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CLERK OF THE COURT

NOAS
MALCOLM P. LAVERGNE, ESQ.
Nevada Bar No. 10121
MALCOLM P. LAVERGNE & ASSOCIATES
400 South 4th Street, Suite 500
Las Vegas, Nevada 89101
702.448.7981 / 702.966.3117 (Facsimile)
mlavergne@lavergnelaw.com
Representing Appellant Thomas Morley

Electronically Filed
Apr 08 2015 01:07 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

DISTRICT COURT
COUNTY OF CLARK, NEVADA

THOMAS MORLEY, an Individual, Appellant, vs. JOHN W. BOSTEDT and JONATHEN M. NICHOLS, Respondents.	CASE NO.: A-12-667202-C DEPT. NO.: 31

NOTICE OF APPEAL

COMES NOW, Plaintiff Thomas Morley ("Morley" or "Plaintiff"), by and through his attorney of record Malcolm P. LaVergne, Esq., and hereby appeals to the Supreme Court of Nevada from all judgments, orders, rulings, decisions and other actions by the District Court to which Plaintiff Thomas Morley is an aggrieved party that are now made appealable by the foregoing final and/or appealable judgments and orders entered in this action.

DATED this 2nd day of April, 2015.

MALCOLM P. LAVERGNE & ASSOCIATES

By: /s/: Malcolm P. LaVergne
MALCOLM P. LAVERGNE, ESQ.
Nevada Bar No. 10121
Representing Appellant Thomas Morley

MALCOLM P. LAVERGNE & ASSOCIATES
400 South 4th Street, Suite 500
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Docket 67752 Document 2015-10610

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to NRCP 5(b), that on the April 2, 2015, I served a true and correct copy of the forgoing Notice of Appeal by the Court's E-service system and/or by placing a copy of said document, in a sealed envelope addressed to Defendants' attorneys of record as follows:

Via E-Service

Sean P. Sullivan, P.C.
Attn: Sean P. Sullivan, Esq.
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101

Former Attorney for Defendant,
John W. Bostedt

Via U.S. Mail

Bellon & Maningo, Ltd.
Attn: Lance A. Maningo, Esq.
732 South 6th Street, Suite 102
Las Vegas, Nevada 89101

Attorneys for Defendant,
Jonathen M. Nichols

Via U.S. Mail
John W. Bostedt
9 Blackberry Court
Streamwood, IL 60107
Defendant In Proper Person

/s/ Malcolm P. LaVergne
Malcolm P. LaVergne & Associates

DEPARTMENT 31

CASE SUMMARY

CASE NO. A-12-667202-C

Thomas Morley, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna S.**
John Bostedt, Defendant(s)	§	Filed on:	**08/21/2012**
	§	Cross-Reference Case Number:	**A667202**
	§		

CASE INFORMATION

Statistical Closures
10/23/2014 Verdict Reached

Case Type: **Intentional Misconduct**
Subtype: **Torts/Defamation**

Case Flags: **Appealed to Supreme Court**
Jury Demand Filed
Automatically Exempt from Arbitration

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-12-667202-C
Court	Department 31
Date Assigned	08/21/2012
Judicial Officer	Kishner, Joanna S.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Morley, Thomas**	**Lavergne, Malcolm P.** *Retained* 702-448-7981(W)
Defendant	**Bostedt, John W**	**Pro Se**
	Nichols, Jonathen M Removed: 10/28/2014 Dismissed	**Maningo, Lance A.** *Retained* 702-734-0400(W)
Counter Claimant	**Bostedt, John W**	**Pro Se**
Counter Defendant	**Morley, Thomas**	**Lavergne, Malcolm P.** *Retained* 702-448-7981(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

08/21/2012	Complaint Filed By: Plaintiff Morley, Thomas *Complaint for Damages*	
08/21/2012	Case Opened	
11/27/2012	Initial Appearance Fee Disclosure Filed By: Defendant Nichols, Jonathen M *Initial Appearance Fee Disclosure*	
11/27/2012	Answer to Complaint Filed by: Defendant Nichols, Jonathen M *Answer to Complaint*	

11/28/2012	Answer and Counterclaim Filed By: Defendant Bostedt, John W *Answer and Counterclaim*
11/28/2012	Initial Appearance Fee Disclosure Filed By: Defendant Bostedt, John W *Initial Appearance Fee Disclosure*
01/15/2013	Reply Filed by: Plaintiff Morley, Thomas *Plaintiff's Reply to Defendant John W. Bostedt's Counterclaim*
04/10/2013	Demand for Jury Trial Filed By: Plaintiff Morley, Thomas *Plaintiff's Demand for Jury Trial*
05/15/2013	Joint Case Conference Report Filed By: Plaintiff Morley, Thomas *Joint Case Conference Report*
05/15/2013	Early Case Conference List of Witnesses & Production of Docs Filed By: Plaintiff Morley, Thomas *Plaintiff's Early Case Conference List of Witnesses and Production of Documents Pursuant to NRCP 16.1*
05/24/2013	Scheduling Order *Scheduling Order*
06/19/2013	Notice of Taking Deposition Filed By: Plaintiff Morley, Thomas *Plaintiff's Notice of Taking Deposition of John W. Bostedt*
06/19/2013	Notice of Taking Deposition Filed By: Plaintiff Morley, Thomas *Plaintiff's Notice of Taking Deposition of Jonathen M. Nichols*
06/26/2013	Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call *Order Setting Civil Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check*
06/26/2013	Amended Order Setting Jury Trial *Amended Order Setting Civil Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check*
07/24/2013	Stipulation and Order Filed by: Defendant Nichols, Jonathen M *Stipulation And Order to File Amended Answer and Cross Claim*
07/25/2013	Disclosure of Expert Filed By: Plaintiff Morley, Thomas *Plaintiff's Disclosure of Treating Physician Expert Witness Testimony*
07/25/2013	Notice of Entry of Order Filed By: Defendant Nichols, Jonathen M

