Case No. 71300

In the Supreme Court of Nevada

FAROOQ ABDULLA, individually, Appellant, *vs.* ETHAN VOLUNGIS, individually, Respondent.

Electronically Filed
Mar 01 2018 09:01 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable MICHELLE LEAVITT, District Judge
District Court Case No. A-14-702810-C

APPELLANT'S APPENDIX
VOLUME 1
PAGES 1-250

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Docket 71300 Document 2018-08148

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CIVIL COVER SHEET

A-14-702810-C

Clark County, Nevada

Case No. _____ XII

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Ethan Volungis	Defendant(s) (name/address/phone): Farooq Abdulla
Attorney (name/address/phone): Dennis M. Prince, 3230 S. Buffalo Drive, Suite 108, Las Vegas, Nevada 89117 (702) 228-6800	Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☐ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☐ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence

- ☒ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; *for Clark or Washoe Counties only.*)

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

June 20, 2014

Date

Signature of initiating party or representative

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Attorneys for Plaintiff
Ethan Volungis

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DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

vs.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive;

Defendants.

Case No.: A-14-702810-C
Dept. No.: XII

COMPLAINT

Plaintiff Ethan Volungis, by and through his attorneys of record, PRINCE & KEATING, and the Law Office of Chad Golightly and for his Complaint against the Defendant, and each of them, alleges as follows:

GENERAL ALLEGATIONS

1. At all times relevant herein, Ethan Volungis ("Volungis") is and was a resident of Clark County, State of Nevada.

2. Upon information and belief at all times relevant herein Defendant Farooq Abdulla ("Abdulla") is and was a resident of Clark County, State of Nevada.

3. The true names and capacities of Defendants named herein as DOES I through X, and ROE BUSINESS ENTITIES I through X, whether individual, corporate, associate, or otherwise, are presently unknown to Plaintiff, who, therefore, sues said defendants so designated herein is responsible in some manner for the events and occurrences referred to herein alleged, and Plaintiff will request leave of Court to amend this Complaint to insert the true names and capacities of DOES I through X, and ROE BUSINESS ENTITIES I through X, when the same have been ascertained and to join such defendants in this action.

4. At all times relevant herein, Volungis was the operator of a 1996 Cadillac Fleetwood bearing license plate number LV8R00.

5. At all times relevant herein, Defendant Abdulla was the operator of a 2012 Nissan Altima bearing license plate number 346YKZ.

6. Based upon information and belief, Defendant Abdulla was the registered owner of the 2012 Nissan Altima truck bearing license plate number 346YKZ.

7. On or about July 2, 2013, Volungis was operating his vehicle southbound on Tenaya Way in the number one travel lane south of Lake Mead Blvd in Las Vegas, Clark County, Nevada.

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8. At the same time, Abdulla was also traveling southbound in the number two travel lane on Tenaya Way south of Lake Mead Blvd. While traveling south, Abdulla attempted to change lanes from travel lane two to travel lane one, thereby striking the right side of Volungis' vehicle. The impact caused Plaintiff to sustain personal injuries as set forth herein.

FIRST CLAIM FOR RELIEF

(NEGLIGENCE)

Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 8, as though fully set forth herein.

9. On or about July 2, 2013, Defendant Abdulla had a duty to operate his vehicle in a careful and prudent manner.

10. Abdulla breached this duty when he operated his vehicle in a negligent, careless and reckless manner when he failed to pay full attention to driving and made an unsafe lane change striking Volungis' vehicle, thereby causing damages and injuries to Plaintiff.

11. By reason of the premises and as a direct and proximate result thereof, Plaintiff sustained injuries to his head, neck, back, bodily limbs, organs, and systems all or some of which conditions may be permanent and disabling in nature, all to his general damage in a sum in excess of $10,000.

12. By reasons of the premises and as a direct and proximate result of the aforementioned, Volungis was required to and did receive medical and other treatment for his injuries received in an expense all to his damage in a sum in excess of $10,000. Said services, care, and treatment may continue in the future, at a presently unascertainable amount, and Plaintiff will amend his Complaint accordingly when the same shall be ascertained.

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13. Prior to the injuries complained herein, Volungis was an able bodied person readily and gainfully employed and physically capable of engaging in all other activities for which he was otherwise suited.

14. By reason of the premises and as a direct and proximate result of the Abdulla's negligence, Volungis has been required to and did lose time from his employment, continues to and shall continue to be limited in each of his activities and occupations which has caused and shall continue to cause Volungis' loss of earnings and earning capacity to Volungis' damage in a presently unascertainable amount. In this regard, Volungis asks leave of this Court to insert said amount when the same shall be fully ascertained.

15. Volungis has been compelled to retain the services of an attorney to prosecute this action and is, therefore, entitled to reasonable attorney's fees and costs incurred herein.

SECOND CLAIM FOR RELIEF

(NEGLIGENCE PER SE)

Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 15, as if fully set forth herein.

16. Abdulla had a duty to operate his vehicle in accordance with the traffic laws of the State of Nevada.

17. Abdulla violated the laws of the State of Nevada by operating his vehicle in a negligent, careless and reckless manner, by failing to pay full attention to driving and thus, made an unsafe lane change striking Volungis' vehicle, thereby causing damages and injuries to Plaintiff.

18. By reason of the premises and as a direct and proximate result thereof, Plaintiff sustained injuries to his head, neck, back, bodily limbs, organs, and systems all or some of which conditions may be permanent and disabling in nature, all to his general damage in a sum in excess of $10,000.

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19. By reasons of the premises and as a direct and proximate result of the aforementioned, Volungis was required to and did receive medical and other treatment for his injuries received in an expense all to her damage in a sum in excess of $10,000. Said services, care, and treatment are continuing and shall continue in the future, at a presently unascertainable amount, and Volungis will amend his Complaint accordingly when the same shall be ascertained.

20. Prior to the injuries complained herein, Volungis was an able bodied person readily and gainfully employed and physically capable of engaging in all other activities for which he was otherwise suited.

21. By reason of the premises and as a direct and proximate result of the Defendant's negligence, Volungis has been required to and did lose time from his employment, continues to and shall continue to be limited in each of his activities and occupations which has caused and shall continue to cause loss of earnings and earning capacity to Volungis' damage in a presently unascertainable amount. In this regard, Volungis asks leave of this Court to insert said amount when the same shall be fully ascertained.

22. Volungis has been compelled to retain the services of an attorney to prosecute this action and she is therefore entitled to reasonable attorney's fees and costs incurred herein.

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WHEREFORE, Plaintiff Volungis prays for judgment on all claims for relief as follows:

1. General damages in excess of $10,000.00.

2. Special damages in excess of $10,000.00.

3. Lost wages in an amount yet to be determined.

4. Costs of suit incurred including reasonable attorneys' fees.

5. For such other relief as the Court deems just and proper.

DATED this 2nd day of June, 2014.

PRINCE & KEATING

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Ethan Volungis

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DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

vs.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive,

Defendants.

CASE NO. A-14-702810-C
DEPT. NO. 12

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DEFENDANT, FAROOQ ABDULLA'S ANSWER TO COMPLAINT

COMES NOW Defendant, FAROOQ ABDULLA (Abdulla), by and through his attorneys of record, THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and for his Answer to the Plaintiff's Complaint on file herein, admits, denies and alleges as follows:

GENERAL ALLEGATIONS

1. Answering Paragraphs 1, 3, 4 and 7 of Plaintiff's Complaint on file herein, answering Defendant Abdulla states that he does not have sufficient knowledge or information upon which to

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base a belief as to the truth of the allegations contained therein and, upon that ground, denies each and every allegation therein contained.

2. Answering Paragraphs 2 and 5 of Plaintiff's Complaint on file herein, answering Defendant Abdulla admits the allegations contained therein.

3. Answering Paragraph 6 of Plaintiff's Complaint on file herein, answering Defendant Abdulla admits that Defendant Abdulla was the registered owner of the 2012 Nissan Altima bearing license plate number 346YKZ, but denies that the 2012 Nissan Altima was a truck.

4. Answering Paragraph 8 of Plaintiff's Complaint on file herein, answering Defendant Abdulla denies each and every allegation contained therein.

FIRST CLAIM FOR RELIEF

(NEGLIGENCE)

5. Answering Paragraphs 9, 10, 11, 12, 13, 14 and 15 of Plaintiff's Complaint on file herein, answering Defendant Abdulla denies each and every allegation contained therein.

SECOND CLAIM FOR RELIEF

(NEGLIGENCE PER SE)

6. Answering Paragraphs 16, 17, 18, 19, 20, 21 and 22 of Plaintiff's Complaint on file herein, answering Defendant Abdulla denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant Abdulla alleges that the allegations contained in Plaintiff's Complaint on file herein fail to state a claim against answering Defendant Abdulla upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim is barred by the Statute of Limitations.

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THIRD AFFIRMATIVE DEFENSE

The incident alleged in the Complaint, and the resulting damage, if any, to Plaintiff, was proximately caused or contributed to by the Plaintiff's own negligence, and such negligence was greater than the negligence, if any, of answering Defendant Abdulla.

FOURTH AFFIRMATIVE DEFENSE

Defendant Abdulla alleges that the incident referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party over whom answering Defendant Abdulla had no control.

FIFTH AFFIRMATIVE DEFENSE

Answering Defendant Abdulla alleges that Plaintiff has failed to mitigate his damages and, thus, his recovery, if any, should be reduced accordingly.

RESERVATION OF RIGHTS

Pursuant to Rule 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of answering Defendant Abdulla's Answer, and therefore answering Defendant Abdulla reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

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WHEREFORE, Defendant, FAROOQ ABDULLA, prays that Plaintiff take nothing by reason of his Complaint on file herein, and that the same be dismissed with prejudice, each of the parties to bear their own costs incurred herein.

DATED this 4th day of August, 2014.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on the 4th day of August, 2014, I duly deposited for mailing in the U.S. Mail at Las Vegas, Nevada, a true and correct copy of the above and foregoing DEFENDANT, FAROOQ ABDULLA'S ANSWER TO COMPLAINT, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to:

Further, service was also attempted via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

Dennis M. Prince, Esq.
Garnet E. Beal, Esq.
Prince & Keating
3230 S. Buffalo Drive, Ste. 108
Las Vegas, Nevada 89117
Attorneys for Plaintiff

An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

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CLERK OF THE COURT

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CHRISTOPHER J. CURTIS, ESQ.
Nevada Bar No. 4098
MEGHAN M. GOODWIN, ESQ.
Nevada Bar No. 11974
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
Mailing Address: PO Box 2070
Las Vegas, Nevada 89125-2070
1100 E. Bridger Avenue
Las Vegas, Nevada 89101
Phone: (702) 366-0622
Fax: (702) 366-0327
ccurtis@thorndal.com
mgoodwin@thorndal.com

Attorneys for Defendant,
FAROOQ ABDULLA

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

vs.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive,

Defendants.

CASE NO. A-14-702810-C
DEPT. NO. 12

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DEFENDANT, FAROOQ ABDULLA'S DEMAND FOR JURY TRIAL

COMES NOW Defendant, FAROOQ ABDULLA, by and through his counsel of record, the law firm of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and hereby

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demands a trial by jury of all issues in the above-entitled action.

DATED this 4th day of August, 2014.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER



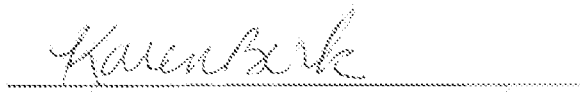
CHRISTOPHER J. CURTIS, ESQ.
Nevada Bar No. 4098
MEGHAN M. GOODWIN, ESQ.
Nevada Bar No. 11974
1100 East Bridger Avenue
Las Vegas, Nevada 89101
Attorneys for Defendant, FAROOQ ABDULLA

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on the 4th day of August, 2014, I duly deposited for mailing in the U.S. Mail at Las Vegas, Nevada, a true and correct copy of the above and foregoing DEFENDANT, FAROOQ ABDULLA'S DEMAND FOR JURY TRIAL, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to:

Dennis M. Prince, Esq.
Garnet E. Beal, Esq.
Prince & Keating
3230 S. Buffalo Drive, Ste. 108
Las Vegas, Nevada 89117
Attorneys for Plaintiff

Further, service was also attempted via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.



An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

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CLERK OF THE COURT

JCCR
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GARNET E. BEAL
Nevada Bar No. 12693
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Attorneys for Plaintiff
Ethan Volungis

CHAD M. GOLIGHTLY
Nevada Bar No. 5331
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(702) 361-7766 facsimile

Attorneys for Plaintiff
Ethan Volungis

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

vs.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive;

Defendants.

Case No. : A702810
Dept. No.: XII

JOINT CASE CONFERENCE REPORT

DISCOVERY PLANNING/DISPUTE
CONFERENCE REQUIRED
YES ____ NO __X__.

SETTLEMENT CONFERENCE REQUESTED
YES ____ NO __X__.

I.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

A. Date of filing of Complaint: June 20, 2014

B. Date of filing of Answer by Each Defendant: Defendant filed his Answer on August 4, 2014;

C. Date that Early Case Conference was held and who attended:

The Early Case Conference was held on October 17, 2014, and was attended by Garnet E. Beal, Esq. of the law office of PRINCE | KEATING on behalf of the Plaintiff Ethan Volungis. Meghan Goodwin of Thorndal, Armstrong, Delk, Balkenbush & Eisinger attended on behalf of the Defendant, Faroog Abdulla.

II.

A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH CLAIM FOR RELIEF OR DEFENSE: [16.1(c)(1)]

A. Description of the action:

This case arises as a result of an automobile accident that occurred on July 2, 2013, wherein the Plaintiff alleges he sustained injuries as a result of the negligence of Defendant.

B. Claims for relief:

1) Negligence;

2) Negligence Per Se;

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C. Defenses:

1) Defendant Abdulla alleges that the allegations contained in Plaintiff's Complaint on file herein fail to state a claim against answering Defendant Abdulla upon which relief can be granted.

2) Plaintiff's claim is barred by the Statute of Limitations.

3) The incident alleged in the Complaint, and the resulting damage, if any, to Plaintiff, was proximately caused or contributed to by the Plaintiffs own negligence, and such negligence was greater than the negligence, if any, of answering Defendant Abdulla.

4) Defendant Abdulla alleges that the incident referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party over whom answering Defendant Abdulla had no control.

5) Answering Defendant Abdulla alleges that Plaintiff has failed to mitigate his damages and thus, his recovery, if any, should be reduced accordingly.

6) Pursuant to Rule 11, all possible affirmative defenses may not have been alleged hereinsofar as sufficient facts were not available after reasonable inquiry upon the filing of answering Defendant Abdulla's Answer, and therefore answering Defendant Abdulla reserves the right amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

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III.

LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A RESULT THEREOF: [16.1(a)(1)(B) and 16.1(c)(4)]

A. Plaintiff:

1. Traffic Accident Report;

2. City of Las Vegas Fire Rescue, medical records;

3. City of Las Vegas Fire Rescue, billing;

4. Mountainview Hospital, medical records;

5. Mountainview Hospital, billing;

6. Fremont Emergency Services, billing;

7. Radiology Specialist, billing;

8. Spinal Rehabilitation Center, medical records (SRC0001-SRC00079);

9. Spinal Rehabilitation Center, billing (SRC00080-SRC00084);

10. Southern Nevada Medical Group, medical records (SNMG0001-0007);

11. Southern Nevada Medical Group, billing (SNMG0008-0009):

12. Lake Mead Radiology, medical records (LMR0001-0006);

13. Lake Mead Radiology, billing (LMR0007);

14. Advanced Pain Consultants, medical records (APC0001-APC00090);

15. Advanced Pain Consultants, billing (APC00091-APC00092);

16. Box Canyon Surgery Center, medical records (BCSC0001-BCSC00062);

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17. Box Canyon Surgery Center, billing (BCSC00063);

18. Desert Institute of Spine Care, medical records (DISC0001-DISC0070);

19. Desert Institute of Spine Care, billing (DISC00071-00072);

20. Desert Orthopedic Center, medical records (DOC0001-0005);

21. Desert Orthopedic Center, billing (DOC0006);

22. Southern Hills Hospital, medical records (SHH0001-SHH00058);

23. Southern Hills Hospital, billing (SHH000569-000577);

24. Any and all diagnostic studies including but not limited to x-rays, CT Scans and MRI studies pertaining to the Plaintiff;

25. Any documents identified by any other party to this litigation;

26. Any rebuttal or impeachment documents deemed necessary.

B. Defendant:

Defendant will provide his list of documents within two (2) weeks of filing this report.

IV.

LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING IMPEACHMENT OR REBUTTAL WITNESSES:

A. Plaintiff:

1. Ethan Volungis
c/o Dennis M. Prince
PRINCE | KEATING
9130 West Russell Road
Suite 200
Las Vegas, Nevada 89148

PRINCE | KEATING
ATTORNEYS
9130 W. RUSSELL RD.
SUITE 200
LAS VEGAS, NEVADA 89148
PHONE: (702) 228-6800

2. Farooq Abdulla
c/o Christopher J. Curtis, Esq.
Meghan M. Goodwin, Esq.
Thorndal, Armstrong, Delk
Balkenbush & Eisinger
P. O. Box 2070
Las Vegas, Nevada 89125-2070

3. Officer D. Fletcher
ID No. 8734
Las Vegas Metropolitan Police Dept.
400 S. Martin Luther King Boulevard, Bldg. C
Las Vegas, NV 89106

4. Jarrett Lovett, EMT
Christopher Racine, EMT and/or
Person Most Knowledgeable
City of Las Vegas Fire Rescue
P.O. Box 748029
Los Angeles, CA 90074

5. Robert L. Spence and/or
Person Most Knowledgeable
Mountainview Hospital
3100 N. Tenaya Way
Las Vegas, NV 89128

6. David Gorczyca, M.D. and/or
Person Most Knowledgeable
Radiology Specialists
P.O. Box 50709
Henderson, NV 89016

7. James Preddy, DO and/or
Person Most Knowledgeable
Fremont Emergency Services
9301 S. Western
Oklahoma City, OK 73139

8. James Glasgow, DC and/or
Person Most Knowledgeable
Spinal Rehabilitation Center
2415 N. Las Vegas Boulevard, Suite 105
North Las Vegas, NV 89030

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SUITE 200
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9. Syed Ahmed, M.D.
Southern Nevada Medical Group
3025 S. Maryland Parkway, Suite A
Las Vegas, NV 89109

10. Keith Lewis, M.D.
Las Mead Radiology - Upright MRI
6460 Medical Center Street
Suite 150
Las Vegas, NV 89148

11. Raimundo Leon, M.D. and/or
Person Most Knowledgeable
Advanced Pain Consultants
2650 Crimson Canyon
Las Vegas, NV 89128

12. Person Most Knowledgeable
Box Canyon Surgery Center
2555 Box Canyon Drive
Las Vegas, NV 89128

13. Andrew Cash, M.D. and/or
Person Most Knowledgeable
Desert Institute of Spine Care
9339 W. Sunset Road, Suite 100
Las Vegas, NV 89148

14. Thomas Dunn, M.D. and/or
Person Most Knowledgeable
Desert Orthopedic Center
8402 W. Centennial Parkway
Las Vegas, NV 89149

15. Person Most Knowledgeable
Southern Hills Hospital
9300 W. Sunset Road
Las Vegas, NV 89148

16. Any and all witnesses identified by any party to this litigation.

17. Any and all witnesses identified by Defendants.

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18. Any impeachment or rebuttal witnesses who may be deemed necessary.

B. Defendant:

Defendant will provide their list of witnesses within two (2) weeks of the signing of this report.

V.

DISCOVERY PLAN [16.1(b)(2) and 16.1(c)(2)]

A. What changes, if any, should be made in the timing, form or requirements for disclosures under 16.1(a):

1. Plaintiff's view: None.

2. Defendant's view: None.

When disclosures under 16.1(a)(1) were made or will be made:

1. Plaintiff's disclosures: January 5, 2015.

2. Defendant's disclosures: To be provided within two (2) weeks of filing this report.

Subjects on which discovery may be needed:

1. Plaintiff's view: All matters set forth in Plaintiff's complaint.

2. Defendant's view: All matters set forth in Plaintiff's complaint.

C. Should discovery be conducted in phases or limited to or focused upon particular issues?

1. Plaintiff's view: N/A

2. Defendant's view: N/A

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D. What changes, if any, should be made in limitations on discovery imposed under these rules and what, if any, other limitations should be imposed?

1. Plaintiff's view: None at this time.

2. Defendant's view: None at this time.

E. What, if any, other orders should be entered by court under Rule 26(c) or Rule 16(b) and (c):

1. Plaintiff's view: None at this time.

2. Defendant's view: None at this time.

F. Estimated time for trial:

1. Plaintiff's view: 8-9 full trial days.

2. Defendant's view: 8-9 full trial days.

VI.

DISCOVERY AND MOTION DATES [16.1(c)(5)-(8)]

A. Dates agreed by the parties:

1. Close of discovery: January 20, 2016;

2. Final date to file motions to amend pleadings or add parties (without further court order: October 20, 2015;

3. Final dates for expert disclosures:

i. initial disclosure: October 20, 2015;

ii. rebuttal disclosures: November 20, 2015;

4. Final date to file dispositive motions: February 19, 2016.

B. In the event the parties do not agree on dates, the following section must be completed: N/A

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VII.

JURY DEMAND [16.1(c)(10)]

A jury demand has been filed: Yes.

VIII.

INITIAL DISCLOSURES/OBJECTIONS [16.1(a)(1)]

If a party objects during the Early Case Conference that initial disclosures are not appropriate in the circumstances of this case, those objections must be stated herein. The Court shall determine what disclosures, if any, are to be made and shall set the time for such disclosures.

This report is signed in accordance with Rule 26(g)(1) of the Nevada Rules of Civil Procedure. Each signature constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the disclosures made by the signer are complete and correct as of this time.

Dated: 2/12/15

PRINCE | KEATING

#12575

Dennis M. Prince
Nevada Bar No. 5092
Garnet E. Beal
Nevada Bar No. 12693
9130 W. Russell Road, Suite 200
Las Vegas, Nevada 89148
Attorney for Plaintiff
Ethan Volungis

Dated: 2/13/15

THORNDAL, ARMSTRSONG, DELK, BALKENBUSH & EISINGER

Philip Goodhart, Esq.
Nevada Bar No. 5332
Meghan M. Goodwin, Esq.
Nevada Bar No. 11974
P. O. Box 2070
Las Vegas, Nevada 89125-2070
Attorneys for Defendant
Farooq Abdulla

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

v.

FAROOQ ADBULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive,

Defendants.

CASE NO. A702810
DEPT NO. XII

SCHEDULING ORDER
(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Personal injury - vehicle accident**

DATE OF FILING JOINT CASE CONFERENCE REPORT(S): **2/17/15**

TIME REQUIRED FOR TRIAL: **8-9 days**

DATES FOR SETTLEMENT CONFERENCE: **None Requested**

Counsel for Plaintiff:
Dennis M. Prince, Esq., Prince & Keating AND Chad M. Golightly, Esq., Law Offices of Chad M. Golightly (co-counsel)

Counsel for Defendant:
Philip Goodhart, Esq., Thorndal, Armstrong, Delk, Balkenbush & Eisinger

Counsel representing all parties have been heard and after consideration by the Discovery Commissioner,

IT IS HEREBY ORDERED:

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DISCOVERY COMMISSIONER
EIGHTH JUDICIAL DISTRICT COURT

1. all parties shall complete discovery on or before 1/20/16.

2. all parties shall file motions to amend pleadings or add parties on or before 10/20/15.

3. all parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 10/20/15.

4. all parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 11/20/15.

5. all parties shall file dispositive motions on or before 2/19/16.

Certain dates from your case conference report(s) may have been changed to bring them into compliance with N.R.C.P. 16.1.

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Within 60 days from the date of this Scheduling Order, the Court shall notify counsel for the parties as to the date of trial, as well as any further pretrial requirements in addition to those set forth above.

Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at least 30 days before trial.

Motions for extensions of discovery shall be made to the Discovery Commissioner in strict accordance with E.D.C.R. 2.35. Discovery is completed on the day responses are due or the day a deposition begins.

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Unless otherwise ordered, all discovery disputes (except disputes presented at a pre-trial conference or at trial) must first be heard by the Discovery Commissioner.

Dated this 25 day of February, 2015.

DISCOVERY COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I placed a copy of the foregoing DISCOVERY SCHEDULING ORDER in the attorney folder(s), mailed or e-served as follows:

Dennis M. Prince, Esq.
Chad M. Golightly, Esq.
Philip Goodhart, Esq.

COMMISSIONER DESIGNEE

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, Plaintiff, vs.	)	CASE NO.: A-14-702810-C
FAROOQ ABDULLA, et al., Defendants.	)	DEPT. NO.: XII

ORDER SETTING CIVIL JURY TRIAL

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried before a jury on a FIVE WEEK stack to begin on, **TUESDAY, APRIL 19, 2016**, at 10:30 a.m.

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held on **MONDAY, MARCH 28, 2016,** at 10:00 a.m. The Pre-Trial Conference must be attended by designated trial counsel who are knowledgeable and prepared for such conference. Should the designated trial counsel fail to appear at the Pre-Trial Conference, an ex-parte hearing may be held and judgment of dismissal or default or other appropriate judgment entered or other sanctions imposed. E.D.C.R. 2.68.

1. The parties are required to meet and confer, through their counsel prior to the Pre-Trial Conference to stipulate to the contents of the juror notebook. Any objections to the juror notebook may be addressed with the court at the Pre-Trial Conference.

2. The parties are required to bring a copy of the proposed juror notebook to the Pre-Trial Conference for the courts review. Failure to comply with this requirement may result in the court vacating the trial date, or any other remedy deemed appropriate pursuant to E.D.C.R. 7.60.

3-10-15 PI

MICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

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C. A Calendar Call will be held on **APRIL 11, 2016,** at 10:00 a.m. Parties must bring to Calendar Call the following:

(1) All exhibits marked by counsel for identification purposes;
(2) Typed exhibit lists with all stipulated exhibits marked:
(3) Jury instructions in 2 groups: (1) Unopposed, and (2) Opposed. Opposed instructions must contain the name of the proposing party and authoritative citations.
(4) Proposed voir dire questions;
(5) Original depositions;
(6) List of equipment needed for trial.

D. The Pre-trial Memorandum must be filed no later than 5:00 P.M. on **APRIL 4, 2016**, with a Courtesy Copy delivered to the Department. All parties, (Attorneys and parties in proper person) **MUST** comply with **ALL REQUIREMENTS** of E.D.C.R. 2.67.

E. All discovery deadlines, deadlines for filing dispositive motions and motions to amend the pleadings or add parties are controlled by the previously issued Scheduling Order.

F. The parties are hereby ordered that in addition to any disclosures required by NRCP 16.1 (a)(1) and (2), the disclosures required by NRCP 16.1 (3) (A)(B) and (C) must be made at least 30 days prior to trial. Within 14 days thereafter, a party may serve a list disclosing (1) any objections to the use under NRCP 32(a) of a deposition designated by another party, and (2) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C) of NRCP 16.1 (3) (C). Objections not so disclosed, other than objections under NRS 48.025 and 48.035, **shall** be deemed waived unless excused by the court for good cause shown.

The disclosures must be in writing, signed and served.

G. All other pre-trial motions, including motions in limine, must be in writing and set for hearing no later than **APRIL 4, 2016.** Any such pre-trial motion **MUST** be filed by 5:00 P.M. on **FEBRUARY 29, 2016**; Oppositions are to be filed by 5:00 P.M. **MARCH 15, 2016**; Replies thereto are to be filed by 5:00 P.M., **MARCH 23, 2016**. **Orders Shortening Time will not be signed except in extreme emergencies.**

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacating of trial date; and/or other appropriate remedy or sanction.

MICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

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Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.

DATED this 10th day of March, 2015.

For MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL DISTRICT COURT

CERTIFICATE OF MAILING

I hereby certify on the 10th day of March, 2015, this document was E-Served, and/or mailed to the proper person as follows:

Counsel for Plaintiff: **Dennis M. Prince, Esq., PRINCE & KEATING *and* Chad M. Golightly, Esq., LAW OFFICES OF CHAD M. GOLIGHTLY *(co-counsel)***

Counsel for Defendant: **Philip Goodhart, Esq., THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER**

Pamela Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

Case A-14-702810-C

MICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

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CLERK OF THE COURT

MLIM
DENNIS M. PRINCE, ESQ.
Nevada Bar No. 5092
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
EGLET PRINCE
400 South Seventh Street, #400
Las Vegas, Nevada 89101
eservice@egletlaw.com
(702) 450-5400 phone
(702) 450-5451 facsimile
Attorneys for Plaintiff

EGLET PRINCE

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

vs.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive;

Defendants.

Case No. : A702810
Dept. No.: XII

PLAINTIFF'S MOTION IN LIMINE No. 2: TO EXCLUDE OPINIONS AND ARGUMENT THAT PLAINTIFF WAS SPEEDING EXCESSIVELY OR THAT SPEED CAUSED COLLISION

COMES NOW Plaintiff, ETHAN VOLUNGIS, by and through his attorneys of record, DENNIS M. PRINCE, ESQ., TRACY A. EGLET, ESQ., and DANIELLE TARMU, ESQ. of the law firm EGLET PRINCE, and hereby submits *Plaintiff's Motion in Limine No. 2: to Exclude Opinions and Argument That Plaintiff Was Speeding Excessively or That Speed Caused Collision.*

///

This Motion is based upon the pleadings and papers on file in this action, the Points and Authorities set forth herein, and argument to be made by counsel at the time of the hearing.

DATED this 29 day of February, 2016.

EGLET PRINCE

DENNIS M. PRINCE, ESQ.
Nevada Bar No.: 5092
TRACY A. EGLET, ESQ.
Nevada Bar No.: 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
Attorneys for Plaintiff

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **PLAINTIFF'S MOTION IN LIMINE No. 2: TO EXCLUDE OPINIONS AND ARGUMENT THAT PLAINTIFF WAS SPEEDING EXCESSIVELY OR THAT SPEED CAUSED COLLISION** on for hearing on the 4 day of Apr., 2016, at the hour of 8:30am, or as soon thereafter as counsel may be heard in Department XII.

DATED this 29 day of February, 2016.

