENTS**

Plaintiff reserves the right to supplement this section as the discovery process continues.

DATED THIS 18th day of April, 2023.

**HICKS & BRASIER, PLLC**

/s/ Betsy C. Jefferis-Aguilar  
BETSY C. JEFFERIS-AGUILAR, ESQ.  
Nevada Bar No. 12980  
2630 S. Jones Blvd.  
Las Vegas, Nevada 89146  
*Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under  
3 penalty of perjury that I am an employee of HICKS & BRASIER, PLLC, and that on the 18th  
4 day of April, 2023, the foregoing **PLAINTIFF'S FIFTH SUPPLEMENTAL EARLY CASE**  
5 **CONFERENCE LIST OF WITNESSES AND EXHIBITS PURSUANT TO N.R.C.P. 16.1**

6 a copy of which is attached hereto, was served via facsimile and U.S. Mail to all parties as  
7 follows:

8 M. Caleb Meyer, Esq.  
9 Renee M. Finch, Esq.  
10 Jason G. Martinez, Esq.  
11 MESSNER REEVES, LLP.  
12 8945 W. Russell Road, Suite 300  
13 Las Vegas, NV 89148  
14 *Attorneys for Defendants*

15 /s/ Alyssa Malavong  
16 An employee of HICKS & BRASIER PLLC  
17  
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**EXHIBIT “J”**

**EXHIBIT “J”**

**OOJ**

M. Caleb Meyer, Esq.

Nevada Bar No. 13379

Renee M. Finch, Esq.

Nevada Bar No. 13118

Jason G. Martinez, Esq.

Nevada Bar No. 13375

MESSNER REEVES LLP

8945 W. Russell Road, Ste 300

Las Vegas, Nevada 89148

Telephone: (702) 363-5100

Facsimile: (702) 363-5101

E-mail: [cmeyer@messner.com](mailto:cmeyer@messner.com)

[rfinch@messner.com](mailto:rfinch@messner.com)

[jgmartinez@messner.com](mailto:jgmartinez@messner.com)

*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JARED MOSS, individually

Plaintiff,

vs.

SEAN EDWARD TOMESCO,  
individually; SECOND OPINION  
PLUMBING, LLC., a domestic limited  
liability company; DOES I through X,  
inclusive; ROE CORPORATIONS XI  
through XX, inclusive,

Defendants.

Case No. A-21-840372-C

Dept. No. 20

**DEFENDANTS' OFFER OF  
JUDGMENT TO PLAINTIFF**

TO: JARED MOSS, Plaintiff, and

TO: HICKS & BRASIER, Attorneys for Plaintiff.

Pursuant to NRCP 68 and NRS 17.117, Defendants, SEAN EDWARD TOMESCO and SECOND OPINION PLUMBING, offer to allow Plaintiff, JARED MOSS, to take judgment against Defendants in the amount of \$160,001.00 (ONE HUNDRED SIXTY THOUSAND ONE DOLLARS AND 00/100), inclusive of costs allowed by NRS 18.005 and prejudgment interest.



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**EXHIBIT “K”**

**EXHIBIT “K”**

1 **OOJ**

2 M. Caleb Meyer, Esq.

3 Nevada Bar No. 13379

4 Renee M. Finch, Esq.

5 Nevada Bar No. 13118

6 Jason G. Martinez, Esq.

7 Nevada Bar No. 13375

8 MESSNER REEVES LLP

9 8945 W. Russell Road, Ste 300

10 Las Vegas, Nevada 89148

11 Telephone: (702) 363-5100

12 Facsimile: (702) 363-5101

13 E-mail: [cmeyer@messner.com](mailto:cmeyer@messner.com)

14 [rfinch@messner.com](mailto:rfinch@messner.com)

15 [jgmartinez@messner.com](mailto:jgmartinez@messner.com)

16 *Attorneys for Defendants*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 JARED MOSS, individually

20 Plaintiff,

21 vs.

22 SEAN EDWARD TOMESCO,  
23 individually; SECOND OPINION  
24 PLUMBING, LLC., a domestic limited  
25 liability company; DOES I through X,  
26 inclusive; ROE CORPORATIONS XI  
27 through XX, inclusive,

28 Defendants.

Case No. A-21-840372-C

Dept. No. 20

**DEFENDANTS' OFFER OF  
JUDGMENT TO PLAINTIFF**

TO: JARED MOSS, Plaintiff, and

TO: HICKS & BRASIER, Attorneys for Plaintiff.

Pursuant to NRCP 68 and NRS 17.117, Defendants, SEAN EDWARD TOMESCO and SECOND OPINION PLUMBING, offer to allow Plaintiff, JARED MOSS, to take judgment against Defendants in the amount of \$185,000.00 (ONE HUNDRED EIGHTY-FIVE THOUSAND DOLLARS AND 00/100), inclusive of costs allowed by NRS 18.005 and prejudgment interest.



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**EXHIBIT “L”**

**EXHIBIT “L”**

1 **OOJ**

2 M. Caleb Meyer, Esq.  
3 Nevada Bar No. 13379  
4 Renee M. Finch, Esq.  
5 Nevada Bar No. 13118  
6 Christine L. Atwood, Esq.  
7 Nevada Bar No. 14162  
8 MESSNER REEVES LLP  
9 8945 West Russell Road, Suite 300  
10 Las Vegas, Nevada 89148  
11 Telephone: (702) 363-5100  
12 Facsimile: (702) 363-5101  
13 E-mail: [cmeyer@messner.com](mailto:cmeyer@messner.com)  
14 [rfinch@messner.com](mailto:rfinch@messner.com)  
15 [catwood@messner.com](mailto:catwood@messner.com)

16 *Attorneys for Defendants*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

14 JARED MOSS, individually

15 Plaintiff,

16 vs.

17 SEAN EDWARD TOMESCO,  
18 individually; SECOND OPINION  
19 PLUMBING, LLC., a domestic limited  
20 liability company; DOES I through X,  
21 inclusive; ROE CORPORATIONS XI  
22 through XX, inclusive,

Defendants.

Case No. A-21-840372-C

Dept. No. 20

**DEFENDANT SECOND OPINION  
PLUMBING, LLC and SEAN EDWARD  
TOMESCO'S OFFER OF JUDGMENT TO  
PLAINTIFF JARED MOSS**

23 TO: JARED MOSS, Plaintiff; and

24 TO: HICKS & BRASIER, PLLC, Attorneys for Plaintiff:

25 Pursuant to NRS 17.117 and NRCP 68, Defendants, SECOND OPINION PLUMBING, LLC  
26 and SEAN EDWARD TOMESCO, offers to allow Plaintiff, JARED MOSS, to take judgment against  
27 Defendants SECOND OPINION PLUMBING, LLC and SEAN EDWARD TOMESCO, in the

amount of \$117,000.00 (ONE HUNDRED SEVENTEEN THOUSAND, 00/100 DOLLARS),  
exclusive of costs allowed by NRS 18.005 and prejudgment interest.

This offer is made for the purposes specified in NRS 17.117 and NRCP 68 and is not to be construed as an admission of any kind. This offer does not allow for a separate award of attorney's fees. Pursuant to NRCP 68(d), Defendant requests in lieu of judgment being entered, the settlement check be delivered to Plaintiff in a reasonable amount of time.

DATED this 2nd day of February, 2022.

MESSNER REEVES LLP

/s/ Christine L. Atwood

M. Caleb Meyer, Esq.  
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Renee M. Finch, Esq.  
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*Attorneys for Defendants*

1 **CERTIFICATE OF SERVICE**

2 On this 2nd day of February, 2022, pursuant to Administrative Order 14-2 and Rule 9 of the  
3 NEFCR, I caused the foregoing **DEFENDANT SECOND OPINION PLUMBING, LLC and**  
4 **SEAN EDWARD TOMESCO'S OFFER OF JUDGMENT TO PLAINTIFF JARED MOSS** to  
5 be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-  
6 File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service  
7 transmission report reported service as complete and a copy of the service transmission report will be  
8 maintained with the document(s) in this office.

9 Justin W. Wilson, Esq.  
10 HICKS & BRASIER, PLLC  
11 2630 S. Jones Blvd  
12 Las Vegas, Nevada 89146  
13 *Attorney for Plaintiff*

14 */s/ James Alvarado*

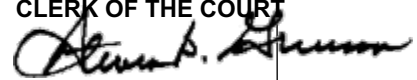
15 

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Employee of MESSNER REEVES LLP

**EXHIBIT “15”**

**EXHIBIT “15”**



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*Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

JARED MOSS, individually,  
Plaintiff,  
vs.

SEAN EDWARD TOMESCO,  
individually; SECOND OPINION  
PLUMBING, LLC., a domestic limited  
liability company; DOES I through X,  
inclusive; ROE CORPORATIONS XI  
through XX, inclusive,  
Defendants.

Case No. A-21-840372-C

Dept. No. 20

**PLAINTIFF'S REPLY IN  
SUPPORT OF MOTION FOR  
ATTORNEY FEES, COSTS, AND  
INTEREST**

Hearing Date: November 13, 2024  
Hearing Time: 8:30 a.m.

1 Plaintiff, Jared Moss (“Plaintiff”), hereby files this Reply in Support of  
2 Motion for Attorney Fees, Costs, and Interest. This reply is based on the papers  
3 and pleadings on file herein, the attached memorandum of points and  
4 authorities, and any oral argument this Court may entertain during the hearing.

## 5 MEMORANDUM OF POINTS AND AUTHORITIES

### 6 INTRODUCTION

7 In his motion, Plaintiff asked this Court to award him \$2,556,135.02 in  
8 attorney fees and \$41,102.61 in costs, for a total award of \$2,597,237.63. Now  
9 that the Court has awarded Plaintiff \$28,937.61 in costs, Plaintiff updates his  
10 requested attorney fees to 50% of the \$5,071,167.43 judgment = \$2,535,583.72 +  
11 50% of the \$28,937.61 in awarded costs = \$14,468.81, for a total attorney fees  
12 award of \$2,550,052.53. Together with the awarded costs, Plaintiff’s requested  
13 total for both attorney fees and costs is now \$2,578,990.14.

14 Plaintiff asked the Court in his motion to award him attorney fees  
15 against Defendants based upon any of the four prevailing offers of judgment for  
16 only \$1,000,000 on January 27, 2022 (attached to motion as **Exhibit 3**);  
17 \$800,000 on May 22, 2023 (attached to motion as **Exhibit 4**); \$600,000 on  
18 November 9, 2023 (attached to motion as **Exhibit 5**); and \$375,000 on March 4,  
19 2024 (attached to motion as **Exhibit 6**). In their opposition, Defendants do not  
20 even address Plaintiff’s fourth offer of judgment, such that the Court can, at a  
21 minimum, enforce this offer of judgment against Defendants as conceded.

22 In his motion, Plaintiff also analyzed the *Beattie/Yamaha* factors to  
23 support his requested attorney fees and provided supporting evidence for each  
24

factor. *See Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998); *Beattie v. Thomas*, 99 Nev. 579, 588–589, 668 P.2d 268, 274 (1983). In their opposition, Defendants concede that Plaintiff satisfies the first *Beattie/Yamaha* factor but challenge Plaintiff's satisfaction of the remaining three *Beattie* factors, including the fourth *Beattie* factor on the reasonableness of Plaintiff's requested attorney fees, which is subsumed into the four *Brunzell* factors. However, Defendants do not specifically challenge any of the four *Brunzell* factors, thus conceding that Plaintiff has satisfied these four factors. Instead, they argue that there is no evidence to substantiate Plaintiff's requested 50% contingency fee as an award of attorney fees against Defendants.