	NOTICE OF ENTRY OF ORDER
07/29/2013	Answer and Crossclaim Filed By: Defendant Nichols, Jonathen M *Amended Answer to Complaint and Crossclaim*
08/15/2013	Answer to Crossclaim Filed By: Defendant Bostedt, John W *Answer to Crossclaim*
10/09/2013	Stipulation to Extend Discovery Party: Plaintiff Morley, Thomas *Stipulation and Order for Extension of Time to Complete Discovery (First Request)*
10/09/2013	Supplement to List of Witnesses & Documents Party: Plaintiff Morley, Thomas *Plaintiff's First Supplemental List of Witnesses and Production of Documents*
10/10/2013	Notice of Entry of Stipulation and Order Filed By: Plaintiff Morley, Thomas *Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (First Request)*
10/11/2013	Subpoena Duces Tecum Filed by: Plaintiff Morley, Thomas *Subpoena Duces Tecum*
11/01/2013	Supplement to List of Witnesses & Documents Party: Plaintiff Morley, Thomas *Plaintiff's Second Supplemental List of Witnesses and Production of Documents*
11/07/2013	*CANCELED* **Status Check** (9:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - Superseding Order*
11/07/2013	Amended Order Setting Jury Trial *Amended Order Setting Civil Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check*
12/05/2013	*CANCELED* **Pre Trial Conference** (10:15 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - Superseding Order*
01/02/2014	*CANCELED* **Calendar Call** (9:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - Superseding Order*
01/06/2014	*CANCELED* **Jury Trial** (10:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - Superseding Order*
01/21/2014	Supplement to List of Witnesses & Documents Party: Plaintiff Morley, Thomas *Plaintiff's Third Supplemental List of Witnesses and Production of Documents*
02/11/2014	**Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
03/04/2014	Motion to Continue Trial Filed By: Defendant Nichols, Jonathen M

Motion to Continue Trial

03/11/2014 Joinder To Motion
Filed By: Defendant Bostedt, John W
Joinder in Defendant Nichols' Motion to Continue Trial

03/23/2014 Response
Filed by: Plaintiff Morley, Thomas
Plaintiff's Response to Defendant Nichols's Motion to Continue Trial

04/08/2014 **Motion to Continue Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Defendant Jonathen M. Nichols Motion to Continue Trial

04/08/2014 **Joinder** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Defendant John W. Bostedt's Joinder in Defendant Nichols Motion to Continue Trial

04/08/2014 **All Pending Motions** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)

04/10/2014 *CANCELED* **Pre Trial Conference** (10:15 AM) **(Judicial Officer: Kishner, Joanna S.)**
Vacated - per Judge

04/30/2014 Motion in Limine
Filed By: Defendant Nichols, Jonathen M
Defendant Jonathen M. Nichols' Motion in Limine to Exclude Video and Audio Recording Taken at Lucky's Lounge on July 27, 2012

05/06/2014 *CANCELED* **Calendar Call** (9:00 AM) **(Judicial Officer: Kishner, Joanna S.)**
Vacated - per Judge

05/12/2014 Trial Subpoena
Filed by: Plaintiff Morley, Thomas
Trial Subpoena

05/12/2014 Trial Subpoena
Filed by: Plaintiff Morley, Thomas
Subpoena

05/12/2014 *CANCELED* **Jury Trial** (10:00 AM) **(Judicial Officer: Kishner, Joanna S.)**
Vacated - per Judge

05/19/2014 Joint Pre-Trial Memorandum
Filed By: Defendant Nichols, Jonathen M
Defendants' John W. Bostedt and Jonathen M. Nichols' Joint Pre-Trial Memorandum

05/19/2014 Trial Subpoena
Filed by: Plaintiff Morley, Thomas
Trial Subpoena - Witness John Orosz

05/19/2014 Pre-trial Memorandum
Filed by: Plaintiff Morley, Thomas
Plaintiff's Pre-Trial Memorandum

05/20/2014 Trial Subpoena
Filed by: Plaintiff Morley, Thomas
Trial Subpoena - Witness Tish DeSalvio

05/20/2014	**Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
05/21/2014	Affidavit of Service Filed By: Plaintiff Morley, Thomas *Affidavit of Service*
05/21/2014	Brief Filed By: Plaintiff Morley, Thomas *Plaintiff's Brief Pursuant to EDCR 2.69(d) Regarding the Admissibility of Defendants' Certified Criminal Judgments of Conviction and the Conclusive Presumption of Civil Liability Against Defendants Pursuant to NRS 41.133*
05/21/2014	Trial Subpoena Filed by: Plaintiff Morley, Thomas *Trial Subpoena - Witness John or Johnny the Bartender at Lucky's Lounge.*
05/21/2014	Pre-trial Memorandum Filed by: Plaintiff Morley, Thomas *Plaintiff's Supplemental Pre-Trial Memorandum*
05/21/2014	Trial Subpoena Filed by: Plaintiff Morley, Thomas *Trial Subpoena Dueces Tecum - Custodian of Records - Las Vegas Metropolitan Police Department.*
05/21/2014	Withdrawal of Motion Filed by: Defendant Nichols, Jonathen M *Notice of Withdrawal of Jonathen M. Nichols' Motion in Limine to Exclude Video and Audio Recording Taken at Lucky's Lounge on July 27, 2012*
05/21/2014	Trial Subpoena Filed by: Plaintiff Morley, Thomas *Amended Trial Subpoena - Defendant John W. Bostedt*
05/21/2014	Trial Subpoena Filed by: Plaintiff Morley, Thomas *Amended Trial Subpoena - Defendant Jonathen M. Nichols*
05/21/2014	Trial Subpoena Filed by: Plaintiff Morley, Thomas *Amended Trial Subpoena - Witness John Orosz*
05/21/2014	Affidavit of Service Filed By: Plaintiff Morley, Thomas *Affidavit of Service*
05/27/2014	**Hearing** (1:00 PM) (Judicial Officer: Kishner, Joanna S.) *2.69 Conference*
05/28/2014	**Jury Trial** (10:00 AM) (Judicial Officer: Kishner, Joanna S.) **05/28/2014-05/30/2014, 06/02/2014-06/03/2014** *Jury Trial #1*