EGLET PRINCE

DENNIS M. PRINCE, ESQ.
Nevada Bar No.: 5092
TRACY A. EGLET, ESQ.
Nevada Bar No.: 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
Attorneys for Plaintiff

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AFFIDAVIT OF KEVIN T. STRONG, ESQ. IN COMPLIANCE WITH EDCR 2.47

STATE OF NEVADA)
) ss.:
COUNTY OF CLARK)

KEVIN T. STRONG, ESQ., being first duly sworn, under oath, deposes and says that:

1. Affiant is an attorney licensed to practice law in the State of Nevada and an Associate with the law firm of **EGLET PRINCE**, counsel for Plaintiff in this matter;

2. Trial of this matter is scheduled to begin on April 19, 2016.

3. Affiant attempted to resolve this matter pursuant to EDCR 2.47 on February 25, 2016 via a telephone conference with Craig Delk, Esq. Although counsel were able to resolve numerous issues, which are outlined in a separate stipulation and order, they were unable to stipulate to exclude opinions and argument that Plaintiff was speeding excessively or that speed caused the subject collision because Mr. Delk believes Defendant can testify that Plaintiff was speeding at the time of the subject collision.

FURTHER, AFFIANT SAYETH NAUGHT.

KEVIN T. STRONG, ESQ.

SUBSCRIBED AND SWORN to before me
this 29 day of February, 2016.

NOTARY PUBLIC

BRITTNEY GLOVER
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 06-08-19
Certificate No: 15-2041-1

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendant has represented in various documents that he believes Plaintiff was speeding, and Plaintiff's speed is what caused the subject collision. However, Defendant admits he did not see Ethan's vehicle before the collision, thus he has no factual basis for his assumption of speed and his lay witness opinion is inadmissible under Nevada law cited below. Further, Defendant did not retain any expert to reconstruction the accident, give opinions about the vehicles' speeds, or give the opinion that Plaintiff's speed caused or contributed to the subject collision. Because there is no evidence to support any witness opinion or attorney argument that Plaintiff was speeding excessively or that his speed caused or contributed to the subject collision, any such opinions and argument should be excluded from trial.

II.

STATEMENT OF FACTS

On July 2, 2013, Plaintiff Ethan Volungis was driving his vehicle southbound on Tenaya Way in the number one travel lane, south of Lake Mead Boulevard. At the same time, Defendant Farooq Abdulla was traveling southbound on Tenaya Way, but in the number two travel lane. Defendant changed lanes into the number one travel lane and Ethan honked his horn and attempted to avoid Defendant's vehicle, but the left front of Defendant's vehicle struck the right side of Ethan's vehicle.

The speed limit where the subject collision occurred was 35 mph. *See* Traffic Accident Report, attached as **Exhibit "1,"** at 3, 5. Plaintiff Ethan Volungis was driving approximately 25 to 30 mph right before the collision. *See* Excerpt of Volungis Deposition, attached as **Exhibit "2,"** at 57:7-8. Ethan saw Defendant's vehicle start to encroach into his lane and honked his

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horn and slammed on his brakes to try to avoid Defendant. *Id.* at 57:13-25. Even though Plaintiff was traveling under the speed limit, Defendant Abdulla accuses Ethan of speeding prior to the subject collision and that his speed caused it. However, Defendant has no way of knowing Ethan's speed because he admits he did not see Ethan before the vehicles impacted:

> **INTERROGATORY NO. 9:**
>
> Please state in detail your actions taken from the time you first saw Plaintiff's vehicle until the time of impact and set forth:
> 1) If you accelerated or decelerated just prior to impact;
> 2) If you braked before, during, or after the impact; and
> 3) Did you turn just prior to impact, and if so, in what direction?
>
> **ANSWER:** See answer to Interrogatory No. 3 and answer to Interrogatory No. 5. ***Otherwise, not applicable, since I did not see Plaintiff's car before the impact.***

See Defendant's Answers to Plaintiff's First Set of Interrogatories, 6/26/15, attached as **Exhibit "3,"** at 4-5 (bold italic emphasis added).

> **INTERROGATORY NO. 15:**
>
> Please describe in detail your statement of facts as to how you contend the subject motor vehicle collision took place.
>
> **ANSWER:** I pulled out of the driveway into the right-hand lane of Tenaya going south. I wanted to make a U-turn, and started to change lanes to my left after checking for traffic. That is when the accident happened. ***I did not see Plaintiff, and believed that it was safe to change lanes. I believe Plaintiff may have been speeding which would explain why I did not see him before the accident.***

Id. at 7 (bold italic emphasis added).

Defendant also testified at his deposition that he did not see Plaintiff's vehicle before the collision and did not know where it came from. *See* Excerpt of Abdulla Deposition, attached as **Exhibit "4,"** at 20:18-20, 23:5-9.

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Plaintiff retained an accident reconstruction expert, Ronald Probert, to reconstruct the collision based on the evidence provided in this case. *See* Probert Report, 12/7/15, attached as **Exhibit "5."** Mr. Probert opines that the impact speed was 10 to 15 mph and Defendant pulled out in front of Ethan when he was 71 to 127 feet away from the point of impact, demonstrating that Defendant failed to keep a proper lookout for other vehicles when he changed lanes. *Id.* at 5. Defendant did not retain any expert to rebut Mr. Probert's conclusions or support Defendant's theory that Plaintiff was allegedly speeding and caused the collision.

Based on the foregoing, there is no evidence that Ethan was speeding excessively or that his speed caused the subject collision. Defendant Abdulla is a lay witness without facts or qualifications to support his opinion of Ethan's speed or causation of the collision, and Defendant has no expert witness to support his theory. Because there is no evidence to support testimony or argument that Ethan was speeding excessively or that his speed caused the subject collision, any opinions and argument in this respect should be excluded as baseless speculation.

III.

ARGUMENT

The trial court maintains the authority to rule on motions in limine by allowing advance rulings on the admissibility of evidence. Nev. R. Civ. P. 16(c). It is a goal of pretrial motions to narrow the issues for trial. *See* EDCR 2.67(a). The court is vested with discretion to simplify issues for trial and to determine whether to admit or exclude evidence. *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 320-21 (1995). The trial court's determination will not be overturned absent a showing of abuse. *Id.*

Regarding Defendant's testimony about speed, a lay witness can testify to opinions and inferences that are "[r]ationally based on the perception of the witness" and "[h]elpful to a clear

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understanding of the testimony of the witness or the determination of a fact in issue." Nev. Rev. Stat. 50.265. However, witnesses cannot give opinions or statements that are unsupported by the evidence. A verdict may not be based on speculation, whether the testimony comes from a lay witness or an expert. *Gramanz v. T-Shirts & Souvenirs*, 111 Nev. 478, 485 (1995). Testimony must have an evidentiary basis in order for it to be presented to a jury. *See id.*

In *Patton v. Henrikson*, 79 Nev. 197 (1963), the Nevada Supreme Court held that lay witnesses may testify to the rate of speed of moving vehicles only if the witness "is of ordinary intelligence ***and has had an adequate opportunity to observe the vehicle at the time in question***." 79 Nev. at 200 (emphasis added). The requirement that the witness have an adequate opportunity to view the vehicle is imperative to ensure that the opinions and inferences are based on the witness's personal knowledge.

Regarding causation, it is the function of the trier of fact to decide who and what caused an accident. *Frias v. Valle*, 101 Nev. 219, 221 (1985). An expert or other witness cannot give an opinion about who is at fault based on the statements of third parties "and a cursory inspection of the scene." *Id.* (excluding the conclusions and testimony of a police officer as to fault for a collision). "In Nevada, issues of negligence and proximate cause are considered issues of fact and not of law, and thus they are for the jury to resolve." *Nehls v. Leonard*, 97 Nev. 325, 328 (1981).

Defendant Abdulla believes that Plaintiff was speeding excessively and his speed caused the subject collision. However, he repeatedly admits that he did not see Ethan's vehicle before the impact. *See* **Exhibit "3,"** at 4-5, 7; **Exhibit "4,"** at 20:18-20, 23:5-9. Therefore, Defendant did not have an adequate opportunity to observe Plaintiff's vehicle and speed before the subject collision, as required by the Nevada Supreme Court in *Patton v. Henrikson*, 79 Nev. 197 (1963),

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and his conclusion is not "[r]ationally based on the perception of the witness," as required by NRS 50.265. Further, Defendant has no qualifications to give opinions that estimate speed, and chose not to retain an appropriately qualified expert to calculate whether Ethan was speeding in excess of the speed limit. Therefore, Defendant's conclusion is pure speculation, and any reference to his belief of Plaintiff's speed should be excluded from trial, as should any other lay witness opinion regarding speed unless he or she satisfies the requirements of NRS 50.265 and *Patton*.

Additionally, Defendant Abdulla should be precluded from speculating about whether Plaintiff's speed caused the subject collision. It is improper for a witness to testify about fault without the proper qualifications and foundation to do so. *See Frias*, 101 Nev. at 221 (reversible error to allow a police officer to testify about fault because he lacked the foundation and qualifications to do so). Defendant does not have any expertise in forces, impact, accident reconstruction, or speeds of vehicles, so he cannot form opinions about causation and factors that contributed to the subject collision. He did not retain an expert to provide such opinions. Therefore, it would be improper to allow him to give opinions that Plaintiff's speed caused or contributed to the subject collision.

Lastly, Defendant's counsel cannot be permitted to argue that Plaintiff was speeding excessively or that his speed caused the collision because there is no evidentiary basis for such argument. "There is no rule of trial practice more universally accepted and applied than the rule that counsel may not introduce into his argument to the jury statements unsupported by evidence produced on the trial and made not as expressions of belief or opinion, but as assertions of fact." *State v. Kassabian*, 69 Nev. 146, 149 (1952). Courts are encouraged in both civil and criminal cases to censure counsel's misstatements of facts or evidence to the jury. *Id.* at 149 (citing 53

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Am.Jur. 386 (Trial, sec. 480)). The Nevada Supreme Court has held in multiple cases that it is attorney misconduct and reversible error to allow an attorney to make a statement of fact beyond the scope of the record and/or evidence in front of the jury. *Id.* at 151-53 (citing *State v. Rodriguez*, 31 Nev. 342, 342 (1909) and *State v. Cyty*, 50 Nev. 256, 258 (1927)). Therefore, it would be improper for defense counsel to argue or imply at trial that Ethan was speeding excessively or his speed caused or contributed to the subject collision.

IV.

CONCLUSION

Based upon the foregoing facts, law, and analysis, Plaintiff respectfully requests this Court to **GRANT** his *Motion in Limine No. 2: to Exclude Opinions and Argument That Plaintiff Was Speeding Excessively or That Speed Caused Collision.*

DATED this 29 day of February, 2016.

EGLET PRINCE

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on February 29, 2016, I caused the foregoing document entitled **PLAINTIFF'S MOTION IN LIMINE No. 2: TO EXCLUDE OPINIONS AND ARGUMENT THAT PLAINTIFF WAS SPEEDING EXCESSIVELY OR THAT SPEED CAUSED COLLISION** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Craig R. Delk, Esq.
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An employee of EGLET PRINCE

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EXHIBIT "1"

Event Number: 130702-3226
Date Revised:

STATE OF NEVADA
TRAFFIC ACCIDENT REPORT
SCENE INFORMATION SHEET
Revised 1/1/01

Accident Number: LVMPD-130702-3226
☐ Property ☒ Injury ☐ Fatal

☒ Urban ☐ Rural
☐ Emergency Use ☐ Office Report
☐ Preliminary Report ☐ Resubmission ☒ Initial Report ☐ Supplement Report
☐ Hit and Run ☐ Private Property

Agency Name: LAS VEGAS METROPOLITAN PD

Collision Date	Time	Day	Beat / Sector	☐ County	☒ City
7/2/2013	18:03	TUESDAY	V6		LAS VEGAS

Mile Marker	# Vehicles	# Non Motorists	# Occupants	# Fatalities	# Injured	# Restrained
	2	0	2	0	1	2

Surface: ☒ Asphalt ☐ Concrete ☐ Gravel ☐ Dirt ☐ Other

Intersection: ☐ Four Way ☐ > Four Way ☐ T ☐ Y ☐ Roundabout ☐ Other

Possible Hazards: ☒ None ☐ Left Side ☐ Right Side ☐ Both Side ☐ Unknown

Occurred On: (Highway # or Street Name)
☐ 1) Parking Lot TENAYA WAY

Access Control: ☐ None ☐ Full ☒ Partial

☐ At Intersection With:
☒ Or 315 ☒ East ☐ West ☒ Approximate SOUTH or (Cross Street) LAKE MEAD BLVD

Roadway Character: ☐ Curve & Grade ☐ Curve & Hillcrest ☐ Curve & Level ☐ Straight & Grade ☐ Straight & Hillcrest ☒ Straight & Level ☐ Unknown ☐ Other

Roadway Conditions: ☒ Dry ☐ Icy ☐ Wet ☐ Snow ☐ Slush ☐ Standing Water ☐ Moving Water ☐ Unknown ☐ Sand / Mud / Oil / Dirt / Gravel ☐ Other

Total Thru Lanes: Main Road ☐ One ☐ Two ☐ Three ☒ Four ☐ Five ☐ > 5
Total All Lanes: 4

Average Roadway Widths: Travel Lane 12 Ft; Storage / Turn Lane 0 Ft; Median 0 Ft

Paved Shoulder: Inside 0; Outside 0

Roadway Grade: ☐ Not Determined ☒ Relatively Level Roadway ☐ Up Slope (+) ☐ Down Slope (-)
Relative To:
Grade: %

Pavement Markings and Type: 4 Lane Line, Broken White; ☐ Other; ☐ None; ☐ Unknown

Highway Description: ☐ Two-Way, Not Divided ☐ Two-Way, Div., Unprc. Median ☒ Two-Way, Div., Median Barrier ☐ One-Way, Not Div. ☐ Unknown ☐ Dirt Road

Weather Conditions: ☒ Clear ☐ Fog, Smog, Smoke, Ash ☐ Cloudy ☐ Severe Crosswinds ☐ Snow ☐ Sleet / Hail ☐ Rain ☐ Unknown ☐ Blowing Sand, Dirt, Soil, Snow ☐ Other

Light Conditions: ☐ Dusk ☐ Dawn ☒ Daylight ☐ Unknown ☐ Other ☐ Dark - No Roadway Lighting ☐ Dark - Spot Roadway Lighting ☐ Dark - Continuous Roadway Lighting ☐ Dark - Unknown Roadway Lighting

Vehicle Collision Type: ☐ Head On ☐ Rear End ☐ Backing ☐ Angle ☐ Rear to Rear ☒ Sideswipe - Meeting ☐ Sideswipe - Overtaking ☐ Non - Collision ☐ Unknown

Location of First Event: ☒ Travel Lane ☐ Turn Lane ☐ Gore ☐ Median ☐ Inside Shoulder ☐ Outside Shoulder ☐ Intersection ☐ Private Property ☐ Roadside ☐ Other ☐ Ramp ☐ Unknown

Highway / Environment Factors: ☒ None ☐ Weather ☐ Debris ☐ Glare ☐ Other Highway ☐ Other Environmental ☐ Shoulders ☐ Road Obstruction ☐ Work Trucks Blocking ☐ Wet, Icy, Snow, Slush ☐ Ruts, Holes, Bumps ☐ Active Work Zone ☐ Inactive Work Zone ☐ Animal in Roadway ☐ Unknown

Property Damage To Other Than Vehicle
Describe Property Damage:
Owner's Name (Last First Middle): ☐ 1) Owner Notified
Owner's Address: (Street Address City, State Zip)

First Harmful Event
Code #: 214 Description: 214 MOTOR VEHICLE IN TRANSPORT

Description of Accident / Narrative

V2 WAS A WHITE CADILLAC FLEETWOOD TRAVELING SOUTH ON TENAYA WAY IN T1 OF 2 SOUTH OF [illegible] V1 WAS A BLACK [illegible] TRAVELING SOUTH ON TENAYA WAY IN T2 OF 2 SOUTH OF [illegible] V1 WAS [illegible] SOUTH V1 ATTEMPTED TO CHANGE LANES FROM T2 TO T1 STRIKING THE RIGHT SIDE OF V2 WITH HIS LEFT FRONT. ACCORDING TO V1 HE DID NOT SEE V2 AND BELIEVES HE WAS SPEEDING AND WAS [illegible] LANE CHANGE. HE WAS FOUND AT FAULT AND CITED. A/C WAS BASED ON TIRE MARKS IN THE ROADWAY. V2 DRIVER CLAIMED

Investigation Complete	Photos Taken	Scene Diagram	Statement?	Date Notified	Time Notified	Arrival Date	Arrival Time
☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No	7/2/2013	19:16	7/2/2013	18:35

Investigator(s)	ID Number	Date	Reviewed By	Date Reviewed	Page
8734 D. FLETCHER	8734	7/2/2013	6829 JEFFREY FICHTER	7/8/2013	1 of 6

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Event Number: 130702-3228	STATE OF NEVADA TRAFFIC ACCIDENT REPORT SCENE INFORMATION SHEET Revised 08/1/08	Accident Number: LVMPD-130702-3228 Agency Name: LAS VEGAS METROPOLITAN PD

Description of Accident / Narrative Continuation

INJURY AND WAS TRANSPORTED TO THE HOSPITAL

Indicate North

A.L.C.: 315FT S/S 21FT E/W

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STATE OF NEVADA
TRAFFIC ACCIDENT REPORT
VEHICLE INFORMATION SHEET

Event Number: 130702-3228 | Accident Number: LVMPD-130702-3228 | Agency Name: LAS VEGAS METROPOLITAN PD

Vehicle #: 1 | Footprint: 1 | [1] All Fault

Direction of Travel: [2] South | Highway / Street Name: TENAYA WAY | Travel Lane #: 2

Vehicle Action: [17] Lane Change

Driver: ABDULLA FAROOQ | Transported By: [1] Not Transported

Street Address: 8809 PALM GREENS CT | Transported To:

City: LAS VEGAS | State / Country: NV | Zip Code: 89134 | Person Type: 1 | Seating Position: 01 | Occupant Restraints: 7

[1] Male | DOB: 1/13/1955 | Phone Number: (702)9010555 | Injury Severity: N | Injury Location: 0

DL #: | State: [1] NV | [1] CDL | License Status: 0 | Airbags: 2 | Airbag Switch: 1 | Ejected: 0 | Trapped: 0

Completion: | Endorsements | Restrictions: 0

Alcohol/Drug Involvement: [1] Not Involved | Method of Determination (check up to 2) | Test Results:

Driver Factors
- [1] Apparently Normal
- [2] Had Been Drinking
- [3] Drug Involvement
- [4] Apparently Fatigued / Asleep
- [5] Distracted / Inattentive
- [6] Driver Ill / Injured
- [7] Other Improper Driving
- [8] Driver Inattention / Distracted
- [9] Physical Impairment
- [10] Unknown

Vehicle Year: 2012 | Vehicle Make: NISSAN | Vehicle Model: ALTIMA | Vehicle Type: P4

Plate / Permit No.: 345YKZ | State: [1] NV | Expiration Date: 11/1/2013 | Vehicle Color: BLK

Vehicle Identification Number: 1N4AL2AP1CN445926

Registered Owner Name: [1] Same As Driver: ABDULLA FAROOQ

Registered Owner Address: 8809 PALM GREENS CT LAS VEGAS NV 89134

Vehicle Factors
- [1] Failed To Yield Right Of Way
- [2] Disregard Control Device
- [3] Too Fast For Conditions
- [4] Exceeding Speed Limit
- [5] Wrong Way / Direction
- [6] Mechanical Defects
- [7] Drove Left Of Center
- [8] Failed To Maintain Lane
- [9] Following Too Close
- [11] Unsafe Lane Change
- [12] Made Improper Turn
- [13] Over Corrected/Steering
- [14] Other Improper Driving
- [15] Aggressive / Reckless / Careless
- [16] Other
- [17] Unsafe Backing
- [18] Ran Off Road
- [19] Hit and Run
- [20] Road Defect (a)
- [21] Object Avoidance
- [22] Unknown (a)

Insurance Company Name: [1] Insured: LIBERTY MUTUAL

Policy Number: AC22589004877086 | Effective: 8/17/2012 | To: 8/17/2013

Insurance Company Address or Phone Number: 18002252467

[1] Vehicle Towed | Towed By:

Released To: RETAINED BY DRIVER

Traffic Control
F 1) Speed Zone; 2) Signal Light; 3) Flashing Light; 4) School Zone; 5) Ped. Signal; 6) No Passing; 7) No Controls; 8) Warning Sign; 9) Type Signal; 10) Other; 11) Stop Sign; 12) Yield Sign; 13) R. R. Sign; 14) R. R. Gates; 15) R. R. Signal (a); F 16) Marked Lanes; 17) Two Officers/Escort Req.; 18) Passenger Green; 19) Unknown

Distance Traveled After Impact: (7-MOVED)

Speed Estimate: From | To | Limit: 35

Extent Of Damage: [1] Minor; [2] Total; [3] Moderate; [4] None; [5] Major; [6] Unknown

Damaged Areas: [1] Front; [2] Right Side; [3] Left Side; [4] Rear; [5] Right Front; [6] Right Rear; [7] Top; [8] Undercarriage; [9] Left Front; [10] Left Rear; [11] Unknown; [12] Other

Tilt Control: [2] [3] [4] [1] [5] [6] [7] [8]

[1] Override | [2] Under Ride

Sequence Of Events

	Code #	Description	Fixed Object	Motor Vehicle in Transport
1st	214	214 MOTOR VEHICLE IN TRANSPORT		■
2nd				
3rd				
4th				
5th				

	Violation	NOC	Citation Number
[1] (1)	NRS FAILURE TO DRIVE IN TRAVEL...		E10340061
[2] (2)			

Investigator(s)	ID Number	Date	Reviewed By	Date Reviewed	Page
5734 D. FLETCHER	5734	7/8/2013	5629 JEFFREY [illegible]	7/8/2013	3 of 6

7/11/2013

Event Number: 130702-3228	STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET Revised 04/1/08	Accident Number: LVMPD-130702-3228 Agency Name: LAS VEGAS METROPOLITAN PD

Name: (Last Name, First Name, Middle Name Suffix)	Transported By: ☐1) Not Transported ☐2) EMS ☐3) Police ☐4) Unknown ☐5) Other
Street Address:	Transported To:
City: / State / Country ☐1) IV / Zip Code:	Person Type: / Seating Position: / Occupant Restraints:
☐1) Male ☐2) Unknown ☐3) Female / DOB: / Phone Number:	Injury Severity: / Injury Location:
	Airbags: / Airbag Switch: / Ejected: / Trapped:

Name: (Last Name, First Name, Middle Name Suffix)	Transported By: ☐1) Not Transported ☐2) EMS ☐3) Police ☐4) Unknown ☐5) Other
Street Address:	Transported To:
City: / State / Country ☐1) IV / Zip Code:	Person Type: / Seating Position: / Occupant Restraints:
☐1) Male ☐2) Unknown ☐3) Female / DOB: / Phone Number:	Injury Severity: / Injury Location:
	Airbags: / Airbag Switch: / Ejected: / Trapped:

Name: (Last Name, First Name, Middle Name Suffix)	Transported By: ☐1) Not Transported ☐2) EMS ☐3) Police ☐4) Unknown ☐5) Other
Street Address:	Transported To:
City: / State / Country ☐1) IV / Zip Code:	Person Type: / Seating Position: / Occupant Restraints:
☐1) Male ☐2) Unknown ☐3) Female / DOB: / Phone Number:	Injury Severity: / Injury Location:
	Airbags: / Airbag Switch: / Ejected: / Trapped:

☐1) Trailing Unit 1 VIN:	Plate: / State: ☐1) IV / Type:
☐1) Trailing Unit 2 VIN:	Plate: / State: ☐1) IV / Type:
☐1) Trailing Unit 3 VIN:	Plate: / State: ☐1) IV / Type:

Commercial Vehicle Configuration

☐1) Bus, 9 - 15 Occupants
☐2) Bus, > 15 Occupants
☐3) Single 2 Axle and 6 Tire
☐4) Single > 2 Axle
☐5) Any 4 Tire Vehicle
☐6) Tractor Only
☐7) Tractor / Trailer
☐8) Tractor / Doubles
☐9) Tractor / Triples
☐10) Tractor with Trailer
☐11) Tractor / Semi Trailer
☐12) Passenger Vehicle, Other
☐13) Light Truck, (Non-Rec)
☐14) Other Heavy Vehicle

☐1) Commercial Vehicle ☐2) School Bus

Source
☐1) Driver
☐2) Log Book
☐3) Shipping Papers / Trip Manifest
☐4) State Reg.
☐5) State Of Vehicle
☐6) Other

Power Unit GVWR
☐1) ≤ 10,000 Lbs ☐2) 10,001 - 26,000 Lbs ☐3) ≥ 26,001 Lbs
☐1) Hazmat ☐2) Released

Carrier Name:			
Carrier Street Address:	City:	State: ☐1) IV	Zip:

Cargo Body Type

☐1) Bus / Van
☐2) Cargo Tank
☐3) Flatbed
☐4) Dump
☐5) Concrete Mixer
☐6) Auto Carrier
☐7) Garbage/Refuse
☐8) Not Applicable
☐9) Logging
☐10) Intermodal Container Chassis
☐11) Grain, Gravel, Chips
☐12) Bus, 9 - 15 Occupants
☐13) Bus, > 15 Occupants
☐14) Other

Has Hazmat ID #:	Type of Carrier ☐1) Single State ☐2) USDOT ☐3) Canada ☐4) Mexico ☐5) None	NAS Safety Report #:	
Hazard Classification #:		Carrier Number:	Page 4 of 6

STATE OF NEVADA
TRAFFIC ACCIDENT REPORT
VEHICLE INFORMATION SHEET
Revised 1/1/04

Event Number: 130702-3228
Accident Number: LVMPD-130702-3228
Agency Name: LAS VEGAS METROPOLITAN PD

Vehicle #: 2 | # Occupants: 1 | 1) At Fault | 9) Was Involved
Direction of Travel: 3) East
Highway / Street Name: TENAYA WAY
Travel Lane #: 1
Vehicle Action: 1) Straight | 3) Left Turn | 5) U-Turn | 7) Wrong Way | 9) Passing | 11) Leaving Parked | 13) Legally Leave | 15) Enter Parked | 17) Lane Change | 19) Unknown
2) Slowing | 4) Right Turn | 6) Parked | 8) Stopped | 10) Making | 12) Entering | 14) Other Turning | 16) Driverless Vehicle | 18)

Driver: VOLUNGIS ETHAN
Street Address: 7017 COPPERLEAF DR
City: LAS VEGAS | **State / Country:** NV | **Zip Code:** 89128
1) Male | 2) Female | **DOB:** 5/5/1983 | **Phone Number:** (702)7760471
DL#: | **State:** NV | 1) CDL | 2) DL | **License Class:** 0
Compliance: | **Endorsements:** | **Restrictions:**
Alcohol/Drug Involvement: 1) Not Involved | 2) Suspected Involvement | 3) Alcohol | 4) Drugs | 5) Unknown
Method of Determination (check up to 3): 1) Field Sobriety Test | 2) Preliminary Breath | 3) Other Admission | 4) Urine Test | 5) Blood Test | 6) Preliminary Breath | **Test Results:**

Transported By: 1) Not Transported | 2) EMS | 3) Police | 4) Unknown | 5) Other: LVFD
Transported To: MOUNTAIN VIEW HOSPITAL
Person Type: 1 | **Seating Position:** 01 | **Occupant Restraint:** 7
Injury Severity: C | **Injury Location:** 3 | 6
Airbags: 1 | **Airbag Switch:** 1 | **Ejected:** 0 | **Trapped:** 0

Driver Factors
1) Apparently Normal | 2) Had Been Drinking | 3) Drug Involvement | 4) Apparently Fatigued / Asleep | 5) Distracted / Inattentive | 6) Other Ill / Injured | 7) Other Improper Driving | 8) Driver Inattention / Distracted | 9) Physical Impairment | 10) Unknown

Vehicle Year: 1998 | **Vehicle Make:** CADILLAC | **Vehicle Model:** FLEETWOOD | **Vehicle Type:** 4D
Plate / Permit No.: LV6R00 | **State:** NV | **Registration Date:** 8/13/2013 | **Vehicle Color:** WHI
Vehicle Identification Number: 1G6DW52P0TR709576
Registered Owner Name: VOLUNGIS ETHAN | 1) Same As Driver
Registered Owner Address: 7017 COPPERLEAF DR LAS VEGAS NV 89128

Vehicle Factors
1) Failed To Yield Right Of Way | 2) Damaged Control Device | 3) Tire Flat Per Conditions | 4) Speeding Speed Limit | 5) Wrong Way / Direction | 6) Mechanical Defects | 7) Drove Left Of Center | 8) Other | 9) Failed To Maintain Lane | 10) Following Too Close | 11) Illegal Lane Change | 12) Made Improper Turn | 13) Over Correct/Steering | 14) Other Improper Driving | 15) Aggressive / Reckless / Careless | 16) Unknown | 17) Illegally Backing | 18) Ran Off Road | 19) Hit and Run | 20) Road Defect | 21) Object Avoidance | 22) Unknown

Insurance Company Name: KEY INS | 1) Insured
Policy Number: KNV0666150 | **Effective:** 6/12/2013 | **Till:** 7/12/2013
Insurance Company Address or Phone Number: 7028737000

Tow Contact: 1) Driveable | 2) Under Tow
Damaged Areas: 1) Front | 2) Right Side | 3) Left Side | 4) Rear | 5) Right Front | 6) Right Rear | 7) Top | 8) Under Carriage | 9) Left Rear | 10) Left Front | 11) Unknown | 12) Other

1) Vehicle Towed | **Towed By:** REMOVED BY OWNER
Released To: OWNERS RESIDENCE

Traffic Control: F 1) Speed Zone | 2) Signal Light | 3) Flashing Light | 4) School Zone | 5) Yield Sign | 6) No Passing | 7) No Controls | 8) Warning Sign | 9) Train Signal | 10) Other | 11) Stop Sign | 12) Yield Sign | 13) R. R. Sign | 14) R. R. Gate | 15) R. R. Signal | F 16) Marked Lanes | 17) Two Opposite Direc. Lines | 18) Passing/No Cross | 19) Unknown

Distance Traveled After Impact: (7-MOVED) | **Speed Estimate:** From | To | Unit: 35
Extent of Damage: 1) Minor | 2) Moderate | 3) Major | 4) Total | 5) None | 9) Unknown

Sequence of Events

	Code #	Description	Fixed Object	Struck Vehicle
1st	214	214 MOTOR VEHICLE IN TRANSPORT	☐	■
2nd			☐	☐
3rd			☐	☐
4th			☐	☐
5th			☐	☐

(1) 1) Cited | 2) Warned | 3) CC / BC | 4) Pending — Violation | NOC | Citation Number
(2) 1) Cited | 2) Warned | 3) CC / BC | 4) Pending — Violation | NOC | Citation Number