Plaintiff now replies to Defendants' limited arguments in opposition and urges this Court to award him \$2,550,052.53 in attorney fees against Defendants, which along with the \$28,937.61 in costs the Court already awarded amounts to a total award of \$2,578,990.14:

|               |                |                       |
|---------------|----------------|-----------------------|
| 1.            | Awarded Costs: | \$28,937.61; and      |
| 2.            | Attorney Fees: | <u>\$2,550,052.53</u> |
| <b>TOTAL:</b> |                | <b>\$2,578,990.14</b> |

#### LEGAL ARGUMENT

**I. THE COURT SHOULD WEIGH THE SECOND AND THIRD *BEATTIE* FACTORS IN PLAINTIFF'S FAVOR DUE TO DEFENDANTS' FAILURE TO CHALLENGE HIS FOURTH OFFER OF JUDGMENT FOR \$375,000.**

In Plaintiff's motion, he asked the Court to enforce any of his four rejected offers of judgment to Defendants: \$1,000,000 on January 27, 2022 (attached to motion as **Exhibit 3**); \$800,000 on May 22, 2023 (attached to



1 motion as **Exhibit 4**); \$600,000 on November 9, 2023 (attached to motion as  
2 **Exhibit 5**); and \$375,000 on March 4, 2024 (attached to motion as **Exhibit 6**).  
3 In the context of the second and third *Beattie* factors, Defendants only discuss  
4 Plaintiff's first three offers of judgment. However, Defendants do not at any  
5 time in their opposition even mention Plaintiff's \$375,000 offer of judgment.  
6 Thus, even if the Court were to not enforce any of Plaintiff's first three offers of  
7 judgment, the Court should still enforce Plaintiff's fourth offer of judgment as  
8 unchallenged. *See, e.g.*, EDCR 2.20(e) ("Failure of the opposing party to serve  
9 and file written opposition may be construed as an admission that the motion  
10 and/or joinder is meritorious and a consent to granting the same."); DCR 13(3)  
11 (expressly authorizing a district court to construe an opposing party's failure to  
12 file a written opposition "as an admission that the motion is meritorious and a  
13 consent to granting the same"); *see also Las Vegas Fetish & Fantasy Halloween*  
14 *Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 278, 182 P.3d 764, 768 (2008)  
15 (affirming the district court's treatment of the opposing party's failure to oppose  
16 a motion for attorney fees as an admission that the moving party's motion was  
17 meritorious). In other words, Defendants expressly agree that for all four of  
18 Plaintiff's offers of judgment, Plaintiff satisfies the first *Beattie/Yamaha* factor  
19 for an award of attorney fees. And for Plaintiff's fourth offer of judgment for  
20 \$375,000, which Defendants do not challenge, Defendants impliedly agree that  
21 Plaintiff satisfies the third and fourth *Beattie* factors.<sup>1</sup>

---

22  
23  
24 <sup>1</sup> Although Defendants do not raise a timing issue for Plaintiff's fourth offer of

Under this procedural posture, the only issue for the Court to decide is the amount of Plaintiff's requested attorney fees and costs under the *Brunzell* factors.

**II. THE COURT SHOULD FIND THAT AT LEAST ONE OF PLAINTIFF'S FIRST THREE OFFERS OF JUDGMENT WAS REASONABLE AND IN GOOD FAITH IN BOTH ITS TIMING AND AMOUNT.**

Plaintiff's motion asked this Court to enforce any one of his four offers of judgment. Since Defendants tacitly concede the enforceability of Plaintiff's fourth offer of judgment, the Court does not need to reach the enforceability of Plaintiff's first three offers of judgment. Plaintiff, nevertheless, provides the Court with these reply arguments.

In his motion, Plaintiff outlined the timing and amount of each offer of judgment, including what supporting information Defendants had to evaluate each offer of judgment. Mot. at 13–14. Plaintiff's discussion focused on his disclosed medical expenses that continued to increase while his offers of judgment continued to decrease. However, Plaintiff also pointed out that

---

judgment, Plaintiff directs the Court to *Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1049, 881 P.2d 638, 642 (1994), where the Nevada Supreme Court concluded that the deadline in NRCP 68(a) refers to the "point in trial when the actual presentation of evidence commences." In this case, Plaintiff did not call his first witness until March 26, 2024, which was the second day of trial, making his fourth offer of judgment timely issued on March 4, 2024, which was "more than 21 days before trial." This timing also complies with the Supreme Court's language in *Schwartz*: Since NRCP 68's purpose is to encourage settlements, courts should select "the last possible point in time for cutting off Rule 68 offers." *Schwartz*, 110 Nev. at 1048, 881 P.2d at 642 (citing *Greenwood v. Stevenson*, 88 F.R.D. 225, 228 (D.R.I. 1980)).

1 according to his own expert, Dr. Muir, he would have future treatment. Nevada  
2 law does not require the disclosure of a plaintiff's requested pain and suffering  
3 damages, but pain and suffering damages are extremely common in cases with  
4 significant medical expenses, such as this case, and are sometimes almost  
5 presumed. *See Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 265 n.7, 396  
6 P.3d 783, 787 n.7 (2017) ("We note, however, that pain and suffering damages  
7 are not subject to NRCP 16.1(a)(1)(C)'s computation-of-damages requirement.");  
8 *Drummond v. Mid-West Growers*, 91 Nev. 698, 712–713, 542 P.2d 198, 208  
9 (1975) (recognizing that a jury verdict for medical expenses without a separate  
10 award of pain, suffering, and future disability was "clearly inadequate" and a  
11 candidate for additur or a new trial on damages). Thus, it would be  
12 unreasonable for Defendants to completely discount Plaintiff's pain and  
13 suffering damages in evaluating his offers of judgment.

14 Defendants' opposition offers a limited narrative of only a portion of the  
15 facts surrounding each of Plaintiff's first three offers of judgment, while  
16 completely ignoring any analysis relevant to Plaintiff's fourth offer of judgment.  
17 However, Defendants' narrative is not supported by any evidence. *Opp.* at 7–8.  
18 Thus, the Court can immediately ignore Defendants' narrative as  
19 unsubstantiated. And Defendants' counsel offers improper commentary on the  
20 narrative that amounts to pure argument of counsel. *See Jain v. McFarland*,  
21 109 Nev. 465, 475–476, 851 P.2d 450, 457 (1993) ("Arguments of counsel are not  
22 evidence and do not establish the facts of the case."). For example, Defendants  
23 continue to discuss Plaintiff's subsequent accident, which their own expert,  
24

1 Dr. Wang, could not associate with any of Plaintiff's injuries. Opp. at 5, lines  
2 13–18. See **Exhibit 11** (attached to motion), at 9, ¶ 14 (“Defendants never had  
3 any causation evidence relative to this second accident, even from Defendants’  
4 own expert Dr. Wang.”).

5 In any event, the actual evidence shows that Plaintiff continued to  
6 receive treatment, which is expected given the sheer number of disclosed  
7 medical providers, as well as Dr. Muir’s life care plan. See, e.g., **Exhibit 13**  
8 (attached to motion) (life care plan listing future treatments such as pain  
9 management, pain management for lumbar, anesthesiologist, chiropractic  
10 therapy, and lumbar RFAs); **Exhibit 14** (attached to motion) (listing seven  
11 medical providers). Certainly, after Plaintiff received certain treatment, such  
12 as RFAs, he would receive some temporary relief. But the totality of the  
13 circumstances demonstrates that Plaintiff needed continuous treatment. *Id.*  
14 Additionally, Defendants elected to not take Dr. Muir’s deposition; thus, their  
15 arguments now arguing that future treatment was not necessary is based upon  
16 only supposition and not Dr. Muir’s actual opinions, which were reflected in his  
17 expert report and life care plan that Defendants had very early in this litigation.  
18 See **Exhibit 13** (attached to motion).

19 Setting aside the pain and suffering component of Plaintiff’s claim (which  
20 independently defeats Defendants’ arguments), Nevada law does not allow  
21 offerees to presume that a plaintiff in a personal injury case will receive no  
22 more treatment, especially under the facts of this case involving a pedestrian vs.  
23 an industrial vehicle. In *Clark v. Lubritz*, 113 Nev. 1089, 1100, 944 P.2d 861,  
24

1 868 (1997), the Nevada Supreme Court relied upon *Lutynski v. B.B. & J.*  
2 *Trucking, Inc.*, 31 Conn. App. 806, 628 A.2d 1 (Conn. Ct. App. 1993), where the  
3 Connecticut Appellate Court considered a circumstance similar to the instant  
4 case when “the plaintiff moved for attorney’s fees and costs [and] the defendant  
5 argued that the amount of judgment obtained was attributable to facts and  
6 increased damages alleged after the initial offer of judgment had expired.” In  
7 rejecting this argument against the enforcement of the offer of judgment, the  
8 Nevada Supreme Court adopted the holding in *Lutynski*:

9 An offer of judgment is an offer to settle the entire case, including  
10 claims both known and unknown and both certain and uncertain.  
11 Obviously, if injuries worsen as time passes, damages will  
increase, and if injuries mend, the damages will decrease. These  
are the vagaries of offers of settlement.

12 *Id.* at 1100, 944 P.2d at 868.

13 Thus, the fact that Plaintiff’s medical expenses increased over time is  
14 completely normal in cases such as this where a plaintiff has suffered  
15 catastrophic injuries and continues to treat with a variety of medical providers.  
16 Therefore, the Court should find that at least one of Plaintiff’s first three offers  
17 of judgment was reasonable and in good faith in both its timing and amount.  
18 Alternatively, the Court should conclude that Plaintiff’s fourth offer of judgment  
19 for only \$375,000 just prior to trial was reasonable in its timing and amount,  
20 which Defendants do not challenge.

1     **III. THE COURT SHOULD ALSO FIND THAT DEFENDANTS’**  
2     **DECISION TO REJECT AT LEAST ONE OF PLAINTIFF’S**  
3     **FIRST THREE OFFERS OF JUDGMENT AND PROCEED**  
4     **TO TRIAL WAS EITHER GROSSLY UNREASONABLE OR**  
5     **IN BAD FAITH.**

6     For this third *Beattie* factor, Plaintiff’s motion on this issue refers to the  
7     prior lengthy discussion that Defendants’ defenses were not brought in good  
8     faith. Mot. at 11–12, 14–15. In other words, since Defendants’ defenses were  
9     admittedly not brought in good faith, it was either grossly unreasonable or in  
10    bad faith for Defendants to proceed to trial. As discussed, Defendants expressly  
11    conceded the first *Beattie/Yamaha* factor, which means that Defendants agree  
12    that their defenses were not brought in good faith, particularly given that they  
13    admitted liability later in this litigation. See **Exhibit 10** (attached to motion).  
14    Instead of addressing these issues in their opposition, Defendants simply  
15    reiterate the timing and amounts of Plaintiff’s first three offers of judgment,  
16    which is an incorrect analysis for this third *Beattie* factor. Opp. at 8–9.  
17    Importantly, Defendants do not address their lack of any reasonable defense in  
18    proceeding to trial, which was once again confirmed by this Court in rejecting  
19    their misplaced argument regarding Plaintiff’s subsequent accident. See  
20    **Exhibit 11** (attached to motion), at 9, ¶ 14 (“Defendants never had any  
21    causation evidence relative to this second accident, even from Defendants’ own  
22    expert Dr. Wang.”). Of course, Defendants offer no explanation of why it was  
23    reasonable for them to proceed to trial after receiving Plaintiff’s \$375,000 offer  
24    of judgment just prior to trial. Based upon both Defendants’ concessions

1 regarding the first *Beattie/Yamaha* factor and Plaintiff's fourth offer of  
2 judgment, the Court should weigh this third *Beattie* factor in Plaintiff's favor.