05/28/2014	Jury List *Jury List*
06/03/2014	*CANCELED* **Motion in Limine** (9:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated* *Defendant Jonathen M. Nichols' Motion in Limine to Exclude Video and Audio Recording Taken at Lucky's Lounge on July 27, 2012*
06/03/2014	Special Jury Verdict *Special Verdict Form*
06/03/2014	Verdict
06/03/2014	Amended Jury List
06/03/2014	Jury Instructions
06/03/2014	Verdict Submitted to the Jury But Returned Unsigned
06/03/2014	Proposed Jury Instructions Not Used At Trial *Defendant Nichols' Proposed Jury Instructions Not Used At Trial*
06/03/2014	Proposed Jury Instructions Not Used At Trial *Defendant's Proposed Jury Instructions Not Used At Trial*
06/03/2014	**Verdict** (Judicial Officer: Kishner, Joanna S.) Debtors: John W Bostedt (Defendant), Jonathen M Nichols (Defendant) Creditors: Thomas Morley (Plaintiff) Judgment: 06/03/2014, Docketed: 06/10/2014 Total Judgment: 44,200.00
06/03/2014	**Verdict** (Judicial Officer: Kishner, Joanna S.) Debtors: Thomas Morley (Plaintiff) Creditors: Jonathen M Nichols (Defendant) Judgment: 06/03/2014, Docketed: 06/10/2014
06/11/2014	Memorandum of Costs and Disbursements Filed By: Plaintiff Morley, Thomas *Plaintiff's Memorandum of Costs and Disbursements*
07/02/2014	Memorandum of Costs and Disbursements Filed By: Plaintiff Morley, Thomas *Plaintiff's Amended Memorandum of Costs and Disbursements*
08/13/2014	Motion Filed By: Defendant Nichols, Jonathen M *Defendant Jonathen M. Nichols' Motion to Place on Calendar to Address Entry of Judgment*
09/16/2014	**Motion** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Defendant Jonathen M. Nichols' Motion to Place on Calendar to Address Entry of Judgment*
09/26/2014	**Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.) *Status Check: Motion in Limine Order*

09/29/2014	Notice of Change of Address Filed By: Defendant Bostedt, John W *Notice of Change of Address*
10/02/2014	Order Scheduling Status Check *Order Scheduling Status Check*
10/13/2014	Order *Order Re Plaintiff's 2.69 Brief Seeking to Admit Exhibits "1" Through "6"*
10/23/2014	Order to Statistically Close Case *Civil Order to Statistically Close Case*
10/28/2014	Judgment Upon Jury Verdict Filed By: Plaintiff Morley, Thomas *Judgment Upon a Jury Verdict*
10/28/2014	Motion for Fees Filed By: Defendant Nichols, Jonathen M *Motion for Fees and Costs*
10/28/2014	**Judgment Upon the Verdict** (Judicial Officer: Kishner, Joanna S.) Debtors: Thomas Morley (Plaintiff) Creditors: Jonathen M Nichols (Defendant) Judgment: 10/28/2014, Docketed: 11/05/2014 Debtors: John W Bostedt (Defendant) Creditors: Thomas Morley (Plaintiff) Judgment: 10/28/2014, Docketed: 11/05/2014 Total Judgment: 48,650.29
10/28/2014	**Order of Dismissal** (Judicial Officer: Kishner, Joanna S.) Debtors: Jonathen M Nichols (Defendant) Creditors: Thomas Morley (Plaintiff) Judgment: 10/28/2014, Docketed: 11/05/2014
11/06/2014	Withdrawal of Attorney Filed by: Defendant Bostedt, John W *Notice of Withdrawal as Counsel*
11/13/2014	Notice of Entry of Order Filed By: Plaintiff Morley, Thomas *Notice of Entry of Judgment Upon a Jury Verdict*
11/14/2014	Memorandum Filed By: Plaintiff Morley, Thomas *Plaintiff's Second Amended Memorandum of Costs and Disbursements*
11/25/2014	Opposition Filed By: Plaintiff Morley, Thomas *Plaintiff's Opposition to Defendant Jonathen Nichols's Motion for Fees and Costs*
12/02/2014	**Motion** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) **12/02/2014, 12/05/2014, 01/08/2015, 01/16/2015, 01/23/2015, 01/30/2015, 02/06/2015, 02/13/2015, 02/20/2015, 02/27/2015** *Defendant Jonathen M. Nichols Motion for Fees and Costs*

12/02/2014	Motion for Judgment Notwithstanding Verdict Filed By: Plaintiff Morley, Thomas *Plaintiff's Motion for Judgment Notwithstanding the Verdict or, in the Alternative, Motion for a New Trial or Amend Judgment*
12/09/2014	Opposition Filed By: Defendant Nichols, Jonathen M *Opposition to Plaintiff's Motion for Judgment Notwithstanding the Verdict or, in the Alternative, Motion for a New Trial or Amend Judgment*
12/11/2014	Joinder to Opposition to Motion Filed by: Defendant Bostedt, John W *Joinder In Defendant Nichols' Opposition To Plantiff's Motion For Judgement Notwithstanding The Verdict Or, In The Alternative, Motion For A New Trial Or Amend Judgement*
01/08/2015	**Motion** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Plaintiff's Motion for Judgment Notwithstanding the Verdict or, in the Alternative, Motion for a New Trial or Amend Judgment*
01/08/2015	**All Pending Motions** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
01/23/2015	**Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.) **01/23/2015, 01/30/2015** *Status Check: Order 1/8/15*
02/05/2015	Order Filed By: Defendant Nichols, Jonathen M *Order*
03/05/2015	Notice of Entry of Order Filed By: Defendant Nichols, Jonathen M *Notice of Entry of Order*
03/06/2015	**Order** (Judicial Officer: Kishner, Joanna S.) Debtors: Thomas Morley (Plaintiff) Creditors: Jonathen M Nichols (Defendant) Judgment: 03/06/2015, Docketed: 03/13/2015 Total Judgment: 1,251.58
03/06/2015	Order Filed By: Defendant Nichols, Jonathen M *Order for Fees and Costs*
03/10/2015	Notice of Entry of Order Filed By: Defendant Nichols, Jonathen M *Notice of Entry of Order for Fees and Costs*
03/13/2015	*CANCELED* **Status Check** (3:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - per Order* *Status Check: Order 2/27/15*
04/02/2015	Notice of Appeal Filed By: Plaintiff Morley, Thomas *Notice of Appeal*