Investigator(s)	ID Number	Date	Reviewed By	Date Reviewed	Page
8734 D. FLETCHER	8734	7/2/2013	8629 JEFFREY RICHTER	7/8/2013	5 of 6

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Event Number: 130702-3228	STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET Revised 02/08	Accident Number: LVMPD-130702-3228
		Agency Name: LAS VEGAS METROPOLITAN PD

Name: (Last Name, First Name, Middle Name/Suffix)	Transported By: ☐1) Not Transported ☐2) EMS ☐3) Police ☐4) Unknown ☐5) Other
Street Address:	Transported To:
City: / State / Country ☐1) IRP / Zip Code:	Person Type: / Seating Position: / Occupant Restraints:
☐1) Male ☐2) Unknown ☐3) Female / DOB: / Phone Number:	Injury Severity: / Injury Location:
	Airbags: / Airbag Switch: / Ejected: / Trapped:

Name: (Last Name, First Name, Middle Name/Suffix)	Transported By: ☐1) Not Transported ☐2) EMS ☐3) Police ☐4) Unknown ☐5) Other
Street Address:	Transported To:
City: / State / Country ☐1) IRP / Zip Code:	Person Type: / Seating Position: / Occupant Restraints:
☐1) Male ☐2) Unknown ☐3) Female / DOB: / Phone Number:	Injury Severity: / Injury Location:
	Airbags: / Airbag Switch: / Ejected: / Trapped:

Name: (Last Name, First Name, Middle Name/Suffix)	Transported By: ☐1) Not Transported ☐2) EMS ☐3) Police ☐4) Unknown ☐5) Other
Street Address:	Transported To:
City: / State / Country ☐1) IRP / Zip Code:	Person Type: / Seating Position: / Occupant Restraints:
☐1) Male ☐2) Unknown ☐3) Female / DOB: / Phone Number:	Injury Severity: / Injury Location:
	Airbags: / Airbag Switch: / Ejected: / Trapped:

☐1) Trailing Unit 1 VIN:	Plate: / State: ☐1) IRP / Type:
☐1) Trailing Unit 2 VIN:	Plate: / State: ☐1) IRP / Type:
☐1) Trailing Unit 3 VIN:	Plate: / State: ☐1) IRP / Type:

Commercial Vehicle Configuration

☐1) Bus, 9 - 15 Occupants
☐2) Bus, > 15 Occupants
☐3) Single 2 Axle and 6 Tire
☐4) Single > 2 Axle
☐5) Any 4 Tire Vehicle
☐6) Tractor Only
☐7) Tractor / Trailer
☐8) Tractor / Doubles
☐9) Tractor / Triples
☐10) Truck with Trailer
☐11) Tractor / Semi Trailer
☐12) Passenger Vehicle, Bus-like
☐13) Light Truck, Van-like
☐14) Other Heavy Vehicle

☐1) Commercial Vehicle ☐2) School Bus

Source: ☐1) Driver ☐2) Log Book ☐3) Motor Carrier / Trip Manifest ☐4) State Rec. ☐5) Side of Vehicle ☐6) Other

Power Unit GVWR: ☐1) ≤ 10,000 Lbs ☐2) 10,001 - 26,000 Lbs ☐3) ≥ 26,001 Lbs ☐1) Hazmat ☐2) Released

Carrier Name:	
Carrier Street Address:	City: / State: ☐1) IRP / Zip:

Cargo Body Type

☐1) Bulk
☐2) Tank
☐3) Flatbed
☐4) Dump
☐5) Unknown
☐6) Van / Box
☐7) Concrete Mixer
☐8) Auto Carrier
☐9) Garbage/Refuse
☐10) Not Applicable
☐11) Grain, Gravel Chips
☐12) Bus, 9 - 15
☐13) Bus, > 15 Occupants
☐14) Other

Haz-Mat ID #:	Type of Carrier: ☐1) Single State ☐2) USDOT ☐3) Canada ☐4) Mexico ☐5) None	NAS Safety Report #:	
Hazard Classification #:		Carrier Number:	Page 6 of 6

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EXHIBIT "2"

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, Plaintiff, vs. FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive, Defendants.	)	CASE NO.: A-14-702810-C DEPT NO.: XII

DEPOSITION OF ETHAN VOLUNGIS

Taken at Thorndal, Armstrong, Delk, Balkenbush & Eisinger
on Friday, September 25, 2015
at 10:00 a.m.

at 1100 East Bridger Avenue
Las Vegas, Nevada 89101

JOB NO.: 262660

Reported by: Trina K. Sanchez, CCR No. 933, RPR

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APPEARANCES:

For the Plaintiff:

KEVIN STRONG, ESQ.
EGLET PRINCE
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101

For the Defendants:

DOUGLAS DUESMAN, ESQ.
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, Nevada 89101

I N D E X

WITNESS:		PAGE
ETHAN VOLUNGIS		
	Examination by Mr. Douglas Duesman	3

E X H I B I T S

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EXHIBIT A	Answers to interrogatories	9

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LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 25, 2015;
10:00 A.M.

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(In an off-the-record discussion held prior to the commencement of the deposition proceedings, counsel agreed to waive the court reporter requirements under Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)

Whereupon,

ETHAN VOLUNGIS,

having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as followS:

EXAMINATION

BY MR. DUESMAN:

Q. Good morning, Ethan. Could you state your full name and spell your last name for the court reporter.

A. Ethan Edward Volungis, V-o-l-u-n-g-i-s.

Q. I assume you understand why we're here today just by way of introduction. I am one of the

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A. It's different.

Q. How is the pain different now to your lower back than it was when you had the spasms?

A. Spasm, it would pull me. It wasn't really pain, but it would pull me to the side. And I looked like I had scoliosis. It made me crooked.

Q. Anything you could think of that you did that caused the spasms?

A. Just work.

Q. You weren't at Pep Boys at that time yet, were you?

A. No.

Q. So you worked at either The Bank or the car dealership?

A. Yeah.

Q. Any physically intensive work at the car dealership?

A. Just rotating tires, changing tires.

Q. What kind of car were you driving when this accident occurred?

A. 1996 Cadillac Fleetwood.

Q. Do you still have that car?

A. Yes.

Q. Where was the damage at to your vehicle from the accident?

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A. The right front door and fender.

Q. Approximately how much did it cost to get it fixed?

A. 3,500.

Q. Was anyone else in the car with you when this accident happened?

A. No.

Q. Where you headed to?

A. Home.

Q. Where were you coming from?

A. Work.

Q. What was the intersection -- the nearest intersection where this accident occurred?

A. Lake Mead and Tenaya.

Q. What street were you traveling on?

A. Tenaya.

Q. Northbound or southbound?

A. South.

Q. Had you passed Lake Mead or were you coming up to it?

A. It was -- it was already behind me.

Q. What's the next street down from Lake Mead?

A. Vegas.

Q. Vegas Drive?

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A. Yeah.

Q. What lane of travel were you in?

A. I was in the far left lane.

Q. Do you know what the speed limit is there in that part of town?

A. It's either 25 or 35.

Q. How fast were you going?

A. Probably 25 to 30.

Q. What time of day was this?

A. It's about 6:00.

Q. At night?

A. Yes.

Q. Why don't you just tell me in your own words what happened in the accident.

A. Well, I was leaving work and I pulled out from the parking lot. Lake Mead was on my left side, and I was pulling out onto Tenaya. I got into the far left lane. I was going straight towards Vegas, and I see in my mirror that the car next to me is coming into my lane. So then I tried to get more to the left and I'm honking my horn and I see he's still coming. He's coming closer, so I slam on my brakes a little bit and kind of swerve to the left trying to avoid the median at the same time and he hit my car.

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Q. Where was your work at relative to where the accident occurred?

A. Walking distance.

Q. Is your job -- is the Pep Boys located on Tenaya -- the corner of Tenaya and Lake Mead?

A. Yes.

Q. Is there an exit and entrance, then, both from Lake Mead and Tenaya?

A. Yes.

Q. So you took the driveway or whatever from work, made a right turn onto southbound Tenaya?

A. Yes.

Q. Did you make the right turn immediately into the left lane or did you make the closest turn and then lane change over?

A. Probably into the left lane.

Q. A lot of traffic southbound on there?

A. No.

Q. The guy who hit you, you've seen him before, right?

A. I seen him briefly in my store before that happened -- before the incident.

Q. That same day?

A. Yes.

Q. Did you have any interactions with him in

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the store?

A. No, not me.

Q. In your answers to interrogatories, you referenced that he was complaining about service. Do you know what he was in there for?

A. No, but my manager at the time -- I remember him. He was -- there was a line of people. It was a busy night. When I was getting off, there's a line of people and he came to the front of line and he was speaking to another service adviser or possibly the manager. And that's the story I heard from them. I seen him there, though. And then I seen him after he hit my car.

Q. Is there only one person above you at work, the manager?

A. There was the service manager and the store manager.

Q. So the service manager, that's the person who runs the technicians?

A. Yes.

Q. And so that person in the hierarchy is above you?

A. Yes.

Q. And then the whole store manager is above

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EXHIBIT "3"

ELECTRONICALLY SERVED
06/26/2015 09:49:31 AM

ANS
CRAIG R. DELK, ESQ.
Nevada Bar No. 2295
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
1100 E. Bridger Avenue
Las Vegas, Nevada 89101-5315
Mail To:
P.O. Box 2070
Las Vegas, NV 89125-2070
Tel: (702) 366-0622
Fax: (702) 366-0327
cdelk@thorndal.com
Attorneys for Defendant,
FAROOQ ABDULLA

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually, Plaintiff, v. FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive, Defendants.	Case No. A-14-702810-C Dept No. XII

DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: ETHAN VOLUNGIS,
Plaintiff; and

TO: EGLET PRINCE,
Attorney for Plaintiff.

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COMES NOW Defendant, FAROOQ ABDULLA, by his attorneys, THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and hereby answers the Interrogatories propounded to him by the Plaintiff, as follows:

INTERROGATORY NO. 1:

Please state your full name, address, date of birth, marital status, and if you are married, the name and address of your spouse.

ANSWER: Farooq Abdulla; date of birth January 13, 1955; married; wife's name Nighat Abdulla; address 8809 Palm Greens Court, Las Vegas, Nevada 89134.

INTERROGATORY NO. 2:

Please state your current occupation and any occupations you have had within the last ten (10) years.

ANSWER: Pediatric physician and neonatology.

INTERROGATORY NO. 3:

Please state the purpose and intended destination of the motor vehicle trip you were on at the time of the subject motor vehicle collision.

ANSWER: I was shopping for tires and was on my way to another auto parts store.

INTERROGATORY NO. 4:

Please state whether or not you were familiar with the

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location or area where the subject collision occurred, and how often you traveled through that same location prior to the subject motor vehicle collision.

ANSWER: Yes, I drive through that area approximately once a week.

INTERROGATORY NO. 5:

Please state in detail your itinerary on the date of the subject motor vehicle collision, including each place at which you were present, your length of stay at each such place, and a detailed account of whom you saw and what you did at each such place, and the destination from which you left prior to the subject motor vehicle collision.

ANSWER: I was shopping for tires, and had previously been to Pep Boys, and was on my way to another auto supply store when the accident happened. I had just exited the driveway of a gas station and Michael's parking lot heading south on Tenaya. Earlier I had seen Plaintiff at the Pep Boys Auto Supply Store while I was there and discussed my purchase of tires.

INTERROGATORY NO. 6:

Please state whether or not you were acting within the course and scope of your employment at the time of the subject motor vehicle collision, and if so; please identify the name,

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address, and telephone number of your employer, including your position and title of your occupation, and the name of your supervisor.

ANSWER: I was not driving in the course and scope of my employment at the time of the accident.

INTERROGATORY NO. 7:

Please state in detail which part of your vehicle came into contact with which part of Plaintiff's vehicle at the time of the subject motor vehicle collision.

ANSWER: The collision caused damage to the left front my car and the right front of Plaintiff's car.

INTERROGATORY NO. 8:

If you and the Plaintiff involved in this litigation had any conversation after the subject motor vehicle collision, please describe the substance of any such conversation.

ANSWER: I had a short conversation with Plaintiff after the accident to make sure that everyone was okay.

INTERROGATORY NO. 9:

Please state in detail your actions taken from the time you first saw Plaintiff's vehicle until the time of impact and set forth:

(1) If you accelerated or decelerated just prior to impact;

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(2) If you braked before, during, or after the impact; and

(3) Did you turn just prior to impact, and if so, in what direction?

ANSWER: See answer to Interrogatory No. 3 and answer to Interrogatory No. 5. Otherwise, not applicable, since I did not see Plaintiff's car before the impact.

INTERROGATORY NO. 10:

Please identify all persons known to you to have personal knowledge of the facts pertaining to the subject motor vehicle collision, and indicate those who were eye witnesses, and state the substance of their knowledge and articulate their expected testimony.

ANSWER: Other than witnesses identified in Defendant's Initial NRCP 16.1 List of Witnesses and Exhibits, all supplements, and prior discovery responses, none.

INTERROGATORY NO. 11:

Please describe the impact of the subject collision and state whether your air bag deployed, your vehicle had to be towed, and whether you sustained any injuries.

ANSWER: It was a slight impact, the air bag in my car did not deploy, and my car was not required to be towed.

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INTERROGATORY NO. 12:

Please set forth what you did immediately after the subject motor vehicle collision up through the 6 hours following the subject collision.

ANSWER: I got out of my car and spoke with Plaintiff to make sure everyone was okay. After the police left, I drove home.

INTERROGATORY NO. 13:

Identify each person with knowledge of the subject motor vehicle collision from whom you have taken a statement, indicating whether the statement was oral, written, by a court reporter, tape recorded or otherwise preserved, and include in your answer, the date, time and location of each statement was made.

ANSWER: Plaintiff gave a recorded statement dated July 3, 2013. Otherwise, none to my knowledge.

INTERROGATORY NO. 14:

Please state whether you have within your possession or control any photographs, cell phone videos or pictures, videotapes, drawings, models, charts or other physical, demonstrative or illustrative evidence of any type or nature whatsoever of the scene of the subject motor vehicle collision or objects connected with said motor vehicle collision, and

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identify what those objects are.

ANSWER: None to my knowledge at this time.

INTERROGATORY NO. 15:

Please describe in detail your statement of facts as to how you contend the subject motor vehicle collision took place.

ANSWER: I pulled out of the driveway into the right-hand lane of Tenaya going south. I wanted to make a U-turn, and started to change lanes to my left after checking for traffic. That is when the accident happened. I did not see Plaintiff, and believed that it was safe to change lanes. I believe Plaintiff may have been speeding which would explain why I did not see him before the accident.

INTERROGATORY NO. 16:

If you were taking or prescribed any type of medication within thirty (30) days prior to the time of the subject motor vehicle collision, please state the names of all medications that you were taking, the amount of each medication that was taken, the type of condition for which each medication was prescribed, and the person or entity who prescribed or provided the medication.

ANSWER: I may have been prescribed Testim (a topical gel for low testosterone) at the time of the accident. Otherwise, none.

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INTERROGATORY NO. 17:

If you consumed any alcoholic beverage or mood-altering drugs within twenty-four (24) hours prior to the subject motor vehicle collision, please state the names of all alcoholic beverages or drugs consumed, the exact amount of alcoholic beverages or drugs taken, and the exact times that such beverages or drugs were consumed.

ANSWER: None.

INTERROGATORY NO. 18:

If at the time of the subject motor vehicle collision, you suffered from any disease, ailment, disability, vision problems, or medical conditions, or were under a physician's care for any condition, please describe.

ANSWER: None, except for corrective lenses for near-sightedness and far-sightedness (bifocals which I was wearing at the time of the accident.)

INTERROGATORY NO. 19:

If you have ever been given a prescription for corrective lenses to correct any deficiencies in your vision, please state the most recent prescription that was given for each of your eyes, the prescription at the time of the subject motor vehicle collision, the type of lenses that you typically wear (contact lenses or glasses), and whether you were wearing any type of

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corrective lenses at the time of the subject motor vehicle collision.

ANSWER: I believe approximately two years prior to the accident. Dr. Marietta Nelson, 2800 N Tenaya Way, Suite 102, Las Vegas, Nevada 89128.

INTERROGATORY NO. 20:

Please list all policies of insurance, including umbrella and/or excess policy, you have regarding the vehicle you were operating at the time of the subject motor vehicle collision, the name of the insurance carrier, the policy number, the type of coverage, and the amount of coverage available and in effect at the time of the subject motor vehicle collision.

ANSWER: Liberty Insurance Company, $100,000 per person liability limits applicable to this accident. Policy number AO2-268-800467-70. No excess or umbrella policies.

INTERROGATORY NO. 21:

Please set forth, in detail and without legal conclusion, the substance of any and all conversations in which you were involved, or which you observed and overheard others involved in, at the scene of the subject motor vehicle collision, and include the time, place, and the names, addresses, and telephone numbers of all persons involved in such conversations.

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ANSWER: See answer to Interrogatory No. 8 and Interrogatory No. 12. In addition, Plaintiff's wife or girlfriend arrived at the accident scene and spoke with Plaintiff, but I did not overhear what was said, nor did I speak with her directly. I also spoke with the police officer. See police report.

INTERROGATORY NO. 22:

Please state whether there was any obstruction to your vision at the time of the subject motor vehicle collision, and if so, please describe the nature of the obstructions to your vision.

ANSWER: There was no objection to my vision at the time of the accident.

INTERROGATORY NO. 23:

Please set forth your estimate of the speed at which your vehicle was traveling at the time of the subject motor vehicle collision.

ANSWER: I had just turned out of the driveway, and was traveling approximately 10-15 m.p.h. when the accident happened.

INTERROGATORY NO. 24:

Please describe all automobile accidents which you have been involved in for five (5) years prior to the subject motor

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vehicle collision, and all automobile accidents which you have been involved in subsequent to the subject motor vehicle collision.

ANSWER: Objection, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to said objection, no prior accidents, and one subsequent accident where I collided with a car to my right.

INTERROGATORY NO. 25:

If you have ever been convicted of, or pled guilty to, a misdemeanor or felony, please state the date of each conviction or plea, the court in which the conviction or plea was rendered, and the exact nature of the charge.

ANSWER: Objection as to non-traffic misdemeanors as being irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to said objection, none. As to prior felony conviction, none.

INTERROGATORY NO. 26:

Please state when and where you obtained your driver's license, the year you obtained it, whether such license was valid, suspended, revoked, or subject to any restrictions at the time of the subject motor vehicle collision, and the nature of such restrictions, if any.

ANSWER: I have had my Nevada driver's license since

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approximately 1992. Before that I was also licensed to drive in State of Louisiana and the State of California. I have never had any license suspended or revoked or any restrictions except for corrective lenses.

INTERROGATORY NO. 27:

Please list all traffic violations for any jurisdiction with which you have been charged since you obtained your driver's license.

ANSWER: Objection, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to said objection, I was involved in one accident where I was at fault when I collided with a car to my right, and was cited one time for not putting my turn indicator on.

INTERROGATORY NO. 28:

Please state whether or not it is your contention that the Plaintiff's injuries and damages were caused in whole or in part by a superseding or intervening cause; and if it is, please state all facts upon which you rely in support of such contention.

ANSWER: No. By counsel: However, Plaintiff has a documented pre-existing back condition, including surgery, for which he was still taking medication at or about the time of the subject accident. This raises an issue of causation and/or

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apportionment of damages.

INTERROGATORY NO. 29:

Please set forth all mechanical problems of the vehicle you were driving before the subject collision, including any headlight, braking, signal light, alignment, and steering problems.

ANSWER: None.

DATED this 24 day of June, 2015.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

CRAIG R. DELK, ESQ.
Nevada Bar No. 2295
1100 Bridger Avenue
Las Vegas, Nevada 8910
Attorneys for Defendant,
FAROOQ ABDULLA

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VERIFICATION

STATE OF NEVADA)
(SS.
CLARK COUNTY)

FAROOQ ABDULLA, states that he is the Defendant in this matter and authorized to make this verification on his own behalf; that he has read the foregoing ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES prepared by defense counsel, and on information and belief, believes them to be true.

FAROOQ ABDULLA

SUBSCRIBED AND SWORN to before me this 25 day of June, 2015.

NOTARY PUBLIC in and for said County and State

KAY CRABB
Notary Public State of Nevada
No. 00-60166-1
My appt. exp. Dec. 16, 2015

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on the 26 day of June, 2013 service of ***DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES*** was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

NAME	TEL. & FAX NOS.	PARTY
Dennis M. Prince, Esq. Tracy A. Eglet, Esq. Paul A. Shpirt, Esq. EGLET PRINCE 400 South Seventh St., #400 Las Vegas, NV 89101	P:(702)450-5400 F:(702)450-5451	Plaintiff

Kay Snabb
An Employee of Thorndal, Armstrong,
Delk, Balkenbush & Eisinger

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EXHIBIT "4"

Deposition of:

Farooq Abdulla, M.D.

Case:

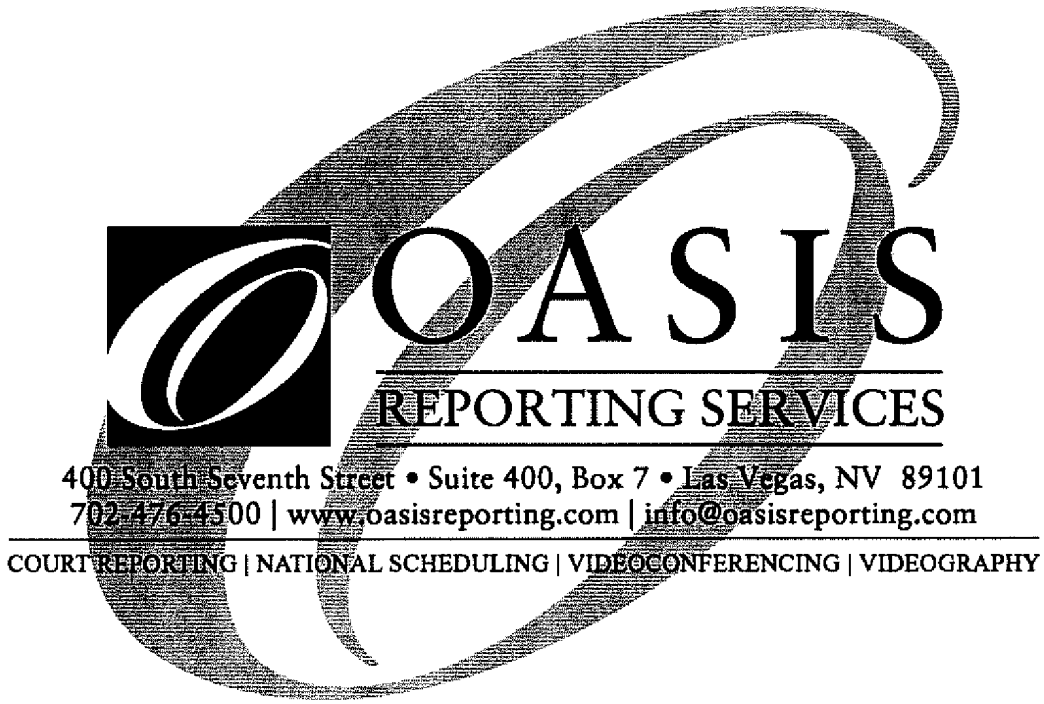
Ethan Volungis v. Farooq Abdulla
A702810

Date:

11/10/2015

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DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually, Plaintiff,	)	
vs.	)	Case No. A702810
	)	Dept. No. XII
FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive,, Defendants.	)	

DEPOSITION OF FAROOQ ABDULLA, M.D.

Taken on Tuesday, November 10, 2015

By a Certified Court Reporter

At 7:59 a.m.

At 400 South Seventh Street

Las Vegas, Nevada

REPORTED BY: KEVIN WM. DANIEL, FAPR, RDR, CRR, CCR 711

Job No. 14797

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APPEARANCES:

For Plaintiff:

EGLET PRINCE
BY: REX D. GARNER, ESQ.
400 South Seventh Street
Box 1
Las Vegas, NV 89101

For Defendant:

THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER
BY: CRAIG R. DELK, ESQ.
1100 East Bridger Avenue
Las Vegas, NV 89101

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I N D E X

WITNESS: FAROOQ ABDULLA, M.D.

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P-R-O-C-E-E-D-I-N-G-S

(A discussion was held off the record between court reporter and counsel, wherein counsel present agreed to waive the reporter requirements as set forth under NRCP Rule 30(b)(4) or FRCP Rule 30(b)(5), as applicable.)

Whereupon,

FAROOQ ABDULLA, M.D.,

having first duly sworn or affirmed to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. GARNER:

Q. Good morning. Please state your name, your full name for the record.

A. Farooq Abdulla.

Q. And can you spell that for the record?

A. F-A-R-O-O-Q, A-B-D-U-L-L-A.

Q. Have you ever used any other names?

A. No.

Q. Have you ever given testimony before?

A. Yes.

Q. How many times?

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Q. Okay. Do you remember what day of the week this was?
A. I don't remember the day.
Q. Do you recall what time of day it was when you left the house to go to Pep Boys or do any other errands?
A. I don't recall.
Q. Okay. How long had you had the Altima at that point in July 2013?
A. Couple of years, I think.
Q. Did you buy it new?
A. No.
Q. And do you know if the tires that it had on, were they original? Or do you know?
A. I don't recall.
Q. Do you know how old the tires were?
A. I don't remember.
Q. Any other stores besides Pep Boys that you had visited that day?
A. That was the only one I recall.
Q. Now, was anyone traveling with you?
A. No.
Q. Had you just left the Pep Boys auto store?
A. That is correct.
Q. And where were you going?

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A. I was going to look for some other stores.
Q. Okay. Do you know the names of any other stores?
A. No. No, I can recall. I was just, you know.
Q. Had you searched on your cell phone where there might be other auto stores?
A. No.
Q. What year was the Altima; do you recall?
A. I do not recall, maybe '12 or '13 maybe. I do not recall.
Q. But you bought it used?
A. Say that again? I bought it used; that is correct.
Q. And did you maintain any maintenance records for that Altima?
A. It may have been in the car, yeah.
Q. Okay. Did you keep those when you sold the car or otherwise got rid of it?
A. I did not sell the car. It was totaled.
Q. Do you still have any records for the maintenance of that car?
A. No, sir.
Q. Would you have gotten rid of those at the same time that the car was totaled?
A. Say that again?

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Q. What did you do -- you had those records at some point?

A. My daughter had it, you know. It was my daughter's car.

Q. And she kept records of oil changes and other things like that?

A. It used, was in the glove, you know, whatever records was in the glove compartment.

Q. So describe for me the accident from the time you left the parking lot, up until the time of collision.

A. What I recall actually, you know, that I was just making a right, that was on Michaels parking lot and the gas station right next to it, so I was just making a right, and I looked behind, nothing in there. I was just leaving the parking lot, and then, you know, I gave an indicator, just tried to move to the left lane because I was going to make a U-turn there, and all of a sudden, bang. I didn't even see where it came from.

Q. Okay. So you were turning out of the parking lot where Michaels and the gas station were?

A. Right. Exactly.

Q. You were making a right to head, is that south?

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A. South.
Q. Okay. And how many lanes are heading south on Tenaya?
A. Two lanes.
Q. And you turned into the far right lane?
A. Yes. It was far right lane, but the turn was just like, you know, a few yards, few feet away from me. So when I looked back, there's nothing there, so I was just trying to make a left there so that I could make a U-turn.
Q. Okay. How long would you estimate you were in the right lane before moving to the left lane?
A. Just a few seconds I would think.
Q. And I think you said you turned your blinker on?
A. Yes, sir.
Q. And then where did the collision take place? Was it in the left lane, or was it in the turning lane?
A. It was in the left lane.
Q. Okay. And was there a median running south in the center of Tenaya near where you exited the parking lot, or can you recall?
A. I don't recall, you know. There were two lanes, that's all I remember going south, and then was a U-turn lane, you know, U-turn lane. You know,

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there's a regular lane, and then where you make, where you can make a U-turn, so there was an extra lane over there. That's what I was going down there.

Q. So let me see if I understand. There are two lanes headed south, and then are there two lanes headed north, and then one lane in the center of those lanes?

A. I don't recall very exactly if there was a center or not, but there were two lanes on the right side, as I remember.

Q. And did you intend to make a U-turn at a light or a stop sign, or just somewhere along the road?

A. No. There was the U-turn right there, you know, and I was exiting, so there was a U-turn, so I wanted to just move to that lane and make a turn. And the traffic light was, you know, just a few hundred yards away.

Q. Okay.

A. Lake Mead was right there.

Q. Do you know what the posted speed limit was on Tenaya in that section of the road?

A. If I remember, 35. I think it was 35 or 45. Maybe 35. Don't recall exactly. Either 35 or 45.

Q. Do you think you got up to the speed limit before the collision happened?

A. Oh, no, I was just turning. I was just

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turning, barely moving.

Q. Okay. And so were you in then the left lane, or the U-turn lane when the collision happened?

A. In the left lane.

Q. And where was the other car when the collision happened? Was it also in the left lane, or was it in the U-turn lane?

A. I did not even see that car. All I heard was just a bang all of a sudden. Looks like it was quite a speed.

Q. And where did the cars stop after the collision?

A. In the left lane.

Q. Were you both in the left lane?

A. I don't recall. It was somewhere, you know, in between that, you know.

Q. Might have been in the --

A. It could have been.

Q. -- in between those lanes?

A. I don't recall exactly.

Q. Okay. What did you do right after, after you stopped your car?

A. I -- you know, I got out of the car then I just asked him, "Are you okay, everything okay?" He said "Fine."

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Q. Any other words between you, what you said and what he said?

A. At that time, you know, after he came out, I said, you know, let's exchange some information. It's not -- it's barely some damage, and we'll get our insurance companies and then we'll go from there.

Q. And what was his response?

A. He -- I think he just started -- I don't remember right, but he started to call some, make some phone calls and all that stuff. And I said, "You know, I mean, let's exchange some, you know some." He said, "No. I'm just going to wait over here."

Q. I'm sorry?

A. He said, "I'm going to wait over here, I'm calling the ambulance." I don't remember exactly the conversation, but all I remember is that I said, "It's just a little bit dented fender. Let's exchange the information and then we can call the insurance companies."