3  
4 **IV. THE COURT SHOULD ONCE AGAIN TREAT**  
5 **DEFENDANTS' FAILURE TO DIRECTLY ADDRESS THE**  
6 ***BRUNZELL* FACTORS AS A CONCESSION THAT**  
7 **PLAINTIFF HAS SATISFIED THE FACTORS.**

8 Although Defendants' opposition recites the *Brunzell* factors, it does not  
9 specifically challenge any of these factors. Opp. at 9–12; See, e.g., EDCR 2.20(e)  
10 ("Failure of the opposing party to serve and file written opposition may be  
11 construed as an admission that the motion and/or joinder is meritorious and a  
12 consent to granting the same."); DCR 13(3) (expressly authorizing a district  
13 court to construe an opposing party's failure to file a written opposition "as an  
14 admission that the motion is meritorious and a consent to granting the same");  
15 see also *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*,  
16 124 Nev. 272, 278, 182 P.3d 764, 768 (2008) (affirming the district court's  
17 treatment of the opposing party's failure to oppose a motion for attorney fees as  
18 an admission that the moving party's motion was meritorious). As such,  
19 Defendants once again concede that Plaintiff and his attorneys satisfy the four  
20 *Brunzell* factors to demonstrate the reasonableness of their requested attorney  
21 fees: (1) qualities of the advocates: ability, training, education, experience,  
22 professional standing, and skill; (2) the character of the work: difficulty,  
23 intricacy, importance, time, skill required, and responsibility imposed; (3) the  
24 work actually performed: skill, time, and attention; and (4) the result: whether

1 the attorney was successful and the benefits derived. *See Brunzell v. Golden*  
2 *Gate Nat'l Bank*, 85 Nev. 345, 349–350, 455 P.2d 31, 33 (1969).

3 Notably, Nevada law does not permit this Court to look beyond the  
4 *Brunzell* factors to determine the reasonableness of Plaintiff's requested  
5 attorney fees, including the bare argument of counsel which is not evidence.  
6 *See Schouweiler v. Yancey Co.*, 101 Nev. 827, 834, 712 P.2d 786, 790 (1985)  
7 ("Because the district court based its award on the amount of the offer of  
8 judgment and **not the factors listed in Brunzell**, we remand this matter to the  
9 district court with instructions to reevaluate the award in light of the proper  
10 factors.") (emphasis added); *Jain v. McFarland*, 109 Nev. 465, 475–476, 851 P.2d  
11 450, 457 (1993) ("Arguments of counsel are not evidence and do not establish the  
12 facts of the case."). Therefore, the Court should presume that Plaintiff's  
13 requested attorney fees of \$2,550,052.53 are reasonable under the *Brunzell*  
14 factors, as outlined in *O'Connell* and *Yahyavi*, particularly given the lengthy  
15 discussion in Plaintiff's motion for which there is no response. Mot. at 16–24.

16 **V. THE COURT SHOULD FIND THAT THERE IS**  
17 **SUFFICIENT EVIDENCE TO SUPPORT PLAINTIFF'S**  
**REQUESTED ATTORNEY FEES.**

18 Instead of attacking Plaintiff's analysis of the *Brunzell* factors,  
19 Defendants offer their misplaced argument that there is allegedly "no" evidence  
20 to support Plaintiff's requested attorney fees. However, in making this argument,  
21 Defendants ignore the very holdings cited in Plaintiff's motion and instead offer  
22 dicta in place of the actual holdings of the cases. Despite Defendants' protests,  
23 hourly billing records are not required under Nevada law to recover a  
24



1 contingency fee. *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 557–558, 429  
2 P.3d 664, 670 (Ct. App. 2018). The Nevada Supreme Court specifically upheld  
3 this holding in *Yahyavi*: “District courts may award NRCP 68 attorney fees  
4 based on a contingency-fee agreement without billing records so long as the  
5 party seeking fees satisfies the *Beattie* and *Brunzell* factors.” *Id.* at 680, 498 P.3d  
6 at 231. Additionally, “[t]he evidence does not need to be limited to documents  
7 and may include what the trial court readily observed.” *O'Connell*, 134 Nev. at  
8 563, 429 P.3d at 674.

9 Defendants completely ignore the robust discussion in *O'Connell*  
10 supporting the desirability of contingency fee agreements for a variety of reasons,  
11 as well as controlling Nevada caselaw. Mot. at 7–10. See *Shuette v. Beazer*  
12 *Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549 (2005) (“[I]n  
13 determining the amount of fees to award, the court is not limited to one specific  
14 approach; its analysis may begin with any method rationally designed to  
15 calculate a reasonable amount, including those based on a ‘lodestar’ amount or a  
16 contingency fee.”) (citation omitted and emphasis added). According to *Shuette*,  
17 district courts are not required to engage in a lodestar analysis, as Defendants  
18 suggest, when a contingency fee is involved.

19 In the end, it is unclear what “evidence” Defendants believe that Plaintiff  
20 has to present to the Court to satisfy the reasonableness of their requested  
21 attorney fees. Aside from Plaintiff’s lengthy unrebutted discussion of the  
22 *Brunzell* factors in his motion (Mot. at 16–24) supported by documentation,  
23 Plaintiff also provided declarations that are specifically required by NRCP  
24

1 54(d)(2)(B)(v)(a): “Unless a statute or a court order provides otherwise, the  
2 motion must be supported by counsel’s affidavit swearing that the fees were  
3 actually and necessarily incurred and were reasonable. . . .” *See Exhibits 7 & 8*  
4 (attached to motion). Notably, the “documentation concerning the amount of fees  
5 claimed” in subsection NRCP 54(d)(2)(B)(v)(b) does not have to be based upon a  
6 sworn affidavit. In this case, Plaintiff has additionally provided the Court with  
7 some of the discovery disclosures, other documents demonstrating the breadth of  
8 work performed, and the District Court docket showing the history of this  
9 litigation. *See Exhibits 12, 14, 17* (attached to motion). Therefore, the Court  
10 should find that Plaintiff has presented sufficient evidence according to Nevada  
11 law to support his requested attorney fees. *See O’Connell*, 134 Nev. at 561, 429  
12 P.3d at 673.

13 ///

14 ///

15 ///

## CONCLUSION

In summary, Plaintiff requests \$2,550,052.53 in attorney fees to be awarded against Defendants, given that the Court has already awarded \$28,937.61 in costs to Plaintiff against Defendants:

|               |                |                       |
|---------------|----------------|-----------------------|
| 1.            | Awarded Costs: | \$28,937.61; and      |
| 2.            | Attorney Fees: | <u>\$2,550,052.53</u> |
| <b>TOTAL:</b> |                | <b>\$2,578,990.14</b> |

Dated this 6th day of November 2024.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

\_\_\_\_\_  
Micah S. Echols, Esq.

David P. Snyder, Esq.

Charles L. Finlayson, Esq.

HICKS & BRASIER, PLLC

Alison M. Brasier, Esq.

Betsy C. Jefferis-Aguilar, Esq.

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of October 2024, I served a true and correct copy of the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY FEES, COSTS, AND INTEREST** upon the following persons by the following methods pursuant to NRCP 5(b) and NEFCR 9:

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*Attorneys for Defendants*

/s/ Anna Gresl

---

Anna Gresl, an employee of  
CLAGGETT & SYKES LAW FIRM

**EXHIBIT “16”**

**EXHIBIT “16”**

1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4 \* \* \* \*

5 JARED MOSS, individually,

6 Plaintiff,  
7 v.

8 SEAN EDWARD TOMESCO,  
9 individually; SECOND OPINION  
10 PLUMBING, LLC, a domestic limited liability  
11 company; DOES I through X, inclusive; ROE  
12 CORPORATIONS XI through XX, inclusive,

13 Defendants.

Case No. A-21-840372-C

Dept. No. 20

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
ATTORNEY FEES, COSTS,  
AND INTEREST AND ORDER  
GRANTING IN PART AND  
DENYING IN PART  
DEFENDANTS' MOTION TO  
RETAX PLAINTIFF'S COSTS**

Hearing Date: November 13, 2024

Hearing Time: 8:30 a.m.

14 **ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY FEES, COSTS, AND  
15 INTEREST**

16 The Court, having considered Plaintiff's Motion for Attorney Fees, Costs, and Interest,  
17 Defendants' opposition, Plaintiff's reply, and the argument of counsel at the time of the hearing,  
18 hereby orders as follows: Plaintiff's Motion for Attorney Fees, Costs, and Interest is hereby  
19 GRANTED.

20 **PLAINTIFF'S MOTION FOR ATTORNEY FEES, COSTS, AND INTEREST**

21 On October 10, 2024, Plaintiff filed his Motion for Attorney Fees, Costs, and Interest.  
22 Plaintiff moved the Court for an award of attorney fees against Defendants based upon any of his  
23 four rejected offers of judgment for (1) \$1,000,000 on January 27, 2022; (2) \$800,000 on May  
24 22, 2023; (3) \$600,000 on November 9, 2023; and (4) \$375,000 on March 4, 2024.

25 In his motion, Plaintiff requested attorney fees against Defendants in the sum of  
26 \$2,556,135.02 based upon two combined 50% contingency fee agreements using the total  
27 judgment amount of \$5,071,167.43 and Plaintiff's requested costs of \$41,102.61. Plaintiff has a  
28 50% contingency fee agreement with his trial attorneys, Hicks & Brasier, as well as a 5%  
contingency fee agreement with his appellate attorneys, Claggett & Sykes Law Firm. Hicks &

1 Brasier have reduced their fee agreement by 5%, such that the total contingency fee charged to  
2 Plaintiff is 50%, given that the case proceeded to trial and is now in post-trial proceedings. This  
3 combined 50% contingency fee does not increase for the remaining duration of this litigation,  
4 including appellate proceedings.

5 Plaintiff argued that any of his four offers of judgment should be enforced against  
6 Defendants based upon the underlying purpose of offers of judgment to facilitate and encourage  
7 settlement. “The purpose of an offer of judgment under former NRS 17.115 and NRCP 68 is to  
8 facilitate and encourage a settlement by placing a risk of loss on the offeree who fails to accept  
9 the offer, with no risk to the offeror, thus encouraging both offers and acceptance of offers.”  
10 *Mendenhall v. Tassinari*, 133 Nev. 614, 625, 403 P.3d 364, 374 (2017); *Dillard Dep’t Stores,*  
11 *Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999) (highlighting that “[t]he purpose  
12 of . . . NRCP 68 is to save time and money” and to “reward a party who makes a reasonable offer  
13 and punish the party who refuses to accept such an offer”).

14 Plaintiff next argued that each of his four offers of judgment are more favorable than the  
15 jury’s verdict, without interest, which is \$4,961,545. Plaintiff also pointed out that since each of  
16 his offers of judgment include costs and prejudgment interest, the comparison between each of  
17 Plaintiff’s offers of judgment and the judgment, without interest, would further support Plaintiff’s  
18 request to enforce any of his offers of judgment. “[P]re-offer prejudgment interest must be added  
19 to the judgment when comparing it to the offer of judgment, unless the offeror clearly intended  
20 to exclude prejudgment interest from its offer.” *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409,  
21 426, 132 P.3d 1022, 1033 (2006); NRCP 68(g).

22 To support his requested attorney fees based upon the two contingency fee agreements,  
23 Plaintiff outlined Nevada law allowing for the recovery of attorney fees against an opponent in  
24 litigation based upon the measure of a contingency fee agreement. *See, e.g., O’Connell v. Wynn*  
25 *Las Vegas, LLC*, 134 Nev. 550, 557-58, 429 P.3d 664, 670 (Ct. App. 2018); *Capriati Constr.*  
26 *Corp., Inc. v. Yahyavi*, 137 Nev. 675, 498 P.3d 226 (2021). Relying upon these same Nevada  
27 authorities, Plaintiff further argued that billing records are not required to support an award of  
28 attorney fees that is based upon a contingency fee agreement. *Id.*

1 Since Plaintiff is both the prevailing party and the offeror for the offers of judgment,  
2 Plaintiff argued that the *Beattie* factors must be adjusted according to the clarification in *Yamaha*  
3 *Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998) (citing *Beattie v.*  
4 *Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)), which makes the relevant factors as  
5 follows:

- 6 (1) whether the defendant's defense was brought in good faith; (2)  
7 whether the plaintiffs' offer of judgment was reasonable and in good faith in  
8 both its timing and amount; (3) whether the defendant's decision to reject  
9 the offer and proceed to trial was grossly unreasonable or in bad faith; and  
10 (4) whether the fees sought by the offeror are reasonable and justified in  
11 amount.