CASE SUMMARY

CASE NO. A-12-667202-C

DATE	FINANCIAL INFORMATION	
	Defendant Nichols, Jonathen M	
	Total Charges	223.00
	Total Payments and Credits	223.00
	Balance Due as of 4/6/2015	**0.00**
	Defendant Bostedt, John W	
	Total Charges	223.00
	Total Payments and Credits	223.00
	Balance Due as of 4/6/2015	**0.00**
	Plaintiff Morley, Thomas	
	Total Charges	294.00
	Total Payments and Credits	294.00
	Balance Due as of 4/6/2015	**0.00**

CIVIL COVER SHEET A-12-667202-C

County, Nevada

Case No. _____ XXXI

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Thomas Morley	Defendant(s) (name/address/phone): John W. Bostedt and Jonathen M. Nichols
Attorney (name/address/phone): Malcolm P. LaVergne, 1212 S Casino Center Blvd Las Vegas, NV 89104, 702.448.7981	Attorney (name/address/phone): Unknown

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

Probate

Estimated Estate Value: _____

- ☐ **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**
  - ☐ Foreclosure Mediation
  - ☐ 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

August 21, 2012
Date

/s/ Malcolm P. LaVergne
Signature of initiating party or representative

See other side for family-related case filings.

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	**COURT MINUTES**	**February 11, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

February 11, 2014 **9:00 AM** **Status Check**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Cortese, Gregory	Attorney
Lavergne, Malcolm P.	Attorney
Sullivan, Sean P.	Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Lavergne states no settlement conference. Mr. Sullivan states Plaintiff filed four additional witnesses the day before the close of discovery, would like opportunity to depose. No objection by Mr. Lavergne. Discussion regarding trial stack. Pursuant to the agreement of the parties, depositions to be completed by 4/10/14.

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	**COURT MINUTES**	**April 08, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

April 08, 2014 **9:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney
Sullivan, Sean P.	Attorney

JOURNAL ENTRIES

- DEFENDANT JONATHEN M. NICHOLS MOTION TO CONTINUED TRIAL...DEFENDANT JOHN W. BOSTEDT'S JOINDER IN DEFENDANT NICHOLS MOTION TO CONTINUE TRIAL

Statements by counsel. Counsel estimate 4-5 days for trial. COURT ORDERED, Pre Trial Conference, Calendar Call and Trial Date VACATED and RESET; Pre Trial Memo now due 5/16/14. Court noted motions not technically granted as Trial was set within the Court's trial stack, therefore, no order needed.

5/20/14 9:00 AM CALENDAR CALL

5/27/14 11:00 AM JURY TRIAL #2

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	**COURT MINUTES**	**May 20, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

May 20, 2014 **9:00 AM** **Calendar Call**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney
Sullivan, Sean P.	Attorney

JOURNAL ENTRIES

- Discussion regarding AV tech check on 5/22/14 or 5/23/14. Counsel to contact clerk to set up date and time. Upon Court's inquiry, counsel state 2.67 conference was held. Colloquy regarding video, Defense unable to view. Mr. Lavergne stated exhibit list was provided to defense counsel, will provide binder (1) to the Court by noon on 5/22/14. Mr. Maningo states there will be a number of issues prior to start of trial. Mr. Maningo further states motion in limine is set after date of trial and states he will withdraw the motion. Upon Court's inquiry, Mr. Sullivan states it would be wise to begin trial on Wed 5/28/14 instead of 5/27/14, suggests outstanding issues be cleaned up on 5/27/14 prior to start of trial. Counsel estimate 4-5 days for trial. All parties in agreement for trial to commence on 5/28/14 at 9:00 am. COURT ORDERED, matter SET for 2.69 Conference on 5/27/14 at 1:00 pm in order to resolve any outstanding issues, briefing, if any, due by noon on 5/23/14. COURT FURTHER ORDERED, Trial to commence on 5/28/14 at 9:00 am.

5/27/14 1:00 PM HEARING: 2.69 CONFERENCE

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	**COURT MINUTES**	**May 27, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

May 27, 2014 **1:00 PM** **Hearing** **2.69 Conference**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Ying Pan

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney
Sullivan, Sean P.	Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Counsel waived the jury instruction regarding "read back" and indicated parties are very close on finishing the proposed Jury Instructions. Counsel placed stipulations and objections regarding proposed exhibits on the records. Argument by counsel as to disclosures of Defendants' criminal convictions and whether the criminal convictions would constitute a direct verdict for liabilities. Court FINDS, it does not see Exhibit Nos. 1 to 6 are admissible just because they are certified copies. COURT ORDERED, ruling regarding the admissibility of Exhibit Nos. 1 to 6 DEFERRED until Trial, this issue may be discussed outside the presence of the Jury. Mr. Maningo withdrew the counterclaims. COURT STATED ITS FINDINGS and FURTHER ORDERED, Counterclaims are WITHDRAWN. Counsel presented the orders of witnesses. COURT ADDITIONALLY ORDERED, Trial on 5-28-14 will start at 10:00 a.m. and Trial on 5-29-14 will reconvene at 1:30 p.m. to accommodate counsel's schedule. Court informed counsel regarding jury selection process. Counsel stipulated each side will have 5 peremptory challenges and Juror Nos. 9 and 10 will be the alternates. Mr. Lavergne estimated his voir dire will last between 90 to 120 minutes and opening statement will last 15 to 25 minutes. Defense counsel estimated their voir dire

will last 60 minutes and their opening statements will last 15 to 25 minutes each counsel.

5-28-14 10:00 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	**COURT MINUTES**	**May 28, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

May 28, 2014 **10:00 AM** **Jury Trial** **Jury Trial #1**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Ying Pan

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Bostedt, John W	Defendant Counter Claimant
Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney
Nichols, Jonathen M	Defendant
Sullivan, Sean P.	Attorney

JOURNAL ENTRIES

- OUTSIDE OF THE PRESENCE OF THE PROSPECTIVE JURY PANEL -
Court reviewed the case records and REAFFIRMED its decision regarding Exhibit Nos. 1 to 6. Colloquy between the Court and counsel regarding Jury selection.