Q. Okay.

A. Is all I remember.

Q. And did he say, "Yes, we'll exchange information" or no?

A. I don't recall that the conversation, I don't remember what he said.

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Q. Did he suggest that you call the police or the ambulance, that either of you do?
A. I think he was already calling.
Q. Okay. And did he say that he was going to wait for the police to arrive?
A. Yeah.
Q. And did you say that you were going to wait for the police to arrive?
A. Well, I said, "Okay, I'll wait." No choice.
Q. Did he say anything to you about being hurt?
A. No.
Q. And were you hurt at all?
A. Not at all.
Q. Did you also look at damage to either of the cars?
A. Yes.
Q. What did you see?
A. Just a little dent in my front, the front end, and a little bit dent on his car, on the passenger side I think. No, sorry, sorry, on the -- yeah, passenger side. His damage was on the passenger side. Mine was on the driver side.
Q. And both cars in the front?
A. Right.
Q. Did either of you pull off to the side of the

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EXHIBIT "5"

David M. Ingebretsen
Ronald L. Probert
Michael S. Anderson

COLLISION FORENSICS & ENGINEERING, INC.
2469 E. FORT UNION BLVD., SUITE 114
SALT LAKE CITY, UT 84121
(801) 733-5458 - FAX: (801) 733-5491
WWW.CFANDE.COM

ST. GEORGE, UT LOCATION
(801)509-6271

December 7, 2015

Tracy A. Eglet
EGLET PRINCE
400 South Seventh Street, #400
Las Vegas, Nevada 89101

RE: Volungis v. Abdulla
DOL: 07/02/2013

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Dear Ms. Eglet:

I have completed my review of this traffic accident, and submit this report for your review and consideration. In preparation of this report I have reviewed the following:

Police Report from LVMPD
86 color photographs of Volungis vehicle
Black & White photos of the Volungis vehicle
Recorded statement of Ethan Volungis
Recorded statement of Farooq Abdulla
Complaint
Defendant's 2nd Supplemental Responses to Plaintiff's 1st set of Req. for Prod. Of Docs.
Defendant's answers to Plaintiff's 1st set of Interrogatories
Plaintiff's answers to the Defendant's Interrogatories
Defendant's Responses to Plaintiff's 1st set of Requests for Admissions
Plaintiff's Responses to Defendant's 1st requests for Prod. Of Docs.
Plaintiff's responses to Defendant's 2nd requests for Prod. Of Documents
Deposition of Ethan Volungis
Deposition of Farooq Abdulla
Medical records of Mr. Volungis
Review of Area via Google Maps

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Tracy A. Eglet
EGLET PRINCE
DOL: 07/02/2013

My analysis of this collision draws on my education training and experience, and I have used standard methods and techniques of investigation, reconstruction, and analysis. All opinions expressed are to a reasonable degree of scientific probability.

This accident occurred on July 2, 2013 on Tenaya Way 315 feet south of South Lake Mead Blvd, Las Vegas, Nevada. The road is described as straight and level, dry, with clear weather conditions. This accident occurred during daylight hours with no highway or environmental issues present.

Vehicle #1 was a 2012 Nissan Altima, operated by Farooq Abdulla, Las Vegas, Nevada. Vehicle #2 was a 1996 Cadillac Fleetwood, operated by Ethan Volungis, Las Vegas, Nevada. There are no listed witnesses to this accident. The police report narrative states: Vehicle #2 was a white Cadillac Fleetwood traveling south on Tenaya Way in Travel #1 of 2 South of Lake Mead Blvd. Vehicle #1 was a black Nissan Altima traveling south on Tenaya Way in Travel #2 of 2 lanes south of Lake Mead Blvd. While traveling south Vehicle #1 attempted to change lanes from Travel #2 to Travel #1 striking the right side of vehicle #2 with his left front. According to Vehicle #1 he did not see vehicle #2 and believes he was speeding. Since Vehicle #1 made an unsafe lane change he was found at fault and cited. AIC was based on tire marks in the roadway. Vehicle #2 driver claimed injury and was transported to the hospital.

The photographs of the Volungis vehicle show contact on the right front including the right front tire and wheel, the fender, and the trim associated with the fender.

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In the recorded statement of Ethan Volungis he states: I was driving south bound and I was in the left hand turn lane. I was going straight and the other guy was next to me in the other lane and I was assuming he was going straight too as that's the only way to go. I noticed that he was starting to veer into my lane so I turned a little left, he kept coming. I slammed on my brakes to stop and I veered to the left. My skid marks showed I went to the left and he just kept coming like he was going to turn around me or something from the right hand lane and then he just kept coming and smashed right into my car. Mr. Volungis states he was traveling at approximately 20 miles-per-hour."

In the recorded statement of Farooq Abdulla he states he was in the right lane traveling at 10-15 miles-per-hour and trying to make a lane change. Mr. Abdulla states he thought the other driver was rushing and he did not see him. Mr. Abdulla stats he impact occurred in the left lane.

In the Plaintiff's Answers to the defendant's Interrogatories he indicates he was transported from the scene by ambulance.

In the defendant's answers to Plaintiff's 1st set of Interrogatories – Mr. Abdulla states he is familiar with this area, Mr. Abdulla states he had just exited a gas station driveway and was headed south on Tenaya Way. Mr. Abdulla states he did not see the Plaintiff's vehicle prior to impact. Mr. Abdulla states he had just pulled out of a driveway into the right hand lane of Tenaya going south. I wanted to make a U-turn and started to change lanes to my left after checking for traffic. That is when the accident happened. I did not see Plaintiff and believed it was safe to change lanes. Defendant believes Plaintiff may have

been speeding which would explain why he did not see him before the accident. Mr. Abdulla states he was traveling at 10-15 miles-per-hour when the accident occurred.

In the deposition of Farooq Abdulla he states as he pulled out of the driveway making a right turn, he looked and nothing was there. He then tried to make a move to the left lane, giving an indicator, because he was going to make a U-turn and all of a sudden, bang. He did not know where it came from. He stated he turned into the right lane, because a few yards later he was going to make a U-turn. He indicated he was in the right turn lane for a few seconds, and was in the left lane when the impact occurred. Mr. Abdulla indicates he is not at fault for this accident, and Mr. Volungis is 100% at fault for this accident. Mr. Abdulla states he looked back, and there was nothing there. He indicated he looked in his rear view mirror, and over his shoulder. Mr. Abdulla states he got ½ of his car into the left lane when the impact occurred.

In the deposition of Ethan Volungis he states it cost approximately $3500 to get his vehicle repaired. Mr. Volungis states he was in the left lane when the accident occurred and he was traveling at approximately 25 to 30 miles-per-hour. Mr. Volungis states he could see the car next to him coming into his lane. He tried to get more to the left, while honking his horn and he sees this vehicle still coming. He slams on his brakes and swerves to the left but was still struck. Mr. Volungis stated he did not see where the other vehicle came from.

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ANALYSIS

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In reviewing this accident I reviewed the dimensions of the respective vehicles, and looked at the weight difference between them (see enclosed) and there is almost 1300 pounds difference between these vehicles. The information, and the AIC of the investigating officer clearly indicates Mr. Abdulla was in the #1 travel lane, already occupied by Mr. Volungis. This is clear from the testimony of Mr. Volungis indicating he was already in the #1 travel lane, and trying to avoid the movement of Mr. Abdulla. This is confirmed by the Investigating officer and where he has located the AIC. This is also confirmed by Mr. Abdulla who states in his recorded statement and in his deposition, he was changing lanes, and never saw the Volungis vehicle to his left.

The stated speeds of the respective vehicle places Mr. Abdulla traveling 10-15 miles-per-hour, or 14.7 feet-per-second to 22.05 feet-per-second, and Mr. Volungis traveling at 25-30 miles-per-hour or 36.75 to 44.1 feet-per-seconds.

The distance for Mr. Abdulla to get into the #2 travel lane and then to get to the point of impact is approximately 42.23 feet, this utilizing a standard steering movement, and not a swerve. The time for this to occur would have been 2.88 seconds.

Tracy A. Eglet
EGLET PRINCE
DOL: 07/02/2013

$D = 0.732 \times S \times \sqrt{L \div f}$
$D = 0.732 \times 10.00 \times \text{sqrt}(10.00 \div 0.30)$
$D = 0.732 \times 10.00 \times \text{sqrt}(33.33)$
$D = 0.732 \times 10.00 \times 5.77$
$D = 42.23$

$$t = \frac{D}{1.466 \times S} \qquad t = \frac{42.23}{1.466 \times 10.00}$$

$$t = \frac{42.23}{14.66} \qquad t = 2.88$$

Utilizing the potential stated speed of 15 miles-per-hour on Mr. Abdulla he would require 63.35 feet to make this movement and would require 1.91 seconds to make this movement.

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$D = 0.732 \times S \times \sqrt{L \div f}$
$D = 0.732 \times 15.00 \times \text{sqrt}(10.00 \div 0.30)$
$D = 0.732 \times 15.00 \times \text{sqrt}(33.33)$
$D = 0.732 \times 15.00 \times 5.77$
$D = 63.35$

$$t = \frac{D}{1.466 \times S} \qquad t = \frac{42.23}{1.466 \times 15.00}$$

$$t = \frac{42.23}{22.00} \qquad t = 1.91$$

The significance of this is utilizing the stated speeds and these distances places Mr. Volungis, at his stated speed of 25 to 30 miles-per-hour, or 36.75 to 44.1 feet-per-second, places Mr. Volungis at a maximum of 127 feet away from the point of impact, or at the closest 70.19 feet from the point of impact.

This would indicate Mr. Abdulla did not look as in both instances Mr. Volungis was close enough to easily be seen, and yielded to.

Tracy A. Eglet
EGLET PRINCE
DOL: 07/02/2013

CONCLUSION

It is my opinion Mr. Abdulla failed to yield to Mr. Volungis who was already occupying the #1 travel lane, and Mr. Abdulla pulled out in front of Mr. Volungis when he was 71 to 127 feet away from the point of impact. Additionally, Mr. Abdulla failed to keep a proper lookout for failing to see the Volungis vehicle when it was close enough to constitute a hazard. I do not see any liability on the part of Mr. Volungis for steering and braking to avoid this collision.

The impact speed on the Volungis vehicle would be between 10-15 miles-per-hour, the lane change speed as indicated by Mr. Abdulla in his testimony.

I hope this has been of assistance. If there is anything else you need, or require, please feel free to contact me. I reserve the right to amend, modify, or add to this report if further information is obtained, or generated.

Sincerely,

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Ronald L. Probert
Accident Reconstructionist
ACTAR# 1339

Enclosures

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cdelk@thorndal.com
Attorneys for Defendant,
FAROOQ ABDULLA

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually, Plaintiff, v. FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive, Defendants.	Case No. A-14-702810-C Dept No. XII

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DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 2 -- TO EXCLUDE LAY OPINION TESTIMONY

COMES NOW, Defendant, FAROOQ ABDULLA, and submits his Opposition to Plaintiff's Motion in Limine No. 2 -- to Exclude Lay Opinion Testimony, as follows:

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Initially, if facts are adduced at trial suggesting that Plaintiff was in fact speeding, the undersigned, as Defendant's counsel of record in this case, can argue to the jury in closing that Plaintiff was speeding, and that speed played a role in this accident. That is fundamental closing argument protocol, and there should be no question about that. The more subtle issue here is whether Defendant himself may testify that "in his opinion," Plaintiff "must have been speeding." Clearly he can.

It is true, as Plaintiff points out in his Motion, that Defendant did not see Plaintiff's car prior to the accident. However, the conclusion does not necessarily follow that Plaintiff has no credible, relevant, and therefore admissible opinion about Plaintiff's excessive speed; or to be more precise, that based upon all of the facts surrounding the accident, Plaintiff must have been speeding. If Defendant's testimony in this regard is reasonably tenable and based on Defendant's percipient interaction with the relevant factual environment within which this accident occurred, then it is clearly admissible. NRS 50.265 provides:

> If the witness is not testifying as an expert, the witness in the form of opinions or inferences is limited to those opinions or inferences which are:

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(1) rationally based on the perception of the witness; and

(2) helpful to a clear understanding of the testimony of the witness of the determination of a fact in issue.

In this case, Defendant will testify (and has testified in his deposition) that he looked to his left to make sure that traffic was clear before initiating his lane change, he did not observe any approaching vehicles, and thereupon made his lane change from the right lane to the left lane, at which point in time Plaintiff collided with Defendant's car. This factual scenario of how the accident happened is equally consistent with Plaintiff speeding as it is with Defendant making an unsafe lane change in front of Plaintiff's approaching vehicle. In other words, if Defendant looked left, did not see a vehicle approaching that presented a hazard to his intended lane change, and the next thing that happened is that he is involved in a collision with Plaintiff's car, a reasonable inference can be drawn by the jury that the only way Plaintiff's car could have reached the point of impact when it did under these circumstances was because Plaintiff was traveling at an excessive rate of speed. Such testimony, and all logical inferences to be drawn therefrom, falls squarely within the purview of so-called "lay opinion testimony" specifically provided for in NRS 50.265, and cannot be excluded for this

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reason alone.

Lay witnesses can obviously testify about physical phenomena, and the temporal sequencing of such physical objects, within their common understanding and experience. Expert testimony is only required if the issue is beyond the common understanding of the witness or jury. Defendant's anticipated testimony as to Plaintiff's speed in this case is not speculative, but rather constitutes factual testimony derived from the witness' own percipient observation of a simple sequence of events culminating in the subject accident.

In this regard, see Paul v. Imperial Palace, 111 Nev. 1544, 908 P.2d 226, 230 (1995), where the Nevada Supreme Court allowed a lay witness in the vicinity of plaintiff's slip and fall to testify that plaintiff's fall was caused by an oily substance on the floor. If the lay witness in Imperial Palace can testify as to the cause of plaintiff's fall in that case based on her third-party observation alone, then defendant in this case, an actual participant in the accident, can certainly draw the reasonable inference that, if Plaintiff's car was nowhere to be seen when he initiated his lane change, then materialized a few seconds later and caused the accident, Plaintiff must have been speeding. Plaintiff's attorney can certainly cross-examine Dr. Abdulla on this point, but the

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testimony itself is not inadmissible as a matter of law.

On a related note, see Wright and Gold, Federal Practice and Procedure (Evidence), Section 651, page 106 (1997), where the authors state:

> All testimony from a percipient witness contains inference. Without inferences, that testimony would consist only of a description of the chemical and electrical effects of perception on the brain of the witness. Because this manifestation of the opinion rule was based upon a false distinction, its application led to appeals, confusion, and inconsistency. As a consequence, both judges and legal commentators savagely criticized the principle. (emphasis added)

Defendant's testimony herein regarding Plaintiff's speed is rationally based on factual circumstances obtained through Defendant's personal observation of the accident itself, and is therefore relevant, reliable, and calculated to assist the jury on both the liability and causation issues in this case. Plaintiff's Motion should be denied.

DATED this 15 day of March, 2016.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

for 12756

CRAIG R. DELK, ESQ.
Nevada Bar No. 2295
1100 Bridger Avenue
Las Vegas, Nevada 8910
Attorneys for Defendant,
FAROOQ ABDULLA

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on the 15th day of March, 2016 service of *DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 2 -- TO EXCLUDE LAY OPINION TESTIMONY* was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

NAME	TEL. & FAX NOS.	PARTY
Dennis M. Prince, Esq. Tracy A. Eglet, Esq. Joseph J. Troiano, Esq. EGLET PRINCE 400 South Seventh St., #400 Las Vegas, NV 89101	P:(702)450-5400 F:(702)450-5451	Plaintiff

Bonnie Hastings
An Employee of Thorndal, Armstrong,
Delk, Balkenbush & Eisinger

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DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually, Plaintiff, vs. FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive; Defendants.	CASE NO.: A-14-702810-C DEPT. NO.: XII **PLAINTIFF'S PRE-TRIAL DISCLOSURE STATEMENT PURSUANT TO NRCP 16.1(a)(3)**

COMES NOW, Plaintiff, ETHAN VOLUNGIS, by and through his attorneys of record, DENNIS M PRINCE, ESQ., TRACY A. EGLET, ESQ., and DANIELLE TARMU, ESQ. of EGLET PRINCE; and makes the following Pretrial Disclosure pursuant to NRCP 16.1(a)(3).

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EGLET PRINCE

I.

WITNESSES

i. Plaintiff expects to present the following witnesses at trial:

1. Ethan Volungis
c/o Eglet Prince
400 S. Seventh Street, Box 1, 4th Floor
Las Vegas, NV 89101

2. Farooq Abdulla
c/o Christopher J. Curtis, Esq.
Meghan M. Goodwin, Esq.
Thorndal, Armstrong, Delk
Balkenbush & Eisinger
P. O. Box 2070
Las Vegas, Nevada 89125-2070

3. Officer D. Fletcher
ID No. 8734
Las Vegas Metropolitan Police Dept.
400 S. Martin Luther King Boulevard, Bldg. C
Las Vegas, NV 89106

4. Janet Arce
7017 Copperleaf Drive
Las Vegas, NV 89128
(520) 867-3671

5. Oliver Volungis
7017 Copperleaf Drive
Las Vegas, NV 89128
(520) 867-3671

6. Steve Johnston
c/o Rogue Toys
616 S. Las Vegas Blvd.
Las Vegas, NV 89101
(702) 330-3945

7. Terrence M. Clauretie, Ph.D.
217 Palmetto Point Drive
Henderson, Nevada 89102
702-895-3223

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8. Ira Spector, M.S., C.R.C.
CERTIFIED VOCATIONAL SERVICES
3440 E. Russell Road, #215
Las Vegas, NV 89120
(702) 214-4294

9. David J. Oliveri, M.D.
851 South Rampart Blvd., Suite 115
Las Vegas, Nevada 89145
702-778-9300

11. Ron Probert
COLLISION FORENSICS & ENGINEERING, INC.
2469 E. Fort Union Blvd., Suite 114
Salt Lake City, Utah 84121
(801) 733-5458

12. Raimundo Leon, M.D.
ADVANCED PAIN CONSULTANTS
2650 Crimson Canyon Drive
Las Vegas, NV 89128
(702)731-2642

13. Andrew M. Cash, M.D.
Desert Institute of Spine Care
9339 West Sunset Road, Suite 100
Las Vegas, NV 89148

14. Jared Lovett, EMT
Christopher Racine, EMT and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
City of Las Vegas Fire Rescue
Aaron Downing, EMT
Andrew Osborn, EMT
Charles Tyler, EMT
Levi Zimbelman, EMT
P.O. Box 748029
Los Angeles, CA 90074

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15. Thomas Dunn, M.D. and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Desert Orthopedic Center
8402 W. Centennial Parkway
Las Vegas, NV 89149

16. Pep Boys Automotive
7399 W. Lake Mead Blvd.
Las Vegas, NV 89128

ii. Plaintiff's witnesses who have been subpoenaed for trial:

None at this time.

iii. Plaintiff's witnesses of whom Plaintiff may call if the need arises:

1. City of Las Vegas Fire & Rescue
500 N. Casino Center Blvd.
Las Vegas, NV 89101
(702) 229-6326

2. Reynold L. Rimoldi, M.D
Nevada Orthopedic and Spine
7455 W. Washington Avenue, Suite 160
Las Vegas, NV 89128
(702) 878-0393

3. Gary R. Skoog, Ph.D
Legal Econometrics, Inc.
1527 Basswood Circle,
Glenview, Illinois 60025
(847) 729-6154

4. Sarah Valdez
Address Unknown
(702) 201-2755

5. Aubrey A. Corwin, M.S., L.P.C., C.R.C,
Vocational Diagnostics Inc.
3030 N. Central Avenue, Suite 406
Phoenix, Arizona 85012
(602) 285-0625

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6. University Medical Center
1800 W. Charleston Blvd.
Las Vegas, NV 89102

7. Robert L. Spence and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Mountainview Hospital
Nalani Mongkholtham, R.N.
Donna Sullivan, R.N.
Melissa Whitney, R.N.
3100 N. Tenaya Way
Las Vegas, NV 89128

8. David Gorczyca, M.D. and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Radiology Specialists
P.O. Box 50709
Henderson, NV 89016

9. James Preddy, DO and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Fremont Emergency Services
9301 S. Western
Oklahoma City, OK 73139

10. James Glasgow, DC and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Spinal Rehabilitation Center
2415 N. Las Vegas Boulevard, Suite 105
North Las Vegas, NV 89030

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11. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Syed Ahmed, M.D.
Southern Nevada Medical Group
3025 S. Maryland Parkway, Suite A
Las Vegas, NV 89109

12. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Keith Lewis, M.D.
Lake Mead Radiology – Upright MRI
6460 Medical Center Street, Suite 150
Las Vegas, NV 89148

13. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Raimundo Leon, M.D
Advanced Pain Consultants
2650 Crimson Canyon
Las Vegas, NV 89128

14. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Box Canyon Surgery Center
Raimundo Leon, M.D.
Michael Prater, M.D.
2555 Box Canyon Drive
Las Vegas, NV 89128

15. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Desert Institute of Spine Care
Andrew Cash, M.D.
A.J. Turpin, PA-C
9339 W. Sunset Road, Suite 100
Las Vegas, NV 89148

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16. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Southern Hills Hospital
Abdul-Sami Siddiqui, M.D.
Andrew Cash, M.D.
Peter Caravella, M.D.
Timothy Beckett, M.D.
Varoujan Kostanian, M.D.
Maria Arancia-Draves, R.N.
9300 W. Sunset Road
Las Vegas, NV 89148

17. Jeffery Markham, M.D. and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Las Vegas Radiology
Bhuvana Kittusamy, M.D.
7500 Smoke Ranch Road, Suite 100
Las Vegas, NV 89128

18. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Don Nobis Progressive Physical Therapy
801 South Rancho Drive, #F4
Las Vegas, NV 89106

19. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
CVS Pharmacy
Privacy Office
One CVS Drive
Woonsocket, RI 02895
(800) 287-2414

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20. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Las Vegas Surgical Associates
8930 W. Sunset Road, Suite 300
Las Vegas, NV 89148
(702) 258-7788

21. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Monitoring Associates
8400 Menaul Blvd., Suite A211
Albuquerque, NM 87112
(505) 836-7894

22. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Neuromonitoring Associates
Nicholas Masciotti, NCIM
Simon Farrow, M.D.
8400 Menaul Blvd., Suite A211
Albuquerque, NM 87112
(505) 836-7894

23. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
ProCare Medical Center
Sang Tran, M.D.
6870 S. Rainbow Blvd., Suites 106 & 107
Las Vegas, NV 89118
(702) 396-6000

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24. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Quest Diagnostics
4230 Burnham Ave.
Las Vegas, NV 89119
(702) 733-6302

25. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Pioneer Healthcare
Abdul-Sami Siddiqui, M.D.
3540 West Sahara Ave., Suite 330
Las Vegas, NV 89102
(702) 921-6823

26. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Valley Anesthesia
Timothy Beckett, M.D.
P.O. Box 400310
Las Vegas, NV 89140
(517) 787-6440

27. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Wesley Zimmerman, CST/CSFA
650 N. Tenaya Way, Suite 301
Las Vegas, NV 89128

Plaintiff reserves the right to call any witness or expert witness whom may be listed by Plaintiff, Defendants and/or any other party to this action, as well as any witness or expert witness listed in the NRCP 16.1 Supplements, Answers to Interrogatories, and Responses to Requests for Production of Documents, Responses to Admissions, deposition exhibits and deposition testimony. Plaintiff also reserves the right to call any witnesses or expert witnesses

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necessary for rebuttal or for the purpose of impeachment at the time of trial. Plaintiff may call the Custodian of Records of all treating physicians to testify as to the completeness and accuracy of records, medical records and bills generated in the normal course of business. By listing witnesses Plaintiff does not waive the right to challenge and/or exclude a witness and, Plaintiff reserves the right to object to any witness at the time of trial.

II.

PLAINTIFF WILL PRESENT THE FOLLOWING DEPOSITIONS AT TRIAL PURSUANT TO NRCP 16.1 (a)(3)(B)

i. The Plaintiff will use the deposition of *Defendants and Defendants' representatives* as allowed by Nevada law.

1. Deposition of Farooq Abdulla (including all volumes of transcripts and all accompanying exhibits referenced therein).

ii. The Plaintiff will present the following deposition testimony if the witness is unavailable at the time of trial:

1. Deposition of Reynold Rimoldi, M.D. (including all volumes of transcripts and all accompanying exhibits referenced therein) (Currently Scheduled)..
2. Deposition of David Oliveri, M.D. (including all volumes of transcripts and all accompanying exhibits referenced therein) (Currently Scheduled)..
3. Deposition of Ronald Probert (including all volumes of transcripts and all accompanying exhibits referenced therein)(Currently Scheduled).
4. Deposition of Terrence Clauretie (including all volumes of transcripts and all accompanying exhibits referenced therein))(Currently Scheduled)..
5. Deposition of Ira Spector (including all volumes of transcripts and all accompanying exhibits referenced therein))(Currently Scheduled).
6. Deposition of Andrew Cash (including all volumes of transcripts and all accompanying exhibits referenced therein))(Currently Scheduled).
7. Deposition of Raimundo Leon (including all volumes of transcripts and all accompanying exhibits referenced therein))(Currently Scheduled).

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iii. The following deposition testimony will be presented by the Plaintiff for impeachment, if the need arises:

1. Testimony of Reynold Rimoldi, M.D. in Arenas De Castillo v Nunez-Moreno;

2. Testimony of Reynold Rimoldi, M.D. in Bergeron v Woldemarian;

3. Testimony of Reynold Rimoldi, M.D. in Celis v Ralph's Grocery;

4. Testimony of Reynold Rimoldi, M.D. in Garcia v Underbrink;

5. Testimony of Reynold Rimoldi, M.D. in Golanics v Sotalo;

6. Testimony of Reynold Rimoldi, M.D. in Hill v Guyer;

7. Testimony of Reynold Rimoldi, M.D. in Hinostroza v Circus Circus;

8. Testimony of Reynold Rimoldi, M.D. in Johnson v Lucky Cab;

9. Testimony of Reynold Rimoldi, M.D. in Luker v Gillett Construction;

10. Testimony of Reynold Rimoldi, M.D. in Marku v Linens'n Things;

11. Trial Testimony of Reynold Rimoldi, M.D. in Marku v Linens'n Things;

12. Testimony of Reynold Rimoldi, M.D. in Peltier v Wright;

13. Testimony of Reynold Rimoldi, M.D. in Szabo v The Mirage;

14. Testimony of Reynold Rimoldi, M.D. in Turnbull v Burke Vol I and II;

15. Testimony of Reynold Rimoldi, M.D. in Baird v First Transit Inc;

16. Testimony of Reynold Rimoldi, M.D. in Rentas v Ermer;

17. Testimony of Reynold Rimoldi, M.D. in Ortiz v Hall;

18. Trial Testimony of Reynold Rimoldi, M.D. in Faubion v Arata;

19. Testimony of Reynold Rimoldi, M.D. in Macias v King Ranch Market;

20. Testimony of Reynold Rimoldi, M.D. in Phillips v Las Vegas Mini Grand Prix;

21. Testimony of Reynold Rimoldi, M.D. in Wise v Veolia Transportation;

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22. Testimony of Reynold Rimoldi, M.D. in Fullmer v Jones;

23. Plaintiff reserves the right to use any transcript of testimony, in any case, listed on Dr. Rimoldi's testimony history list, at trial in this matter.

24. Testimony of Gary Skoog in Doe HL v Doe JW;

25. Testimony of Gary Skoog in Fenton v Good;

26. Testimony of Gary Skoog in Johnson v Lucky Cab Co.;

27. 12/28/09 ORDER re Gary Skoog in Lee v Overbey in Western District of Arkansas 08-CV-2115;

28. Plaintiff reserves the right to use any testimony, in any cases listed in Gary Skoog's testimony history list, at the time of trial.

Plaintiff reserves the right to use expert depositions given in the instant litigation. Plaintiff reserves the right to use any depositions designated by the Defendants and any other party related to this matter. Plaintiff further reserves the right to use any testimony given in the above-named depositions during the trial of this matter regardless of the subject matter, including for impeachment purposes.

By disclosing deposition testimony, including any additional volumes of the transcript and exhibits attached thereto, Plaintiff does not waive the right to challenge and exclude such deposition testimony and/or exhibits, or portions thereof, on any basis.

III.

PLAINTIFF'S EXHIBITS

i. Plaintiff's Exhibits which Plaintiff expects to offer at trial:

1. Traffic Accident Report (TAR0001-TAR0005);

2. Plaintiff's Wage Verification form for Pep Boys dated 7/12/13;

3. Plaintiff's Pep Boys FMLA paperwork dated 4/25/15;

4. Plaintiff's Social Security Earnings Statement dated 9/10/15;

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5. Plaintiff's W2's from Pep Boys for 2011 through 2014;

6. Four (4) color photographs of Plaintiff's surgical scars and surgical hardware;

7. Medical Records of City of Las Vegas Fire Rescue;

8. Medical Records of Mountainview Hospital;

9. Medical Records of Spinal Rehabilitation Center;

10. Medical Records of Southern Nevada Medical Group;

11. Medical Records of Lake Mead Radiology;

12. Medical Records of Advanced Pain Consultants;

13. Medical Records of Box Canyon Surgery Center;

14. Medical Records of Desert Institute of Spine Care;

15. Medical Records of Las Vegas Radiology;

16. Medical Records of Desert Orthopedic Center;

17. Medical records of ProCare Medical;

18. Medical records of Quest Diagnostics;

19. Medical records of Monitoring Associates;

20. Medical records of Neuromonitoring Associates;

21. Medical Records of Southern Hills Hospital;

22. Medical Records of Don Nobis Progressive Physical Therapy;

23. Billing Records of City of Las Vegas Fire Rescue;

24. Billing Records of Mountainview Hospital;

25. Billing Records of Spinal Rehabilitation Center;

26. Billing Records of Southern Nevada Medical Group;

27. Billing Records of Lake Mead Radiology;

28. Billing Records of Advanced Pain Consultants;

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29. Billing Records of Box Canyon Surgery Center;

30. Billing Records of Desert Institute of Spine Care;

31. Billing Records of Las Vegas Radiology;

32. Billing Records of Desert Orthopedic Center;

33. Billing records of ProCare Medical;

34. Billing records of Quest Diagnostics;

35. Billing records of Monitoring Associates;

36. Billing records of Neuromonitoring Associates;

37. Billing Records of Southern Hills Hospital;

38. Billing Records of Don Nobis Progressive Physical Therapy;

39. Billing Records of Fremont Emergency Services;

40. Billing Records of Las Vegas Surgical Associates;

41. Billing Records of CVS Pharmacy;

42. Billing Records of Radiology Specialists;

43. Billing Records of Pioneer Healthcare;

44. Billing Records of Valley Anesthesiology;

45. All MRIs, X-rays, CT scans, and radiology films and studies associated with reports contained in the medical records, including but not limited to:

DIAGNOSTIC IMAGING STUDIES PERTAINING TO PLAINTIFF:

Provider	Service Date	Type of Film
Las Vegas Radiology	5/22/14	CT Lumbar
Las Vegas Radiology	11/07/14	MRI Lumbar
Las Vegas Radiology	11/07/14	CT Lumbar
Desert Institute of Spine Care	2/12/14	X-ray Lumbar
Desert Institute of Spine Care	11/12/14	X-ray Lumbar

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Desert Institute of Spine Care	12/11/14	X-ray Lumbar
Desert Institute of Spine Care	1/13/15	X-ray Lumbar
Desert Institute of Spine Care	9/02/14	X-ray Lumbar
Desert Institute of Spine Care	10/07/14	X-ray Lumbar
Desert Institute of Spine Care	2/18/15	X-ray Lumbar
Desert Institute of Spine Care	10/28/14	X-ray Lumbar
Lake Mead Radiology	8/05/13	MRI Lumbar
Mountainview Hospital	7/02/13	X-Ray Lumbar
Mountainview Hospital	7/30/12	US Left Duplex Venous Lower Ext
Mountainview Hospital	7/30/12	X-Ray L Tibia/ Fibula
Mountainview Hospital	7/30/12	X-Ray L Ankle
Southern Hills Hospital	8/18/14	X-Ray Lumbosacral

ii. Plaintiff's Exhibits which May be Offered at the time of Trial, If the Need Arises:

1. Plaintiff's property damage claim file;

2. Photographs related to Plaintiff's property damage claim file;

3. Photographs of Defendant's Lexus automobile following the subject incident;

4. Transcription of Defendant Farooq Abdulla's recorded statement;

5. Terrence M. Clauretie, Ph.D.: Curriculum Vitae, fee schedule and testimony history list;

6. Terrence M. Clauretie, Ph.D.: Report of 9/24/2015 regarding household services;

7. Terrence M. Clauretie, Ph.D.: Report of 9/30/2015 regarding earning losses;

8. Terrence M. Clauretie, Ph.D.: Report of 9/21/2015 regarding future medical needs;

9. David J. Oliveri, M.D.: Curriculum Vitae, testimony history list and fee schedule;

10. David J. Oliveri, M.D.; Report of 8/28/2015;

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11. Ira Spector, M.S.: Curriculum Vitae, testimony history list and fee schedule;

12. Ira Spector, M.S.: Report of 9/28/2015;

13. Raimundo Leon, M.D.: Curriculum vitae, testimony history list and fee schedule;

14. Andrew Cash, M.D.: Curriculum vitae, testimony history list and fee schedule.

15. Andrew Cash, M.D.: Letter of 12/1/2015;

16. David J. Oliveri, M.D.: Supplemental report of 12/06/2015;

17. Terrence M. Clauretie, Ph.D.: Report of 12/14/2015, regarding Future medical costs;

18. Ron Probert: Curriculum Vitae, fee schedule, testimony history;

19. Ron Probert: Report of 12/7/2015;

20. Ron Probert: Report of 12/7/2015 (corrected typo);

21. Andrew Cash, M.D.: Report of 1/13/2016;

22. David J. Oliveri, M.D.: Report of 1/2/2016;

23. Ira Spector: Report of 1/19/2016;

24. Raimundo Leon, M.D.: Report of 1/19/2016;

25. Terrence M. Clauretie, Ph.D.: Updated report of 1/23/2016 regarding earning losses;

26. David J. Oliveri, M.D.: Report of 1/25/2016;

27. Dr. Reynold Rimoldi's Curriculum Vitae, Fee Schedule and list of Cases;

28. Dr. Reynold Rimoldi's IME Report dated November 9, 2015;

29. Dr. Reynold Rimoldi's Supplemental Report dated November 19, 2015;

30. Dr Gary Skoog's Curriculum Vitae, Fee Schedule and List of Cases;

31. Dr. Gary Skoog's Report dated December 21, 2015;

32. Dr. Aubrey A. Corwin's Curriculum Vitae, Fee Schedule and List of Cases;

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33. Dr. Aubrey A. Corwin's Report dated December 16, 2015;

34. David J. Oliveri, M.D.; Report of 3/14/16;

35. Complaint(s);

36. Answer(s);

37. All Discovery responses to Interrogatories, Requests for Production of Documents, and Requests for Admissions, from all Defendant(s) which were propounded by the Plaintiff; and

38. All exhibits attached to the parties' Motions, Oppositions, and Replies filed in support thereof.

Plaintiff reserves the right to use any documents disclosed by Defendants and any other party related to this case. Plaintiff may use any and all writings, published works, journals, treatises, medical texts, affidavits, films, drawings, graphs, charts, photographs, reports, computer tapes, computer discs, and other data compilations, and other medical reference materials which Plaintiff and/or Plaintiff's expert(s) use in support of Plaintiff's allegations. By disclosing documents, Plaintiff does not waive the right to challenge and exclude documents, or portions thereof, on any basis.

IV.

PLAINTIFF'S DEMONSTRATIVE EXHIBITS

Plaintiff may offer, at trial, certain Exhibits for demonstrative purposes including, but not limited to, the following:

a. Actual surgical hardware, plates, screws, surgical tools, and surgical equipment as used in Plaintiff's medical treatment and anticipated to be used in future treatment;

b. Demonstrative and actual photographs and videos of surgical procedures and other diagnostic tests Plaintiff has undergone and will undergo in the future;

c. Actual diagnostic studies and computer digitized diagnostic studies;

d. Samples of tools used in surgical procedures;

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e. Diagrams, drawings, pictures, photos, film, video, DVD and CD ROM of various parts of the human body, diagnostic tests and surgical procedures;

f. Computer simulation, finite element analysis, mabymo and similar forms of computer visualization;

g. Power point images/drawings/diagrams/animations/story boards depicting the facts and circumstances of the subject incident, the parties involved, the location of the subject incident and what occurred in the subject incident.

h. Pictures of Plaintiff prior and subsequent to the subject incident;

i. Surgical Timeline;

j. Medical treatment timeline;

k. Future Medical Timeline;

l. Charts depicting Plaintiff's Loss of Earning Capacity;

m. Charts depicting Plaintiff's Life Care Plans;

n. Charts depicting Plaintiff's Loss of Hedonic Damages;

o. Charts depicting Plaintiff's Loss of Household Services;

p. Photographs of Plaintiff's Witnesses;

q. Charts depicting Plaintiff's Life Expectancy;

r. Story boards and computer digitized power point images;

s. Blow-ups/transparencies/digitized images of medical records, medical bills, photographs and other exhibits;

t. Diagrams/story boards/computer re-enactment of the subject incident;

u. Diagrams of various parts of the human body related to Plaintiff's injuries;

v. Photographs of various parts of the human body related to Plaintiff's injuries;

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w. Models of the human body related to Plaintiff's injuries;

x. Samples of a spinal cord stimulator and leads;

y. Sample of an intrathecal drug delivery system and leads;

z. Samples of the needles and surgical tools used in Plaintiff's various diagnostic and therapeutic pain management procedures.

Plaintiff reserves the right to use any demonstrative exhibits disclosed by Defendants in this matter. Plaintiff reserves the right to introduce such other demonstrative exhibits into evidence as may be necessary for purposes of rebuttal, impeachment, or both. By disclosing demonstrative exhibits, Plaintiff does not waive the right to object to demonstrative exhibits disclosed by any party at the time of trial.

Plaintiff reserves the right to object to the introduction of exhibits and witnesses not previously disclosed, and further reserve their objections to any exhibits offered based on foundation and relevancy. Plaintiff further reserves the right to supplement his pre-trial disclosure statement as necessary.

DATED this 18th day of March, 2016.

EGLET PRINCE

___/s/ Danielle Tarmu_____
DENNIS M. PRINCE
Nevada Bar No. 5092
TRACY A. EGLET
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
400 South Seventh Street, #400
Las Vegas, Nevada 89101
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2 of the Eighth Judicial District Court, I hereby certify that I am an employee of EGLET PRINCE and that on the ____ day of March, 2016, I served the above and foregoing **PLAINTIFF'S PRE-TRIAL DISCLOSURE STATEMENT PURSUANT TO NRCP 16.1(a)(3)** on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

Christopher J. Curtis, Esq.
Meghan M. Goodwin, Esq.
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
P. O. Box 2070
Las Vegas, Nevada 89125-2070
ccurtis@thorndal.com
mgoodwin@thorndal.com
Attorneys for Defendant
FAROOQ ABDULLA

John T. Keating
9130 West Russell Road, #200
Las Vegas, Nevada 89148
jkeating@princekeating.com
Co-Counsel for Plaintiff

Chad M. Golightly
Law Offices of Chad M. Golightly
8560 South Eastern Avenue, Suite 240
Las Vegas, Nevada 89123
Co-Counsel for Plaintiff

____/s/ David Ochoa_____
an Employee of EGLET PRINCE

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PTD

CRAIG R. DELK, ESQ.
Nevada Bar No. 2295
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
1100 E. Bridger Avenue
Las Vegas, Nevada 89101-5315
Mail To:
P.O. Box 2070
Las Vegas, NV 89125-2070
Tel: (702) 366-0622
Fax: (702) 366-0327
cdelk@thorndal.com

Attorneys for Defendant,
FAROOQ ABDULLA

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

v.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive,

Defendants.

Case No. A-14-702810-C
Dept No. XII

DEFENDANT FAROOQ ABDULLA'S NRCP 16.1 (a)(3) PRE-TRIAL DISCLOSURES

COMES NOW, Defendant, FAROOQ ABDULLA, and hereby submits his NRCP 16.1(a)(3) Pre-Trial Disclosures.

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(A) WITNESSES

(a) Non-Expert Witnesses Defendant Expects to Call:

(1) ETHAN VOLUNGIS, Plaintiff, 7017 Copperleaf Drive, Las Vegas, Nevada 89128.

(2) FAROOQ ABDULLA, Defendant, 8809 Palm Greens Court, Las Vegas, Nevada 89134.

(3) CITY OF LAS VEGAS FIRE & RESCUE, 500 N. Casino Center Blvd., Las Vegas, Nevada 89101, telephone (702) 229-6326.

(4) SARAH VALDEZ, address unknown, last known telephone number (702) 201-2755.

(5) JANET ARCE, 7017 Copperleaf Drive, Las Vegas, Nevada 89128, telephone (520) 867-3671.

(6) OLIVER VOLUNGIS, 7017 Copperleaf Drive, Las Vegas, Nevada 89128, telephone (520) 867-3671.

(7) OFFICER D. FLETCHER, ID No. 8734, Las Vegas Metropolitan Police Dept., 400 S. Martin Luther King Blvd., Las Vegas, Nevada 89106, telephone (702) 346-5555.

(8) All of Plaintiff's treating physicians and other healthcare providers.

(b) Witnesses Defendant May Call If Necessary:

(1) Foundation witnesses.

(2) Impeachment and/or rebuttal witnesses.

(3) Witnesses identified by Plaintiff.

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(c) No trial subpoenas have been issued to date.

(B) DEPOSITIONS OR OTHER PUBLICATION OF TESTIMONY

(1) Depositions and written discovery, with all exhibits, as necessary.

(C) EXPERTS

(1) DR. REYNOLD L. RIMOLDI, Nevada Orthopedic and Spine, 7455 W. Washington Avenue, Suite 160, Las Vegas, Nevada 89128, telephone (702) 878-0393.

(2) GARY R. SKOOG, Ph.D., Legal Econometrics, Inc., 1527 Basswood Circle, Glenview, Illinois 60025, telephone (847) 729-6154.

(3) AUBREY CORWIN, M.S., L.P.C., C.R.C., Vocational Diagnostics, Inc., 3030 N. Central Ave., Suite 406, Phoenix, AZ 85012, telephone (602) 285-0625.

(4) All of Plaintiffs' retained experts.

(5) All of Plaintiffs' unretained experts.

(6) All of Plaintiffs' treating physicians and other healthcare providers.

(D) EXHIBITS

(a) Exhibits Defendant Expects to Offer:

(1) Recorded Statement of Farooq Abdulla.

(2) Photographs of Defendant's Lexus automobile.

(3) Photographs of Plaintiff's Cadillac automobile.

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(4) Property damage estimate for Plaintiff's 1996 Cadillac Fleetwood 4D Sedan.

(5) Property damage estimate for Defendant's 2012 Nissan Altima 4D Sedan.

(6) Traffic Accident Report including driver statements.

(7) Dr. Reynold Rimoldi's IME report dated November 9, 2015, and all materials relied upon by said expert identified therein.

(8) Dr. Reynold Rimoldi's Supplemental Report dated November 19, 2015, and all materials relied upon by said expert identified therein.

(9) Dr. Reynold Rimoldi's Supplemental Report dated March 14, 2016, and all materials relied upon by said expert identified therein.

(10) Dr. Gary Skoog's expert report dated December 21, 2015, and all materials relied upon by said expert identified therein.

(11) Aubrey Corwin's expert reported dated December 16, 2015, and all materials relied upon by said expert identified therein.

(12) All of Plaintiff's medical and billing records, including films.

(13) Plaintiff's tax returns.

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(14) Plaintiff's personnel file from Pep Boys.

(b) Documents Defendant May Offer If Necessary:

(1) Excerpt of Jury Trial - 4, Testimony of Andrew Cash, Monday, August 24, 2015, in re *Beau Orth v. Albert Capanna, MD, Case No. A-11-648041-C.*

(2) Transcript of Proceedings, Jury Trial - Day 7, Thursday, August 27, 2015, in re *Beau Orth v. Albert Capanna, MD, Case No. A-11-648041-C.*

(3) All exhibits identified by Plaintiff.

(4) Impeachment, rebuttal and/or rehabilitation exhibits and other evidence, including expert reports together with all materials relied upon by said expert identified therein.

(5) All deposition exhibits if such deposition is used in Defendant's case in chief and/or for impeachment, rebuttal, or rehabilitation.

DATED this 18 day of March, 2016.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

CRAIG R. DELK, ESQ.
Nevada Bar No. 2295
1100 Bridger Avenue
Las Vegas, Nevada 8910
Attorneys for Defendant,
FAROOQ ABDULLA

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on the 18 day of March, 2016 service of ***DEFENDANT FAROOQ ABDULLA'S NRCP 16.1(a)(3) PRE-TRIAL DISCLOSURES*** was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

NAME	TEL. & FAX NOS.	PARTY
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Kaz Crall

An Employee of Thorndal, Armstrong,
Delk, Balkenbush & Eisinger

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CLERK OF THE COURT

RIS
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Nevada Bar No. 5092
TRACY A. EGLET, ESQ.
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

vs.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive;

Defendants.

Case No. : A702810
Dept. No.: XII

PLAINTIFF'S REPLY IN SUPPORT OF MOTION IN LIMINE NO. 2: TO EXCLUDE OPINIONS AND ARGUMENT THAT PLAINTIFF WAS SPEEDING EXCESSIVELY OR THAT SPEED CAUSED COLLISION

COMES NOW Plaintiff, ETHAN VOLUNGIS, by and through his attorneys of record, DENNIS M. PRINCE, ESQ., TRACY A. EGLET, ESQ., and KEVIN T. STRONG, ESQ. of the law firm EGLET PRINCE, and hereby submits *Plaintiff's Reply in Support of Motion in Limine No. 2: to Exclude Opinions and Argument That Plaintiff Was Speeding Excessively or That Speed Caused Collision.*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

Defendant's Opposition fails to provide sufficient facts necessary to accuse Plaintiff Ethan Volungis of speeding at the time of the subject collision. Defendant initially suggests that if facts are adduced at trial suggesting Plaintiff was speeding, then Defendant's counsel can argue to the jury that speed played a role in the subject collision. This argument is speculative and not based in reality because all of the evidence regarding the subject collision has already been disclosed between the parties during discovery. This evidence includes that Plaintiff traveled approximately 25 to 30 mph right before the collision and that Defendant did not see Plaintiff's vehicle before the impact. *See* Plaintiff's Motion, **Exhibits "2," "3," and "4."** Defendant has not provided any facts that might be adduced at trial to allow his counsel to make this argument to the jury. Therefore, any such argument should be excluded because it is unsupported by all of the evidence in this case and would amount to attorney misconduct. *See State v. Kassabian*, 69 Nev. 146, 149 (1952).

Defendant spends the majority of his Opposition arguing that Abdulla's failure to see Plaintiff's vehicle prior to the accident does not foreclose his opinion that Plaintiff was speeding prior to the collision. However, the testimony Defendant relies upon is speculative and it does not comport with Nevada law regarding lay witness opinions regarding the speed of moving vehicles. In *Patton v. Henrikson*, 79 Nev. 197, 199 (1963), Brehm was injured while driving a motor scooter after colliding with a car driven by Henrikson. A 15-year-old witness to the collision observed the motor scooter in motion 15 to 20 seconds before the collision and offered her opinion as to its speed at the trial. *Id.* at 200. The Nevada Supreme Court held that the lay opinion regarding the speed of the motor scooter was admissible because the witness was "of

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ordinary intelligence ***and ha[d] an adequate opportunity to observe the vehicle at the time in question.***" *Patton*, 79 Nev. at 200. This holding is consistent with NRS 50.265, which states that a lay witness can testify as to opinions and inferences that are: "(1) rationally based on the perception of the witness; and (2) helpful to a clear understanding of the testimony of the witness or the determination of a fact in issue." Nev. Rev. Stat. 50.265.

In this case, Defendant admittedly never observed Plaintiff's vehicle prior to the subject collision. Instead, Defendant claims that Plaintiff must have been speeding because at the time he first looked to his left before making a lane change, Plaintiff's vehicle was not approaching. *See* Defendant's Opposition, 3:5-11. Defendant then alleges that as he made his lane change, Plaintiff and Defendant's vehicles collided. *Id.* However, Defendant cannot reasonably infer that Plaintiff was speeding without having actually observed Plaintiff's vehicle in motion prior to the subject collision pursuant to *Patton*. Without this observation, Defendant's inference that Plaintiff must have been speeding is speculative and impermissibly presumes that Plaintiff was speeding without any factual basis. *See Gramanz v. T-Shirts & Souvenirs*, 111 Nev. 478, 485 (1995) (A verdict may not be based on speculation, whether from a lay witness or an expert). Defendant's factual scenario regarding Plaintiff speeding is not equally consistent with Plaintiff's testimony that Defendant made an unsafe lane change in front of his vehicle because Plaintiff ***actually observed*** Defendant make an unsafe lane change in front of his vehicle. Defendant, on the other hand, never observed Plaintiff speeding in his vehicle prior to Defendant's lane change. Thus, Defendant's inference that Plaintiff was speeding is not reasonable because he did not perceive Plaintiff's vehicle before the collision and to allow Defendant to present such an opinion contravenes NRS 50.265 and *Patton*.

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Defendant's reliance on *Paul v. Imperial Palace*, 111 Nev. 1544, 1546 (1995) does not support his argument to admit his speculative testimony about Plaintiff's speed at the time of the collision. In *Paul*, Edolia Paul slipped and fell on her right shoulder while standing in line at the Imperial Palace buffet. Ms. Paul's friend, Mamie McCloud, "heard Paul's foot slip, saw the end of Paul's fall, and then saw oil on the rug where Paul fell." *Id.* at 1550. Thus, the Nevada Supreme Court held that McCloud's opinion regarding the cause of Paul's fall was "rationally based on her perceptions" (*i.e.* observing the fall and the oil on the floor). Defendant improperly focuses on the fact that McCloud was a third-party observer to support his argument that his testimony that Plaintiff was speeding at the time of the collision should be admitted. McCloud's lay opinion testimony was properly admitted because she actually observed Paul slip and fall and observed the oil on the rug where Paul fell. Here, Defendant did not see Plaintiff's vehicle before the impact and thus, has no factual basis to argue or testify that Plaintiff was speeding at the time of the collision. Therefore, *Paul* actually further supports Plaintiff's argument that Defendant's lay opinion about the speed of Plaintiff's vehicle should be excluded because such opinion is not rationally based on his perception of Plaintiff's vehicle, which is required under Nevada law.

As a result of Defendant's failure to produce necessary evidence that he perceived Plaintiff's vehicle prior to the subject collision, he is also precluded from arguing that Plaintiff's speed caused the subject collision. The issue of causation is left for the trier of fact to decide. *Frias v. Valle*, 101 Nev. 219, 221 (1985). Defendant's failure to perceive Plaintiff's vehicle before the collision and failure to retain an expert in forces, impact, accident reconstruction, or speeds of the vehicles renders any opinion that Plaintiff's speed caused the collision improper and speculative. *Gramanz*, 111 Nev. at 485.

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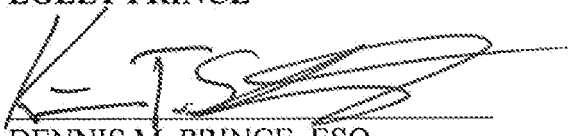
II.

CONCLUSION

Based upon the foregoing facts, law, and analysis, Plaintiff respectfully requests this Court to **GRANT** his *Motion in Limine No. 2: to Exclude Opinions and Argument That Plaintiff Was Speeding Excessively or That Speed Caused Collision.*

DATED this 28th day of March, 2016.

EGLET PRINCE



DENNIS M. PRINCE, ESQ.
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TRACY A. EGLET, ESQ.
Nevada Bar No.: 6419
KEVIN T. STRONG, ESQ.
Nevada Bar No.: 12107
Attorneys for Plaintiff

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on March 28, 2016, I caused the foregoing document entitled **PLAINTIFF'S REPLY IN SUPPORT OF MOTION IN LIMINE NO. 2: TO EXCLUDE OPINIONS AND ARGUMENT THAT PLAINTIFF WAS SPEEDING EXCESSIVELY OR THAT SPEED CAUSED COLLISION** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Craig R. Delk, Esq.
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CLERK OF THE COURT

OBJ
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DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually, Plaintiff, vs. FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive; Defendants.	CASE NO.: A-14-702810-C DEPT. NO.: XII **PLAINTIFF'S OBJECTION TO DEFENDANT'S PRE-TRIAL DISCLOSURE STATEMENT PURSUANT TO NRCP 16.1(a)(3)**

COMES NOW, Plaintiff, ETHAN VOLUNGIS, by and through his attorneys of record, DENNIS M PRINCE, ESQ., TRACY A. EGLET, ESQ., and DANIELLE TARMU, ESQ. of EGLET PRINCE; and make the following objections to Defendant's Pretrial Disclosure pursuant to NRCP 16.1(a)(3).

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1. **General Objections Applicable to all Documents Disclosed by Defendants**

Plaintiff objects to the following documents that the Defendant intends to use as exhibits at the trial of this matter, if any information not identified with particularity, violates the collateral source rule, hearsay rule, best evidence rule, lacks foundation, is not relevant or which relevancy is outweighed by its prejudicial effect, or contains information that was/will be excluded by the court or by stipulation of the parties. Plaintiff also objects to these documents inasmuch as they have not been properly redacted according to the laws of privacy, and the previous stated objections.

Furthermore, Plaintiff reserves the right to object to or move to exclude any document, on any basis, at the time of trial.

2. **Traffic Accident Report including driver statements.**

Plaintiff objects to the Traffic Accident Report and driver statements to the extent they violate the hearsay rule, best evidence rule, is more prejudicial than probative, and it lacks foundation.

3. **Photographs of the parties' vehicles.**

Plaintiff objects to the photographs of vehicles to the extent they lack foundation, are more prejudice than probative, and are not identified with particularity.

4. **Property Damage estimate for Plaintiff's 1996 Cadillac Fleetwood 4D Sedan.**

Plaintiff objects to any information contained in the Property Damage estimate for Plaintiff's 1996 Cadillac Fleetwood 4D Sedan that violates the hearsay rule and/or lacks foundation.

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5. **Property Damage estimate for Defendant's 2012 Nissan Altima 4D Sedan.**

Plaintiffs object to any information contained in the Property Damage estimate for Defendant's 2012 Nissan Altima 4D Sedan that violates the hearsay rule, and/or lacks foundation.

6. **Recorded Statement of Farooq Abdulla.**

Plaintiff objects to the Recorded Statement of Farooq Abdulla on the basis that it lacks foundation and is inadmissible hearsay.

7. **Expert Reports and Supplements thereto, Curriculum Vitae, Fee Schedules, and or testimony history.**

Plaintiff objects to the extent that the Expert Reports and Supplements thereto, Curriculum Vitae, Fee Schedules, and or testimony history lacks foundation and/or is inadmissible hearsay.

8. **Plaintiff's tax returns.**

Plaintiff objects to any information contained in Plaintiff's tax return that violates the collateral source rule, hearsay rule, best evidence rule and/or lacks foundation.

9. **Plaintiff's personnel file from Pep Boys.**

Plaintiff objects to the personnel file from Pep Boys as it is inadmissible hearsay and/or lacks proper foundation.

10. **General Objections Applicable to all Depositions Exhibits, Testimony, Trial Excerpts listed by Defendants.**

Plaintiff objects to any information contained in any deposition, testimony, or trial excerpt that is not admissible, violates the collateral source rule, hearsay rule, lacks foundation, is not relevant or which relevancy is outweighed by its prejudicial effect or contains information that was/will be excluded by the court or by stipulation of the parties.

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CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court sustain the foregoing objections at the trial of this matter.

DATED this 28th day of March, 2016.

EGLET PRINCE

/s/ Danielle Tarmu

DENNIS M. PRINCE
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Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2 of the Eighth Judicial District Court, I hereby certify that I am an employee of EGLET PRINCE and that on the 28th day of March, 2016, I served the above and foregoing **PLAINTIFFS' OBJECTION TO DEFENDANT'S PRE-TRIAL DISCLOSURE STATEMENT PURSUANT TO NRCP 16.1(a)(3)** on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

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Co-Counsel for Plaintiff

/s/ David Ochoa
an Employee of EGLET PRINCE

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, Plaintiff, vs. FAROOQ ABDULLA, Defendants.	)	CASE NO. A702810 DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT,

DISTRICT COURT JUDGE

MONDAY, MARCH 28, 2016

RECORDER'S TRANSCRIPT OF CIVIL CALENDAR

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APPEARANCES:

For the Plaintiffs: DENNIS PRINCE, ESQ.

For the Defendants: CRAIG DELK, ESQ.

COURT RECORDER: KRISTINE CORNELIUS, DISTRICT COURT

TRANSCRIBED BY: FABIAN SCHWIN, HEARING REPORTER

JOB NO.: 16942MOD-AUDIO(C)

LAS VEGAS, NEVADA, MONDAY, MARCH 28, 2016, 09:52 A.M.

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MR. DELK: Counsel is not here yet.

THE COURT: Okay. Maybe I'll just take a recess until we get the parties here. We just have pretrial (inaudible).

MR. DELK: Thank you.

THE COURT: Thank you.

THE CLERK: Court will be in recess.

(Recess)

THE COURT: A702810.

MR. DELK: Good morning, your Honor. Craig Delk, Defendant Abdulla.

MR. PRINCE: Your Honor, good morning. Denis Prince for the Plaintiff.

THE COURT: Are the parties ready to go?

MR. PRINCE: We are trial ready.

MR. DELK: We are ready.

THE COURT: Okay.

MR. DELK: We were just discussing the possibility of getting bumped to the next stack due to some conflicting dates.

THE COURT: That doesn't sound trial ready to me.

MR. DELK: If we need to go, we can go.

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THE COURT: When can you go on this stack?
MR. PRINCE: I have -- just so you know, your Honor, I have a firm set April 18th. One-week bench trial.
THE COURT: Just a minute.
MR. PRINCE: Okay. Sorry.
THE COURT: What are the weeks?
THE CLERK: (Inaudible).
THE COURT: This is pretty basic. Okay. You are a firm the first week. That's the only week you can't go?
MR. PRINCE: I would say that's correct.
THE COURT: Okay. But you could go -- how about you? Do you have any conflicts?
MR. DELK: My daughter's law school graduation is --
THE COURT: Got to go to that.
MR. DELK: -- is Sunday, May 15th. So if I had to, I could come back on the 16th.
THE COURT: Okay. But it's on Sunday, right?
MR. DELK: That's correct. The ceremony is Sunday.
THE COURT: Okay. Are you going to be -- are you going to be far away?
MR. DELK: Los Angeles.
THE COURT: Oh, okay. So you just can't do it -- well, probably try not to start right after that, but that would be the last week of the stack. So it looks like

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there's just a conflict the first week.

MR. DELK: Yes. Unless the trial, whenever it does commence, runs into the graduation ceremonies beginning on Thursday, May 13th.

THE COURT: Okay. I'll make sure you get there if you're in trial.

MR. DELK: Okay.

THE COURT: You're not going to miss that.

MR. DELK: Appreciate that, your Honor.

THE COURT: Yeah. I understand. There's just certain things you can't miss. How many days will it take?

MR. PRINCE: I think seven.

THE COURT: So you think it's about a week and half?

MR. PRINCE: I do.

MR. DELK: I would say five to seven full trial days, your Honor.

MR. PRINCE: What's your typical -- you tell me your typical trial schedule.

THE COURT: 8:30 to 5:00 on Wednesday and Friday, and 10:30 to 5:00 on Tuesday, Thursday -- Monday, Tuesday, Thursday.

MR. PRINCE: Okay.

THE COURT: Monday, Tuesday, Thursday 10:30 to 5:00. Wednesday, Friday 8:30 to 5:00.

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MR. DELK: Probably seven then, your Honor. Seven days.

THE COURT: Okay. Seven days?

MR. DELK: On that schedule.

THE COURT: Okay. So we only have those two conflicts, but other than that you're ready to go?

MR. PRINCE: Yeah. May need a few days after the one trial starts to finish -- you know, to get myself collected for this case.

THE COURT: All right. But it's one --

MR. DELK: I do need to call one witness out of order, your Honor, but otherwise --

THE COURT: That's fine.

MR. DELK: -- not a problem.

THE COURT: That's fine. And then we'll just see -- well, I guess I'll see you April 4th next week. Looks like you have a bunch of motions pending.

MR. PRINCE: Okay.

THE COURT: Okay. Thank you.

PROCEEDING CONCLUDED AT 10:04 A.M.

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.



Fabian Schwin,
Hearing Reporter

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CLERK OF THE COURT

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FAROOQ ABDULLA

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually, Plaintiff, v. FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive, Defendants.	Case No. A-14-702810-C Dept No. XII **DEFENDANT'S OBJECTIONS TO EXHIBITS LISTED IN PLAINTIFF'S PRE-TRIAL DISCLOSURE STATEMENT PURSUANT TO NRCP 16.1(a)(3)**

COMES NOW, Defendant, FAROOQ ABDULLA, and submits the following objections to the exhibits listed in Plaintiff's Pre-Trial Disclosure Statement Pursuant to NRCP 16.1(a)(3), except only as to relevancy and/or more prejudicial than probative under NRS 48.025 and NRS 48.035, as follows:

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i. Plaintiff's Exhibits which Plaintiff expects to offer at trial:

1. Traffic Accident Report; objection foundation and hearsay.

2. Plaintiff's Wage Verification form for Pep Boys dated 7/12/13; objection foundation and hearsay.

3. Plaintiff's Pep Boys FMLA paperwork dated 4/25/15; objection foundation and hearsay.

4. Plaintiff's Social Security Earnings Statement dated 9/10/15; objection foundation and hearsay.

5. Plaintiff's W-2's from Pep Boys for 2011 through 2014; objection foundation and hearsay.

6. Four (4) color photographs of Plaintiff's surgical scars and surgical hardware; objection foundation.

7. Medical records of City of Las Vegas Fire Rescue; objection and hearsay.

8. Medical Records of Mountainview Hospital; objection foundation and hearsay.

9. Medical Records of Spinal Rehabilitation Center; objection foundation and hearsay.

10. Medical Records of Southern Nevada Medical Group; objection foundation and hearsay.

11. Medical Records of Lake Mead Radiology; objection

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foundation and hearsay.

12. Medical Records of Advanced Pain Consultants; objection foundation and hearsay.

13. Medical Records of Box Canyon Surgery Center; objection foundation and hearsay.

14. Medical Records of Desert Institute of Spine Care; objection foundation and hearsay.

15. Medical Records of Las Vegas Radiology; objection foundation and hearsay.

16. Medical Records of Desert Orthopedic Center; objection foundation and hearsay.

17. Medical Records of ProCare Medical; objection foundation and hearsay.

18. Medical Records of Quest Diagnostic; objection foundation and hearsay.

19. Medical Records of Monitoring Associates; objection foundation and hearsay.

20. Medical Records of Neuromonitoring Associates; objection foundation and hearsay.

21. Medical Records of Southern Hills Hospital; objection foundation and hearsay.

22. Medical Records of Don Nobis Progressive Physical Therapy; objection foundation and hearsay.

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23. Billing Records of City of Las Vegas Fire and Rescue; objection foundation and hearsay.

24. Billing Records of Mountainview Hospital; objection foundation and hearsay.

25. Billing Records of Spinal Rehabilitation Center; objection foundation and hearsay.

26. Billing Records of Southern Nevada Medical Group; objection foundation and hearsay.

27. Billing Records of Lake Mead Radiology; objection foundation and hearsay.

28. Billing Records of Advanced Pain Consultants; objection foundation and hearsay.

29. Billing Records of Box Canyon Surgery Center; objection foundation and hearsay.

30. Billing Records of Desert Institute of Spine Care; objection foundation and hearsay.

31. Billing Records of Las Vegas Radiology; objection foundation and hearsay.

32. Billing Records of Desert Orthopedic Center; objection foundation and hearsay.

33. Billing Records of ProCare Medical; objection foundation and hearsay.

34. Billing Records of Quest Diagnostics; objection

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foundation and hearsay.

35. Billing Records of Monitoring Associates; objection foundation and hearsay.

36. Billing Records of Neuromonitoring Associates; objection foundation and hearsay.

37. Billing Records of Southern Hills Hospital; objection foundation and hearsay.

38. Billing Records of Don Nobis Progressive Physical Therapy; objection foundation and hearsay.

39. Billing Records of Fremont Emergency Services; objection foundation and hearsay.

40. Billing Records of Las Vegas Surgical Associates; objection foundation and hearsay.

41. Billing Records of CVS Pharmacy; objection foundation and hearsay.

42. Billing Records of Radiology Specialists; objection foundation and hearsay.

43. Billing Records of Pioneer Healthcare; objection foundation and hearsay.

44. Billing Records of Valley Anesthesiology; objection foundation and hearsay.

45. All MRIs, X-rays, CT scans, and radiology films and studies associated with reports contained in the medical

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records; objection foundation and hearsay.

DIAGNOSTIC IMAGING STUDIES

All listed imaging studies, objection, foundation.

ii. Plaintiff's Exhibits Which May be Offered at the Time of Trial, if the Need Arises:

1. Plaintiff's property damage claim file; objection foundation and hearsay.

2. Photographs related to Plaintiff's property damage claim file; objection foundation.

3. Photographs of Defendant's Lexus automobile following the subject accident; objection foundation and hearsay. objection foundation.

4. Transcription of Defendant Farooq Abdulla's recorded statement; objection foundation.

5. Terrence M. Clauretie, Ph.D.: Curriculum Vitae, fee schedule and testimony history list; objection foundation and hearsay.

6. Terrence M. Clauretie Ph.D.: Report of 9/24/2015 regarding household services; objection foundation and hearsay.

7. Terrence M. Clauretie Ph.D.: Report of 9/30/2015 regarding earning losses; objection foundation and hearsay.

8. Terrence M. Clauretie Ph.D.: Report of 9/21/2015 regarding future medical needs; objection foundation and hearsay.

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9. David J. Oliveri, M.D.: Curriculum Vitae, testimony history list and fee schedule; objection foundation and hearsay.

10. David J. Oliveri, M.D.: Report of 8/28/15; objection foundation and hearsay.

11. Ira Spector, M.S.: Curriculum Vitae, testimony history list and fee schedule; objection foundation and hearsay.

12. Ira Spector, M.S.: Report of 9/28/2015; objection foundation and hearsay.

13. Raimundo Leon, M.D.: Curriculum Vitae, testimony history list and fee schedule; objection foundation and hearsay.

14. Andrew Cash, M.D.: Curriculum vitae, testimony list and fee schedule; objection foundation and hearsay.

15. Andrew Cash, M.D.: Letter of 12/1/2015; objection foundation and hearsay.

16. David J. Oliveri, M.D.: Supplemental Report of 12/06/2015; objection foundation and hearsay.

17. Terrence M. Clauretie, Ph.D.: Report of 12/14/2015 regarding future medical costs; objection foundation and hearsay.

18. Ron Probert: Curriculum Vitae, fee schedule, testimony history; objection foundation and hearsay.

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19. Ron Probert: Report of 12/7/2015; objection foundation and hearsay.

20. Ron Probert: Report of 12/7/2015 (corrected typo); objection foundation and hearsay.

21. Andrew Cash, M.D.: Report of 1/13/2016; objection foundation and hearsay.

22. David J. Oliveri, M.D.: Report of 1/2/2016; objection foundation and hearsay.

23. Ira Spector: Report of 1/19/16; objection foundation and hearsay.

24. Raimundo Leon, M.D.: Report of 1/19/2016; objection foundation and hearsay.

25. Terrence M. Clauretie, Ph.D.: Updated report of 1/23/2016 regarding earning losses; objection foundation and hearsay.

26. David J. Oliveri, M.D.: Report of 1/25/2016; objection foundation and hearsay.

27. Dr. Reynold Rimoldi's Curriculum Vitae, Fee Schedule, and List of Cases,; objection foundation and hearsay.

28. Dr. Reynold Rimoldi's IME Report dated November 9, 2015; objection foundation and hearsay.

29. Dr. Reynold Rimoldi's Supplemental Report dated November 19, 2015; objection foundation and hearsay.

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30. Dr. Gary Skoog's Curriculum Vitae, Fee Schedule and List of Cases; objection foundation and hearsay.

31. Dr. Gary Skoog's Report dated December 21, 2015; objection foundation and hearsay.

32. Dr. Aubrey A. Corwin's Curriculum Vitae, Fee Schedule and List of Cases, objection foundation and hearsay.

33. Dr. Aubrey A. Corwin's Report dated December 16, 2015; objection foundation and hearsay.

34. Dr. David J. Oliveri, M.D.: Report of 3/14/16; objection foundation and hearsay.

35. Complaint(s); objection pleadings may be read but not introduced into evidence.

36. Answer(s); objection pleadings may be read but not introduced into evidence.

37. All discovery responses to Interrogatories, Requests for production of Documents, Requests for Admissions from all Defendant(s) which were propounded by Plaintiff; objection discovery may be published but not introduced into evidence.

38. All exhibits attached to the parties' Motions, Oppositions, and Replies filed in support thereof; objection foundation and hearsay.

IV. **PLAINTIFF'S DEMONSTRATIVE EXHIBITS**

a. Actual surgical hardware, plates, screws, surgical

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tools, and surgical equipment as used in Plaintiff's medical treatment and anticipated to be used in future treatment; objection foundation and hearsay.

b. Demonstrative and actual photographs and videos of surgical procedures and other diagnostic tests Plaintiff has undergone and will undergo in the future; objection foundation and hearsay.

c. Actual diagnostic studies and computer digitized diagnostic studies; objection foundation and hearsay.

d. Samples of tools used in surgical procedures; objection foundation and hearsay.

e. Diagrams, drawings, pictures, photos, film, video, DVD and CD ROM of various parts of the human body, diagnostic tests and surgical procedures; objection foundation and hearsay.

f. Computer simulation, finite element analysis, mabymo and similar forms of computer visualization; objection foundation and hearsay.

g. Power point images/drawings/diagrams/animation/story boards depicting the facts and circumstances of the subject incident, the parties involved, the location of the subject incident and what occurred in the subject incident; objection foundation and hearsay.

h. Pictures of Plaintiff prior and subsequent to the

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subject incident; objection foundation and hearsay.

i. Surgical Timeline; objection foundation and hearsay.

j. Medical treatment timeline; objection foundation and hearsay.

k. Future Medical Timeline; objection foundation and hearsay.

l. Charts depicting Plaintiff's Loss of Earning Capacity; objection foundation and hearsay.

m. Charts depicting Plaintiff's Life Care Plans; objection foundation and hearsay.

n. Charts depicting Plaintiff's Loss of Hedonic Damages; objection foundation and hearsay.

o. Charts depicting Plaintiff's Loss of Household Services; objection foundation and hearsay.

p. Photographs of Plaintiff's Witnesses; objection foundation and hearsay.

q. Charts depicting Plaintiff's Life Expectancy; objection foundation and hearsay.

r. Story boards and computer digitized power point images; objection foundation and hearsay.

s. Blow-ups/transparencies/digitized images of medical records, medical bills, photographs and other exhibits; objection foundation and hearsay.

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t. Diagrams/story boards/computer re-enactment of the subject incident; objection foundation and hearsay.

u. Diagrams of various parts of the human body related to Plaintiff's injuries; objection foundation and hearsay.

v. Photographs of various parts of the human body related to Plaintiff's injuries; objection foundation and hearsay.

w. Models of the human body related to Plaintiff's injuries; objection foundation and hearsay.

x. Samples of a spinal cord stimulator and leads; objection foundation and hearsay.

y. Sample of an intrathecal drug delivery system and leads; objection foundation and hearsay.

z. Samples of various needles and surgical tools used in Plaintiff's various diagnostic and therapeutic pain management procedures; objection foundation and hearsay.

V. DEPOSITIONS

All proposed depositions; objection foundation.

DATED this 6 day of April, 2016.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

CRAIG R. DELK, ESQ.
Nevada Bar No. 2295
1100 Bridger Avenue
Las Vegas, Nevada 8910
Attorneys for Defendant,
FAROOQ ABDULLA

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on the 1 day of April, 2016 service of ***DEFENDANT'S OBJECTIONS TO EXHIBITS LISTED IN PLAINTIFF'S PRE-TRIAL DISCLOSURE STATEMENT PURSUANT TO NRCP 16.1(a)(3)*** was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

NAME	TEL. & FAX NOS.	PARTY
Dennis M. Prince, Esq. Tracy A. Eglet, Esq. Joseph J. Troiano, Esq. EGLET PRINCE 400 South Seventh St., #400 Las Vegas, NV 89101	P:(702)450-5400 F:(702)450-5451	Plaintiff

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Kay Craee

An Employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger

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CLERK OF THE COURT

PMEM
DENNIS M. PRINCE
Nevada Bar No. 5092
TRACY A. EGLET
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
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eservice@egletlaw.com
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(702) 450-5451 facsimile
Attorneys for Plaintiff
Ethan Volungis

EGLET PRINCE

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DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually, Plaintiff, vs. FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive; Defendants.	CASE NO.: A-14-702810-C DEPT. NO.: XII **PLAINTIFF'S PRE-TRIAL MEMORANDUM**

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Plaintiff, ETHAN VOLUNGIS, by and through his attorneys of record, DENNIS M PRINCE, ESQ., TRACY A. EGLET, ESQ., and DANIELLE TARMU, ESQ. of EGLET PRINCE, hereby submits his Pre-Trial Memorandum.

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I.

STATEMENT OF FACTS

This case arises as a result of an automobile collision that occurred on July 2, 2013, on Tenaya Way south of Lake Mead Blvd., wherein the Plaintiff alleges he sustained damages as a result of the negligence of Defendant.

II.

CLAIMS FOR RELIEF

Plaintiff's Claims for Relief per Complaint:

1. Negligence

2. Negligence Per Se

III.

STATEMENT OF ADMITTED OR UNDISPUTED FACTS

None.

IV.

CLAIMS TO BE ABANDONED

None.

V.

PROPOSED AMENDMENTS TO PLEADINGS

None at this time.

VI.

LIST OF PLAINTIFF'S EXHIBITS

A. Plaintiff's Exhibits which Plaintiff expects to offer at trial:

1. Traffic Accident Report (TAR0001-TAR0005);

2. Plaintiff's Wage Verification form for Pep Boys dated 7/12/13;

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3. Plaintiff's Pep Boys FMLA paperwork dated 4/25/15;

4. Plaintiff's Social Security Earnings Statement dated 9/10/15;

5. Plaintiff's W2's from Pep Boys for 2011 through 2014;

6. Four (4) color photographs of Plaintiff's surgical scars and surgical hardware;

7. Medical Records of City of Las Vegas Fire Rescue;

8. Medical Records of Mountainview Hospital;

9. Medical Records of Spinal Rehabilitation Center;

10. Medical Records of Southern Nevada Medical Group;

11. Medical Records of Lake Mead Radiology;

12. Medical Records of Advanced Pain Consultants;

13. Medical Records of Box Canyon Surgery Center;

14. Medical Records of Desert Institute of Spine Care;

15. Medical Records of Las Vegas Radiology;

16. Medical Records of Desert Orthopedic Center;

17. Medical records of ProCare Medical;

18. Medical records of Quest Diagnostics;

19. Medical records of Monitoring Associates;

20. Medical records of Neuromonitoring Associates;

21. Medical Records of Southern Hills Hospital;

22. Medical Records of Don Nobis Progressive Physical Therapy;

23. Billing Records of City of Las Vegas Fire Rescue;

24. Billing Records of Mountainview Hospital;

25. Billing Records of Spinal Rehabilitation Center;

26. Billing Records of Southern Nevada Medical Group;

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27. Billing Records of Lake Mead Radiology;

28. Billing Records of Advanced Pain Consultants;

29. Billing Records of Box Canyon Surgery Center;

30. Billing Records of Desert Institute of Spine Care;

31. Billing Records of Las Vegas Radiology;

32. Billing Records of Desert Orthopedic Center;

33. Billing records of ProCare Medical;

34. Billing records of Quest Diagnostics;

35. Billing records of Monitoring Associates;

36. Billing records of Neuromonitoring Associates;

37. Billing Records of Southern Hills Hospital;

38. Billing Records of Don Nobis Progressive Physical Therapy;

39. Billing Records of Fremont Emergency Services;

40. Billing Records of Las Vegas Surgical Associates;

41. Billing Records of CVS Pharmacy;

42. Billing Records of Radiology Specialists;

43. Billing Records of Pioneer Healthcare;

44. Billing Records of Valley Anesthesiology Consultants;

45. All MRIs, X-rays, CT scans, and radiology films and studies associated with reports contained in the medical records, including but not limited to:

DIAGNOSTIC IMAGING STUDIES PERTAINING TO PLAINTIFF:

Provider	Service Date	Type of Film
Las Vegas Radiology	5/22/14	CT Lumbar
Las Vegas Radiology	11/07/14	MRI Lumbar

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Las Vegas Radiology	11/07/14	CT Lumbar
Desert Institute of Spine Care	2/12/14	X-ray Lumbar
Desert Institute of Spine Care	11/12/14	X-ray Lumbar
Desert Institute of Spine Care	12/11/14	X-ray Lumbar
Desert Institute of Spine Care	1/13/15	X-ray Lumbar
Desert Institute of Spine Care	9/02/14	X-ray Lumbar
Desert Institute of Spine Care	10/07/14	X-ray Lumbar
Desert Institute of Spine Care	2/18/15	X-ray Lumbar
Desert Institute of Spine Care	10/28/14	X-ray Lumbar
Lake Mead Radiology	8/05/13	MRI Lumbar
Mountainview Hospital	7/02/13	X-Ray Lumbar
Mountainview Hospital	7/30/12	US Left Duplex Venous Lower Ext
Mountainview Hospital	7/30/12	X-Ray L Tibia/ Fibula
Mountainview Hospital	7/30/12	X-Ray L Ankle
Southern Hills Hospital	8/18/14	X-Ray Lumbosacral

B. Plaintiffs' Exhibits which May be Offered at the time of Trial, If the Need Arises:

1. Plaintiff's property damage claims file;

2. Photographs related to Plaintiff's property damage claims file;

3. Photographs of Defendant's Lexus automobile following the subject incident;

4. Transcription of Defendant Farooq Abdulla's recorded statement;

5. Terrence M. Clauretie, Ph.D.: Curriculum Vitae, fee schedule, and testimony history list;

6. Terrence M. Clauretie, Ph.D.: Report of 9/24/2015 regarding household services;

7. Terrence M. Clauretie, Ph.D.: Report of 9/30/2015 regarding earning losses;

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8. Terrence M. Clauretie, Ph.D.: Report of 9/21/2015 regarding future medical needs;

9. David J. Oliveri, M.D.: Curriculum Vitae, testimony history list, and fee schedule;

10. David J. Oliveri, M.D.: Report of 8/28/2015;

11. Ira Spector, M.S.: Curriculum Vitae, testimony history list, and fee schedule;

12. Ira Spector, M.S.: Report of 9/28/2015;

13. Raimundo Leon, M.D.: Curriculum Vitae, testimony history list, and fee schedule;

14. Andrew Cash, M.D.: Curriculum Vitae, testimony history list, and fee schedule.

15. Andrew Cash, M.D.: Letter of 12/1/2015;

16. David J. Oliveri, M.D.: Supplemental report of 12/06/2015;

17. Terrence M. Clauretie, Ph.D.: Report of 12/14/2015, regarding Future medical costs;

18. Ron Probert: Curriculum Vitae, fee schedule, and testimony history;

19. Ron Probert: Report of 12/7/2015;

20. Ron Probert: Report of 12/7/2015 (corrected typo);

21. Andrew Cash, M.D.: Report of 1/13/2016;

22. David J. Oliveri, M.D.: Report of 1/2/2016;

23. Ira Spector: Report of 1/19/2016;

24. Raimundo Leon, M.D.: Report of 1/19/2016;

25. Terrence M. Clauretie, Ph.D.: Updated report of 1/23/2016 regarding earning losses;

26. David J. Oliveri, M.D.: Report of 1/25/2016;

27. Dr. Reynold Rimoldi's Curriculum Vitae, Fee Schedule and list of Cases;

28. Dr. Reynold Rimoldi's IME Report dated November 9, 2015;

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29. Dr. Reynold Rimoldi's Supplemental Report dated November 19, 2015;

30. Dr. Gary Skoog: Curriculum Vitae, Fee Schedule and List of Cases;

31. Dr. Gary Skoog: Report dated December 21, 2015;

32. Dr. Aubrey A. Corwin's Curriculum Vitae, Fee Schedule and List of Cases;

33. Dr. Aubrey A. Corwin's Report dated December 16, 2015;

34. David J. Oliveri, M.D.; Report of 3/14/16;

35. Life Expectancy Table;

36. Complaint(s);

37. Answer(s);

38. All Discovery responses to Interrogatories, Requests for Production of Documents, and Requests for Admissions, from all Defendant(s) which were propounded by the Plaintiff; and

39. All exhibits attached to the parties' Motions, Oppositions, and Replies filed in support thereof.

Plaintiff identifies and incorporates any and all documents identified and/or produced by any party to this matter. Plaintiff further reserves the right to use any exhibits identified by Defendant. Plaintiff further reserves the right to call any impeachment or rebuttal witnesses as necessary, as well as any exhibits listed in the NRCP 16.1 Supplements, Answers to Interrogatories, Responses to Request for Production of Documents, Responses to Admissions, deposition exhibits and deposition testimony. Plaintiff also reserves the right to introduce such other exhibits into evidence as may be necessary for purposes of rebuttal, impeachment, or both.

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VII.

LIST OF DEPOSITIONS

A. Plaintiff will use the videotaped and/or transcripts of the depositions of Defendant and Defendant's representatives as allowed by law:

1. Deposition of Farooq Abdulla (including all volumes of transcripts and all accompanying exhibits referenced therein).

B. The Plaintiffs will present the following deposition testimony if the witnesses are unavailable at the time of trial:

1. Deposition of Reynold Rimoldi, M.D. (including all volumes of transcripts and all accompanying exhibits referenced therein);
2. Deposition of David Oliveri, M.D. (including all volumes of transcripts and all accompanying exhibits referenced therein);
3. Deposition of Ronald Probert (including all volumes of transcripts and all accompanying exhibits referenced therein);
4. Deposition of Terrence Clauretie (including all volumes of transcripts and all accompanying exhibits referenced therein);
5. Deposition of Ira Spector (including all volumes of transcripts and all accompanying exhibits referenced therein);
6. Deposition of Andrew Cash (including all volumes of transcripts and all accompanying exhibits referenced therein);
7. Deposition of Raimundo Leon (including all volumes of transcripts and all accompanying exhibits referenced therein).

C. The following deposition testimony will be presented by the Plaintiffs for impeachment, if the need arises:

1. Testimony of Reynold Rimoldi, M.D. in Arenas De Castillo v Nunez-Moreno;
2. Testimony of Reynold Rimoldi, M.D. in Bergeron v Woldemarian;
3. Testimony of Reynold Rimoldi, M.D. in Celis v Ralph's Grocery;
4. Testimony of Reynold Rimoldi, M.D. in Garcia v Underbrink;

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5. Testimony of Reynold Rimoldi, M.D. in Golanics v Sotalo;

6. Testimony of Reynold Rimoldi, M.D. in Hill v Guyer;

7. Testimony of Reynold Rimoldi, M.D. in Hinostroza v Circus Circus;

8. Testimony of Reynold Rimoldi, M.D. in Johnson v Lucky Cab;

9. Testimony of Reynold Rimoldi, M.D. in Luker v Gillett Construction;

10. Testimony of Reynold Rimoldi, M.D. in Marku v Linens'n Things;

11. Trial Testimony of Reynold Rimoldi, M.D. in Marku v Linens'n Things;

12. Testimony of Reynold Rimoldi, M.D. in Peltier v Wright;

13. Testimony of Reynold Rimoldi, M.D. in Szabo v The Mirage;

14. Testimony of Reynold Rimoldi, M.D. in Turnbull v Burke Vols I and II;

15. Testimony of Reynold Rimoldi, M.D. in Baird v First Transit, Inc;

16. Testimony of Reynold Rimoldi, M.D. in Rentas v Ermer;

17. Testimony of Reynold Rimoldi, M.D. in Ortiz v Hall;

18. Trial Testimony of Reynold Rimoldi, M.D. in Faubion v Arata;

19. Testimony of Reynold Rimoldi, M.D. in Macias v King Ranch Market;

20. Testimony of Reynold Rimoldi, M.D. in Phillips v Las Vegas Mini Grand Prix;

21. Testimony of Reynold Rimoldi, M.D. in Wise v Veolia Transportation;

22. Testimony of Reynold Rimoldi, M.D. in Fullmer v Jones;

23. Plaintiff reserves the right to use any transcript of testimony, in any case, listed on Dr. Rimoldi's testimony history list, at trial in this matter;

24. Testimony of Gary Skoog in Doe HL v Doe JW;

25. Testimony of Gary Skoog in Fenton v Good;

26. Testimony of Gary Skoog in Johnson v Lucky Cab Co.;

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27. 12/28/09 ORDER re Gary Skoog in Lee v Overbey in Western District of Arkansas 08-CV-2115; and

28. Plaintiff reserves the right to use any testimony, in any cases listed in Gary Skoog's testimony history list, at the time of trial.

Plaintiff reserves the right to use any deposition testimony and/or trial testimony designated by any party for impeachment purposes.

VIII.

DEMONSTRATIVE EXHIBITS

Plaintiff may offer, at trial, certain Exhibits for demonstrative purposes including, but not limited to, the following:

1. Actual surgical hardware, plates, screws, surgical tools, and surgical equipment as used in Plaintiff's medical treatment and anticipated to be used in future treatment;

2. Demonstrative and actual photographs and videos of surgical procedures and other diagnostic tests Plaintiff has undergone and will undergo in the future;

3. Actual diagnostic studies and computer digitized diagnostic studies;

4. Samples of tools used in surgical procedures;

5. Diagrams, drawings, pictures, photographs, film, video, DVD and CD ROM of various parts of the human body, diagnostic tests and surgical procedures;

6. Computer simulation, finite element analysis, mabymo and similar forms of computer visualization;

7. PowerPoint images/drawings/diagrams/animations/story boards depicting the facts and circumstances of the subject incident, the parties involved, the location of the subject incident and what occurred in the subject incident.

8. Photographs of Plaintiff, both prior and subsequent to the subject incident;

9. Surgical Timeline;

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10. Medical treatment timeline;

11. Future Medical Timeline;

12. Charts depicting Plaintiff's Loss of Earning Capacity;

13. Charts depicting Plaintiff's Life Care Plans;

15. Charts depicting Plaintiff's Loss of Household Services;

16. Photographs of Plaintiff's Witnesses;

17. Charts depicting Plaintiff's Life Expectancy;

18. Story boards and computer digitized PowerPoint images;

19. Blow-ups/transparencies/digitized images of medical records, medical bills, photographs and other exhibits;

20. Diagrams/story boards/computer re-enactment of the subject incident;

21. Diagrams of various parts of the human body related to Plaintiff's injuries;

22. Photographs of various parts of the human body related to Plaintiff's injuries;

23. Models of the human body related to Plaintiff's injuries;

24. Sample of an intrathecal drug delivery system and leads; and

25. Samples of the needles and surgical tools used in Plaintiff's various diagnostic and therapeutic pain management procedures.

Plaintiff reserves the right to use any and all demonstrative exhibits identified by any party in this matter. Plaintiff may use any and all writings, published works, journals, treatises, affidavits, drawings, graphs, charts, photographs, reports, computer tapes, computer discs and other data compilations, and other reference materials, which Plaintiff uses in support of his claims. By disclosing documents, Plaintiff does not waive the right to challenge and exclude documents, or portions thereof, on any basis.

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Plaintiff reserves the right to use any demonstrative exhibits disclosed by Defendant in this matter. Plaintiff reserves the right to introduce such other demonstrative exhibits into evidence as may be necessary for purposes of rebuttal, impeachment, or both. By disclosing demonstrative exhibits, Plaintiff does not waive the right to object to demonstrative exhibits disclosed by any party at the time of trial.

Plaintiff reserves the right to object to the introduction of exhibits and witnesses not previously disclosed, and further reserves his objections to any exhibits offered based on foundation and relevancy. Plaintiff further reserves the right to supplement his Pre-Trial Memorandum as necessary.

IX.

LIST OF WITNESSES

A. Plaintiff expects to present the following witnesses at trial:

1. Ethan Volungis
c/o Eglet Prince
400 S. Seventh Street, Box 1, 4th Floor
Las Vegas, NV 89101

2. Farooq Abdulla
Craig Delk, Esq.
Thorndal, Armstrong, Delk
Balkenbush & Eisinger
P. O. Box 2070
Las Vegas, Nevada 89125-2070

3. Officer D. Fletcher
ID No. 8734
Las Vegas Metropolitan Police Dept.
400 S. Martin Luther King Boulevard, Bldg. C
Las Vegas, NV 89106
(702) 828-2843

4. Janet Arce
7017 Copperleaf Drive
Las Vegas, NV 89128
(520) 867-3671

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5. Oliver Volungis
7017 Copperleaf Drive
Las Vegas, NV 89128
(520) 867-3671

6. Steve Johnston
c/o Rogue Toys
616 S. Las Vegas Blvd.
Las Vegas, NV 89101
(702) 330-3945

7. Terrence M. Clauretie, Ph.D.
217 Palmetto Point Drive
Henderson, Nevada 89102
702-895-3223

8. Ira Spector, M.S., C.R.C.
CERTIFIED VOCATIONAL SERVICES
3440 E. Russell Road, #215
Las Vegas, NV 89120
(702) 214-4294

9. David J. Oliveri, M.D.
851 South Rampart Blvd., Suite 115
Las Vegas, Nevada 89145
702-778-9300

11. Ron Probert
COLLISION FORENSICS & ENGINEERING, INC.
2469 E. Fort Union Blvd., Suite 114
Salt Lake City, Utah 84121
(801) 733-5458

12. Raimundo Leon, M.D.
ADVANCED PAIN CONSULTANTS
2650 Crimson Canyon Drive
Las Vegas, NV 89128
(702) 731-2642

13. Andrew M. Cash, M.D.
Desert Institute of Spine Care
9339 West Sunset Road, Suite 100
Las Vegas, NV 89148
(702) 630-3472

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14. Jared Lovett, EMT
Christopher Racine, EMT and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
City of Las Vegas Fire Rescue
Aaron Downing, EMT
Andrew Osborn, EMT
Charles Tyler, EMT
Levi Zimbelman, EMT
P.O. Box 748029
Los Angeles, CA 90074
702) 229-6326

15. Thomas Dunn, M.D. and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Desert Orthopedic Center
8402 W. Centennial Parkway
Las Vegas, NV 89149
(702) 731-1616

16. Pep Boys Automotive
7399 W. Lake Mead Blvd.
Las Vegas, NV 89128
(702) 838-4646

B. Plaintiff's witnesses who have been subpoenaed for trial:

None at this time.