12 *Id.*

13 For the first *Beattie/Yamaha* factor, Plaintiff argued that Defendants' defenses were not  
14 brought in good faith because their answer generally denied the allegations in Plaintiff's  
15 complaint and asserted a series of affirmative defenses that there was some other source of  
16 Plaintiff's injuries, such as preexisting injuries or unknown third parties, while also arguing that  
17 none of Plaintiff's injuries were caused by the incident of this case. Even though Defendants  
18 eventually stipulated to liability (duty and breach only), Plaintiff argued in his motion that  
19 Defendants never presented a plausible defense, including the Court's prior determination that  
20 Defendants never had any causation evidence of Plaintiff's second, subsequent accident. *See*  
21 *Order Denying Defendants' Renewed Motion for Judgment as a Matter of Law Pursuant to*  
22 *NRCP 50(b), and NRCP 59, or Alternatively, for Remittitur*, at 9, ¶ 14, filed on September 19,  
23 2024 ("Defendants never had any causation evidence relative to this second accident, even from  
24 Defendants' own expert Dr. Wang."). Plaintiff further argued that even though Defendants had  
25 opportunities, they chose not to abandon any defenses. For this first *Beattie/Yamaha* factor,  
26 Plaintiff finally argued that Defendants did not meaningfully contest Plaintiff's requested  
27 damages throughout this litigation.

28 For the second *Beattie/Yamaha* factor, Plaintiff argued that each of his offers of judgment  
were reasonable and in good faith in both their timing and amounts. Plaintiff argued that when  
he issued his first offer of judgment, Defendants had Dr. Muir's expert report, which outlined



1 Plaintiff's medical treatment and the associated expenses. As such, Plaintiff argued that  
2 Defendants could have resolved this case for less than the medical expenses. Plaintiff also argued  
3 that at the time of his offer of judgment for \$1,000,000 on January 27, 2022, Defendants had  
4 received on January 6, 2022, Plaintiff's Early Case Conference NRCP 16.1 disclosures, including  
5 Plaintiff's medical providers, Plaintiff's medical records corresponding to the disclosed  
6 providers, a computation of past medical expenses of \$110,706, and a computation of future  
7 medical expenses of \$1,150,243.

8 Plaintiff next contended that as the litigation continued, Defendants had the opportunity  
9 to depose Plaintiff on January 31, 2023, which was after Plaintiff's first offer of judgment, but  
10 before his second offer. The parties also attended a mediation at Advanced Resolution  
11 Management ("ARM") in June 2023—after which Plaintiff issued his third and fourth offers of  
12 judgment for only \$600,000 and \$375,000, respectively, which were less than Plaintiff's  
13 requested medical expenses. Thus, Plaintiff contends that according to his third and fourth  
14 rejected offers of judgment, he was willing to bear the majority of the costs for his medical  
15 treatment, while completely waiving any compensation for pain and suffering.

16 For the third *Beattie/Yamaha* factor, Plaintiff relied upon the same analysis and factual  
17 underpinnings for the first two factors to argue that Defendants' decision to reject Plaintiff's offer  
18 of judgment and proceed to trial was either grossly unreasonable or in bad faith. In essence,  
19 Plaintiff argued that Defendants proceeded to trial without supporting evidence for their defenses.

20 For the fourth *Beattie/Yamaha* factor, Plaintiff argued that his requested attorney fees of  
21 \$2,556,135.02 are reasonable under the factors outlined in *Brunzell v. Golden Gate Nat'l Bank*,  
22 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969), which are subsumed into the fourth *Beattie/Yamaha*  
23 factor. Plaintiff also cited *Capriati*, 137 Nev. at 680, 498 P.3d at 231-32, for the argument that  
24 Plaintiff does not have to demonstrate work done before or after an offer of judgment to recover  
25 up to the entire amount of his 50% contingency fee as an award of attorney fees against  
26 Defendants since "the contingency fee does not vest until the plaintiff prevails." *Id.* at 679, 498  
27 P.3d at 231.

28 In his motion, Plaintiff outlined the four *Brunzell* factors, which are as follows:

1 (1) qualities of the advocates: ability, training, education, experience,  
2 professional standing, and skill; (2) the character of the work: difficulty,  
3 intricacy, importance, time, skill required, and responsibility imposed; (3) the  
work actually performed: skill, time, and attention; and (4) the result: whether  
the attorney was successful and the benefits derived.

4 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969). Plaintiff  
5 contended that he satisfied each of the factors based upon the evidence provided for the Court to  
6 determine the reasonableness of his attorneys' 50% contingency fee agreements.

7 For the first *Brunzell* factor, Plaintiff outlined the training, education, experience,  
8 professional standing, and skill of his trial attorneys, Alison M. Brasier, Esq. and Betsy C.  
9 Jefferis-Aguilar, Esq. Plaintiff outlined the same information for his appellate attorney, Micah S.  
10 Echols, Esq.

11 For the second *Brunzell* factor, Plaintiff provided a copy of the District Court docket to  
12 demonstrate the breadth of the work that has been done in this litigation since it was filed in  
13 August 2021. Plaintiff also highlighted the discovery process, pretrial briefing and argument, the  
14 extensive work done for the jury trial (as reflected in the trial transcripts), and the post-trial  
15 briefing and argument that had already been completed, as well as the continuing litigation.  
16 Plaintiff further highlighted that the skills and abilities of the defense made this litigation, the  
17 jury trial, and the post-trial proceedings even more challenging, which supports this second  
18 *Brunzell* factor. Plaintiff finally argued that the Court's own observations since presiding over  
19 this case support Plaintiff's arguments regarding the character of the work. *See O'Connell*, 134  
20 Nev. at 561, 429 P.3d at 672-73.

21 For the third *Brunzell* factor, Plaintiff once again relied upon *O'Connell* for the notion  
22 that the Court's own observations are an important aspect of the Court's assessment of the work  
23 actually performed. Additionally, Plaintiff relied upon much of the same information for this  
24 third *Brunzell* factor that he used to support the second *Brunzell* factor dealing with the character  
25 of the work. In other words, Plaintiff's description of the character of the work would also entail  
26 the work actually performed. Plaintiff relied upon the *Rose Miller* case for the notion that when  
27 the Court evaluates the work actually performed, it can also include the post-trial work actually  
28 performed. *See In re Estate & Living Trust of Miller*, 125 Nev. 550, 556, 216 P.3d 239, 243

(2009) (“[W]e reverse the judgment of the district court and remand for the award of reasonable attorney fees and costs under NRCP 68 and NRS 17.115. On remand, the district court should award reasonable post-rejection fees incurred at the district court and appellate levels both on this appeal and the prior appeal.”). Plaintiff further pointed out that the work performed under this third *Brunzell* factor includes not only the work performed by the attorneys themselves but also their staff members. *See Las Vegas Metro. Police Dep’t v. Yeghiazarian*, 129 Nev. 760, 769-70, 312 P.3d 503, 510 (2013) (“[A] reasonable attorney’s fee cannot have been meant to compensate only work performed personally by members of the bar. Rather, the term must refer to a reasonable fee for the work product of an attorney. Thus, the fee must take into account the work not only of attorneys, but also of secretaries, messengers, librarians, janitors, and others whose labor contributes to the work product for which an attorney bills her client . . . We thus take as our starting point the self-evident proposition that the reasonable attorney’s fee provided for by statute should compensate the work of paralegals, as well as that of attorneys.”).

For the fourth *Brunzell* factor, Plaintiff argued that the jury’s verdict speaks for itself, and the work of Plaintiff’s attorneys also speaks for itself to support this factor. The current amount of the judgment on the jury verdict is \$5,071,167.43, which was several times more than any of Plaintiff’s four offers of judgment for (1) \$1,000,000 on January 27, 2022; (2) \$800,000 on May 22, 2023; (3) \$600,000 on November 9, 2023; and (4) \$375,000 on March 4, 2024. To demonstrate the overall reasonableness of Plaintiff’s requested attorney fees against Defendants, Plaintiff additionally referenced other cases where District Judges had relied upon the same authorities presented in Plaintiff’s motion to award attorney fees based upon 50% contingency fee agreements.

For his final argument, Plaintiff presented *Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 26, 125 P.3d 1160, 1167 (2006) for the notion that the Court’s entire award of attorney fees and costs should accrue post-judgment interest: The stated “purpose of post-judgment interest is to compensate the plaintiff for loss of the use of the money awarded in the judgment without regard to the various elements that make up the judgment.” *See also* NRS 15.040 (“Whenever an order

1 for the payment of a sum of money is made by a court, it may be enforced by execution in the  
2 same manner as if it were a judgment.”).

3 **DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION FOR ATTORNEY FEES,**  
4 **COSTS, AND INTEREST**

5 On October 24, 2024, Defendants filed their Opposition to Plaintiff’s Motion for Attorney  
6 Fees, Costs, and Interest. After reciting some of the procedural and factual background of this  
7 case, as well as the applicable legal standards for Plaintiff’s requested relief, Defendants argued  
8 that the *Beattie* factors support the denial of Plaintiff’s Motion. In essence, Defendants argued  
9 against the enforcement of any of Plaintiff’s offers of judgment because (1) the expert testimony  
10 from both sides regarding Plaintiff’s future treatment was disputed; (2) Plaintiff did not present  
11 any evidence of his requested general damages; and (3) Plaintiff had a second, more severe  
12 accident three months after the accident in this litigation. Based upon these assumptions,  
13 Defendants argued that they were reasonable to believe that the jury would render a verdict of  
14 less than \$185,000.

15 On the first *Beattie* factor, Defendants conceded that Plaintiff’s claim was brought in  
16 good faith. Defendants explained that after they admitted liability (duty and breach elements of  
17 Plaintiff’s negligence claim), the sole issue for trial was the reasonableness and the necessity of  
18 Plaintiff’s past and future medical treatment.

19 On the second *Beattie* factor, Defendants argued that Plaintiff’s offers of judgment were  
20 not brought in good faith given the circumstances surrounding each offer. Defendants contended  
21 that Plaintiff’s own treating physicians provided contrary assessments of Plaintiff’s need for  
22 further treatment. For Plaintiff’s first offer of judgment for \$1,000,000 issued on January 27,  
23 2022, Defendants argued that Plaintiff had only disclosed medical expenses of \$110,706 with no  
24 justification for any future medical needs based upon Plaintiff’s own doctor, Dr. Muir, whose  
25 treatment notes stated that there was a possibility that future treatment would not be needed.  
26 Defendants further argued that Plaintiff had been involved in another more severe, pedestrian-  
27 versus-vehicle accident which likely contributed to, or exacerbated, his symptoms. Under these  
28

1 circumstances, Defendants claimed that Plaintiff did not make his \$1,000,000 offer of judgment  
2 in good faith.

3 For Plaintiff's second offer of judgment for \$800,000 issued on August 8, 2022,  
4 Defendants argued that Plaintiff had not disclosed any future treatment. Defendants further  
5 argued that Plaintiff had only disclosed \$140,981 in past medical expenses. Defendants also  
6 contended that Dr. Muir's treatment notes from July 14, 2022 noted that Plaintiff continued to  
7 experience relief from his low back pain. Based on these points, Defendants argued that any  
8 future medical treatment was placed in doubt.

9 For Plaintiff's third offer of judgment for \$600,000 issued on November 9, 2023,  
10 Defendants once again argued that the offer was made in bad faith because Defendants' own  
11 expert, Dr. Wang, performed an independent medical examination of Plaintiff in October 2022  
12 and found that Plaintiff needed no further treatment related to the subject accident. Defendants  
13 also argued that Plaintiff had no treatment between August 8, 2022 and April 18, 2023 according  
14 to his own disclosures, which also overstated the amount of Plaintiff's medical specials by  
15 \$8,000. Thus, Defendants argued that Plaintiff did not make any of his offers of judgment in  
16 good faith.

17 On the third *Beattie* factor, Defendants argued that in light of the circumstances  
18 surrounding each of Plaintiff's offers of judgment, it was not unreasonable for Defendants to  
19 reject each of Plaintiff's offers of judgment.

20 On the fourth *Beattie* factor, Defendants characterized Plaintiff's argument as a "take it  
21 or leave it" argument for the full 50% contingency fee amount. Even when the Court uses a  
22 contingency fee agreement as a measure to award attorney fees, Defendants pointed out that the  
23 *Brunzell* factors must still be satisfied. *See Capriati*, 137 Nev. at 683, 498 P.3d at 234.

24 Defendants further argued that a party seeking attorney fees based on a contingency fee  
25 agreement must provide or point to substantial evidence of counsel's efforts to satisfy the  
26 *Brunzell* factors. Otherwise, the Court has discretion to reduce the requested amount of attorney  
27 fees. In this case, Defendants contended that Plaintiff should not recover any attorney fees  
28 because Plaintiff has failed to present any substantial evidence of the actual time his counsel

1 reasonably spent on the case. Defendants argued this failure prevented Plaintiff from recovering  
2 a full 50% contingency fee amount. Defendants then argued that substantial evidence of the time  
3 reasonably spent on a case includes a specific number of hours of work performed in the form of  
4 billing records, an affidavit of counsel, or some other evidence or testimony. *O'Connell*, 134  
5 Nev. at 562-63, 429 P.3d at 673-74; *Herbst v. Humana Health Ins. of Nevada, Inc.*, 105 Nev.  
6 586, 591, 781 P.2d 762, 765 (1989). Under this standard, Defendants argued that Plaintiff failed  
7 to demonstrate the time spent on the case, which is a requirement of the second *Brunzell* factor,  
8 preventing Plaintiff from recovering any attorney fees.

9  
10 **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY  
FEES, COSTS, AND INTEREST**

11 On November 6, 2024, Plaintiff filed his Reply in Support of Motion for Attorney Fees,  
12 Costs, and Interest. Plaintiff first pointed out that Defendants' Opposition did not even address  
13 Plaintiff's fourth offer of judgment for \$375,000 issued on March 4, 2024. Plaintiff also noted  
14 that Defendants conceded the first *Beattie/Yamaha* factor as favoring Plaintiff. Plaintiff further  
15 noted that Defendants did not specifically challenge any of the *Brunzell* factors.

16 Regarding the *Beattie/Yamaha* factors, Plaintiff first argued that the Court should weigh  
17 the second and third *Beattie/Yamaha* factors in his favor due to Defendants' failure to challenge  
18 his fourth offer of judgment for \$375,000. *See, e.g.*, EDCR 2.20(e) ("Failure of the opposing  
19 party to serve and file written opposition may be construed as an admission that the motion and/or  
20 joinder is meritorious and a consent to granting the same."); DCR 13(3) (expressly authorizing a  
21 district court to construe an opposing party's failure to file a written opposition "as an admission  
22 that the motion is meritorious and a consent to granting the same"); *see also Las Vegas Fetish &*  
23 *Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 278, 182 P.3d 764, 768 (2008)  
24 (affirming the district court's treatment of the opposing party's failure to oppose a motion for  
25 attorney fees as an admission that the moving party's motion was meritorious). Under Plaintiff's  
26 waiver argument, the Court would only need to decide the reasonableness of the amount of  
27 Plaintiff's requested attorney fees under the fourth *Beattie/Yamaha* factor and the *Brunzell*  
28 factors.

1 If the Court did not accept Plaintiff's waiver argument, Plaintiff then argued that at least  
2 one of his four offers of judgment was reasonable and in good faith in both its timing and amount  
3 to satisfy the second *Beattie/Yamaha* factor. Aside from Plaintiff's medical expenses that were  
4 disclosed, he also pointed out that the law almost always allows separate compensation for pain  
5 and suffering damages. Plaintiff also replied that many of Defendants' assertions analyzing the  
6 *Beattie/Yamaha* factors were not supported by any citation to evidence or some other  
7 information. Plaintiff also referenced Dr. Muir's life care plan for Plaintiff, which outlined  
8 Plaintiff's future medical needs.

9 Plaintiff additionally argued that Defendants' assumption that Plaintiff would receive no  
10 more treatment was unreasonable in light of the nature of the accident and various medical  
11 providers with which Plaintiff was treating. For this issue, Plaintiff relied in part on *Clark v.*  
12 *Lubritz*, 113 Nev. 1089, 1100, 944 P.2d 861, 868 (1997), which held:

13 An offer of judgment is an offer to settle the entire case, including claims  
14 both known and unknown and both certain and uncertain. Obviously, if  
15 injuries worsen as time passes, damages will increase, and if injuries mend,  
the damages will decrease. These are the vagaries of offers of settlement.

16 *Id.* Thus, Plaintiff argued that it was natural for his medical expenses to increase over time,  
17 especially as he continued to receive treatment.

18 For the third *Beattie/Yamaha* factor, Plaintiff argued that it was grossly unreasonable or  
19 in bad faith for Defendants to proceed to trial due in part to Defendants' concession that they did  
20 not satisfy the first *Beattie/Yamaha* factor, meaning that Defendants conceded that they  
21 admittedly did not bring their defenses in good faith, particularly because they later conceded  
22 liability. Plaintiff also pointed out that Defendants did not respond to the interaction of the first  
23 *Beattie/Yamaha* factor with the third factor in light of Defendants' concession of the first factor.

24 Regarding the *Brunzell* factors, Plaintiff argued that the Court should treat Defendants'  
25 failure to directly respond to the *Brunzell* factors as a concession that Plaintiff satisfied each of  
26 the four factors for a full award of attorney fees against Defendants. Along this same vein,  
27 Plaintiff argued that the Court cannot look outside the *Brunzell* factors to determine the  
28 reasonableness of requested attorney fees. *See Schouweiler v. Yancey Co.*, 101 Nev. 827, 834,

1 712 P.2d 786, 790 (1985) (“Because the district court based its award on the amount of the offer  
2 of judgment and not the factors listed in *Brunzell*, we remand this matter to the district court with  
3 instructions to reevaluate the award in light of the proper factors.”). As such, Plaintiff urged the  
4 Court to award him the sum of \$2,550,052.53 as an award of attorney fees against Defendants.  
5 This slightly reduced amount of Plaintiff’s requested attorney fees was based upon the Court’s  
6 minute order awarding \$28,937.61 in costs to Plaintiff.

7 In response to Defendants’ argument that there was no evidence to support Plaintiff’s  
8 requested attorney fees, Plaintiff first noted that Defendants did not accurately represent the  
9 holdings of the cited authorities for Defendants’ argument that billing entries are required to  
10 support a request for attorney fees based upon a contingency fee agreement. *See O’Connell*, 134  
11 Nev. at 557-58, 429 P.3d at 670. Plaintiff directed the Court to the holding in *Capriati*: “District  
12 courts may award NRCP 68 attorney fees based on a contingency-fee agreement without billing  
13 records so long as the party seeking fees satisfies the *Beattie* and *Brunzell* factors.” *Capriati*, 137  
14 Nev. at 680, 498 P.3d at 231. Additionally, “[t]he evidence does not need to be limited to  
15 documents and may include what the trial court readily observed.” *O’Connell*, 134 Nev. at 563,  
16 429 P.3d at 674. Plaintiff cited to earlier Nevada law that reaches the same holding regarding  
17 awards of attorney fees based upon a contingency fee agreement. *See Shuette v. Beazer Homes*  
18 *Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549 (2005) (“[I]n determining the amount of  
19 fees to award, the court is not limited to one specific approach; its analysis may begin with any  
20 method rationally designed to calculate a reasonable amount, including those based on a  
21 ‘lodestar’ amount or a contingency fee.”). Thus, Plaintiff argued that Defendants’ argument was  
22 without merit regarding the kinds of “evidence” to support a request for attorney fees. In the end,  
23 Plaintiff urged the Court to award him \$2,550,052.53 in attorney fees against Defendants.

#### 24 **FINDINGS OF FACT**

25 This case involved a disputed vehicle striking a pedestrian in a cross-walk accident. The  
26 jury returned a verdict in favor of Plaintiff in the amount of \$5,000,000.00, which was filed on  
27 March 29, 2024. Plaintiff timely filed a Memorandum of Costs and Disbursements on September  
28



1 24, 2024, for \$41,102.61 in costs. Defendants filed a Motion to Retax Plaintiff's Costs on  
2 September 27, 2024.

3 On October 29, 2024, the Court issued a minute order granting in-part Defendants'  
4 Motion to Retax Costs, finding Plaintiff shall recover litigation costs in the amount of \$28,937.61.  
5 Plaintiff and Plaintiff's Counsel entered into contingency fee agreements under which Plaintiff  
6 effectively agreed to compensate his counsel 50% of the gross amount recovered after  
7 commencement of trial. The Judgment on the Jury Verdict, entered on September 19, 2024, is for  
8 the amount of \$5,071,167.43, which is the total of the \$4,961,545 modified verdict and interest  
9 pursuant to NRS 17.130(2), in the amount of \$109,622.43.

#### 10 **CONCLUSIONS OF LAW**

11 Plaintiff issued offers of judgment to Defendants for \$1,000,000 on January 27, 2022;  
12 \$800,000 on May 22, 2023; \$600,000 on November 9, 2023; and \$375,000 on March 4, 2024.

13 The offers of judgments were properly served on Defendants pursuant to NRCP 68.  
14 Defendants failed to respond to the offers of judgment within 14 days and, thus, the offers were  
15 properly considered rejected pursuant to NRCP 68(e). Plaintiff's offers of judgment were  
16 inclusive of fees, costs, and interest, as permitted by NRCP 68(g), which would require the total  
17 of the verdict, fees, costs, and interest to total less than each offer in order for Defendants to  
18 defeat the offer pursuant to NRCP 68. *See Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 426, 132  
19 P.3d 1022, 1033 (2006) (citations omitted).

20 Defendants failed to obtain a more favorable judgment, as the jury's verdict and NRS  
21 17.130(2) interest totaled \$5,071,167.43. This amount alone exceeds the Plaintiff's offers of  
22 judgment. *See* NRCP 68(f). Defendants did not recover a judgment more favorable than the offer  
23 of judgment served by Plaintiff and, as penalty for rejecting the offers of judgment, Defendants  
24 must pay Plaintiff's reasonable attorney fees. NRCP 68(f)(1)(B). Billing records are not required  
25 to support an award of attorney fees and attorney fees can be awarded based on contingency fee  
26 agreements. *O'Connell*, 134 Nev. at 557-558, 429 P.3d at 670.

27 "A party who makes an unimproved upon offer of judgment—an offer that is more  
28 favorable to the opposing party than the judgment ultimately rendered by the district court—is

entitled to recover costs and reasonable attorney fees incurred after making the offer of judgment.” *Logan v. Abe*, 131 Nev. 260, 262, 350 P.3d 1139, 1140 (2015); *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983) (“[T]he purpose of NRCP 68 is to encourage settlement.”); *Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 24, 125 P.3d 1160, 1165–1166 (2006) (“NRCP 68(f) provides for penalties if the offeree rejects the offer, proceeds to trial, and fails to obtain a more favorable judgment.”) (emphasis and internal quotation marks omitted).

“The purpose of an offer of judgment under former NRS 17.115 and NRCP 68 is to facilitate and encourage a settlement by placing a risk of loss on the offeree who fails to accept the offer, with no risk to the offeror, thus encouraging both offers and acceptance of offers.” *Mendenhall v. Tassinari*, 133 Nev. 614, 625, 403 P.3d 364, 374 (2017) (citing *Matthews v. Collman*, 110 Nev. 940, 950, 878 P.2d 971, 978 (1994)); see also *Marek v. Chesny*, 473 U.S. 1, 5, 105 S.Ct. 3012 (1985) (noting that the primary purpose behind offers of judgment is to encourage the compromise and settlement of litigation and that they “prompt [] both parties to a suit to evaluate the risks and costs of litigation, and to balance them against the likelihood of success upon trial on the merits”); 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *FEDERAL PRACTICE AND PROCEDURE* § 3001 (2014) (stating that by encouraging compromise, offers of judgment discourage both protracted litigation and vexatious lawsuits); *Dillard Dep’t Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999) (highlighting that “[t]he purpose of . . . NRCP 68 is to save time and money” and to “reward a party who makes a reasonable offer and punish the party who refuses to accept such an offer”).

An award of attorney fees in this case is appropriate pursuant to NRCP 68 because Plaintiff satisfies the factors set forth in *Beattie v. Thomas* and *Yamaha Motor Co., U.S.A. v. Arnoult*:

- (1) Whether the defendant’s defense was brought in good faith; (2) whether the plaintiffs’ offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the defendant’s decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

1 *Beattie v. Thomas*, 99 Nev. 579, 588-589, 668 P.2d 268, 274 (1983); *Yamaha Motor Co., U.S.A.*  
2 *v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998).

3 As to the first *Beattie* factor, pursuant to the stipulation of the parties on July 5, 2022,  
4 Defendants did not contest liability as they conceded they were negligent and caused the accident.  
5 As such, the only issues to be decided at trial were whether Plaintiff's claimed injuries were  
6 caused by the subject accident, and whether the damages he incurred were reasonable and related  
7 to the subject accident. Defendants' only expert, Dr. Wang, opined in his report that he did not  
8 identify any structural injury to the lumbar spine from the July 9, 2020 incident on any of the  
9 post-accident radiological studies. He concluded Plaintiff suffered only a soft tissue buttock  
10 contusion and a possible lumbar strain from the incident and would have needed some  
11 conservative soft tissue treatments. Dr. Wang opined that after about three months of treatment,  
12 he would not relate any of Plaintiff's further medical treatment to the July 9, 2020 accident.  
13 Consequently, Defendants could, in good faith, challenge the extent of Plaintiff's damages  
14 attributable to the July 9, 2020 incident.

15 However, at trial, Defendants clearly demonstrated that they intended, as a major thrust  
16 of their case, to attempt to undermine Plaintiff's case by suggesting Plaintiff's second accident,  
17 which occurred about three months after the subject accident, was the cause of Plaintiff's injuries.  
18 Plaintiff's expert, Dr. Muir, stated in his report that the second accident was not related to  
19 Plaintiff's injuries, which Dr. Muir completely attributed to the first accident. Despite this notice  
20 of Plaintiff's position, Defendants did not develop expert testimony that there was a causal  
21 relation between the second accident and Plaintiff's injuries and damages. Dr. Wang did not  
22 opine in his report that there was any connection between the second accident and Plaintiff's  
23 injuries. Consequently, Defendants knew at the time of Plaintiff's third and fourth offers that  
24 they lacked expert testimony to properly draw a link between Plaintiff's second accident and his  
25 medical injuries. Despite the absence of any expert testimony suggesting some other cause for  
26 Plaintiff's injuries, Defendants sought to press the case to trial with the intent of suggesting to  
27 the jury that Plaintiff was injured not by the subject accident, but by the second accident.

1           The Court finds that Defendants could assert, in good faith, that Plaintiff's injuries from  
2 the subject accident were limited soft-tissue injuries that should have quickly resolved. However,  
3 Defendants' intended thrust at trial to tie the second accident as the cause of Plaintiff's damages  
4 was not pursued in good faith. The Court weighs this first factor in Plaintiff's favor. The Court  
5 once again reiterates that there was no causation evidence, even from Defendants' own expert  
6 Dr. Wang, for Defendants' assertion that Plaintiff's second, subsequent accident somehow  
7 contributed to Plaintiff's injuries and the associated damages awarded by the jury. Defendants  
8 knew this by the time of Plaintiff's third and fourth offers of judgment.

9           The Court finds that Plaintiff's third and fourth offers of judgment were reasonable and  
10 made in good faith in timing and amount. At the time Plaintiff served the third offer of judgment  
11 of \$600,000 on November 9, 2023, and fourth offer of judgment of \$375,000 on March 4, 2024,  
12 Defendants had sufficient information to evaluate the offers and their exposure. This information  
13 included:

- 14           a. a computation of past medical expenses of \$ \$132,571.00;
- 15           b. Dr. Muir's expert report and a computation of future medical expenses  
16           of \$1,150,243;
- 17           c. Dr. Wang's NRCP 30(b)(6) examination and expert report finding  
18           minimal injuries and need for treatment from the July 9, 2020 accident,  
19           but giving no opinion that Plaintiff's second accident was the cause of  
20           his injuries;
- 21           d. deposition of Plaintiff on January 31, 2023; and
- 22           e. a mediation at Advanced Resolution Management ("ARM") in June  
23           2023.

24           Defendants were in a position to evaluate Plaintiff's evidence, Plaintiff as a witness, the  
25 extent of their admissible evidence, and their substantial exposure if the jury accepted Plaintiff's  
26 contended damages. Consequently, Plaintiff's offers were reasonable and made in good faith in  
27 timing.

28           In view of the jury's verdict, Plaintiff's \$600,000.00 offer and \$375,000.00 offer were  
reasonable and in good faith in their amounts. Additionally, the fourth offer was approximately  
twice the amount of Plaintiff's medical charges. Considering Dr. Muir's estimate of over one  
million dollars in future medical expenses, both the second and third offers placed most of the  
burden for Plaintiff's future medical care on Plaintiff, with no compensation for pain and

1 suffering. The Court finds Plaintiff's third and fourth offers to settle the case were fair after taking  
2 into account the risks and the time and costs each side would incur if the case proceeded to trial.  
3 Accordingly, the Court weighs this second *Beattie/Yamaha* factor in Plaintiff's favor. The Court  
4 also notes that Defendants did not challenge or analyze Plaintiff's fourth offer of judgment in any  
5 respect.

6 Third, though the Court has some hesitancy, the Court concludes Defendants' rejections  
7 of Plaintiff's third and fourth offers were, at least, not "grossly unreasonable." *See Beattie*, 99  
8 Nev. at 588-89, 668 P.2d at 274. "Grossly unreasonable or bad faith rises to a much higher level  
9 than poor judgment or incorrect tactical decisions." *Assurance Co. of Am. v. Nat'l Fire & Marine*  
10 *Ins. Co.*, No. 2:09-CV-1182 JCM PAL, 2012 WL 6626809, at \* 3 (D. Nev. Dec. 19, 2012).  
11 Plaintiff's offers of \$600,000.00 and \$375,000.00 were for a significant amount of money.  
12 Defendants argue they believed that Plaintiff had ceased treatment in 2022, and note that  
13 Plaintiff's medical expert stated that Plaintiff was experiencing continuing back pain relief.  
14 Consequently, Defendants contend their rejections of Plaintiff's offers of judgment were based  
15 on Plaintiff's concrete damages. With their expert witness's findings, the Court concludes that  
16 Defendants could, in good faith, contend that their negligence did not cause Plaintiff's injuries  
17 or that the injuries they caused were not as extensive as Plaintiff contended. However, the jury's  
18 acceptance of Defendants' position was far from a foregone conclusion at the time of Plaintiff's  
19 offers. Defendants did not have expert testimony to suggest, in good faith, that the second  
20 accident, and not the subject accident, caused Plaintiff's injuries. In view of Plaintiff's expert's  
21 anticipated testimony, Defendants faced a real risk –which occurred at trial– that the jury could  
22 conclude Defendants' negligence did cause the Plaintiff's injuries to the extent opined, exposing  
23 Defendants to liability far beyond the \$600,000 and \$375,000 offered.

24 In the Court's view, Defendants were blinded to this risk by their assumption that a jury  
25 would find Plaintiff, with his lack of work history, his drug addiction, and his serious criminal  
26 record, not credible as to the extent of his injuries and not justifying significant pain and suffering  
27 damages. Defendants also overestimated their expert's testimony as to the limited nature of  
28 Plaintiff's injuries and their ability to attribute blame for any injuries to the second accident. The

1 Court finds that these assumptions were questionable, at least in the context of the expert  
2 testimony Defendants had available to them in contrast to Plaintiff's expert testimony. As  
3 discussed above, at the time of the offers, the Parties had conducted significant discovery,  
4 including experts' evaluations of the evidence. Considering that Plaintiff's and Defendants' final  
5 offers of judgments of \$375,000.00 and \$185,000.00, respectively, were only about \$190,000  
6 apart and Defendants were facing a real potential of far greater damages, the Court finds  
7 Defendants, while not grossly unreasonable, arguably engaged in poor judgment in rejecting  
8 Plaintiff's offers. This factor therefore is neutral or slightly favors Plaintiff.

9 As to the fourth *Beattie* factor "whether the fees sought by the offeror are reasonable and  
10 justified in amount," Defendants urge the Court to find Plaintiff's request for \$2,550,052.53 in  
11 attorney's fees unreasonable. As noted above, Plaintiff's request for \$2,550,052.53 in attorney's  
12 fees represents 50% of the \$4,961,545 amended jury verdict, \$109,622.43 in prejudgment interest  
13 on the verdict, and the \$28,937.61 in costs the Court allowed. Plaintiff's Counsel are entitled to  
14 this fee pursuant to their contingency fee agreements with Plaintiff, which effectively provide for  
15 Counsel to be paid 50% of all amounts recovered after commencement of trial. Plaintiff's  
16 Counsel contends this fee amount sought is reasonable, consistent with local contingency fee  
17 arrangements, and appropriate in view of the nature and circumstances of the case.

18 Defendants acknowledge Plaintiff's contingency agreement is relevant to the inquiry of  
19 a reasonable attorney fee, but argue that Plaintiff is required to present "substantial evidence of  
20 the time reasonably spent on [a] case[]" by his counsel. *O'Connell*, 134 Nev. at 562-63, 429 P.3d  
21 at 673-74. Defendants contend Plaintiff has failed to present any evidence of his counsel's time  
22 spent on the case and, consequently, has failed to support the amount of the proposed fee.  
23 Defendants implicitly suggest that at least some lodestar evaluation of Plaintiff's Counsel's fees  
24 must be done to justify the contingency fee. However, in *Capriati*, the Nevada Supreme Court  
25 stated:

26 District courts may award NRCP 68 attorney fees based on a contingency-fee  
27 agreement without billing records so long as the party seeking fees satisfies the *Beattie*  
28 and *Brunzell* factors. *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 562, 429 P.3d  
664, 673 (Ct. App. 2018). Consistent with NRCP 68's plain meaning, the court of  
appeals in *O'Connell* explained that NRCP 68 attorney fees based on a contingency-fee

1 agreement must be “limited to those fees earned post-offer.” *Id.* However, *O’Connell*  
2 did not address whether a party may recover the entirety of the contingency fee as post-  
offer attorney fees. *Id.*

3 We now clarify that a district court may award the entire contingency fee as post-offer  
4 attorney fees under NRCP 68 because the contingency fee does not vest until the client  
5 prevails. . . . We reiterate that a party seeking NRCP 68 attorney fees based on a  
contingency-fee agreement must still satisfy the *Beattie* and *Brunzell* factors.

6 *Capriati*, 137 Nev. at 680, 498 P.3d at 231-32. Consequently, Defendants’ implicit suggestion  
7 that at least some lodestar evaluation must be presented has been specifically rejected. While  
8 Defendants are correct that Plaintiff must present more than just his contingency agreement to  
9 establish the reasonableness of the fees he requests, billing or time records or other evidence  
10 suggesting specific expenditures of time are not required. This Court’s obligation is to consider  
11 the nature and circumstances of the case and counsel’s efforts and performance, and to determine  
12 the reasonable value of Plaintiff’s Counsel’s services. “[A] party seeking attorney fees based on  
13 a contingency fee agreement must provide or point to substantial evidence of counsel’s efforts to  
14 satisfy the *Beattie* and *Brunzell* factors.” *O’Connell*, 134 Nev. at 562, 429 P.3d at 673.

15 This Court generally accepts Plaintiff’s Counsel’s negotiated contingency fee as a  
16 reasonable fee for the purposes of applying NRCP 68. *Cf. Gianna P. v. O’Malley*, No. 3:20-CV-  
17 01808-AGS, 2025 WL 43564, at \*1 (S.D. Cal. Jan. 7, 2025) (contingency “fee agreements are  
18 generally presumed valid” in Social Security benefit cases unless they exceed statutory fee limit);  
19 *Hearn v. Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003) (same). The underlying principle  
20 for contingency fee agreements is the desire to make legal services more readily available to  
21 those who need such services but cannot afford hourly payments or payments up front. Attorneys  
22 are permitted to negotiate contingency fees, which, if the case is successful, may result in a fee  
23 that would be far beyond what attorneys would ordinarily charge on an hourly basis. This  
24 contingency fee is accepted in view of the risk the attorney accepts in taking a client on a  
25 contingency fee. “A contingent-fee lawyer bears the risk of receiving no pay if the client loses  
26 and is entitled to compensation for bearing that risk.” Restatement (Third) of the Law Governing  
27 Lawyers § 35, comment c. (2000) (hereinafter “Restatement”). While the attorney’s agreement  
28 with the client may obligate the client for costs, in many, if not most, instances the attorney must

1 front the costs and is not likely to recover them if unsuccessful. Consequently, a substantial  
2 contingency fee in a successful case is thought to cover the risk of time and expenses in the case  
3 and offset the loss of time and expenses in unsuccessful or less successful cases. *Id.*, comment b.  
4 (The lawyer “is usually better able to assess the risk and to bear it by undertaking similar  
5 arrangements in other cases.”).

6 However, in view of the Nevada Supreme Court’s instruction that “a party seeking NRCP  
7 68 attorney fees based on a contingency-fee agreement must still satisfy the *Beattie* and *Brunzell*  
8 factors,” this Court recognizes there may be contingency fee arrangements where the amount of  
9 the contingency fee after trial would be “unearned by either effort or a significant period of risk”  
10 and unreasonable to award against a non-prevailing party under NRCP 68. *Id.*, comment c.  
11 However, a contingent fee is not “necessarily unreasonable because the lawyer devoted relatively  
12 little time to a representation, for the customary terms of such arrangements commit the lawyer  
13 to provide necessary effort without extra pay if a relatively large expenditure of the lawyer’s time  
14 were entailed.” *Id.*

15 In the instant case, Plaintiff’s Counsel specifically asked the jury to award Plaintiff a total  
16 of \$3,000,000. While, in closing argument, Plaintiff’s Counsel invited the jury to award more  
17 than that amount, Plaintiff’s Counsel’s request to the jury arguably indicated what Plaintiff’s  
18 Counsel felt was an appropriate amount for the jury to award in view of Plaintiff’s damages, and  
19 Plaintiff’s and Plaintiff’s Counsel’s risks in litigating this case through trial. At first blush then,  
20 to award Plaintiff the contingency fee under NRCP 68 on the jury’s verdict of \$5,000,000,  
21 \$2,000,000 beyond the amount requested, would appear to be an award on a windfall, beyond  
22 that award Plaintiff’s Counsel perceived necessary to meet Plaintiff’s damages and assume the  
23 risk of the case.

24 However, NRCP 68 provides “the offeree must pay the offeror’s . . . reasonable attorney  
25 fees.” NRCP 68(d). The Nevada Supreme Court has made it clear that the district court may  
26 award the entire contingency fee under NRCP 68 if the party seeking NRCP 68 attorney fees  
27 satisfies the *Beattie* factors as to whether attorney fees should be awarded under NRCP 68 and  
28 the *Brunzell* factors as to whether the requested fees are reasonable. *Capriati*, 137 Nev. at 680,



1 498 P.3d at 231-32. Consequently, the Court concludes that the focus of its inquiry should not be  
2 whether the jury's verdict and resulting contingency fee was expected or anticipated, but whether  
3 the contingency fee resulting from the jury verdict is reasonable.

4 In evaluating whether a contingent fee is unreasonable, the Court must consider the  
5 underlying justification of such fees—the lawyer's bearing of the risk. Generally, courts have  
6 found contingency fees unreasonable in two kinds of cases: "those in which there was a high  
7 likelihood of substantial recovery by trial or settlement, so that the lawyer bore little risk of  
8 nonpayment; and those in which the client's recovery was likely to be so large that the lawyer's  
9 fee would clearly exceed the sum appropriate to pay for services performed and risks assumed."  
10 Restatement, § 35, comment c.

11 This case was not one where Plaintiff's counsel bore little risk in taking on the case  
12 because of a high likelihood of recovery. The Court recognizes the risk counsel took in offering  
13 and accepting a contingency fee in this case. Defendants contested causation, the need for past  
14 and future medical damages, and the extent of Plaintiff's pain and suffering. Defendants called  
15 their own expert witness to challenge Plaintiff's damages and the need for future treatment from  
16 the subject accident. If the jury had accepted Defendants' expert testimony or failed to accept  
17 Plaintiff's expert testimony, Plaintiff may have received little or no recovery for damages in his  
18 case. Additionally, this case presented special risks in view of Plaintiff's background. Plaintiff  
19 was a drug addict with a serious criminal history and other serious past personal issues. Plaintiff's  
20 Counsel did an exceptional job of showing that Plaintiff was seeking to turn his life around and  
21 Defendants' conduct in injuring him had undermined his efforts. Nevertheless, Plaintiff's  
22 background presented a real risk to his recovery when Plaintiff's Counsel accepted his case and  
23 made legal services available to him. Additionally, while Defendants ultimately did not develop  
24 expert testimony suggesting Plaintiff's subsequent accident had any causal impact on Plaintiff's  
25 claimed damages, Plaintiff's second accident at the time his counsel accepted his case presented  
26 potential risks.

27 This was also not a case where the "client's recovery was likely to be so large that the  
28 lawyer's fee would clearly exceed the sum appropriate to pay for services performed and risks

1 assumed.” Restatement, § 35, comment c. As noted above, Defendants’ expert challenged the  
2 need for Plaintiff’s prior medical treatment and for future medical treatment from the first  
3 accident. Defendants’ Counsel sought to minimize Plaintiff’s claims of pain and suffering. If the  
4 jury had accepted Defendants’ version of the facts, Plaintiff’s recovery would have been  
5 dramatically different or none at all.

6 If Plaintiff’s Counsel had not been successful at trial, Counsel would have received no  
7 fee for their work. Counsel also agreed that, if unsuccessful, they would bear litigation costs.  
8 Realistically, Plaintiff would not have been able to pay or would have had difficulty paying the  
9 costs Counsel fronted for the litigation. While the Court did not find all of Plaintiff’s costs  
10 reasonable and necessary, Plaintiff’s Counsel advanced approximately \$41,000 in costs for the  
11 litigation. Consequently, Plaintiff’s Counsel was at significant risk financially if Plaintiff had not  
12 been successful at trial.

13 Plaintiff’s Counsel represent that they have spent hundreds of hours on Plaintiff’s case  
14 over the last almost three years. The Court observed trial preparations, trial, and post-trial  
15 litigation and believes that Plaintiff’s trial counsel and post-trial/appellate counsel have  
16 reasonably expended 350 hours or more of time with final motions, trial/witness preparations,  
17 trial, and post-trial motions. In looking at the docket and discovery presented, the Court can see  
18 Counsel or Counsel’s staff expending 200 or 300 of additional time. The Court accepts Plaintiff’s  
19 representation that his counsel and staff spent several hundred hours on this case. “[D]istrict  
20 courts can look at the facts before them, such as what occurred at trial and the record a party  
21 produced in litigating a matter.” *O’Connell*, 134 Nev. at 560, 429 P.3d at 672; *see also Clark v.*  
22 *Gen. Motors, LLC*, 161 F. Supp. 3d 752, 762–64 (W.D. Mo. 2015) (“ Where the attorneys do not  
23 estimate the hours worked on a case, the court may make its own estimate.”).

24 Consequently, in assessing the extent of the risk that Plaintiff’s Counsel undertook in  
25 accepting this case, the Court finds that Plaintiff’s Counsel placed significant time and costs at  
26 risk in litigating Plaintiff’s case. Assuming that Plaintiff’s Counsel’s experiences and  
27 backgrounds would justify hourly fees of \$500 to \$600 in the current Southern Nevada market,  
28 Plaintiff’s Counsel expended approximately \$210,000 in time for pretrial, trial, and post-trial

1 litigation. Assuming a blended fee of \$375 an hour for attorney and staff time for discovery and  
2 earlier litigation matters, Plaintiff's Counsel arguably expended \$112,500 in staff and attorney  
3 time. Considering Plaintiff's Counsel's expenditure of \$41,000 in costs, Plaintiff's Counsel has  
4 arguably placed approximately \$363,000 or more in time and costs at risk if Plaintiff is  
5 unsuccessful.

6 Also in assessing the risk Plaintiff's Counsel took in this litigation, the Court appreciates  
7 that in many situations, as in this case, litigation in personal injury cases take years to  
8 consummate, with the lawyers not receiving compensation and fronting the costs in the interim.  
9 Here, Plaintiff's Counsel have represented him since at least August 2021 without receiving  
10 hourly or other compensation. Plaintiff's Counsel continue to represent Plaintiff. Their work now  
11 includes defending the judgment through appeal, for which counsel will receive no additional  
12 compensation other than the contingency fee contracted within the retainer agreements.  
13 Depending upon what the future holds, that amount could even be decreased. If the law firms  
14 have not expended hundreds of hours in representing Plaintiff by now, they most certainly will  
15 have by the conclusion of the appeal process, far surpassing the \$363,000 in approximate time  
16 and costs expended to date. In addition, if Defendants do prevail in the appeal, the likely result  
17 would be that the judgment is reversed and the case remanded to this Court for further  
18 proceedings with Plaintiff's Counsel still receiving no compensation by that point. That could  
19 result in significantly more time expended, especially if the case is retried.

20 Beyond Plaintiff's Counsel's time and costs, this case also presented special risks in view  
21 of Plaintiff's background. As noted above, Plaintiff was a recovering drug addict with a serious  
22 criminal history and other serious past personal issues. Additionally, while Defendants ultimately  
23 did not develop expert testimony suggesting Plaintiff's second accident had any causal impact  
24 on Plaintiff's claimed damages, at the time his counsel accepted his case, Plaintiff's second  
25 accident presented potential significant risks.

26 In his Motion, Plaintiff requested attorney fees against Defendants in the sum of  
27 \$2,556,135.02 based upon his attorneys' total 50% contingency fee from their agreements with  
28 Plaintiff. Plaintiff used the total judgment amount of \$5,071,167.43 and Plaintiff's requested

costs of \$41,102.61 in calculating his attorney's fee. The Court previously awarded Plaintiff \$28,937.61 of the \$41,102.61 in requested costs. Consequently, using the total judgment amount of \$5,071,167.43, and the amount of costs awarded, Plaintiff now asks the Court to award \$2,550,052.53 as reasonable attorney fees under NRCP 68. This is an amount roughly seven-times the Court's estimate of Plaintiff's Counsel's current approximate expenditure in time and costs. In the Court's view, for an attorney to justify the risk in accepting a lengthy case on a contingency basis, in particular a highly contested case such as this one with the potential risks to Plaintiff's Counsel of large time and expenditure losses, a risk multiplier of seven or more is reasonable under the specific circumstances of this case.