PROSPECTIVE JURY PANEL PRESENT -
Opening introductions by the Court. Roll call. Voir Dire Oath given. Voir Dire conducted.

OUTSIDE OF THE PRESENCE OF THE PROSPECTIVE JURY PANEL -
Colloquy regarding notes from prospective jurors. Court thanked and excused Juror Nos. 007, 017, and 042. Mr. Lavergne placed cause challenge on the records. Court stated its findings regarding Juror Nos. 001, 013, and 015.

PROSPECTIVE JURY PANEL PRESENT -
Voir Dire continued.

OUTSIDE OF THE PRESENCE OF THE PROSPECTIVE JURY PANEL -
Peremptory challenge conducted.

PROSPECTIVE JURY PANEL PRESENT -
Jury and 1 alternate selected and sworn. Opening statements by counsel. Testimony and exhibits presented (see worksheets). Court ADMONISHED Jury and ORDERED, Trial CONTINUED.

5-29-14 2:00 PM JURY TRIAL - CONTINUED

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct **COURT MINUTES** **May 29, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

May 29, 2014 **2:00 PM** **Jury Trial** **Jury Trial #1**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Ying Pan

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Bostedt, John W	Defendant Counter Claimant
Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney
Nichols, Jonathen M	Defendant
Sullivan, Sean P.	Attorney

JOURNAL ENTRIES

- JURY PRESENT -
Testimony and exhibits presented (see worksheets).

OUTSIDE THE PRESENCE OF THE JURY -
Mr. Lavergne indicated his next witness is not present and he attempted to locate the witness; however, he did not receive a response. Argument by counsel as to how the Trial should proceed. COURT ORDERED, Trial will resume tomorrow at 9:00 a.m.

JURY PRESENT -
Court ADMONISHED Jury and ORDERED, Trial CONTINUED.

5-30-14 9:00 AM JURY TRIAL - CONTINUED

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	**COURT MINUTES**	**May 30, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

May 30, 2014 **9:00 AM** **Jury Trial** **Jury Trial #1**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Ying Pan

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Bostedt, John W	Defendant Counter Claimant
Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney
Morley, Thomas	Plaintiff Counter Defendant
Nichols, Jonathen M	Defendant
Sullivan, Sean P.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY -
EXCLUSIONARY RULE INVOKED by Defendants. Argument by counsel as to the Defense's concerns regarding communication between witnesses. John Horvath SWORN and TESTIFIED. Defense raised an Oral Motion to Strike Witness Testimony. Further argument as to excluding witness testimony. Thomas Morley SWORN and TESTIFIED. Additional argument. COURT STATED ITS FINDINGS and ORDERED, Oral Motion DENIED; however, general questions regarding witness interactions may be allowed, and if Plaintiff opens the door and Defense counsel may inquire further.

JURY PRESENT -
Testimony and exhibits presented (see worksheets).

OUTSIDE THE PRESENCE OF THE JURY -
Colloquy between Court and counsel as to contents published on the screen. Defense counsel reserved their objection. Objection regarding juror's question on the record. Argument by counsel as to the scope of testimony. COURT ORDERED, counsel is PROHIBITED to mention the existence of "Court Order" when inquiring witness regarding the reduce of anxiety.

JURY PRESENT -
Testimony and exhibits presented (see worksheets).

OUTSIDE THE PRESENCE OF THE JURY -
Argument by counsel as to Defense's Oral Motion to Redact Exhibit No. 16. COURT STATED ITS FINDINGS and ORDERED, Oral Motion DENIED.

JURY PRESENT -
Testimony and exhibits presented (see worksheets). Court ADMONISHED Jury.

OUTSIDE THE PRESENCE OF THE JURY -
Mr. Lavergne renewed his Oral Motion to Admit Exhibit Nos. 1 and 2 and raised an Oral Motion for Direct Verdict. Argument regarding Oral Motions. COURT ORDERED, Ruling DEFERRED until Monday for the Court to review the case law. COURT FURTHER ORDERED, Trial CONTINUED.

6-2-14 9:00 AM JURY TRIAL - CONTINUED

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct **COURT MINUTES** **June 02, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

June 02, 2014 **9:00 AM** **Jury Trial** **Jury Trial #1**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Andrea Natali

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Bostedt, John W	Defendant Counter Claimant
Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney
Nichols, Jonathen M	Defendant
Sullivan, Sean P.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY:
COURT NOTED, it had reviewed the case law presented last week and stated FINDINGS based on the two prongs to consider as to the Motion for Reconsideration and, ORDERED, prior decision is REAFFIRMED and Exhibits one (1) and two (2) are NOT ADMITTED. As to the rule 50 motion, COURT ORDERED, the first part DENIED as there was not an automatic preclusive effect; the second part, based on the evidence as a matter of law, is DENIED as it is not appropriate as to liability. Colloquy regarding whether the Plaintiff had rested and how the motion had been requested by counsel.

Mr. Lavergne stated there were matters he would like presented to the jury with respect to a stipulation regarding Albertson's hours of operation and regarding request for admission nos. 1, 3, 4,

5, & 6. Mr. Sullivan had no objection to presenting the Albertson's stipulation to the jury. Colloquy regarding presenting the Albertson's stipulation to the jury and regarding arguments Mr. Maningo anticipated arguing related to a rule 50 motion. Arguments by counsel regarding whether admissions 1, 3, 4, 5, & 6 as to exhibit 13 should be admitted; whether the arrest was referenced in exhibit 13; whether the arrest would be deemed a conclusive fact. COURT ORDERED as to nos. 1, 3, & 4 PRECLUDED; as to no. 2 DENIED. Following further colloquy, requests to admit admission nos. 5 and 6 WITHDRAWN by Mr. Lavergne. COURT NOTED, Mr. Lavergne's withdrawal of the admissions do not preclude them from being used for impeachment purposes. Colloquy regarding whether the Plaintiff would be resting; whether there would be a rule 50 motion following the Albertson's stipulation.

Mr. Sullivan moved to dismiss the counter claim. Mr. Lavergne agreed to the counter claim being dismissed; however, argued he should not be precluded from using the pleadings for impeachment purposes. COURT ORDERED, counter claim DISMISSED.