C. Plaintiff's witnesses of whom Plaintiff may call if the need arises:

1. City of Las Vegas Fire & Rescue
500 N. Casino Center Blvd.
Las Vegas, NV 89101
(702) 229-6326

2. Reynold L. Rimoldi, M.D
Nevada Orthopedic and Spine
7455 W. Washington Avenue, Suite 160
Las Vegas, NV 89128
(702) 878-0393

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3. Gary R. Skoog, Ph.D
Legal Econometrics, Inc.
1527 Basswood Circle,
Glenview, Illinois 60025
(847) 729-6154

4. Sarah Valdez
Address Unknown
(702) 201-2755

5. Aubrey A. Corwin, M.S., L.P.C., C.R.C,
Vocational Diagnostics Inc.
3030 N. Central Avenue, Suite 406
Phoenix, Arizona 85012
(602) 285-0625

6. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
University Medical Center
1800 W. Charleston Blvd.
Las Vegas, NV 89102
(702) 383-2000

7. Robert L. Spence and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Mountainview Hospital
Nalani Mongkholtham, R.N.
Donna Sullivan, R.N.
Melissa Whitney, R.N.
3100 N. Tenaya Way
Las Vegas, NV 89128
(702) 255-5000

8. David Gorczyca, M.D. and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Radiology Specialists
P.O. Box 50709
Henderson, NV 89016
(702) 942-4123

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9. James Preddy, DO and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Fremont Emergency Services
9301 S. Western
Oklahoma City, OK 73139
(702) 731-8000

10. James Glasgow, DC and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Spinal Rehabilitation Center
2415 N. Las Vegas Boulevard, Suite 105
North Las Vegas, NV 89030
(702) 382-3400

11. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Syed Ahmed, M.D.
Southern Nevada Medical Group
3025 S. Maryland Parkway, Suite A
Las Vegas, NV 89109
(702) 386-0882

12. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Keith Lewis, M.D.
Lake Mead Radiology – Upright MRI
6460 Medical Center Street, Suite 150
Las Vegas, NV 89148
(702) 868-2781

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13. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Raimundo Leon, M.D
Advanced Pain Consultants
2650 Crimson Canyon
Las Vegas, NV 89128
(702) 731-2642

14. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Box Canyon Surgery Center
Raimundo Leon, M.D.
Michael Prater, M.D.
2555 Box Canyon Drive
Las Vegas, NV 89128
(702) 316-4400

15. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Desert Institute of Spine Care
Andrew Cash, M.D.
A.J. Turpin, PA-C
9339 W. Sunset Road, Suite 100
Las Vegas, NV 89148
(702) 630-3472

16. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Southern Hills Hospital
Abdul-Sami Siddiqui, M.D.
Andrew Cash, M.D.
Peter Caravella, M.D.
Timothy Beckett, M.D.
Varoujan Kostanian, M.D.
Maria Arancia-Draves, R.N.
9300 W. Sunset Road
Las Vegas, NV 89148
(702) 880-2100

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17. Jeffery Markham, M.D. and/or
Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Las Vegas Radiology
Bhuvana Kittusamy, M.D.
7500 Smoke Ranch Road, Suite 100
Las Vegas, NV 89128
(702) 254-5004

18. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Don Nobis Progressive Physical Therapy
801 South Rancho Drive, #F4
Las Vegas, NV 89106
(702) 735-4844

19. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
CVS Pharmacy
Privacy Office
One CVS Drive
Woonsocket, RI 02895
(800) 287-2414

20. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Las Vegas Surgical Associates
8930 W. Sunset Road, Suite 300
Las Vegas, NV 89148
(702) 258-7788

21. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Monitoring Associates
8400 Menaul Blvd., Suite A211
Albuquerque, NM 87112
(505) 836-7894

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22. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Neuromonitoring Associates
Nicholas Masciotti, NCIM
Simon Farrow, M.D.
8400 Menaul Blvd., Suite A211
Albuquerque, NM 87112
(505) 836-7894

23. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
ProCare Medical Center
Sang Tran, M.D.
6870 S. Rainbow Blvd., Suites 106 & 107
Las Vegas, NV 89118
(702) 396-6000

24. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Quest Diagnostics
4230 Burnham Ave.
Las Vegas, NV 89119
(702) 733-6302

25. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Pioneer Healthcare
Abdul-Sami Siddiqui, M.D.
3540 West Sahara Ave., Suite 330
Las Vegas, NV 89102
(702) 921-6823

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26. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Valley Anesthesia
Timothy Beckett, M.D.
P.O. Box 400310
Las Vegas, NV 89140
(517) 787-6440

27. Treating Physicians and/or
Treating Nurses and/or
Person(s) Most Knowledgeable and/or
Custodian of Records
Wesley Zimmerman, CST/CSFA
650 N. Tenaya Way, Suite 301
Las Vegas, NV 89128
(702) 878-0393

Plaintiff reserves the right to call any witness or expert witness who may be listed by any other party to this action and to cross-examine each witness called by any other party. Plaintiff further reserves the right to call any impeachment or rebuttal witnesses as necessary, as well as any witness or expert witness listed in the NRCP 16.1 Supplements, Answers to Interrogatories, Responses to Request for Production of Documents, Responses to Admissions, deposition exhibits, and deposition testimony.

X.
CONTESTED ISSUES OF LAW

Plaintiff does not anticipate any unusual issues of law.

XI.
TIME REQUIRED FOR TRIAL

Time required for trial will be approximately 3 weeks.

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XII.

ADDITIONAL MATTERS FOR THE COURT

None at this time.

DATED this 4th day of April, 2016.

EGLET PRINCE

__/s/ Kevin Strong #12107 for
DENNIS M. PRINCE
Nevada Bar No. 5092
TRACY A. EGLET
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
400 South Seventh Street, Box 1, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiff

EGLET PRINCE

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on April 4th, 2016 I caused the foregoing document entitled **PLAINTIFF'S PRE-TRIAL MEMORANDUM** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Craig R. Delk, Esq.
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
P. O. Box 2070
Las Vegas, Nevada 89125-2070
crd@thorndal.com
Attorneys for Defendant
FAROOQ ABDULLA

John T. Keating
9130 West Russell Road, #200
Las Vegas, Nevada 89148
jkeating@princekeating.com
Co-Counsel for Plaintiff

Chad M. Golightly
Law Offices of Chad M. Golightly
8560 South Eastern Avenue, Suite 240
Las Vegas, Nevada 89123
Co-Counsel for Plaintiff

/s/ David Ochoa
An Employee of Eglet Prince

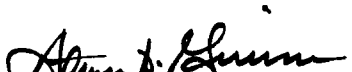
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CLERK OF THE COURT

PMEM
CRAIG R. DELK, ESQ.
Nevada Bar No. 2295
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
1100 E. Bridger Avenue
Las Vegas, Nevada 89101-5315
Mail To:
P.O. Box 2070
Las Vegas, NV 89125-2070
Tel: (702) 366-0622
Fax: (702) 366-0327
cdelk@thorndal.com
Attorneys for Defendant,
FAROOQ ABDULLA

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually, Plaintiff, v. FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive, Defendants.	Case No. A-14-702810-C Dept No. XII

DEFENDANT'S INDIVIDUAL PRE-TRIAL MEMORANDUM

COMES NOW, Defendant, FAROOQ ABDULLA, and submits his Individual Pre-Trial Memorandum herein pursuant to EDCR 2.67.

NOTE: Plaintiff did not coordinate the EDCR 2.67 Conference, nor tender a proposed Joint Pre-Trial Memorandum on

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or before April 4, 2016, thus necessitating this Individual Pre-Trial Memorandum on behalf of Defendant only.

I. FACTS

This case arises out of an automobile accident which occurred on July 2, 2013 on southbound Tenaya near West Lake Mead Boulevard in Las Vegas, Nevada. Plaintiff's car collided with Defendant's car, and Plaintiff alleges that he suffered personal injuries and related damages as a result of the accident. Plaintiff asserts that Defendant caused the accident, and Defendant asserts that Plaintiff caused the accident.

II. CLAIMS FOR RELIEF

Plaintiff asserts the following Claims for Relief in his Complaint:

(a) FIRST CLAIM FOR RELIEF:

Negligence

(b) SECOND CLAIM FOR RELIEF:

Negligence per se

III. AFFIRMATIVE DEFENSES

Defendant has asserted the following affirmative defenses in his Answer:

(a) FIRST AFFIRMATIVE DEFENSE:

Fail to state a claim upon which relief can be granted

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(b) SECOND AFFIRMATIVE DEFENSE:

Statute of Limitations.

(c) THIRD AFFIRMATIVE DEFENSE:

Comparative negligence

(d) FOURTH AFFIRMATIVE DEFENSE:

Negligence of third party

(e) FIFTH AFFIRMATIVE DEFENSE:

Failure to mitigate damages

IV. DEFENSES TO BE ABANDONED

Defendant's First Affirmative Defense, Second Affirmative Defense, and Fourth Affirmative Defense are hereby withdrawn, without prejudice.

V. EXHIBITS

Defendant may offer the following exhibits at the trial of this matter:

(1) Recorded Statement of Farooq Abdulla.

(2) Photographs of Defendant's Lexus automobile.

(3) Photographs of Plaintiff's Cadillac automobile.

(4) Property damage estimate for Plaintiff's 1996 Cadillac Fleetwood 4D Sedan.

(5) Property damage estimate for Defendant's 2012 Nissan Altima 4D Sedan.

(6) Traffic Accident Report.

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(7) Dr. Reynold Rimoldi's IME report dated November 9, 2015, and all materials relied upon by said expert identified therein.

(8) Dr. Reynold Rimoldi's Supplemental Report dated November 19, 2015, and all materials relied upon by said expert identified therein.

(9) Dr. Reynold Rimoldi's Supplemental Report dated March 14, 2016, and all materials relied upon by said expert identified therein.

(10) Dr. Gary Skoog's expert report dated December 21, 2015, and all materials relied upon by said expert identified therein.

(11) Aubrey Corwin's expert reported dated December 16, 2015, and all materials relied upon by said expert identified therein.

(12) All of Plaintiff's medical and billing records, including films.

(13) Plaintiff's tax returns.

(14) Plaintiff's personnel file from Pep Boys.

(15) Excerpt of Jury Trial - 4, Testimony of Andrew Cash, Monday, August 24, 2015, in re *Beau Orth v. Albert Capanna, MD, Case No. A-11-648041-C.*

(16) Transcript of Proceedings, Jury Trial - Day 7,

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Thursday, August 27, 2015, in re *Beau Orth v. Albert Capanna, MD, Case No. A-11-648041-C.*

(17) All exhibits identified by Plaintiff.

(18) Impeachment, rebuttal and/or rehabilitation exhibits and other evidence, including expert reports together with all materials relied upon by said expert identified therein.

(19) Depositions and written discovery, with all exhibits, as necessary.

Objections: Defendant hereby incorporates his Objections to Plaintiff's prior listing of exhibits in Plaintiff's NRCP 16.1(a)(3) Pre-Trial Disclosures as though fully set forth herein.

VI. LIMITATION OR EXCLUSION OF EVIDENCE

The parties have stipulated to certain limited medical treatment and associated billing expenses as set out in the Stipulation and Order filed on March 16, 2016, and certain evidentiary matters stipulated to by the parties as set out in the Stipulation and Order filed on March 8, 2016, attached hereto as Exhibit A and Exhibit B, respectively. Otherwise, none at this time.

VII. WITNESSES

Defendant may call the following witnesses at the trial of this matter:

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(1) ETHAN VOLUNGIS, Plaintiff, 7017 Copperleaf Drive, Las Vegas, Nevada 89128.

(2) FAROOQ ABDULLA, Defendant, 8809 Palm Greens Court, Las Vegas, Nevada 89134.

(3) CITY OF LAS VEGAS FIRE & RESCUE, 500 N. Casino Center Blvd., Las Vegas, Nevada 89101, telephone (702) 229-6326.

(4) SARAH VALDEZ, address unknown, last known telephone number (702) 201-2755.

(5) JANET ARCE, 7017 Copperleaf Drive, Las Vegas, Nevada 89128, telephone (520) 867-3671.

(6) OLIVER VOLUNGIS, 7017 Copperleaf Drive, Las Vegas, Nevada 89128, telephone (520) 867-3671.

(7) OFFICER D. FLETCHER, ID No. 8734, Las Vegas Metropolitan Police Dept., 400 S. Martin Luther King Blvd., Las Vegas, Nevada 89106, telephone (702) 346-5555.

(8) All of Plaintiff's treating physicians and other healthcare providers.

(9) DR. REYNOLD L. RIMOLDI, Nevada Orthopedic and Spine, 7455 W. Washington Avenue, Suite 160, Las Vegas, Nevada 89128, telephone (702) 878-0393.

(10) GARY R. SKOOG, Ph.D., Legal Econometrics, Inc., 1527 Basswood Circle, Glenview, Illinois 60025, telephone (847) 729-6154.

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(11) AUBREY CORWIN, M.S., L.P.C., C.R.C., Vocational Diagnostics, Inc., 3030 N. Central Ave., Suite 406, Phoenix, AZ 85012, telephone (602) 285-0625.

(12) All of Plaintiff's retained experts.

(13) All of Plaintiff's non-retained experts.

(14) Foundation witnesses.

(15) Impeachment and/or rebuttal witnesses.

(16) Witnesses identified by Plaintiff.

(17) Depositions and written discovery, with all exhibits, as necessary.

VIII. CONTESTED LEGAL ISSUES

In Plaintiff's Motion in Limine No. 1, opposing counsel seeks to have the Court issue a "pre-instruction" on the issue of "eggshell plaintiff," scheduled for hearing on April 11, 2016. In Defendant's Opposition to said Motion in Limine, Defendant does not object to a standard jury instruction on this issue at the close of the evidence, but does object that a pre-instruction be given which would only serve to highlight this issue among other issues in this case to Defendant's prejudice. Otherwise, none at this time.

IX. TIME REQUIRED FOR TRIAL

Five to seven days.

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X. OTHER MATTERS

As briefly discussed at the Pre-Trial Conference on March 28, 2016, Defendant's medical expert, Reynold Rimoldi, is not available to testify the last week of April or the second week of May, and it is respectfully requested that the commencement of trial and trial schedule be structured to accommodate his availability. In addition, the undersigned's daughter is graduating from law school in Los Angeles, California in May for which we are driving to Los Angeles on Thursday, May 12, 2016, returning on Sunday, May 15, 2016, and it is similarly requested that the trial schedule be structured to accommodate this important event. Otherwise none at this time.

DATED this 5 day of April, 2016.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

CRAIG R. DELK, ESQ.
Nevada Bar No. 2295
1100 Bridger Avenue
Las Vegas, Nevada 8910
Attorneys for Defendant,
FAROOQ ABDULLA

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on the 5 day of April, 2016 service of ***DEFENDANT'S INDIVIDUAL PRE-TRIAL MEMORANDUM*** was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

NAME	TEL. & FAX NOS.	PARTY
Dennis M. Prince, Esq. Tracy A. Eglet, Esq. Danielle Tarmu, Esq. EGLET PRINCE 400 South Seventh St., #400 Las Vegas, NV 89101	P:(702)450-5400 F:(702)450-5451	Plaintiff

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Kaey Crall
An Employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger

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EXHIBIT "A"

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CLERK OF THE COURT

SAO
DENNIS M. PRINCE, ESQ.
Nevada Bar No. 5092
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
EGLET PRINCE
400 South Seventh Street, #400
Las Vegas, Nevada 89101
eservice@egletlaw.com
(702) 450-5400 phone
(702) 450-5451 facsimile
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

vs.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive;

Defendants.

Case No. : A702810
Dept. No.: XII

STIPULATION AND ORDER REGARDING MEDICAL CAUSATION AND PAST MEDICAL TREAMENT AND BILLS

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective counsel of record, Plaintiff's counsel, DENNIS M. PRINCE, ESQ., TRACY A. EGLET, ESQ., and DANIELLE TARMU, ESQ. of the law firm of EGLET PRINCE, and Defendant's counsel, CRAIG R. DELK, ESQ. of the law firm THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, that counsel in this matter stipulate to the following:

IT IS HEREBY STIPULATED the following medical treatment and bills were reasonable, necessary, and casually related to the July 2, 2013 collision: Ethan's ambulance to

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MountainView Hospital Emergency Department; x-rays at MountainView Hospital; 6-12 weeks of conservative treatment, including chiropractic treatment, medications, and physical therapy; and his first set of MRI's after his 6-12 weeks of conservative treatment. Plaintiff's medical bills for this treatment totals $10,561.73 and this billing amount is reasonable, usual, and customary for the medical community.

Dated this 10 day of March, 2016.

EGLET PRINCE

DENNIS M. PRINCE, ESQ.
Nevada Bar No. 5092
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiff

Dated this 10 day of March, 2016.

THORNDAL ARMSTRONG DELK BALKENBUSY & EISINGER

CRAIG R. DELK, ESQ.
Nevada Bar No. 2295
1100 E. Bridger Avenue
Las Vegas, Nevada 89101
Attorney for Defendant

IT IS SO ORDERED.

Dated this 15 day of March, 2016.

DISTRICT COURT JUDGE

RL

Respectfully Submitted by:

EGLET PRINCE

DENNIS M. PRINCE, ESQ.
Nevada Bar No.: 5092
TRACY A. EGLET, ESQ.
Nevada Bar No.: 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiff

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EXHIBIT "B"

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CLERK OF THE COURT

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DENNIS M. PRINCE, ESQ.
Nevada Bar No. 5092
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
EGLET PRINCE
400 South Seventh Street, #400
Las Vegas, Nevada 89101
eservice@egletlaw.com
(702) 450-5400 phone
(702) 450-5451 facsimile
Attorneys for Plaintiff

EGLET PRINCE

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

vs.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive;

Defendants.

Case No. : A702810
Dept. No.: XII

STIPULATION AND ORDER REGARDING PLAINTIFF'S PRE-TRIAL MOTIONS IN LIMINE PURSUANT TO EDCR 2.47

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective counsel of record, Plaintiff's counsel, DENNIS M. PRINCE, ESQ., TRACY A. EGLET, ESQ., and DANIELLE TARMU, ESQ. of the law firm of EGLET PRINCE, and Defendant's counsel, CRAIG R. DELK, ESQ. of the law firm THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and pursuant to EDCR 2.47, on February 25, 2016, that

counsel in this matter have conferred and resolved several motions in limine and will not introduce any evidence of or make any comment regarding the following at trial:

1. Any reference to hypothetical medical conditions that are not based in evidence;
2. Any reference to or speculation about the absence of medical records for a period of time before the subject incident;
3. Any reference to Plaintiff being a malingerer, magnifying symptoms, or manifesting secondary gain motives because there is no competent evidence to support such reference;
4. Any reference to Plaintiff's treating physicians not being allowed to testify about causation, diagnosis, prognosis, future treatment, and extent of disability without a formal expert report in accordance with NRCP 16.1(a)(2)(B) and the Drafter's Notes to NRCP 16.1 because a summary is sufficient;
5. Any reference, inference, or argument implying Plaintiff improperly used, abused, acquired, or is addicted to prescription pain medications;
6. Any reference to or evidence of the parties' specially retained non-testifying consultants, if any;
7. Any references to defense medical experts as being "Independent;"
8. Any reference that this case is attorney driven or is a medical buildup case, including but not limited to Plaintiff's attorneys directing his medical care, and/or that his physicians performed unnecessary medical procedures;
9. Any reference to Plaintiff's collateral sources of payment of medical bills and all other expenses, including health insurance, Medicare, and/or Obamacare or The Affordable Health Act;

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10. Any evidence of when and why Plaintiff retained counsel as a means of suggesting that his retention of an attorney after the subject incident was for secondary gain motives;

11. Any reference to an alleged federal grand jury investigation into doctors and lawyers in Las Vegas;

12. Any references to attorney advertising except for limited questioning in voir dire if the issue is raised;

13. Any improper attorney arguments such as those precluded by the Nevada Supreme Court in *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008). All counsel shall refrain from engaging in such misconduct, including impermissible jury nullification arguments, making golden rule arguments, or interjecting their personal opinions as to the justness of the case; (wants "condemned" removed)

14. Any reference that Plaintiff and his counsel are seeking more money than they expect to receive in their closing argument. This does not preclude Defendant from arguing that a jury should award less because the evidence does not support the request;

15. Any evidence or argument relating to the fact that a recovery by Plaintiff would or would not be subject to taxation, or that Plaintiff's income would or would not be subject to taxation;

16. Any offers of compromise, negotiations, settlement offers or demands, including money dollar figures pursuant to NRS 48.105, made by either party;

17. Any reference that the parties filed any pre-trial motions, any ruling made by the court regarding the motions, and the content thereof;

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18. Any reference to Plaintiff's counsel working with the treating physicians on unrelated cases. This does not include specially retained experts;

19. Any reference that the subject incident was an act of God or an "unavoidable accident," which is an accident that occurs even though all persons concerned exercised ordinary care and the accident occurred in the absence of any negligence. This is not allowed; and

20. Any reference or evidence of Plaintiff's $5,000 loan.

21. The parties further agree that Defendant is precluded from introducing any evidence, arguing or inferring that the subject collision involved a "minor" or "low" impact that was insufficient to cause Plaintiff's injuries. Defendant is also precluded from offering any argument, opinions or reference regarding biomechanics and accident reconstruction because he did not retain an expert qualified in these fields. Defendant may testify as to his perception of the subject motor vehicle collision, but neither Defendant, nor Defendant's counsel, may testify, argue, or opine that Plaintiff was not injured from the subject collision.

The parties agree that they may reference, introduce into evidence, and make comment regarding the following at trial:

1. The parties agree that they are allowed to ask questions during voir dire regarding employment with or financial interest in any insurance company to the extent allowed under *Silver State Disposal Co. v. Shelley*, 105 Nev. 309, 774 P.2d 1044 (1989);
2. The parties agree to the use of a Jury Questionnaire prior to voir dire. The parties will work together to agree on questions and submit any disputed questions to this Court to decide whether they should be included in the questionnaire;

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3. The parties agree that the Court will take judicial notice of the U.S. Census Bureau's Life Expectancy Table so the parties may readily refer to the data at trial. *See* Life Expectancy Table attached as **Exhibit "1;"** and

4. The parties agree that retained experts' testimony shall be limited to the opinions and bases set forth in their reports pursuant to NRCP 16.1(a)(2)(b).

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The parties hereby stipulate and agree that all counsel will inform their respective clients and witnesses regarding this stipulation and order, and on the Court's rulings on any Motions in Limine and instruct them to stay within the parameters of the orders.

Dated this 1st day of March, 2016.

EGLET PRINCE

DENNIS M. PRINCE, ESQ.
Nevada Bar No. 5092
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiff

Dated this 29 day of February, 2016.

THORNDAL ARMSTRONG DELK BALKENBUSY & EISINGER

CRAIG R. DELK, ESQ.
Nevada Bar No. 2295
1100 E. Bridger Avenue
Las Vegas, Nevada 89101
Attorney for Defendant

IT IS SO ORDERED.

Dated this 4 day of March, 2016.

DISTRICT COURT JUDGE

Respectfully Submitted by:

EGLET PRINCE

DENNIS M. PRINCE, ESQ.
Nevada Bar No.: 5092
TRACY A. EGLET, ESQ.
Nevada Bar No.: 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiff

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, Plaintiff, vs. FAROOQ ABDULLA, Defendants.	)	CASE NO. A702810 DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT,

DISTRICT COURT JUDGE

MONDAY, APRIL 11, 2016

RECORDER'S TRANSCRIPT OF CIVIL CALENDAR

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APPEARANCES:

For the Plaintiffs: DENNIS PRINCE, ESQ.

ERICA ENTSMINGER, ESQ.

For the Defendants: CRAIG DELK, ESQ.

COURT RECORDER: KRISTINE CORNELIUS, DISTRICT COURT

TRANSCRIBED BY: FABIAN SCHWIN, HEARING REPORTER

JOB NO.: 16942MOD-AUDIO(D)

Case Number: A-14-702810-C

LAS VEGAS, NEVADA, MONDAY, APRIL 11, 2016, 09:06 A.M.

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THE COURT: Volungis versus Farooq Abdulla. Case A702810.

MR. PRINCE: We're tired, Judge. So we're going to pull a couple chairs over.

THE COURT: Well, yeah. You sat through.

MR. DELK: Craig Delk for Defendant Abdulla, your Honor.

MR. PRINCE: Denise Prince and Eric Entsminger for the Plaintiff.

MR. DELK: We'll get to know each other over the next couple of weeks.

THE COURT: That's what I figured here. Your motions. Okay. We can start with Plaintiff's first motion in limine to pre-instruct the jury. First of all, I do pre-instruct the jury. I don't pre-instruct the jury on the law, so I guess that's a different thing that you'd be asking me to do.

Do you want to say anything further?

MR. PRINCE: I do, your Honor. And why I think this is -- provides assistance to the jury is to understand at least as they're listening to the evidence and they're evaluating the evidence as they start to receive it, what

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the law is; number one, as it relates to the issue of negligence, but also as it relates to aggravation of a preexisting condition. That's, in part, one of our theories of the case.

Mr. Volungis is claiming a lumbar spine injury. He's had lumbar spine reconstructive surgery and has a significant amount of future treatment to go from this crash. And I think it's going to be important for this jury to understand that the law -- even though you may have a preexisting condition or a physical abnormality, that you can still recover for the aggravation.

I think it allows them to fully appreciate that from the beginning of the trial. And it will make sense as to what our theories are going to be when we present the opening statements to them and they start listening to the evidence and the medical evidence. It will make much more sense to them. It will be more meaningful rather than fully instructing them on the issue at the end.

In our experience, this has worked very, very well both for the Plaintiff and the defense depending upon the theory that they want to have pre-instruction. And I think it's very efficient and effective. So I think with -- we're asking that you would do that. I don't think it will take any time, and I think it will be very meaningful

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to the jury.

MR. DELK: Briefly, your Honor, our position is we have no objection to an instruction at the close of the evidence on the eggshell plaintiff theory. Not a problem at all, of course, if that's what the evidence shows and it'll support such an instruction.

Our objection is to pre-instruction of the jury on that issue before they hear any evidence in the case. There's a shifting of the burden of proof issue. But more of the point I think, more practically speaking, unless the Court is going to instruct the jury on all of the other legal issues in the case, to pre-instruct them on this single issue draws undue attention to that issue to our prejudice.

THE COURT: So as to Plaintiff's motion in limine number one, I'm going to deny the request to pre-instruct.

Plaintiff's motion in limine number two: Opinions and arguments that plaintiff was speeding excessively, and the speed caused the collision. So let me just ask you this because your client -- I went through and all your evidence seems to indicate your client never saw this car.

So is your client going to get on the stand and say I pulled out. I never saw this car. Therefore, they

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were speeding.

MR. DELK: That's what he said in his deposition.

THE COURT: Okay. Because I don't think there's a proper foundation for that. The speed limit is 35-miles-per-hour.

MR. DELK: Right. That's correct.

THE COURT: What speed does your client say the Plaintiff was going?

MR. DELK: He didn't see him. He doesn't know.

THE COURT: Then he can't say he was speeding.

MR. DELK: And --

THE COURT: Do you see my point?

MR. DELK: I do. And I anticipated that would be in the Court's ruling. For the record, I think it's arguable that since a lay witness is entitled to infer conclusions from totality of the circumstances of, in this case, an accident based on their general understanding and experience. For him to look left, not see anybody, and the next thing that happens is he gets hit --

MR. PRINCE: He doesn't get hit.

MR. DELK: He's inferred that Plaintiff came out of no where as it was driving at an excessive rate of speed and --

THE COURT: What's the excessive rate of speed? Maybe

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if your client said, and the Plaintiff must have been going 50-miles-an-hour --

MR. DELK: I understand, your Honor. Actually, and I'll submit that issue to the Court. I was really more concerned that the motion also seemed to request an order precluding counsel, myself, from arguing --

MR. PRINCE: Yeah.

MR. DELK: -- speed at the end of the case in closing argument. And, of course, I wouldn't do that --

THE COURT: I'd have to hear the evidence first.

MR. DELK: Exactly. And so do I. I anticipate there being some evidence to that effect. And in fact, a specific mile-per-hour. If there is -- let's just assume that there is at the end of the day --

THE COURT: Okay.

MR. DELK: -- I believe as counsel for my client in closing argument I'm entitled to draw reasonable inferences from the evidence and make that argument to the jury.

THE COURT: I agree with that.

MR. DELK: So --

THE COURT: I'm inclined to grant your motion at this point, so --

MR. PRINCE: Okay. And then the only other comment I

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would have then he wouldn't be able at this point, since he would not have a basis to do so, is to in his opening statement say the evidence is going to show that my client was speeding. He has no evidence of that. He can't even use my own client's statement who says he's well within the speed limit at the point of the collision, which is about 30-miles-an-hour. And so --

MR. DELK: And I don't plan to do that either.

MR. PRINCE: Okay. So then, I guess, it's a non-issue.

MR. DELK: Only after the evidence is in --

THE COURT: Sure.

MR. DELK: -- if it supports such an argument I simply --

THE COURT: I agree with you.

MR. DELK: -- want permission to make such an argument.

Now I would draw one distinction: Speed versus speeding. There will be testimony about speed in the case. Speed limit. Their own expert comes to specific conclusions about speed utilizing the witness and driver statements and how fast one or the other driver was traveling and, therefore, how much distance he covered in a certain amount of time.

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So I do believe that we should not -- neither side should be precluded from discussing the concept of speed as contrasted with speeding.

MR. PRINCE: I agree with that.

THE COURT: I think there is a contrast.

MR. PRINCE: And I'm in agreement with that.

THE COURT: And I'm assuming both sides are going to talk about speed.

MR. PRINCE: We are.

THE COURT: Because I read your motions and the discovery attached to it.

MR. DELK: Can the order then -- whoever prepares the order draw those two distinctions; speed versus speeding.

THE COURT: I think the only thing they asked me was to prevent your client from getting on the stand and saying I pulled out of the Michael's parking lot, didn't see that person, therefore, the Plaintiff was speeding.

MR. DELK: And that's fine, your Honor.

THE COURT: I think that's all it asked me. I don't think they asked me to preclude you from making any reasonable inferences or arguing any reasonable inferences from the evidence.

MR. DELK: Thank you, your Honor.

MR. PRINCE: Right. The issue -- the relief requested

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was, "that the Plaintiff was speeding or that speed caused the collision." Right. That was the relief we sought.

MR. DELK: And there's reference elsewhere in the motion about counsel arguing speed.

MR. PRINCE: But we understand about the closing argument issue, which you've already ruled on. So I understood that. I understand that.

THE COURT: And then -- okay. So that's number two. Number three was Plaintiff's omnibus motion in limine number three. Let me --

MR. DELK: Perhaps I can short circuit this, your Honor. I really think this is a non-issue. There was just some ambiguity about the scope of the motion whether it extended to comments regarding conflicts in the evidence. Disputes about how the accident happened.

THE COURT: What are we --

MR. PRINCE: You're on number three.

THE COURT: I'm on motion in limine number three.

MR. PRINCE: Which relates to collateral source and lien --

THE COURT: Right. Collateral source.

MR. PRINCE: And commenting on credibility.

THE COURT: And calling a witness --

MR. DELK: I'm sorry your Honor.

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THE COURT: That's okay. So Plaintiff's omnibus motion in limine number three seeks to have the Court enforce, I guess, the collateral source rule prior to trial. And whether collateral source extends to medical liens. And then the next one is preventing either side, I presume, from calling anybody's witness a liar.

MR. DELK: Right.

MR. PRINCE: From the witnesses commenting on other witnesses' credibility. That's correct.

MR. DELK: I believe I can short circuit both of those, your Honor.

THE COURT: Okay.

MR. DELK: I'm prepared to submit the collateral source issue to yourself.

THE COURT: Okay.

MR. DELK: This motion is seen and (inaudible) I'm sure you've ruled on it previously. I'm prepared to submit it -- the briefs and be satisfied with the Court's ruling on that issue.

The second issue, credibility, my client nor any of my witnesses are going to get on the stand and tell the jury in their opinion the Plaintiff is not credible. We are not going to do that. There was, again, some ambiguity in the motion whether or not that would extend

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to contrasting or different testimony regarding how the accident happened, for example. Conflicting testimony and whether that would be the equivalent of --

THE COURT: Well I assume there's going to be conflicting testimony because you guys are here.

MR. PRINCE: Right. But it's kind of more like I don't find that credible, you know, Mr. -- an expert witness getting on the stand and saying that Mr. Volungis, that's not a credible statement, or kind of, like, formulating opinions concerning his veracity, credibility, that sort of thing. Or lack thereof.

THE COURT: Well witnesses can't get up and comment upon other witnesses' credibility. And quite frankly, the lawyers can't call witnesses liars either. You can point out inconsistencies in witnesses' testimony and argue them to the jury, but I don't allow lawyers to get up and call witnesses liars.

MR. PRINCE: Exactly. The one caveat to that is on the credibility instruction one aspect of it says that if a witness has lied on a material point --

THE COURT: I get to say that. I just don't --

MR. PRINCE: Oh, no, no. I'm saying --

THE COURT: You guys can't call them liars.

MR. PRINCE: I understand. But we could say that --

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with that instruction, say if you believe somebody lied, then this is what you can do with that testimony.

THE COURT: Yes.

MR. PRINCE: Right.

THE COURT: Well you guys don't miss a beat.

MR. PRINCE: No.

THE COURT: That is true. I agree with that. But, again, I just -- you know, you can't call -- I don't let the attorneys call witnesses liars, and I don't allow witnesses to comment on other witnesses' credibility because that's for the jury to determine.

MR. DELK: I understand that, and my client will understand that. We discussed this at the 2.47 conference, and it was not resolved. So the motion was filed and figured this is how it would be resolved. It wasn't Mr. Prince. It was one of his associates. Just out of an abundance of caution, I decided to file the motion.

THE COURT: Okay. The motion is granted. And then there is --

MR. PRINCE: The lien issue related in this motion.

THE COURT: Yes. I have ruled that way for 15 years.

MR. PRINCE: That the lien is part of the collateral source?

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THE COURT: Yes.
MR. PRINCE: Okay. Fine. Thank you.
THE COURT: Maybe not 15 years, but a long time.
MR. PRINCE: Very well. Then, I guess, you don't need to hear from me on that.
THE COURT: Well, yep. Okay. Let's see. Then there is Plaintiff's motion in limine number four to exclude irrelevant and highly prejudicial matters, and they appear to -- apparently the Plaintiff doesn't have a high school diploma or a GED. And he was employed at the Bank nightclub, and lost his job because he couldn't intervene and stop a fight quick enough.
MR. PRINCE: Right. So with regard to the level of education, we're going to withdraw that. I think that's part of the --
THE COURT: Okay.
MR. PRINCE: -- the rehab assessment. Even ours.
THE COURT: Okay.
MR. PRINCE: But as it relates to my client working at the Bank nightclub, I mean, I think that's relevant. But the fact that he --
THE COURT: Tell me what you're --
MR. PRINCE: -- was fired.
THE COURT: That's the thing. Because it looks like

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you just want me to prevent them from saying he got terminated during this time period --

MR. PRINCE: To malign him and make him look -- somehow attack his credibility.

THE COURT: Right.

MR. PRINCE: But what they don't understand is there's no employment file from there. There's no records from there to say he was an underperforming employee. He lied. He engaged in some dishonest behavior, which would otherwise impact his credibility. Part of his employment history would be that, hey, I did work at the Bank nightclub as a --

THE COURT: Right.

MR. PRINCE: -- you know, security officer or whatever.

THE COURT: This time to this time.

MR. PRINCE: Right. Correct. But as the circumstances of his termination is what really the purpose of the motion is.

THE COURT: Because I couldn't imagine the circumstances of him being terminated becoming relevant, but.

MR. DELK: I would only reiterate what was said in the opposition, and that was that employability is a relevant

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issue.

THE COURT: It is.

MR. DELK: In a case involving past and future lost wages. And, therefore, termination from a -- history of termination from --

THE COURT: Does he have a history of termination? That was going to be my next question.

MR. PRINCE: From this job.

THE COURT: But that's what I mean. It may be relevant because there's a future wage loss claim, right?

MR. PRINCE: True.

THE COURT: All right. It may be if he was older and had a history of having a job two or three months, getting fired. Two or three months, getting fired. And it doesn't look like that's what we have here. We have a young kid.

How old is he?

MR. PRINCE: He was in his 20s. I think 28 at the time.

THE COURT: Young kid. Okay. Is there a history --

MR. PRINCE: No, no.

THE COURT: -- of anything like that?

MR. PRINCE: No. Not that we know of.

THE COURT: Okay. Then it's granted.

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And then we're on to Defendant's motions. Defendant's motion in limine to exclude the traffic citation, and there was no opposition?

MR. PRINCE: Which we agreed to.

THE COURT: That's granted. And then Defendant's motion in limine regarding exclusion in reference to -- this is, I guess, it's granted in part and denied in part. Obviously the police report is full of hearsay. That's why you're not letting the police report in. However, there are some things on the police report that -- we don't let the police report in, however, it doesn't mean that everything in the police report cannot be testified to.

For instance, there's a witness statement in the police report. You can't admit that witness statement without the witness here, but that person is not prevented from coming in and saying, yeah, I saw the accident and this is what happened. So people can come testify based upon their personal knowledge. Just because their personal knowledge is in the police report, doesn't exclude it.

And a police officer is a good example. We don't let them come in and say this witness told me this, this witness told me this, and this witness told me that, and

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then I concluded this. Okay? But maybe the police officer does have some personal knowledge. They're not prevented from testifying to that.

So the police report is out. It doesn't mean that everything in the police report is excluded. If somebody has personal knowledge -- like for instance, the Plaintiff and Defendant did they give statements to the police?

MR. PRINCE: No.

THE COURT: They didn't? Okay.

MR. PRINCE: Well at least the Defendant spoke to the police, but there's no written statement if you're asking for if there was a statement.

THE COURT: But does the police report say driver one told me this. Driver two told me that.

MR. PRINCE: Yes. Essentially, yes.

THE COURT: Right. I wouldn't let that in, but I certainly wouldn't prevent driver one and driver two from coming in and telling what happened.

MR. DELK: Well for that matter, the police officer coming in and testifying about what each driver told him.

THE COURT: No. That's hearsay.

MR. DELK: Well, it's party admission.

THE COURT: Unless -- that's not hearsay. That's an

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exclusion.

MR. PRINCE: Exactly. That's by definition. Our issue with this is, the police report itself does qualify as a business record because it is required to be completed by the officer as part of his regular duties. Some aspects of it, such as lane configuration, lane width, posted speed limit, any physical evidence observed, any specific findings that part of it is not inadmissible. The things you're talking about are under the (inaudible) case that clearly can't come in. But I think the aspects of the report can come in.

THE COURT: I think that's what I said. If you have personal knowledge.

MR. DELK: And I would agree that if the report itself was properly redacted --

MR. PRINCE: Then let's work on that.

MR. DELK: -- I would stipulate to allow the report to come in on that basis.

THE COURT: Perfect.

MR. PRINCE: Okay. Let's work on that. And we'll deal with it if we can't agree with you.

MR. DELK: I just want to emphasize --

THE COURT: Okay. So it's granted in part and denied in part.

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MR. DELK: The prior motion dealt with the evidence of my client's citation and the (inaudible) the police report obviously includes that information as well. That's out altogether.

THE COURT: Of course.

MR. PRINCE: Of course. We agree.

THE COURT: That's been excluded based on your motion in limine number one.

MR. DELK: Thank you.

MR. PRINCE: We agreed.

THE COURT: So number two is granted in part and denied in part.

Number three, Defendant's motion in limine regarding exclusion of character evidence. All right. So does the Plaintiff -- the Defendant is a doctor, clearly, right?

MR. PRINCE: Yes.

THE COURT: Do you plan on asking about being sued before?

MR. PRINCE: No.

THE COURT: Okay. That part is granted.

MR. PRINCE: As it relates to his professional capacity as a doctor, no. The answer is no.

THE COURT: You know what, what is Defendant really

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seeking to exclude here? Because I'll grant the fact that he was -- whether he's been sued or not is totally irrelevant. That's granted.

What is it you're trying to exclude?

MR. DELK: Those -- these are issues that came up in the Defendant's deposition. Prior to now, complaint or complaints -- I don't know how many there are.

THE COURT: Okay.

MR. DELK: So that's out.

MR. PRINCE: We agreed to that. It's a non-issue.

MR. DELK: The motion goes to that point. The other accidents and/or citations are simply traffic citations and tickets both before and after this accident, which came up during the course of the deposition.

THE COURT: Well subsequent accidents have no relevance. Prior citations or traffic citations would probably be prior bad acts.

MR. DELK: Exactly.

THE COURT: To show that he's a bad driver, therefore, to show that he's a bad driver today so.

MR. PRINCE: The only limitation we have on this, Judge, is -- and it's a big issue because the Defendant speaks in these very broad sweeping conclusionary terms. I'm always safe when I make -- pull out into traffic or

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this is always my habit to look both ways to make sure that there's no cars coming. He's had two other events where he's pulled out and had -- he failed to signal caused two other collisions as it relates to these kind of lane changes, so --

THE COURT: I read his testimony. He corrected whoever was taking his deposition, and he said, no, I did signal. Because I saw that in his deposition.

MR. PRINCE: But he's been involved in two other accidents where he's -- a crash involving a lane change. So if he gets up here and says I'm such a safe driver. This is always my habit. I think he opens the door to those issues.

THE COURT: Probably.

MR. PRINCE: In general, I would agree with Mr. Delk that those aren't admissible. But in this case, if he gets up there and starts saying I'm such a safe driver, this is the habit to always look, and I'm always so careful, I want to be able to say, hey, you've opened the door to that. And I'm going to bring that evidence in.

MR. DELK: I agree to that. And that's a classic exception to the unconvicted bad acts rule. I agree with that.

MR. PRINCE: Very good.

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THE COURT: So the motion is granted. I think we got through all of them.

MR. PRINCE: That was fast.

THE COURT: That was quick.

MR. PRINCE: What do you thinking about in terms of when our trial date can start?

THE COURT: You're on for calendar call, right?

MR. PRINCE: Yes.

THE COURT: Can we get Pam in here? She's probably got you lined up to go. Just have Pam come in here.

MR. PRINCE: The only issue I have, Judge, my -- between the last time I was here -- I'm fully fine to go. The trial that I had is gone. My case has settled, so I want to go to trial. We're ready.

My daughter is getting engaged on April 22nd.

THE COURT: How do you know?

MR. PRINCE: Funny you say that. So she lives in Boston. Her soon-to-be fiance called me and said he's going to propose to her on the 22nd of April.

THE COURT: Okay.

MR. PRINCE: All of her family is flying out there because after college she moved to Boston. So we're all flying out there on the evening of the 21st, which is a Thursday.

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THE COURT: That's a Thursday.

MR. PRINCE: And on the Friday, there's going to be this little engagement party for her. So that's the only -- if we could start that following week, say Tuesday? That would be perfect for me if that's available.

THE COURT: Hopefully we -- you don't want the week of the 19th?

MR. PRINCE: Can't do that.

THE COURT: You can't do the week of the 19th.

MR. DELK: And I cannot do that week either, but I can do the week of the 25th and if -- and starting on the 26th would be even better.

THE COURT: Okay. Right. Did she get your E-mail? We just need to wait for her to come in. She's thinking she doesn't have to come in until 10:00 o'clock.

MR. PRINCE: The other issue, Judge, is we have a jury questionnaire that we have agreed to.

MS. ENTSMINGER: No.

MR. PRINCE: We haven't agreed to?

MS. ENTSMINGER: We agreed to have one, but there's still disputes on content.

MR. PRINCE: So anyway --

MR. DELK: We've agreed to most of it.

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THE COURT: Okay. And usually I like to get a jury questionnaire at least 30 days in advance. We didn't have a jury questionnaire. I'm not sure I can get a jury pool to come in and answer a questionnaire.

MR. PRINCE: She can do it. I know. I'm just giving you one anecdotal experience I had.

THE COURT: And this probably is not a case where if you came and asked me I would have said no. I don't think this is a case where you need a jury questionnaire.

(Conversation off the record)

Yeah. 30 days in advance. I have you set to go on May 2nd, which doesn't appear as though anyone has a conflict on that week. And can we start -- it would be either week --

MR. DELK: That conflicts with my daughter's law school graduation, your Honor.

THE COURT: Oh, that's right. You have that. When is it?

MR. DELK: We're leaving the 12th. That Wednesday.

MR. PRINCE: The 12th of what? Of May?

THE COURT: Twelfth of May?

MR. DELK: Of May. That's right.

THE COURT: Right. I said start on the second.

MR. DELK: I'm concerned about the trial extending

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into that.

THE COURT: You didn't tell me it was going to take two weeks.

MR. PRINCE: It will take about seven, eight days -- trial days.

THE COURT: Did they tell us seven, eight trial days? Seven days? You only gave them five. Oh, yep. It says seven days there. Okay. I was planning on going to a conference in Tahoe the week of the 25th, but if you can't go any other day, I'll have to cancel that and set you the week of the -- starting on April 26th.

MR. DELK: I don't know about Mr. Prince. I'd be happy to -- I'd be willing to kick this over to the next stack. If that's an absolute no, I understand that's his position, but that's -- that may be an option.

THE COURT: I don't want you to think I'm going to kick you. I told you at the pretrial I would accommodate that. Those are things you can't miss.

MR. DELK: No, I mean --

THE COURT: So I understand that.

MR. DELK: That would accommodate all of us, I think, if this case was put over to the next trial stack.

THE COURT: Can you go the week -- can you start April 26th?

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MR. PRINCE: Yes.
THE COURT: I'll cancel the conference, and I'll be here.
MR. PRINCE: I don't want to put the Court in any inconvenience.
MR. DELK: I don't want you to do that either.
MR. PRINCE: I know you're busy, and you have the things you want to do as well.
THE COURT: Can you start the 26th?
MR. PRINCE: The answer is yes. Yes.
THE COURT: Okay. We'll put them on the 26th.
MR. PRINCE: Tuesday, right? Okay.
THE COURT: I have, like, three weddings this summer. So I have to keep having them remind me. And they're sister's kids. One sister has three kids getting married. Boom, boom, boom. So you have to go to those. There's just certain things you have to go to.
MR. PRINCE: Agreed.
THE COURT: They don't let me use my work as an excuse. So we can start on the 26th at 10:30 --
MR. PRINCE: Okay.
THE COURT: -- for jury selection. Have you met with the clerk and provided her with the exhibits and all of that stuff?

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MR. PRINCE: Not yet. We have our exhibit list together, and we have our jury instructions together. But, again, whenever you want us to deliver them, we will.

THE COURT: Okay. Are you going to want a juror notebook?

MR. PRINCE: No, I don't.

MR. DELK: No, I don't. I prefer not to have one.

THE COURT: Well, they'll have one with my instructions in them, so.

MR. PRINCE: Oh, that's fine.

THE COURT: With the Court's. It will have all my -- I put in there all my pre-instructions. I put the admonition in there, and I put the procedures for asking questions. And then they have that to put their jury instructions in at the end of the case.

MR. PRINCE: Let's go back to the jury questionnaire for a moment. Is that an absolute no that we can't?

THE COURT: Yes.

MR. PRINCE: Because we've stipulated to one.

THE COURT: I know but --

MR. PRINCE: We agreed to have one. We'll make it -- and I've done this before even as late as last summer where we didn't have -- we ran out of the pool because of the duration of the trial. So we had to go get another

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hundred people, and she did it within 24 hours. I mean, I can make all the copies and do everything for her so she wouldn't have to do anything.

MR. DELK: Your Honor, it has nothing to do --

THE COURT: I wouldn't be inclined to grant one.

MR. DELK: The contents have not been stipulated to.

THE COURT: Oh, the contents have not been stipulated to? Okay.

MR. PRINCE: We'll --

MR. DELK: Most of it has, but a large part of it has not.

THE COURT: So I wouldn't even get it today? I'm not going to give a jury questionnaire in this case. You'll have plenty of time to do voir dire. I think I'm pretty good with voir dire. The only thing I don't let you do though is I don't let you go -- however many I qualify -- let me see. So I'll qualify 20 jurors.

I don't let you go to each juror and ask them every single question that you wanted to ask them. Your questions have to be towards the jury panel as a whole. And I do allow --

MS. ENTSMINGER: With follow ups.

THE COURT: Yeah, with follow ups of course. And I really have not had the occasion in many years to say you

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got to be quiet because you're talking to long. I give the attorneys an opportunity to voir dire the jury panel.

MR. PRINCE: And given the issues involved, we'll need some time with them to have a meaningful voir dire, obviously.

THE COURT: What are the specials? That just gave me --

MR. PRINCE: Four hundred plus thousand in past and, I think, about 1.9 million in future. So pretty substantial. So we're going to need to spend a little --

THE COURT: How do you know it's 9.1 million? Do you have a --

MR. DELK: 1.9.

MR. PRINCE: 1.9.

THE COURT: Oh, I thought you said 9.1. I wrote 9.1.

MR. PRINCE: I wish it was 9.1.

THE COURT: 1.9. Is there a life care plan?

MR. PRINCE: Yes.

THE COURT: Okay.

MR. PRINCE: When is it possible to get the jury list? I know sometimes we give it the morning of the trial. If we don't have a questionnaire, can we get it any sooner than that?

THE COURT: I haven't asked that question. I could

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ask.

MR. PRINCE: The week before?

THE COURT: A week before?

MR. PRINCE: Yeah.

THE COURT: How would we know -- I mean, they'd have to come and check in because you have people that don't show up. They have to -- I don't think they assemble a panel --

MR. DELK: They don't arrange a list until the jurors check in, and then they type in how many we need, and it pulls them.

THE COURT: I might be able to get it for you 8:00 o'clock on Tuesday morning.

MR. PRINCE: Okay.

THE COURT: What do you want it a week before for?

MR. PRINCE: So we have the names and can find out a little bit about these people. If for example -- if we have this jury questionnaire to you by three --

THE COURT: You're going to be all over Facebook --

MR. PRINCE: -- 4:00 o'clock.

MR. DELK: Today?

MR. PRINCE: Would you ask the jury commissioner if we could get this done?

THE COURT: I'm not going to do a jury questionnaire

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in this case. I don't think it's a case that requires a jury questionnaire, so. I don't know if I want to ask the jury commissioner to do something in less than 30 days, and I don't think it really needs to be done in this case. A jury questionnaire I don't think needs to be done in this case.

And if you would have come and asked me I probably would have said no even if you stipulated. I probably would have said it's not a case that requires a jury questionnaire.

So the 26th at 10:30. Maybe we could get the jury list by 8:00 o'clock, Pam? I think they come and check in between 7:00 and 7:30. I could get it for you probably by 8:00 o'clock.

MR. PRINCE: Okay. We'll take it.

THE COURT: Just so you know, I tell my jury panels don't go on social media. I tell all of them no social media.

MR. PRINCE: Oh, that doesn't stop anybody. Ever.

THE COURT: You mean me telling them don't go on social media? Don't update your Facebook and say you're in district court. All that, you think they'll still do it?

MR. PRINCE: They do.

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THE COURT: I actually had a case where they did do it. That's why --

MS. ENTSMINGER: So did we.

MR. PRINCE: We did.

MS. ENTSMINGER: He was Tweeting, judge just told us I shouldn't be Tweeting.

THE COURT: Shut up.

MS. ENTSMINGER: He was gone after that.

MR. PRINCE: We had one juror last trial about a month or so ago where a juror went on the Defendant's website. He was an oral surgeon. I'm like, okay.

THE COURT: How did you know that?

MR. PRINCE: Because he told us. And then he was a patient. He was in trial for two weeks, and then he said he was a patient of the doctor. Anyway, so.

MR. DELK: Thank you, your Honor.

THE COURT: I've had a few of those. That's why my admonition includes a whole section on don't go on social media. Thank you.

Oh, wait. When are you going to meet with the clerk and give her all your exhibits?

MR. PRINCE: When's best for you? By Friday? Okay. This Friday.

MR. DELK: Call you and make --

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THE CLERK: Yes, please.
MR. DELK: We can come see you individually?
THE CLERK: Whatever is easiest.
MR. DELK: Both of us come on the same day --
THE CLERK: You don't have to.
THE COURT: Are you stipulating to exhibits?
MR. DELK: Yeah. Right.
MR. PRINCE: We're going to meet in the next day or two.
THE COURT: There should be a joint -- after you've done your -- you've done your 30-day before trial disclosures there should be a joint exhibit list.
MR. PRINCE: We'll have that. We will.
MR. DELK: Your Honor, one more thing. Would you prefer individual orders on these motions or a joint one?
THE COURT: Sure. You can do yours, and they can do theirs.
MR. DELK: Fair enough.
MR. PRINCE: We'll be all inclusive with ours. We just need the courtroom about a week before just to have our tech people come in. We're going to bring our own monitor in and other technical equipment, so.
THE COURT: Okay. I will --
MR. PRINCE: Who do we call for that?

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THE COURT: Wait a minute. We'll be in trial the week before. Well, I'll --

MR. PRINCE: Even Monday is fine.

THE COURT: We'll let you in. I mean, how bad? Just give me kind of a heads up of what -- not how bad. How much.

MR. PRINCE: Check the connection, bring in our own monitor. Our tech people are going to check the connection and make sure everything is good before we get started.

THE COURT: Because even if I'm in trial they can still come in and do that.

MR. PRINCE: Fair enough.

THE COURT: As long as you don't mind that it's in here while I'm in trial in another case.

MR. PRINCE: We'll probably bring everything over on that Monday. Monday the 25th. Does that work?

THE COURT: That's fine. We'll be dark that day so that's actually the perfect day, so.

MR. PRINCE: That's what I'll plan for.

THE COURT: So I'll tell Pam. Just call her on the 25th and tell her what time.

MR. PRINCE: Very good.

THE COURT: You have all day 8:00 to 5:00. Both sides

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can come in.

MR. PRINCE: Thank you.

THE COURT: Thank you.

MR. PRINCE: Judge, I'm sorry. One last thing. Your trial schedule? You might have told me before, but isn't it, like, Monday, Wednesday, and Friday 8:30?

THE COURT: Monday, Tuesday, Thursday 10:30. Wednesday, Friday 8:30. So Monday, Tuesday, Thursday I start as close to 10:30 as possible. I have morning calendars. Wednesday and Friday, I do not have morning calendars, so we start at 8:30.

MR. PRINCE: Very well.

THE COURT: So you get pretty good days in here.

MR. PRINCE: Those are good days. Probably the best I've had. Great. Thanks, Judge.

THE COURT: You bet. Have a good day.

PROCEEDING CONCLUDED AT 09:37 A.M.

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.

F. Schwin

Fabian Schwin,
Hearing Reporter

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04/15/2016 09:06:18 AM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

vs.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive;

Defendants.

Case No. : A702810
Dept. No.: XII

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JURY INSTRUCTIONS

(NOT AGREED UPON)

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PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

(NOT AGREED UPON)

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INSTRUCTION NO. _____

Defendant Farooq Abdulla, owed Ethan Volungis a duty to use reasonable care when operating a vehicle.

Doud v. Las Vegas Hilton Corp., 109 Nev. 1096, 1101, 864 P.2d 796, 799 (199

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INSTRUCTION NO. _____

There was a force at the time of the occurrence in question, a law which reads as follows:

> "It is unlawful for any person to operate a motor vehicle upon a highway without giving full time and attention to the operation of the vehicle."

A violation of the law just read to you constitutes negligence as a matter of law. If you find that a party violated a law just read to you, it is your duty to find such violation to be negligence; and you should then consider the issue of whether that negligence was a proximate cause of injury or damage to the Plaintiff.

Nevada Pattern Jury Instruction, Civil 4.12; Clark County Code 14.60.190

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INSTRUCTION NO. _____

Whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury shall be liable to the person injured for damages.

NRS 41.130 (as modified)

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INSTRUCTION NO. _____

Causation of injury or damages must be established by medical expert testimony to a reasonable degree of medical probability.

Williams v. Eighth Jud. Dist. Ct. 127 Nev. Adv. Rep. 45, 262 P. 3d 360, 362-63(2011); *Morsicato v. Sav-On Drug Stores, Inc*, 121 Nev. 153, 111 P. 3d 1112, 1115 (2005); *Fernandez v. Admirand*, 108 Nev. 963, 973, 843 P. 2d 354 (1993); *Layton v. Yankee Caithness Joint Venture*, 774 F. Supp. 576 (1991); *Brown v. Capanna*, 105 Nev. 665, 671-72, 782 P. 2d 1299 (1989).

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INSTRUCTION NO. _____

A treating physician can testify on matters such as causation of injuries, extent of disability and future medical treatment.

NRCP 16.1, Drafter's Note to 2012 Amendment; *FCH 1, LLC v. Rodriguez*, 335 P. 3d 183, 190 (Nev. 2014) *Elgas v. Colorado Belle*, 179 F.R.D. 296 (D. Nev. 1998

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INSTRUCTION NO. _____

If you find that plaintiff suffered injury as a result of the defendant's negligence, you must award reasonable and fair past and future pain and suffering damages as a result of the injury.

Shere v. Davis, 95 Nev. 491 (1979); *Drummond v. Mid-West Growers*, 91 Nev. 698 (1975)

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DEFENDANT'S PROPOSED JURY INSTRUCTIONS

(NOT AGREED UPON)

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NEV. J.I. 3.06 INSTRUCTION NO. _____

The plaintiff has the burden to prove that the plaintiff sustained damage, that the defendant was negligent, and that such negligence was a proximate cause of the damage sustained by the plaintiff.

The defendant has the burden of proving, as an affirmative defense, that some contributory negligence on the part of the plaintiff was a proximate cause of any damage plaintiff may have sustained.

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NEV. J.I. 4.01 INSTRUCTION NO. _____

The plaintiff seeks to establish liability on one or more of different legal bases.

One of the plaintiff's claims is negligence. I will now instruct on the law relating to this claim.

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NEV. J.I. 4.07 INSTRUCTION NO. _____

The defendant seeks to establish that the plaintiff was contributorily negligent.

Contributory negligence is negligence on the part of the plaintiff which, cooperating to some degree with negligence of another, helps in proximately causing an injury to the plaintiff.

The plaintiff may not recover damages if the plaintiff's contributory negligence has contributed more to the plaintiff's injury than the negligence of the defendant. However, if the plaintiff is negligent, the plaintiff may still recover a reduced sum, so long as the plaintiff's contributory negligence was not greater than the negligence of the defendant.

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NEV. J.I. 4.09 INSTRUCTION NO. _____

A person who is exercising ordinary care has a right to assume that all other persons will perform their duty under the law; and in the absence of reasonable cause for thinking otherwise, it is not negligence for such a person to fail to anticipate injury which can come to that person only from a violation of law or duty by another.

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NEV. J.I. 11.07 INSTRUCTION NO. _____

When you retire to consider your verdict, you must select one of your number to act as foreperson, who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

The percentage of negligence attributable to the plaintiff, if any, shall reduce the amount of the plaintiff's recovery by the proportionate amount of hte plaintiff's negligence. If you determine that the plaintiff is entitled to recover, you shall return a general verdict indicating the total amount of damages the plaintiff would be entitled to recover without regard to his or her contributory negligence, if any; and a special verdict indicating the percentage of negligence attributable to each party.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. As soon as six or more of you have agreed upon the general verdicts and six or more of you have agreed upon a special verdict, you must have the verdicts signed and dated by your foreperson, notify the bailiff who will then return with you to this room.

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GENERAL AND SPECIAL VERDICT FOR PLAINTIFF

Nev. J.I. 12.00

We, the jury in the above entitled action, find for the plaintiff and against the defendant[s] and assess the total amount of the plaintiff's damages at $_____.

[We further find that the total amount of the plaintiff's damages is divided into past damages and future damages as follows:

Past damages $_____

Future damages $_____

DATED this ____ day of _____, 2016.

_____

FOREPERSON

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on April 15th, 2016, I caused the foregoing document entitled **JURY INSTRUCTIONS (NOT AGREED UPON)** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Craig R. Delk, Esq.
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
1100 E. Bridger Avenue
Las Vegas, Nevada 89101
Attorney for Defendant

/s/ Kimberly Culley
An Employee of EGLET PRINCE

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Electronically Filed
04/15/2016 09:08:11 AM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN VOLUNGIS, individually,

Plaintiff,

vs.

FAROOQ ABDULLA, individually; DOES I through X, inclusive; ROE BUSINESS ENTITIES I through X, inclusive;

Defendants.

Case No. : A702810
Dept. No.: XII

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AGREED UPON JURY INSTRUCTIONS

INSTRUCTION NO. _____

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

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INSTRUCTION NO. _____

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

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INSTRUCTION NO. _____

The masculine form as used in these instructions, if applicable as shown by the text of the instruction and the evidence, applies to a female person or a corporation.

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INSTRUCTION NO. _____

You are admonished that no juror may declare to a fellow juror any fact relating to this case as of his or her own knowledge, and if any juror discovers during the trial or after the jury has retired that he, she or any other juror has personal knowledge of any fact in controversy in this case, he or she shall disclose such situation to myself in the absence of the other jurors. This means that if you learn, during the course of the trial, that you were acquainted with the facts of this case or the witnesses and you have not previously told me of this relationship, you must then declare that fact to me. You communicate to the court through the bailiff/marshal.

During the course of this trial, the attorneys for both sides and court personnel, other than the bailiff/marshal, are not permitted to converse with members of the jury. These individuals are not being anti-social; they are bound by ethics and the law not to talk to you. To do so might contaminate your verdict. You are admonished, additionally, that you are not to visit the scene of any of the acts or occurrences made mention of during this trial, unless specifically directed to do so by the court. Do not undertake any investigation of the case on your own, or endeavor to research legal or factual issues on your own.

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