In *Clark v. Gen. Motors, LLC*, 161 F. Supp. 3d 752, 768–69 (W.D. Mo. 2015), the Court found a contingency fee of \$1,527,728.00 was unreasonable. The fee was approximately 10 times what the Court calculated would have been Plaintiff's Counsel's hourly fee had the case been charged on an hourly basis. *Id.* The Court found the fee unreasonable in view of what the Court concluded was the *de minimis* amount of work counsel did before settlement, the limited risk of an unfavorable result under the facts of the case, and the high likelihood of a substantial award. *Id.* at 762–64. The Court specifically noted “Plaintiff's counsel's skills or efforts do not appear to have played a significant role in determining the amount.” *Id.* at 768–69. However, the Court ultimately enhanced the amount of Plaintiff's counsel's projected hourly billing six times, finding awarding only the hourly fee for Plaintiff's counsel's work would “fail[] to account for the fact that this case was taken on a contingency fee basis and involved a matter of great importance, some responsibility, and a substantial amount of money.” *Id.*; see also *Claypool v. Barnhart*, 294 F. Supp. 2d 829, 834 (S.D.W. Va. 2003) (despite the limited amount of time counsel spent on the case, contingency fee six times more than Plaintiff's counsel's hourly billing amount reasonable to give effect to the contingency fee entered into by the Plaintiff and his attorney and to “take into account the value of the representation Plaintiff received.”).

If the *Clark* court found a fee six-times the amount of its estimate of the plaintiff's counsel's hourly billing in that case to be reasonable despite counsel's skill, time, and effort not playing “a significant role in determining the amount,” a fee in this case approximately seven-

1 times more than the estimated time and costs that Plaintiff's Counsel expended is more than  
2 reasonable in view of the significant time expended and real risks of little or no recovery. This  
3 was not a case where Plaintiff's Counsel bore little risk of nonpayment because of a high  
4 likelihood of substantial recovery or Plaintiff was likely to recover an award so large that the  
5 contingency fee would be disproportionate to counsel's time and risk. *See* Restatement, § 35,  
6 comment c. Even using Defendants' suggestion that determining the reasonableness of Plaintiff's  
7 Counsel's fee be based on the work done, in looking at the circumstances of this case, the Court  
8 finds Plaintiff's request for approximately \$2,550,052.53 in fees to be reasonable.

9 In considering the specific *Brunzell* factors separately, the Court notes, as to first factor  
10 of quality of Plaintiff's Counsel, Defendants did not challenge Plaintiff's satisfaction of this first  
11 factor. Based upon both Defendants' concession and the Court's review of the information  
12 provided and its own observations, the Court finds that the qualities of Plaintiff's advocates  
13 satisfies the first *Brunzell* factor.

14 On the second *Brunzell* factor, the Court once again notes that Defendants did not  
15 specifically challenge the character of the work, which is the focus of this second factor. Instead,  
16 Defendants argued that Plaintiff did not satisfy this second factor because he failed to present  
17 substantial or sufficient evidence of the time that his attorneys specifically spent prosecuting his  
18 case. Consistent with Nevada Supreme Court and Nevada Court of Appeals precedent, the Court  
19 rejects Defendants' argument that billing records or some other similar evidence must be  
20 provided for an award of attorney fees based upon a contingency fee agreement. *See Capriati*,  
21 137 Nev. at 683, 498 P.3d at 234; *O'Connell*, 134 Nev. at 560, 429 P.3d at 672. As discussed in  
22 detail above, Plaintiff satisfies this second *Brunzell* factor based upon the information presented  
23 and the Court's own observations regarding the difficulty, intricacy, importance, time, skill  
24 required, and responsibility imposed for this case.

25 On the third *Brunzell* factor, the Court finds, consistent with its other findings, that  
26 Plaintiff's requested award of attorney fees against Defendants is reasonable based on the work  
27 actually performed, including the skill, time, attention and risk. The Court, having presided over  
28 this case and the jury trial, has personal knowledge of the information Plaintiff provided

1 regarding the breadth of this litigation, as well as the individual filings on key issues before,  
2 during, and after trial.

3 On the fourth *Brunzell* factor, the Court agrees with Plaintiff's unchallenged  
4 characterization of this factor that the jury's verdict and Plaintiff's work both speak for  
5 themselves. Plaintiff was successful at trial and in Defendants' post-trial challenges to the verdict  
6 to the great benefit of Plaintiff and his requested relief in this litigation.

7 Regarding Plaintiff's requested contingency fee of 50% based upon two contingency fee  
8 agreements with his trial and appellate counsel, the Court finds that the requested sum of  
9 \$2,550,052.53 in attorney fees is reasonable. The Court makes this finding based upon the  
10 Court's weighing of the *Brunzell* factors and the policies, considerations, and law outlined by the  
11 Nevada Court of Appeals in *O'Connell* and the Nevada Supreme Court in *Capriati*, among other  
12 authorities, including the Restatement (Third) of the Law Governing Lawyers.

13 **ORDER GRANTING IN-PART AND DENYING IN-PART DEFENDANTS'**  
14 **MOTION TO RETAX PLAINTIFF'S COSTS**

15 The Court, having considered Plaintiff's Verified Memorandum of Costs and  
16 Disbursements, Defendants' Motion to Retax Plaintiff's Costs, and Plaintiff's Opposition to  
17 Defendants' Motion to Retax Costs, and having decided this matter without oral argument by  
18 minute order on October 29, 2024, hereby orders as follows: Defendants' Motion to Retax  
19 Plaintiff's Costs is hereby GRANTED IN-PART AND DENIED IN-PART, such that Plaintiff  
20 shall recover litigation costs from Defendants in the total amount of \$28,937.61.

21 On September 24, 2024, Plaintiff, Jared Moss, timely filed his Verified Memorandum of  
22 Costs and Disbursements, requesting a total of \$41,102.61 in costs. On September 27, 2024,  
23 Defendants, Sean Edward Tomesco and Second Opinion Plumbing, LLC, timely filed their  
24 Motion to Retax Plaintiff's Costs. On October 11, 2024, Plaintiff timely filed his Opposition to  
25 Defendants' Motion to Retax Costs. The Court, deciding this matter without oral argument,  
26 hereby finds and concludes as follows:

27 This case involved a motor vehicle and pedestrian accident that occurred on July 9, 2020.  
28 A jury trial was held in this case from March 25, 2024 to March 29, 2024. The jury returned a

1 verdict in favor of Plaintiff, in the amount of \$5,000,000.00. Plaintiff was the prevailing party  
2 and, as such, this Court is required to award Plaintiff his reasonable and necessary costs pursuant  
3 to NRS 18.020(b). Defendants' Motion to Retax challenges Plaintiff's requested costs on the  
4 general grounds that Plaintiff failed to demonstrate that each cost was reasonable and necessary.

5 Defendants do not specifically oppose the following costs:

- 6 a. Clerks' fees: \$935.84;
- 7 b. Reporters' fees for depositions, including a reporter's fee for one copy of  
each deposition: \$956.40;
- 8 c. The fee of any sheriff or licensed process server for the delivery or service  
of any summons or subpoena used in the action, unless the court determines  
9 that the service was not necessary: \$460.00;
- 10 d. Reasonable costs for photocopies: \$75.40;
- 11 e. Dr. Wang's Expert fee: \$997.00;
- 12 f. Richard Tusko's fee: \$2,800.00;
- 13 g. LVMPD Photos: \$12.00;
- 14 h. LVMPD 911 Recording Transcript: \$48.00;
- 15 i. LVMPD Report: \$11.00;
- 16 j. LVMPD Redaction of Body Camera Videos: \$465.60;
- 17 k. Nationwide Legal Nevada, LLC Delivery: \$27.00;
- l. Nationwide Legal Nevada, LLC Pickup Flash Drive: \$24.00;
- 18 m. Office Depot: \$128.06;
- 19 n. Parking: \$360.00;
- 20 o. Trial Binders: \$462.47;
- 21 p. Auto Jared Moss: \$129.84; and
- 22 q. Legal Support Services (Equipment Rental): \$446.00.

23 The Court grants Plaintiff these costs, in the total amount of \$8,338.61.

24 Plaintiff has requested \$16,275.00 in expert fees for Dr. Muir. Dr. Muir billed Plaintiff for  
25 medical record review, preparation of a life care plan, and trial testimony. Dr. Muir's education  
26 and experience established him as an expert. Dr. Muir's testimony was crucial for Plaintiff in  
27 establishing his injuries and their continued impact on his life. The Court finds that Dr. Muir  
28 aided the jury on the issue of damages relating to Plaintiff's injuries and the resulting pain and  
suffering. The Court also finds that the focus of Dr. Muir's testimony was not repetitive of any  
other witnesses. Dr. Muir performed a review of Plaintiff's medical records and provided  
thoughtful reporting as to his opinions. Consequently, Dr. Muir's overall fees, documented by  
the provided invoices, were appropriate for the amount of work performed and were consistent  
with rates charged in the community. The Court recognizes Dr. Muir's role in Plaintiff's case and

1 finds that allowing Plaintiff's expert cost beyond the statutory \$15,000 is appropriate. Therefore,  
2 Plaintiff is awarded \$16,275.00 for Dr. Muir's fees.

3 Plaintiff seeks \$9,665.00 for the recovery of costs for three focus group sessions.  
4 Defendants challenge this cost on the ground that it is not included in NRS 18.005. The Court  
5 finds that this cost is not reasonable and necessary in light of the circumstances of this case.  
6 Therefore, the Court will not allow this cost.

7 Defendants challenge Plaintiff's request for \$2,400 in mediation fees, noting that such  
8 fees are not specifically included in NRS 18.005. The Court agrees that mediation fees are not  
9 specifically allowable by statute. The Court recognizes the importance of mediation and does not  
10 want to discourage parties from participating in such settlement efforts. Holding a party  
11 responsible for the other party's meditation costs if he or she loses at trial could discourage parties  
12 from engaging in mediation or other settlement efforts. Therefore, the Court will not allow this  
13 cost.

14 Plaintiff seeks \$100 for recovery of a Medical Summary Spreadsheet prepared by  
15 Plaintiff's vendor. Defendants challenge Plaintiff's request on the basis that the Medical  
16 Summary Spreadsheet could have been prepared by Plaintiff's Counsel. If the Spreadsheet was  
17 prepared by Plaintiff's Counsel, the cost would have been subsumed as part of trial preparation  
18 fees. The Court agrees and finds that the cost is not reasonable and necessary, as Plaintiff's  
19 Counsel could have prepared the Spreadsheet. Therefore, the Court will not allow this cost.

20 Defendants challenge Plaintiff's request of \$4,324.00 for the production of 4 days of trial  
21 transcripts compiled by Realtime Trials Reporting, on the grounds that the cost is excessive and  
22 unreasonable, and that there is no explanation of the disparate costs for different days of trial.  
23 The Court finds that the costs are not excessive and are reasonable. The Court further finds that  
24 Plaintiff has provided a credible explanation for the disparate cost of transcripts for different days  
25 of trial. Therefore, Plaintiff is awarded \$4,324.00 for trial transcripts.

## 26 **CONCLUSION AND ORDER**

27 Based on the foregoing, Plaintiff's Motion for Attorney Fees, Costs, and Interest is hereby  
28 GRANTED. Defendants' Motion to Retax Costs is hereby GRANTED IN-PART AND DENIED



1 IN-PART. Defendants Sean Edward Tomesco and Second Opinion Plumbing, LLC are hereby  
2 ORDERED to pay Plaintiff Jared Moss attorney fees in the amount of \$2,550,052.53 and  
3 litigation costs in the amount of \$28,937.61, for a total of \$2,578,990.14.

4 Based on NRS 17.130 and *Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 26, 125 P.3d 1160, 1167  
5 (2006), post-judgment interest will accrue on this total amount at the adjustable legal rate, which  
6 is currently 10.00%, and is a daily interest amount of approximately \$706.57 until fully satisfied.

7 **IT IS SO ORDERED.**

Dated this 18th day of February, 2025

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10 DISTRICT COURT JUDGE

11 **83F 4AC 8453 9044**  
12 **Eric Johnson**  
13 **District Court Judge**  
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1 **CSERV**

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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Jared Moss, Plaintiff(s)

CASE NO: A-21-840372-C

7 vs.

DEPT. NO. Department 20

8 Sean Tomesco, 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: 2/18/2025

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4  
5 If indicated below, a copy of the above mentioned filings were also served by mail  
6 via United States Postal Service, postage prepaid, to the parties listed below at their last  
7 known addresses on 2/19/2025

8 M. Meyer

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