Mr. Maningo moved to dismiss pursuant to rule 50(a)(1) in regard to medical damages being precluded; noted expert testimony had not been provided thereto; whether there was evidence of reasonable necessity or causation provided. Mr. Sullivan joined in Mr. Maningo's argument. Mr. Lavergne stated he would like to argue that he was not seeking medical specialty fees; stated he withdrew he request as to medical specialty only; however, argued in support of referencing the ambulance and hospital; noted he would not reference the specific amounts. Mr. Maningo stated there was no legal basis to preclude the Plaintiff from arguing as to pain and suffering. COURT NOTED, due to the fact that the plaintiff was withdrawing the ambulance and hospital bills a ruling did not need to be issued on that matter; however, as to the second request related to factual aspects at issue, ORDERED, pain and suffering arguments ARE ALLOWED. Further arguments by counsel regarding how counsel should refer to the hospital and ambulance bills.

JURY PRESENT:
Testimony and exhibits presented (see worksheets). Plaintiff rested. Testimony and exhibits presented (see worksheets). CONFERENCES AT BENCH. Testimony and exhibits continued.

OUTSIDE THE PRESENCE OF THE JURY:
Jury instructions settled off the record; arguments, opposition, and ruling thereto placed on the record. Arguments by counsel regarding whether the Defendants could be question about payment of the restitution on the criminal case. COURT stated FINDINGS noting questions about restitution would be inappropriate and would violate a prior ruling on a motion in limine; therefore, ORDERED, questions PRECLUDED.

JURY PRESENT:
Testimony and exhibits continued. CONFERENCE AT BENCH. Mr. Lavergne rested at 4:10 PM. Mr. Sullivan and Mr. Maningo rested at 4:10 PM. Court admonished the Jury and instructed them to return tomorrow at the given time.

OUTSIDE THE PRESENCE OF THE JURY:
Jury instructions settlement continued off the record; arguments, opposition, and ruling thereto placed on the record. Colloquy regarding whether there would be a supplemental ruling along with the verdict, the verdict forms, and admitted or stipulated exhibits.

COURT ORDERED, matter CONTINUED.

6/3/14 12:30 PM - JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct **COURT MINUTES** **June 03, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

June 03, 2014 **12:30 AM** **Jury Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Andrea Natali

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney
Nichols, Jonathen M	Defendant
Sullivan, Sean P.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY:
Jury instructions settled off the record; arguments, opposition, and ruling thereto placed on the record.

JURY PRESENT:
Court instructed the Jury. Closing argument by Mr. Lavergne. CONFERENCE AT BENCH.

OUTSIDE THE PRESENCE OF THE JURY:
COURT NOTED, during Plaintiff's closing arguments a typographical error was found; therefore, Plaintiff's counsel had requested the error be corrected. No objection by the Defense. Argument by Mr. Maningo regarding ex parte communications to the court by Mr. Lavergne during closing. COURT NOTED, it did not hear what Mr. Lavergne had stated. Mr. Lavergne noted his statement was an administrative comment related to the time. Mr. Maningo stated since the court didn't hear

the comment and considering Mr. Lavergne's explanation thereto, the argument could be withdrawn. Further, Mr. Maningo argued regarding Mr. Lavergne's closing arguments misstated the law regarding Jury Instruction no. 5; therefore, requested further instructions to the Jury thereto. Upon Court's inquiry regarding whether counsel would like the opportunity to correct the statement in front of the Jury, Mr. Lavergne stated he would give a curative to the Jury. Colloquy regarding how the curative would be presented to the Jury. Further, argument by Mr. Maningo regarding whether Mr. Lavergne had misstated the law regarding clear and convincing evidence. Mr. Lavergne stated his description was accurate as to clear and convincing evidence. COURT NOTED, it would give a general reminder to the Jury to rely on the instructions and their memories of the evidence.

JURY PRESENT:
Closing argument by Mr. Sullivan and Mr. Maningo. Rebuttal closing argument by Mr. Lavergne. Court admonished the jury to follow the instructions. Alternate juror excused. At the hour of 4:43 PM the Jury retired to deliberate.

OUTSIDE THE PRESENCE OF THE JURY:
COURT NOTED, the jury may have a question, as there may have been confusion about the special verdict form; therefore, needed to re-read and review the form. FURTHER, if there are any issues with the completion of the form a bench conference will be held.

JURY PRESENT:
At the hour of 6:56 PM the Jury returned with a verdict in accordance with the written verdict which was FILED IN OPEN COURT. Jury polled at Mr. Lavergne's request; unanimous decision. CONFERENCE AT BENCH. Court thanked and excused the Jury. Trial ends.

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	**COURT MINUTES**	**September 16, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

September 16, 2014 **9:00 AM** **Motion**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Shelly Landwehr

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney
Sullivan, Sean P.	Attorney

JOURNAL ENTRIES

- Mr. Maningo inquired regarding the Judgment. Colloquy regarding the Order from the Motion in Limine having not been filed. Court stated it is usually prepared by the prevailing party. Mr. Maningo stated he was willing to prepare the Order to expedite the matter. Colloquy regarding the May 27, 2014 hearing. COURT DIRECTED Mr. Lavergne to file the order TEN (10) DAYS from today's date. With respect to the Judgment, Court noted it should not include fees and costs. FURTHER, matter SET for status check.

9/26/14 STATUS CHECK: ORDER FROM 5/27/14 HEARING (CHAMBER CALENDAR)

CLERK'S NOTE: Minutes amended to reflect correct dates.stl/9/29/14

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct **COURT MINUTES** **December 02, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

December 02, 2014 **9:00 AM** **Motion**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney
Morley, Thomas	Plaintiff Counter Defendant

JOURNAL ENTRIES

- DEFENDANT JONATHEN M. NICHOLS MOTION FOR FEES AND COSTS

Arguments by counsel. Mr. Lavergne advised he has filed motion for new trial. RULING DEFERRED; Court to further review; Decision will issue from Chambers or hearing will be set following Court's evaluation and determination.

CONTINUED FOR DECISION: 12/5/14 (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	**COURT MINUTES**	**December 05, 2014**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

December 05, 2014 **3:00 AM** **Motion**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- This matter came before the Court on December 2, 2014, on Defendant Jonathen Nichols' Motion for Fees and Costs. Present at the hearing was Malcolm LaVergne, Esq., counsel for Plaintiff, and Lance Maningo, Esq., counsel for Defendant Nichols. At the hearing, Plaintiff's counsel indicated that he had filed a Motion for Judgment Notwithstanding the Verdict or, in the Alternative, Motion for a New Trial or Amend Judgment. Based on that information, the Court deferred ruling on the Motion for Fees and Costs to determine if such a Motion had been filed and whether the Court should consider that motion in advance of the Motion for Fees and Costs. The Court's filing system indicates that Plaintiff filed his Motion on December 2, 2014, and that the Motion is set for hearing on January 8, 2015. In light of that fact, the Court finds it appropriate to hear the Motion for Judgment Notwithstanding the Verdict, or in the Alternative Motion for a New Trial or Amend Judgment, before deciding the Motion for Fees and Costs. The Decision on the Motion for Fees and Costs is therefore continued to January 8, 2015, and the Court will issue its Decision once Plaintiff's Motion for Judgment Notwithstanding the Verdict or, in the Alternative, Motion for a New Trial or Amend Judgment is decided.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Lance Maningo, Esq.

and Malcolm Lavergne, Esq.\sjh

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct **COURT MINUTES** **January 08, 2015**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

January 08, 2015 **9:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Lavergne, Malcolm P.	Attorney
Maningo, Lance A.	Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT NOTWITHSTANDING THE VERDICT OR, IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL OR AMEND JUDGMENT...DEFENDANT JONATHEN M. NICHOLS MOTION FOR FEES AND COSTS

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT NOTWITHSTANDING THE VERDICT OR, IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL OR AMEND JUDGMENT:

Matter argued and submitted. Court stated its findings, and ORDERED, NRCP Rule 50(b) motion is DENIED; Court REAFFIRMS its ruling; Rule 59 motion for new trial is DENIED; Request for Defendant Nichols to be added to the judgment is also DENIED; Reaffirmed, Judgment STANDS as is.
Matter SET for Status Check regarding receipt of proposed order.

DEFENDANT JONATHEN M. NICHOLS MOTION FOR FEES AND COSTS:

Arguments by counsel. RULING DEFERRED; Court to further review and a Decision will issue from Chambers.

CONTINUED FOR DECISION: 1/16/15 (CHAMBERS)

1/23/15 STATUS CHECK: ORDER (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct **COURT MINUTES** **January 30, 2015**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

January 30, 2015 **3:00 AM** **Motion**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- This matter came on for hearing on December 2, 2014, on Defendant Jonathen Nichol's Motion for Fees and Costs. Present at the hearing was Malcolm LaVergne, Esq., counsel for Plaintiff, and Lance Maningo, Esq., counsel for Defendant Jonathen Nichols. At the hearing, counsel for Plaintiff indicated that a Motion for Judgment Notwithstanding the Verdict, or in the Alternative, for a New Trial ("Plaintiff's Motion"), had been filed. The Court therefore continued the hearing to resolve Plaintiff's Motion before considering Defendant Nichols' Motion for Fees and Costs.

On January 8, 2015, the Court held oral argument on both motions. The Court denied Plaintiff's Motion and set forth its reasoning on the record. Counsel for Defendant was instructed to prepare, circulate and provide the Order to the Court. The Court deferred its ruling on Defendant Nichols' motion so that it could further review the record.

In accordance with EDCR 7.21 Orders are to be submitted within ten days. A status check was set for January 30, 2015 for the receipt of the proposed order with respect to Plaintiff's Motion. The Court has not received the proposed order on Plaintiff's Motion. Accordingly, the Court does not find it appropriate to rule on Defendant's motion as its ruling with respect to Plaintiff's Motion has not been

reduced to writing and filed. As such the decision on Defendant's motion is continued to February 6, 2015, at which time the Court will rule on Defendant's Motion regardless of whether the proposed order on Plaintiff's Motion has been received or not. The Court is also setting a mandatory in-person status check on the outstanding order on Plaintiff's Motion via separate order.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Malcolm Lavergne, Esq. and Lance Maningo, Esq.\sjh

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	**COURT MINUTES**	**February 27, 2015**

A-12-667202-C Thomas Morley, Plaintiff(s)
vs.
John Bostedt, Defendant(s)

February 27, 2015 **3:00 AM** **Motion**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- This matter came on for hearing on January 8, 2015, on Defendant Jonathen Nichol's Motion for Fees and Costs. Present at the hearing was Malcolm LaVergne, Esq., counsel for Plaintiff, and Lance Maningo, Esq., counsel for Defendant Jonathen Nichols. The Court deferred ruling to further review the issues presented at oral argument. After full review of all the papers, pleadings, documents on file, oral arguments of the parties and all applicable statutes and case law, the Court finds as follows.

NRS 18.010 permits the Court, within its discretion, to award fees and costs to a prevailing party that has not recovered more than $20,000, or when the claim was brought or maintained without reasonable ground. The Court does not find that NRS 18.010 provides an adequate basis for an award of attorney's fees in this case, and therefore turns to Defendant Nichol's alterative bases for such an award.

NRCP 68 and NRS 17.115 permit an award of attorney's fees to party that makes an offer of judgment that is refused by the other party who subsequently obtains a more favorable judgment. Pursuant to Beattie v. Thomas, 99 Nev. 579, 668 P.2d 268 (1983), the Court must also evaluate whether 1) the claim was brought in good faith, 2) whether the offer of judgment was reasonable and in good faith in both

timing and amount, 3) whether the decision to reject the offer of judgment was grossly unreasonable or in bad faith, and 4) whether the fees sought by the offereror are reasonable and a justified amount. Pursuant to NRS 18.020, costs are to be awarded to the prevailing party in an action to recover money damages in excess of $2,500. In evaluating NRCP 68 and NRS 17.115, as well as the factors set forth in Beattie, and NRS 18.020, the Court finds that Defendant Nichol's Motion for Fees and Costs is properly GRANTED in part and DENIED in part.

As a preliminary matter, it is not disputed that Defendant Nichols made an offer of judgment in the amount of $1,500 dated July 3, 2013, and that Plaintiff rejected that offer. Defendant was found to have no liability at all to Plaintiff at the conclusion of trial, and a verdict was entered in favor of Defendant Nichols. The Court therefore must evaluate the factors set forth in Beattie and other applicable precedent to determine if fees are appropriately awarded.

The Court finds that the claims against Defendant Nichols were made in good faith. Although the criminal proceeding against Nichols was properly excluded, the Court is cognizant that Plaintiff took the fact that there was an agreement to pay restitution as well as other facts into account in filing the present civil action. Although the jury did not find Nichols civilly liable, that fact alone does not result in an award of fees against Plaintiff. The Court cannot find based on the arguments and evidence presented, that the claim was not brought in good faith. Further, the Court cannot find that the decision to reject the offer was grossly unreasonable or in bad faith. While there may be a difference of opinion between the parties as to what evidence could and could not be presented at trial, this analysis does not provide a sufficient basis to find the rejection of the offer to be grossly unreasonable. Thus, looking at the sum total of the factors set forth in Beattie as well as the facts of this particular case, the Court DENIES the Motion for Attorney Fees.

As for Defendant Nichols' request for an award of costs pursuant to NRS 18.020, the Court finds that the statute provides an appropriate basis for the award of costs during the pendency of the litigation, in the total amount of $1,251.58.

Accordingly Defendant Nichols' Motion for Fees and Costs is GRANTED in part and DENIED in part. The Motion for Costs is GRANTED in the amount of $1,251.58 and the Motion for Fees is DENIED.

Defendant Nichols' counsel is directed to prepare the order, circulating to all counsel for approval as to content and form, and submitting to Chambers for consideration within 10 days pursuant to EDCR 7.21. A status check is therefore set for March 13, 2015, in Chambers. If the order is received by that date, the status check will be vacated; otherwise a status check will be set on the Court's normal Motion Calendar where personal appearances will be required from all counsel.

3/13/15 STATUS CHECK: ORDER (CHAMBERS)

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Lance Maningo, Esq. and Malcolm Lavergne, Esq.\sjh

TRIAL EXHIBIT LIST

Thomas Morley v. John W. Bostedt, et. al.
Case No. A-12-667202-C

No.	Description	Date Offered	Objected	Date Admitted
1.	Certified Copy of Disposition Notice and Judgment – Case 12F11929A – State v. John W. Bostedt.			
2.	Certified Copy of Disposition Notice and Judgment – Case 12F11929B – State v. Jonathen M. Nichols.			
3.	Certified Copy of Transcript of Appearances and Hearings– Case 12F11929A – State v. John W. Bostedt, bates-stamped "MORLEY00132 - MORLEY00133".			
4.	Certified Copy of Transcript of Appearances and Hearings - Case 12F11929B – State v. Jonathen M. Nichols, bates-stamped "MORLEY00134 - MORLEY00134".			
5.	Certified Copy of Court Minutes for Case 12F11929A – State v. John W. Bostedt.			
6.	Certified Copy of Court Minutes for Case 12F11929B – State v. Jonathen M. Nichols.			
7.	Color photo of Plaintiff's Injuries, bates-stamped "MORLEY126".	6-2-14	STIP NONE	6-2-14
8.	Color photo of Plaintiff's Injuries, bates-stamped "MORLEY127".	6-2-14	STIP	↓
9.	Color photo of Plaintiff's Injuries, bates-stamped "MORLEY128".	6-2-14	STIP	↓
10.	Color photo of Plaintiff's Injuries, bates-stamped "MORLEY129".	6-2-14	STIP	6-2-14
11.	Defendant John W. Bostedt's response to Plaintiff Thomas Morley's Interrogatories, bates-stamped "MORLEY00173 - MORLEY00188".			
12.	Defendant Jonathen M. Nichols' response to Plaintiff Thomas Morley's Interrogatories, bates-stamped "MORLEY00136 - MORLEY00154".			
13.	Defendant John W. Bostedt's response to Plaintiff Thomas Morley's Request for Admissions, bates-stamped "MORLEY00155 - MORLEY00161".			
14.	Defendant John W. Bostedt's response to Plaintiff Thomas Morley's Request for Admissions, bates-stamped "MORLEY00162 - MORLEY00172".			
15.	9-1-1 audiotape recording from July 28, 2012, relating to event number 120728000923.	5-27-14	Stip	5-27-14
16.	9-1-1 Call Computerized Records from July 28, 2012 with Custodian of Records Declaration, bates-stamped "MORLEY00189 - MORLEY00193".	5-27-14	Stip	5-27-14
17.	Video surveillance footage from Lucky's Lounge regarding the July 28, 2012 incident.	5-27-14	Stip	5-27-14

18.	Medical Billing Statement from Centennial Hills Hospital, bates-stamped "MORLEY00082"			
19.	Medical Billing Statement from American Medical Response, bates-stamped "MORLEY00130 - MORLEY00131"			
20.	Aerial Map of Incident Site	5-27-14	Stip	5-27-14
21.	Aerial Map of Incident Site	5-27-14	Stip	5-27-14
22.	Defendant John W. Bostedt's 2012 Income Tax Documents, bates-stamped "MORLEY00194 - MORLEY00205".			

COURT'S TRIAL EXHIBITS **CASE NO: A667202**

THOMAS MORLEY **vs.** **JOHN BOSTEDT**

#	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
1	Juror's Question - Not asked	5-30-14	N/A	5-30-14
2	Albertsons Stipulation	6.2.14	N/A	6.2.14
3				
4				

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

MALCOLM P. LAVERGNE, ESQ.
440 S. 4TH ST., SUITE 500
LAS VEGAS, NV 89101

DATE: April 6, 2015
CASE: A667202

RE CASE: THOMAS MORLEY vs. JOHN W. BOSTEDT; JONATHEN M. NICHOLS

NOTICE OF APPEAL FILED: April 2, 2015

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☒ $250 – Supreme Court Filing Fee**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☒ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☒ Order

☒ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

THOMAS MORLEY,

Plaintiff(s),

vs.

JOHN W. BOSTEDT; JONATHEN M. NICHOLS,

Defendant(s),

Case No: A667202

Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 6 day of April 2015.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk