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Attorneys for Plaintiffs Kent Barkouras and Brandi Barkouras

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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, v. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC., and DOES I through X, and DOE Corporations XI through XX, Defendants.	Case No.: A-23-878023-B Dept. No.: 31 **PLAINTIFFS' NOTICE OF APPEAL**

Plaintiffs, Kent Barkouras and Brandi Barkouras, Individually and as Trustees of the Barkouras Family Revocable Trust, by and through their counsel of record hereby appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law, and Order regarding Defendant Health Sense AI, Inc's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, entered in this action on the 29th day of January, 2024, a true and correct copy of which is attached hereto as **Exhibit 1**, and the Findings of Fact, Conclusions of Law, and Order Regarding Defendants Amy Hester, John Belew, Carolyn Long, Erin Bush, and HD Nursing, LLC's Motions to Dismiss Plaintiffs' Complaint, entered in this action on the 29th day of January, 2024, a true and correct copy of which is attached hereto as **Exhibit 2**, as well as all

Docket 88152 Document 2024-06436

Case Number: A-23-878023-B

orders, rulings or decisions relating thereto, and any other order or decision made appealable thereby.

DATED this 15th day of February 2024.

MCMENEMY | HOLMES PLLC

By: /s/ Dustun H. Holmes
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Attorneys for Plaintiffs Kent Barkouras and Brandi Barkouras

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McMenemy | Holmes PLLC, and that on this 15th day of February 2024, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above **PLAINTIFFS' NOTICE OF APPEAL** to all parties listed on the Court's Master Service List.

/s/ Jodi Farr

An employee of McMenemy | Holmes PLLC

EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, vs. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.; and DOES I through X, and DOE Corporations XI through XX, Defendants.	CASE NO.: A-23-878023-B DEPT. NO.: XXXI **NOTICE OF ENTRY OF ORDER AND JUDGMENT**

PLEASE TAKE NOTICE that a FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANT HEALTH SENSE AI, INC.'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT which includes a JUDGMENT was entered with the Court in the above-captioned matter on the 18th day of January,

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Case Number: A-23-878023-B

2024, a copy of which is attached hereto.

Dated: January 29, 2024

O'REILLY LAW GROUP

By: */s/ Timothy R. O'Reilly*
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Attorneys for Defendants
Amy Hester; John Belew; Carolyn Long;
Erin Bush; HD Nursing, LLC; and
Health Sense Ai, Inc.

CERTIFICATE OF SERVICE

I certify that on this 29th day of January, 2024, I served a copy of the above document - ***NOTICE OF ENTRY OF ORDER AND JUDGMENT*** - on all electronic service list recipients who are registered with the court's electronic case management and filing system in this action.

/s/ Ashley Gonzales
Employee of O'REILLY LAW GROUP

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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, vs. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.; and DOES I through X, and DOE Corporations XI through XX, Defendants.	CASE NO.: A-23-878023-B DEPT. NO.: XXXI **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANT HEALTH SENSE AI, INC.'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

This matter came for a hearing before the Court on December 19, 2023 at 8:30 a.m. on Defendant Health Sense Ai, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in the alternative Motion for Summary Judgment.

Having reviewed the parties' moving papers, briefs, and all pleadings and papers on file, and after having considered the arguments and representations of counsel at the hearing on December 19, 2023, the Court, hereby makes the following Findings of Fact and Conclusions of Law set forth herein..

To the extent any Finding of Fact should be properly designated a Conclusion of Law, it shall be deemed a Conclusion of Law. To the extent any Conclusion of Law should be properly designated a Finding of Fact, it shall be deemed a Finding of Fact.

FINDINGS OF FACT

1. Plaintiffs filed their Complaint on September 19, 2023.

2. Plaintiffs' Complaint alleges claims for civil conspiracy, breach of contract, breach of implied covenant of good faith and fair dealing, invasion of privacy, wrongful termination/breach of contract, intentional infliction of emotional distress, inspection and accounting, declaratory relief, preliminary and injunctive relief, and appointment of a receiver against Defendant Health Sense Ai, Inc.

3. On October 17, 2023, Defendant Health Sense Ai, Inc. filed a Motion to Dismiss Plaintiffs' Complaint or in the alternative Motion for Summary Judgment. Defendant attached to the Motion a Declaration of Amy Hester, the Corporate Bylaws of Health Sense Ai, Inc., an Organization Chart of HD Nursing, LLC, an Organization Chart of Health Sense Ai, Inc., an email dated May 9, 2023 from Amy Hester to John Belew and Kent Barkouras, an email dated May 11, 2023 from Kent Barkouras to Amy Hester, John Belew, and Carolyn Long, and Amy Hester's Curriculum Vitae.

4. On October 31, 2023, Plaintiffs filed an Opposition to Defendant Health Sense Ai, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in the alternative, Motion for Summary Judgment.

5. On November 14, 2023, the Court entered a Stipulation and Order to Continue and Consolidate Hearing and Briefing Deadlines. The Stipulation and Order provided that "Plaintiffs shall have until November 21, 2023 to file a Supplemental Brief in Support of Plaintiffs' Opposition to Defendants Amy Hester, John Belew, Carolyn Long, HD Nursing, LLC and Erin Bush's Motions to Dismiss Plaintiffs' Complaint." There was no stipulation by the Parties, or request by Plaintiffs' counsel, to supplement the Opposition to the instant Motion to Dismiss or in the Alternative Motion for Summary Judgment, which was also confirmed by counsel during oral argument.

6. Defendant Health Sense Ai, Inc. then filed its Reply to Plaintiffs' Opposition on December 5, 2023.

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7. Discovery in the case has not opened, an NRCP 16.1 conference has not been held, the parties have not provided initial disclosures, and no scheduling order has been entered in the case.

8. Plaintiffs' Complaint sufficiently pled factual allegations to survive a Motion to Dismiss under *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

9. Defendant's alternative Motion for summary judgment was submitted before the opening and close of discovery and is appropriate with regard to its timing under NRCP 56(b).

10. The uncontroverted Declaration of Dr. Amy Hester in Support of Defendant Health Sense Ai, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in the alternative Motion for Summary Judgment does fully support the underlying relief requested consistent with Rule 56(c)(1)(A) of the Nevada Rules of Civil Procedure and all factual assertions set forth therein are adopted by this Court as Findings of Fact in their entirety.

11. The Declaration of Dr. Amy Hester does properly reference and authenticate the documents attached as exhibits thereto, which are determined factually accurate uncontroverted evidence in this matter.

12. Defendant has satisfied the procedural, evidentiary, and other applicable standards for a proper request for summary judgment under NRCP 56.

13. There is no declaration or affidavit supporting Plaintiffs' Opposition to Defendant's Motion for Summary Judgment as required under Rule 56(c)(4).

14. There is reference to summary judgment in the footnotes of the Plaintiffs' Opposition. Plaintiffs' failure to include an affidavit or declaration as required under Rule 56(c)(4) is not due to inadvertence to just oppose one part of Defendant's Motion (the Motion to Dismiss), without seeing the second part (the Motion for Summary Judgment), because Plaintiffs acknowledge Defendant's alternative request for summary judgment in the footnotes. Plaintiffs= knew the full requirement of what they had to present as evidence in opposition. There is no evidence in opposition.

15. There is reference to Plaintiffs' request for discovery in the footnotes of their Opposition.

16. However, there is no affidavit or declaration in support of Plaintiffs' request as required under NRCP 56(d) or NRCP 56(e).

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CONCLUSIONS OF LAW

Motion to Dismiss

1. A "complaint should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

2. The Court must "regard all factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party." *Stockmeier v. Nevada Dep't of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008).

3. The Court has found Plaintiffs' Complaint sufficiently pled factual allegations to support their claims upon which relief can be granted; thus, the Court **CONCLUDES** the Complaint should survive a motion to dismiss for failure to state a claim upon which relief can be granted.

Motion for Summary Judgment

4. "A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion." NRCP 56(a)."Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." NRCP 56(b).

5. "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." NRCP 56(c)(1)."An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." NRCP 56(c)(4).

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6. When opposing a summary judgment motion, a non-moving party cannot build a case on the "gossamer threads of whimsy, speculation, and conjecture." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). "While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the moving party's favor." *Id*., 121 Nev. at 732, 121 P.3d at 1031. "The nonmoving party 'must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.' " *Id*.

7. The Court **CONCLUDES AS A MATTER OF LAW** that it is required to grant summary judgment to Defendant Health Sense Ai, Inc. for the following reasons:

8. Defendant Health Sense Ai., Inc.'s Motion for Summary Judgment is timely and appropriate under NRCP 56(b).

9. Defendant Health Sense Ai, Inc. has met its evidentiary burden under NRCP 56(a). As Plaintiffs have failed after numerous opportunities to substantively oppose or present any evidence to show disputed issues of material fact, by affidavit or otherwise, Defendant Health Sense Ai, Inc. is entitled to judgment as a matter of law.

10. Plaintiffs argue that the Court can and should consider the material in the record submitted as part of their Opposition to the Motion to Dismiss for Personal Jurisdiction related to other parties in this litigation. The Court declines to do so for the reasons set forth herein.

NRCP 56 Request for Discovery

11. "If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." NRCP 56(d).

12. "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact.; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials—including the facts considered

undisputed—show that the movant is entitled to it; or (4) issue any other appropriate order." NRCP 56(e).

13. The Court further **CONCLUDES AS A MATTER OF LAW** Plaintiffs have failed to make a proper request under NRCP 56(d) or NRCP 56(e) for a continuance and discovery as there is no affidavit or declaration in support of Plaintiffs' request.

Leave to Amend

14. The Court **CONCLUDES AS A MATTER OF LAW** there was no basis for Plaintiffs' request for leave to amend considering Plaintiffs did not meet the procedural requirements in opposing the Motion for Summary Judgment, and, therefore, request for leave to amend is MOOT.

ORDER

IT IS HEREBY ORDERED, Defendant Health Sense Ai, Inc.'s Motion to Dismiss is DENIED WITHOUT PREJUDICE.

IT IS HEREBY FURTHER ORDERED, Defendant Health Sense Ai, Inc.'s alternative Motion for Summary Judgment is GRANTED in its entirety as to Plaintiffs' claims asserted against Defendant Health Sense Ai., Inc. and accordingly JUDGMENT is hereby entered in favor of Health Sense Ai, Inc. and against each of the Plaintiffs..

IT IS SO ORDERED.

Dated this 18th day of January, 2024

Joanna S Kishner

F30 E5B D916 7B43
Joanna S. Kishner
District Court Judge

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Respectfully submitted by:

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Attorneys for Defendants
Amy Hester; John Belew; Carolyn Long;
Erin Bush; HD Nursing, LLC; and
Health Sense Ai, Inc.

Approved as to form:

McMENEMY HOLMES PLLC

By: */s/ Dustun Holmes*
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Brandi Barkouras

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From: Dustun Holmes
To: Tracie M. Jefcik
Cc: John F. O"Reilly; Timothy R. O"Reilly; Isela Arauz; Ashley Gonzales; Jodi Farr
Subject: RE: HD Nursing adv. Barkouras
Date: Thursday, January 11, 2024 11:29:08 AM
Attachments: image004.png
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image007.png

Thanks, Tracie. Please change “Approved as to form and content” to “Approved as to form:” before our signature block and you may submit with my e-signature.

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From: Tracie M. Jefcik <TMJ@oreillylawgroup.com>
Sent: Thursday, January 11, 2024 10:30 AM
To: Dustun Holmes <dhh@mcmenemyholmes.com>
Cc: John F. O'Reilly <jor@oreillylawgroup.com>; Timothy R. O'Reilly <tor@oreillylawgroup.com>; Isela Arauz <ia@oreillylawgroup.com>; Ashley Gonzales <ag@oreillylawgroup.com>; Jodi Farr <jaf@mcmenemyholmes.com>
Subject: RE: HD Nursing adv. Barkouras

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dustun,

We have received and reviewed your proposed redlines. Some are acceptable but some are not. We have attached your redline with those that are acceptable and plan to submit the same to the Court later today with a note advising the Court we understand you will be submitting competing drafts unless you advise by reply email that you are willing to accept our attached drafts.
We do not see a call as necessary or helpful but could set up a call to also include the other OLG attorneys involved in our Clients’ decisions if we can coordinate everyone’s schedules for a call.
Please follow up with John or Tim O’Reilly going forward since they will be handling this matter.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Kent Barkouras, Plaintiff(s)	CASE NO: A-23-878023-B
vs.	DEPT. NO. Department 31
Amy Hester, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

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EXHIBIT 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, vs. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.; and DOES I through X, and DOE Corporations XI through XX, Defendants.	CASE NO.: A-23-878023-B DEPT. NO.: XXXI **NOTICE OF ENTRY OF ORDER AND JUDGMENT**

PLEASE TAKE NOTICE that a FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANTS AMY HESTER, JOHN BELEW, CAROLYN LONG, ERIN BUSH, AND HD NURSING, LLC'S MOTIONS TO DISMISS PLAINTIFFS' COMPLAINT, which includes a JUDGMENT was entered with the Court in the above-captioned

/ / /

/ / /

/ / /

Case Number: A-23-878023-B

matter on the 18th day of January, 2024, a copy of which is attached hereto.

Dated: January 29, 2024

O'REILLY LAW GROUP

By: */s/ Timothy R. O'Reilly*
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Attorneys for Defendants
Amy Hester; John Belew; Carolyn Long;
Erin Bush; HD Nursing, LLC; and
Health Sense Ai, Inc.

CERTIFICATE OF SERVICE

I certify that on this 29th day of January, 2024, I served a copy of the above document - ***NOTICE OF ENTRY OF ORDER AND JUDGMENT*** - on all electronic service list recipients who are registered with the court's electronic case management and filing system in this action.

/s/ Ashley Gonzales
Employee of O'REILLY LAW GROUP

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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, vs. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.; and DOES I through X, and DOE Corporations XI through XX, Defendants.	CASE NO.: A-23-878023-B DEPT. NO.: XXXI **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANTS AMY HESTER, JOHN BELEW, CAROLYN LONG, ERIN BUSH, AND HD NURSING, LLC'S MOTIONS TO DISMISS PLAINTIFFS' COMPLAINT**

This matter came for a hearing before the Court on December 19, 2023 at 8:30 a.m. on Defendants John Belew, Carolyn Long, Amy Hester, Erin Bush, and HD Nursing, LLC's Motions to Dismiss Plaintiffs' Complaint.

Having reviewed the parties' moving papers, briefs, and all pleadings and papers on file, and after having considered the arguments and representations of counsel at the hearing on December 19, 2023, the Court, hereby makes the following Findings of Fact and Conclusions of Law set forth herein.

To the extent any Finding of Fact should be properly designated a Conclusion of Law, it shall be deemed a Conclusion of Law. To the extent any Conclusion of Law should be properly designated a Finding of Fact, it shall be deemed a Finding of Fact.

FINDINGS OF FACT

1. Plaintiffs filed their Complaint on September 19, 2023.

2. On October 12, 2023, Defendants John Belew and Carolyn Long filed their respective Motions to Dismiss Plaintiffs' Complaint.

3. On October 16, 2023, Defendants HD Nursing, LLC and Amy Hester filed their respective Motions to Dismiss Plaintiffs' Complaint.

4. On October 23, 2023, Defendant Erin Bush filed her Motion to Dismiss Plaintiffs' Complaint.

5. On November 1, 2023, Notices of Non Opposition to Defendants John Belew, Carolyn Long, HD Nursing, LLC, and Amy Hester's Motions to Dismiss were filed by Defendants.

6. On November 6, 2023, Plaintiffs filed an Opposition to Defendants' (Amy Hester, John Belew, Carolyn Long, Erin Bush, and HD Nursing, LLC) Motions to Dismiss.

7. Thereafter, by stipulation of the parties and Order of this Court entered November 14, 2023, Plaintiffs filed their Supplemental Brief in Support of Plaintiffs' Opposition to Jurisdictional Defendants' Motion to Dismiss on November 21, 2023.

8. Defendants (Amy Hester, John Belew, Carolyn Long, Erin Bush, and HD Nursing, LLC) then filed their Reply to Plaintiffs' Opposition on December 5, 2023.

9. Defendants John Belew and Carolyn Long are domiciled in the State of Arkansas and were both physically in attendance at a May 8, 2023 Board Meeting for HD Nursing, LLC and/or Health Sense Ai, Inc. held in Henderson, Nevada.

10. Defendant Erin Bush is domiciled in the State of Texas and that she also was physically in attendance at the May 8, 2023 Board Meeting.

11. Defendant Amy Hester is domiciled in the State of Arkansas and was also physically in attendance at the May 8, 2023 Board Meeting. HD Nursing, LLC is an Arkansas entity with its

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principal place of business in Arkansas and that HD Nursing, LLC held a Board Meeting in Henderson, Nevada on May 8, 2023.

12. Amy Hester has a one-bedroom apartment in Henderson, Nevada, which is also leased and/or paid for in part or in its entirety by Defendant HD Nursing, LLC.

13. The Court finds as a fact and takes into consideration by judicial notice (without objection by Plaintiffs, but for relevancy) an Order presented by Defendants in open Court, which Order was also referenced in the moving papers, from the Circuit Court of Saline County, Arkansas dated December 11, 2023 in an Arkansas case entitled *HD Nursing, LLC vs. Kent Barkouras and Brandi Barkouras*, Case No. 63CV-23-853-3. This Court acknowledges, although it takes no position, that the Arkansas Court has denied Plaintiffs Kent and Brandi Barkouras's motion to dismiss the Arkansas Court Action.

14. Plaintiffs claim to be Nevada residents and are owed great deference as to their choice of forum.

15. However, given that there is a pending case in the Circuit Court of Saline County, Arkansas, an alternative adequate forum exists. It has been specifically shown that there is already an action proceeding with HD Nursing, LLC and the two Plaintiffs in Arkansas.

16. The factors for forum non conveniens in this matter weigh heavily in favor of another forum, namely Arkansas, further analyzed in the Conclusions of Law herein under the factors set forth in *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 350 P.3d 392 (2015).

CONCLUSIONS OF LAW

General Personal Jurisdiction

1. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." *Bristol-Myers Squibb Co. v. Superior Court of Cali., San Francisco Cty.*, 582 U.S. 255, 262 (2017).

2. As Defendants John Belew, Carolyn Long, and Amy Hester are domiciled in the State of Arkansas, this Court **CONCLUDES** it does not have general personal jurisdiction over Defendants John Belew, Carolyn Long, or Amy Hester.

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3. As Defendant Erin Bush is domiciled in the State of Texas, the Court **CONCLUDES** it does not have general personal jurisdiction over Defendant Erin Bush.

4. As HD Nursing, LLC is an Arkansas entity with its principal place of business in Arkansas, this Court **CONCLUDES** it does not have general personal jurisdiction over Defendant HD Nursing, LLC.

Specific Personal Jurisdiction

5. However, Nevada recognizes specific personal jurisdiction is possible via its long-arm statute: "A court of this state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the Constitution of this state or the Constitution of the United States." NRS 14.065. The Nevada Supreme Court has previously held that whether specific personal jurisdiction exists requires an analysis of three (3) factors: (1) where the defendant purposefully avails himself of the forum state or purposefully directs activities with the forum, (2) where the cause of action arises from that purposeful contact with the forum or conduct targeting the forum, and (3) whether requiring defendant to appear in the action would be reasonable. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 122 Nev. 509, 513, 134 P.3d 710, 712–13 (2006)."[B]oth purposeful availment and purposeful direction ask whether defendants have voluntarily derived some benefit from their interstate activities such that they 'will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.' " *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985))."In order for a state court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum." *Bristol-Myers*, 582 U.S. at 262. A defendant's transitory presence in a state "will support jurisdiction only if it was meaningful enough to create a substantial connection with the forum state." *Picot v. Weston*, 780 F.3d 1206, 1213 (9th Cir. 2015).

6. The Court **CONCLUDES** there is no purposeful availment and no minimum contacts with regard to Defendants John Belew, Carolyn Long, and Erin Bush. Thus, the Court **CONCLUDES** AS A MATTER OF LAW Nevada does not have specific personal jurisdiction at this time over Defendants John Belew, Carolyn Long, and Erin Bush. The Court **CONCLUDES**

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there are too many issues at this juncture with regard to the apartment in Henderson, Nevada, rented in part by Defendant HD Nursing, LLC and Defendant Amy Hester and, therefore, whether the Court has specific personal jurisdiction over Defendant Amy Hester would require additional discovery. However, the Court does, **AS A MATTER OF LAW FIND THERE IS A BASIS TO GRANT** Defendant Amy Hester's Motion to Dismiss on the alternative basis of forum non conveniens, further analyzed herein. Because the Court grants Defendant Amy Hester's Motion on the basis of forum non conveniens, there is no need for additional discovery related to personal jurisdiction. The Court **CONCLUDES AS MATTER OF LAW** to **DENY WITHOUT PREJUDICE** Amy Hester's Motion to Dismiss based on personal jurisdiction. The Court **CONCLUDES** that Defendant HD Nursing, LLC would likely be subject to specific personal jurisdiction given that the entity holds meetings in Nevada, has leased an apartment in Nevada, and that, giving the benefit of the doubt to Plaintiffs' assertions, Plaintiffs have shown some minimum contacts and purposeful availment on the part of Defendant HD Nursing, LLC. However, the Court does **FIND AS A MATTER OF LAW THERE IS A BASIS TO GRANT** Defendant HD Nursing, LLC's Motion to Dismiss on the alternative basis of forum non conveniens, further analyzed herein. The Court **CONCLUDES AS MATTER OF LAW** to **DENY WITHOUT PREJUDICE** HD Nursing, LLC's Motion to Dismiss based on personal jurisdiction.

Burden of Proof

7. "When a nonresident defendant challenges personal jurisdiction at the pleading stage, the plaintiff bears the burden of making a prima facie showing that personal jurisdiction is proper by 'producing some evidence in support of all facts necessary for a finding of personal jurisdiction.' " *Matter of Paul D. Burgauer Revocable Living Trust*, 138 Nev. Adv. Op. 79, 521 P.3d 1160, 1165 (2022).

8. The Court is adopting the arguments and assertions made in Defendants' Motions and Reply briefs. With regard to the assertions, the Court is taking fully into account the appropriate standard with regard to jurisdiction on the prima facie showing. The Court **CONCLUDES AS A MATTER OF LAW** Plaintiffs have not met their burden of making a prima facie showing that personal jurisdiction over Defendants John Belew, Carolyn Long, and/or Erin Bush is proper.

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Forum Non Conveniens

9. *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 350 P.3d 392 (2015) walks through the factors of what this Court must do to decide on a motion to dismiss for forum non conveniens.

10. "When deciding a motion to dismiss for forum non conveniens, a court must first determine the level of deference owed to the plaintiff's forum choice." *Id*., 131 Nev. at 300–01, 350 P.3d at 396 (citing *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 70 (2d Cir. 2003)). Here, Plaintiffs are alleging they are Nevada residents, so the Court is giving great deference to Plaintiffs' choice of forum in Nevada.

11. "Next, a district court must determine 'whether an adequate alternative forum exists.' " *Id*., 131 Nev. 301, 350 P.3d at 396 (quoting *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001)) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981)). Here, it has been specifically shown that there is already an action proceeding with HD Nursing, LLC and the two Plaintiffs in Arkansas. The Arkansas suit has already gone through the initial motion practice. With regard to the other individuals that have been set forth, it has been asserted that they would be subject to that jurisdiction as the underlying claims relate to their actions and their involvement with the Arkansas entity, HD Nursing, LLC. This Court **CONCLUDES AS A MATTER OF LAW** there is an alternative adequate forum. "If an adequate alternative forum does exist, the court must then weigh public and private interest factors to determine whether dismissal is warranted." *Id*. (citing *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001)). "Relevant public interest factors include the local interest in the case, the district court's familiarity with applicable law, the burdens on local courts and jurors, court congestion, and the costs of resolving a dispute unrelated to the plaintiffs chosen forum." *Id*. 131 Nev. at 302, 350 P.3d at 397. Here, the local interest in the case would be Arkansas, as the underlying dispute involves an Arkansas company, Arkansas employees, and many of the parties being domiciled in and/or residents of Arkansas. As to the district court's familiarity with applicable law, this Court is familiar with laws from all around the world; but, for a Nevada District Court judge to take on what is already being taken care of Arkansas is not necessary or reasonable. As to the burdens on local courts and jurors, there is no additional or exceptional

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burden placed on this Court or the local jurors, but for the Court and jurors to have to interpret what is already going on in Arkansas. Court congestion is not a factor, as this Court is equipped to handle the cases on its docket. Rather, the duplicative factor weighs heavily in favor of Arkansas when there is already a case in Arkansas. As to the costs of resolving a dispute unrelated to the Plaintiffs' chosen forum, lies in favor of Arkansas, because the majority of the witnesses, the law, the evidence, and the entity are all in Arkansas. Here, other than the May 8, 2023 Board Meeting, Nevada does not have an interest as to these parties or the facts as alleged. With regard to these moving Defendants, none are Nevada entities, so dismissal of these parties does not impact a local company and the case lacks any genuine connection to Nevada. "Where 'personal jurisdiction is difficult to determine, and *forum non conveniens* considerations weigh heavily in favor of dismissal,' a court may properly dismiss a complaint for forum non conveniens without first deciding whether it has personal jurisdiction over the defendant." *Id*., 131 Nev. at 303, 350 P.3d at 397 (quoting *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 436 (2007)). With regard to Defendants Amy Hester and HD Nursing, LLC, this Court denies the Motions for lack of jurisdiction without prejudice because it cannot make a determination as to whether this Court has personal jurisdiction, so the focus with regard to these two Defendants goes to the above noted forum non conveniens analysis. Whether this Court has specific personal jurisdiction over Defendants Amy Hester and HD Nursing, LLC is somewhat unclear (i.e., difficult to determine). Therefore, the Court can and will grant these two defendants' motions to dismiss on the basis of forum non conveniens.

12. Accordingly, the Court **CONCLUDES AS A MATTER OF LAW** to **GRANT** Defendants' motions to dismiss on the basis of forum non conveniens.

ORDER

IT IS HEREBY ORDERED, Defendant John Belew's Motion to Dismiss Plaintiffs' Complaint is GRANTED for lack of personal jurisdiction and also on the basis of forum non conveniens;

IT IS HEREBY FURTHER ORDERED, Defendant Carolyn Long's Motion to Dismiss Plaintiffs' Complaint is GRANTED for lack of personal jurisdiction and also on the basis of forum non conveniens;

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IT IS HEREBY FURTHER ORDERED, Defendant Erin Bush's Motion to Dismiss Plaintiffs' Complaint is GRANTED for lack of personal jurisdiction and also on the basis of forum non conveniens;

IT IS HEREBY FURTHER ORDERED, Defendant Amy Hester's Motion to Dismiss Plaintiffs' Complaint is DENIED WITHOUT PREJUDICE as to personal jurisdiction, and GRANTED on the basis of forum non conveniens;

IT IS HEREBY FURTHER ORDERED, Defendant HD Nursing, LLC's Motion to Dismiss Plaintiffs' Complaint is DENIED WITHOUT PREJUDICE as to personal jurisdiction, and GRANTED on the basis of forum non conveniens.

IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED IN FAVOR OF THE DEFENDANTS AND AGAINST EACH OF THE PLAINTIFFS HEREIN BASED ON THE LACK OF PERSONAL JURISDICTION AND/OR FORUM NON CONVENIENS.

Dated this 18th day of January, 2024

Joanna S Kishner

F08 B04 8CFB 934F
Joanna S. Kishner
District Court Judge

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Respectfully submitted by:

O'REILLY LAW GROUP

By: /s/ Tracie M. Jefcik
John F. O'Reilly, Esq.
Nevada Bar No. 1761
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Nevada Bar No. 8866
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Attorneys for Defendants Amy Hester; John Belew; Carolyn Long; Erin Bush; HD Nursing, LLC; and Health Sense Ai, Inc.

Approved as to form:

McMENEMY HOLMES PLLC

By: /s/ Dustun Holmes
Dustun Holmes, Esq.
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Ian M. McMenemy, Esq.
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Attorneys for Plaintiffs Kent Barkouras and Brandi Barkouras

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From: Dustun Holmes
To: Tracie M. Jefcik
Cc: John F. O"Reilly; Timothy R. O"Reilly; Isela Arauz; Ashley Gonzales; Jodi Farr
Subject: RE: HD Nursing adv. Barkouras
Date: Thursday, January 11, 2024 11:29:08 AM
Attachments: image004.png
image005.png
image006.png
image007.png

Thanks, Tracie. Please change “Approved as to form and content” to “Approved as to form:” before our signature block and you may submit with my e-signature.

Dustun H. Holmes
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OUR ADDRESS HAS CHANGED!

CONFIDENTIALITY NOTE: This communication contains information which is confidential and/or legally privileged. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please delete this communication from your computer and notify us immediately. Thank you.

From: Tracie M. Jefcik <TMJ@oreillylawgroup.com>
Sent: Thursday, January 11, 2024 10:30 AM
To: Dustun Holmes <dhh@mcmenemyholmes.com>
Cc: John F. O'Reilly <jor@oreillylawgroup.com>; Timothy R. O'Reilly <tor@oreillylawgroup.com>; Isela Arauz <ia@oreillylawgroup.com>; Ashley Gonzales <ag@oreillylawgroup.com>; Jodi Farr <jaf@mcmenemyholmes.com>
Subject: RE: HD Nursing adv. Barkouras

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dustun,

We have received and reviewed your proposed redlines. Some are acceptable but some are not. We have attached your redline with those that are acceptable and plan to submit the same to the Court later today with a note advising the Court we understand you will be submitting competing drafts unless you advise by reply email that you are willing to accept our attached drafts.
We do not see a call as necessary or helpful but could set up a call to also include the other OLG attorneys involved in our Clients’ decisions if we can coordinate everyone’s schedules for a call.
Please follow up with John or Tim O’Reilly going forward since they will be handling this matter.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Kent Barkouras, Plaintiff(s)	CASE NO: A-23-878023-B
vs.	DEPT. NO. Department 31
Amy Hester, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 1/18/2024

Timothy O'Reilly	efile@oreillylawgroup.com
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Attorneys for Plaintiffs Kent Barkouras and Brandi Barkouras

DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, v. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC., and DOES I through X, and DOE Corporations XI through XX, Defendants.	Case No.: A-23-878023-B Dept. No.: 31 **PLAINTIFFS' CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:

Kent Barkouras, Brandi Barkouras, The Barkouras Family Revocable Trust.

2. The judge issuing the decision, judgment, or order appealed from:

The Honorable Joanna S. Kishner, Dept. No. 31

3. Parties to the district court proceedings:

Plaintiffs: Kent Barkouras, Brandi Barkouras, The Barkouras Family Revocable Trust.

Defendants: Amy Hester, John Belew, Carolyn Long, Erin Bush, HD Nursing, LLC, and Health Sense Ai, Inc.

4. Parties involved in this appeal:

Appellants: Kent Barkouras, Brandi Barkouras, The Barkouras Family Revocable Trust

Respondents: Amy Hester, John Belew, Carolyn Long, Erin Bush, HD Nursing, LLC, and Health Sense Ai, Inc.

5. Name, law firm, address and telephone number of all counsel on appeal:

Counsel for Plaintiffs/Appellants:

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DHH@mcmenemyholmes.com
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Counsel for Defendants/Respondents:

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6. Whether appellant is represented by appointed or retained counsel in the district court:

Appellants are represented by retained counsel in the district court.

7. Whether appellant is represented by appointed or retained counsel on appeal:

Appellants are represented by retained counsel on appeal.

8. Whether appellant was granted leave to proceed in forma pauperis and the date of entry of the district court order granting such leave:

Appellants are not proceeding in forma pauperis.

9. The date the proceedings commenced in the district court:

September 19, 2023.

…

…

10. Brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

Plaintiffs/Appellants, Kent Barkouras ("Kent") and Brandi Barkouras ("Brandi"), Individually and as Trustees of the Barkouras Family Revocable Trust (collectively the "Barkouras" or "Plaintiffs"), brought claims against Defendants/Respondents Amy Hester ("Hester"), John Belew ("Belew"), Carolyn Long ("Long"), Erin Bush ("Bush"), HD Nursing, LLC ("HD Nursing"), and Health Sense Ai, Inc. ("Health Sense Ai") (collectively "Defendants"), for civil conspiracy, breach of contract, breach of implied covenant of good faith and fair dealing, invasion of privacy, wrongful termination/breach of contract, intentional infliction of emotional distress, inspection and accounting, declaratory relief, preliminary and injunctive relief, and appointment of a receiver.

In response to the complaint, Defendant Health Sense Ai filed a motion to dismiss for failure to state a claim, or in the alternative motion for summary judgment. Defendants Hester, Belew, Long, Bush, and HD Nursing, responded to the complaint with motions to dismiss based on personal jurisdiction and forum non conveniens. After briefing, these motions came before the District Court in a consolidated hearing on December 19, 2023. Following the hearing, the District Court entered on January 29, 2024, (1) Findings of Fact, Conclusions of Law, and Order regarding Defendant Health Sense AI, Inc's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment and (2) Findings of Fact, Conclusions of Law, and Order Regarding Defendants Amy Hester, John Belew, Carolyn Long, Erin Bush, and HD Nursing, LLC's Motions to Dismiss Plaintiffs' Complaint. The District Court's rulings disposed of all of Plaintiffs' claims against all Defendants.

The District Court denied Health Sense Ai's motion to dismiss finding the Complaint sufficient pled factual allegations to support Plaintiffs' claims upon which relief can be granted, but seconds later granted Health Sense Ai's alternative motion for summary judgment finding no genuine dispute as to any of those material facts existed – despite no discovery being conducted or even an answer being filed – and that Health Sense Ai was entitled to judgment as a matter of law. The District Court also declined to consider other material in the record in deciding the

motion – despite hearing this evidence moments before in the same consolidated hearing. The District Court denied Plaintiffs' request under NRCP 56(d) or NRCP 56(e) for a continuance and discovery. Finally, the District Court denied Plaintiffs' request for leave to amend their complaint finding Plaintiffs' request moot.

The District Court granted Defendants Belew, Long, and Bush's motion to dismiss for lack of personal jurisdiction and forum non conveniens. The District Court declined to permit any jurisdictional discovery. The District Court denied Defendants Hester and HD Nursing's motions to dismiss for lack of personal jurisdiction, but granted their motions based on forum non conveniens.

Plaintiffs now appeal from the District Court's entry of the (1) Findings of Fact, Conclusions of Law, and Order regarding Defendant Health Sense AI, Inc's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment and (2) Findings of Fact, Conclusions of Law, and Order Regarding Defendants Amy Hester, John Belew, Carolyn Long, Erin Bush, and HD Nursing, LLC's Motions to Dismiss Plaintiffs' Complaint.

11. Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

This case has not previously been the subject of an appeal or original writ proceeding in the Supreme Court.

12. Whether the appeal involves child custody or visitation:

This appeal does not involve child custody or visitation.

…

…

…

13. Whether the appeal involves the possibility of settlement:

As this is a business dispute, settlement is always a possibility, but there have been no settlement discussions between the parties.

DATED this 15th day of February 2024.

MCMENEMY | HOLMES PLLC

By: /s/ Dustun H. Holmes
Dustun H. Holmes, Esq., #12776
Ian M. McMenemy, Esq., #13190
1645 Village Center Circle, Suite 291
Las Vegas, Nevada 89134

Attorneys for Plaintiffs Kent Barkouras and Brandi Barkouras

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McMenemy | Holmes PLLC, and that on this 15th day of February 2024, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above **PLAINTIFFS' CASE APPEAL STATEMENT** to all parties listed on the Court's Master Service List.

/s/ Jodi Farr

An employee of McMenemy | Holmes PLLC

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CLERK OF THE COURT

Dustin H. Holmes, Esq., Bar No. 12776
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Attorneys for Plaintiffs Kent Barkouras and Brandi Barkouras

DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, v. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC., and DOES I through X, and DOE Corporations XI through XX, Defendants.	Case No.: A-23-878023-B Dept. No.: 31 **NOTICE OF POSTING BOND FOR COSTS ON APPEAL**

PLEASE TAKE NOTICE that Plaintiffs, Kent Barkouras and Brandi Barkouras, Individually and as Trustees of the Barkouras Family Revocable Trust, by and through their counsel of record, deposited with the Clerk of this Court, in compliance with NRAP 7, a check in the amount of $500.00 for security for costs on appeal, a copy of which is attached hereto.

DATED this 16th day of February 2024.

MCMENEMY | HOLMES PLLC

By: /s/ Dustin H. Holmes
Dustin H. Holmes, Esq., #12776
1645 Village Center Circle, Suite 291
Las Vegas, Nevada 89134

Attorneys for Plaintiffs Kent Barkouras and Brandi Barkouras

Case Number: A-23-878023-B

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McMenemy | Holmes PLLC, and that on this 16th day of February 2024, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above **NOTICE OF POSTING BOND FOR COSTS ON APPEAL** to all parties listed on the Court's Master Service List.

/s/ Jodi Farr

An employee of McMenemy | Holmes PLLC

OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
Holmes, Dustun H
McMenemy | Holmes, PLLC
Attn; Dustun H. Holmes, Esq.
1645 Village Center Circle, Ste 291
Las Vegas, NV 89134

Receipt No.
2024-10990-CCCLK

Transaction Date
02/16/2024

Description	Amount Paid
On Behalf Of Barkouras, Brandi	
A-23-878023-B	
Kent Barkouras, Plaintiff(s) vs. Amy Hester, Defendant(s)	
Appeal Bond	
Appeal Bond	500.00
SUBTOTAL	**500.00**

PAYMENT TOTAL **500.00**

Check (Ref #1148) Tendered	500.00
Total Tendered	**500.00**
Change	0.00

Notice of Appeal 2/15/2024

02/16/2024	Cashier	Audit
02:26 PM	Station LE02	38653193

OFFICIAL RECEIPT

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-23-878023-B

Kent Barkouras, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna S.**
Amy Hester, Defendant(s)	§	Filed on:	**09/19/2023**
	§	Cross-Reference Case Number:	**A878023**

CASE INFORMATION

Case Type: **Other Business Court Matters**

Case Status: **09/19/2023 Open**

DATE	CASE ASSIGNMENT

Current Case Assignment

Case Number	A-23-878023-B
Court	Department 31
Date Assigned	09/19/2023
Judicial Officer	Kishner, Joanna S.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Barkouras, Brandi**	**Holmes, Dustun H** *Retained* 702-874-4878(W)
	Barkouras, Kent	**Holmes, Dustun H** *Retained* 702-874-4878(W)
	Trustees of the Barkouras Family Revocable Trust	**Holmes, Dustun H** *Retained* 702-874-4878(W)
Defendant	**Belew, John** Removed: 01/18/2024 Dismissed	**O'Reilly, John F.** *Retained* 7023822500(W)
	Bush, Erin Removed: 01/18/2024 Dismissed	**O'Reilly, Timothy R.** *Retained* 702-382-2500(W)
	HD Nursing LLC	**O'Reilly, Timothy R.** *Retained* 702-382-2500(W)
	Health Sense AI Inc	**O'Reilly, Timothy R.** *Retained* 702-382-2500(W)
	Hester, Amy	**O'Reilly, Timothy R.** *Retained* 702-382-2500(W)
	Long, Carolyn Removed: 01/18/2024 Dismissed	**O'Reilly, John F.** *Retained* 7023822500(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX

EVENTS

09/19/2023 Complaint (Business Court)
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[1] Complaint

09/19/2023 Initial Appearance Fee Disclosure
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[2] Initial Appearance Fee Disclosure

09/19/2023 Demand for Jury Trial
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[3] Demand for Jury Trial

09/19/2023 Summons Electronically Issued - Service Pending
Party: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[5] Summons - Amy Hester

09/19/2023 Summons Electronically Issued - Service Pending
Party: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[6] Summons - John Belew

09/19/2023 Summons Electronically Issued - Service Pending
Party: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[7] Summons - Erin Bush

09/19/2023 Summons Electronically Issued - Service Pending
Party: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[8] Summons - Carolyn Long

09/19/2023 Summons Electronically Issued - Service Pending
Party: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[9] Summons - HD Nursing, LLC

09/19/2023 Summons Electronically Issued - Service Pending
Party: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[10] Summons - Health Sense AI, Inc.

09/20/2023 Clerk's Notice of Nonconforming Document
[4] Clerk's Notice of Nonconforming Document

09/28/2023 Affidavit of Service
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[11] Affidavit of Service - Carolyn Long

09/28/2023 Affidavit of Service

Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[12] Affidavit of Service - Amy Hester

09/28/2023 Affidavit of Service
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[13] Affidavit of Service - John Belew

09/28/2023 Affidavit of Service
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[14] Affidavit of Service - HD Nursing, LLC

09/28/2023 Affidavit of Service
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[15] Affidavit of Service - Health Sense AI, Inc.

10/05/2023 Clerk's Notice of Nonconforming Document and Curative Action
[16] Clerk's Notice of Nonconforming and Curative Action

10/10/2023 Affidavit of Service
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[17] Affidavit of Service - Erin Bush

10/12/2023 Motion to Dismiss
Filed By: Defendant Long, Carolyn
[18] Defendant Carolyn Long's Motion to Dismiss Plaintiffs' Complaint

10/12/2023 Initial Appearance Fee Disclosure
Filed By: Defendant Hester, Amy; Defendant Belew, John; Defendant Long, Carolyn; Defendant Bush, Erin; Defendant HD Nursing LLC; Defendant Health Sense AI Inc
[19] Initial Appearance Fee Disclosure

10/12/2023 Motion to Dismiss
Filed By: Defendant Belew, John
[20] Defendant John Belew's Motion to Dismiss Plaintiffs' Complaint

10/12/2023 Clerk's Notice of Hearing
[21] Notice of Hearing

10/12/2023 Clerk's Notice of Hearing
[22] Notice of Hearing

10/16/2023 Motion to Dismiss
Filed By: Defendant Hester, Amy
[23] Defendant HD Nursing, LLC's Motion to Dismiss Plaintiffs' Complaint

10/16/2023 Disclosure Statement
Party: Defendant HD Nursing LLC
[24] DEFENDANT HD NURSING, LLCS NRCP 7.1 DISCLOSURE STATEMENT

10/16/2023 Motion to Dismiss
Filed By: Defendant Hester, Amy
[25] Defendant Amy Hester's Motion to Dismiss Plaintiffs' Complaint

10/17/2023 Clerk's Notice of Hearing
[26] Notice of Hearing

10/17/2023 Disclosure Statement
Party: Defendant Health Sense AI Inc
[27] DEFENDANT HEALTH SENSE AI, INC.S NRCP 7.1 DISCLOSURE STATEMENT

10/17/2023 Motion To Dismiss - Alternative Motion For Summary Judgment
Filed By: Defendant Health Sense AI Inc
[28] Defendant Health Sense AI, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in Alternative Motion for Summary Judgment

10/18/2023 Clerk's Notice of Hearing
[29] Notice of Hearing

10/23/2023 Motion to Dismiss
Filed By: Defendant Bush, Erin
[30] Defendant Erin Bush's Motion to Dismiss Plaintiffs' Complaint

10/24/2023 Clerk's Notice of Hearing
[31] Notice of Hearing

10/31/2023 Opposition to Motion to Dismiss
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi
[32] Opposition To Defendant Health Sense Ai, Inc.s Motion To Dismiss Plaintiffs Complaint Or In The Alternative, Motion For Summary Judgment

11/01/2023 Notice of Non Opposition
Filed By: Defendant Belew, John
[33] Notice of Non Opposition to Defendant John Belews Motion to Dismiss Plaintiffs Complaint

11/01/2023 Notice of Non Opposition
Filed By: Defendant Long, Carolyn
[34] Notice of Non Opposition to Defendant Carolyn Longs Motion to Dismiss Plaintiffs Complaint

11/01/2023 Notice of Non Opposition
Filed By: Defendant Hester, Amy
[35] Notice of Non Opposition to Defendant Amy Heste'rs Motion to Dismiss Plaintiffs Complaint

11/01/2023 Notice of Non Opposition
Filed By: Defendant HD Nursing LLC
[36] Notice of Non Opposition to Defendant HD Nursing, LLC's Motion to Dismiss Plaintiffs Complaint

11/06/2023 Notice of Association of Counsel
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[37] Notice of Association of Counsel

11/06/2023	Opposition to Motion Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust *[38] Opposition to Defendants' Motions to Dismiss*
11/07/2023	Order Shortening Time *[39] Plaintiff's Motion to Extend Briefing Deadlines and Continue Hearings on Order Shortening Time*
11/07/2023	Order Shortening Time *[40] Plaintiffs' Counsel's Motion to Withdraw as Counsel for Plaintiffs on Order Shortening Time*
11/07/2023	Notice of Entry of Order Filed By: Plaintiff Barkouras, Kent *[41] Notice of Entry of Order Shortening Time on Plaintiffs' Counsel's Motion to Withdraw as Counsel for Plaintiffs*
11/07/2023	Notice of Entry of Order Filed By: Plaintiff Barkouras, Kent *[42] Notice of Entry of Order Shortening Time on Plaintiffs' Counsel's Motion to Withdraw as Counsel for Plaintiffs*
11/07/2023	Notice of Entry of Order Filed By: Plaintiff Barkouras, Kent *[43] Notice of Entry of Order Shortening Time on Plaintiffs' Motion to Extend Briefing and Continue Hearings*
11/07/2023	Substitution of Attorney Filed by: Plaintiff Barkouras, Kent *[44] Substitution of Counsel*
11/07/2023	Receipt of Copy Filed by: Plaintiff Barkouras, Kent *[45] Receipt of Copy of Plaintiffs' Counsel's Motion to Withdraw as Counsel for Plaintiffs on OST*
11/07/2023	Receipt of Copy Filed by: Plaintiff Barkouras, Kent *[46] Receipt of Copy of Plaintiffs' Motion to Extend Briefing and Continue Hearing on OST*
11/14/2023	Stipulation and Order *[47] Stipulation And Order To Continue And Consolidate Hearings And Briefing Deadlines*
11/17/2023	Notice of Entry of Order Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi *[48] Notice of Entry of Order*
11/21/2023	Supplemental Brief Filed By: Plaintiff Barkouras, Kent *[49] Plaintiffs' Supplemental Brief in Support of Plaintiffs' Opposition to Jurisdictional Defendants' Motion to Dismiss*
12/05/2023	Reply to Opposition

Filed by: Defendant Health Sense AI Inc
[50] Reply to Plaintiffs' Opposition to Defendant Health Sense AI, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in the Alternative, Motion for Summary Judgment

12/05/2023 Reply to Opposition
Filed by: Defendant Hester, Amy; Defendant Belew, John; Defendant Long, Carolyn; Defendant Bush, Erin; Defendant HD Nursing LLC
[51] Reply to Plaintiffs' Opposition to Defendants Hester, Belew, Long, Bush, and HD Nursing, LLC's Motions to Dismiss Plaintiffs' Complaint

12/19/2023 Court Recorders Invoice for Transcript
[52]

01/05/2024 Recorders Transcript of Hearing
[53] Transcript of Proceedings: All Pending Motions -- 12-19-23

01/05/2024 Stipulation and Order
[54] Stipulation and Order to Allow Additional Time to Submit Proposed Findings of Fact, Conclusions of Law, and Orders Related to the December 19, 2023, Hearing

01/09/2024 Notice of Entry of Order
Filed By: Defendant Hester, Amy; Defendant Belew, John; Defendant Long, Carolyn; Defendant Bush, Erin; Defendant HD Nursing LLC; Defendant Health Sense AI Inc
[55] Notice of Entry of Order

01/18/2024 Order
[56] Order MTD MSJ HSAi

01/18/2024 Findings of Fact, Conclusions of Law and Judgment
[57] Findings of Fact, Conclusions of Law, and Order Regarding Defendants Amy Hester, John Belew, Carolyn Long, Erin Bush, and HD Nursing, LLC.'s Motion to Dismiss Plaintiffs' Complaint

01/29/2024 Notice of Entry of Order
Filed By: Defendant Hester, Amy; Defendant HD Nursing LLC
[58] Notice of Entry of Order and Judgment

01/29/2024 Notice of Entry of Order
Filed By: Defendant Health Sense AI Inc
[59] Notice of Entry of Order and Judgment

02/15/2024 Notice of Appeal
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[60] Plaintiffs' Notice of Appeal

02/15/2024 Case Appeal Statement
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust
[61] Plaintiffs' Case Appeal Statement

02/16/2024 Notice of Filing Cost Bond
Filed By: Plaintiff Barkouras, Kent; Plaintiff Barkouras, Brandi; Plaintiff Trustees of the Barkouras Family Revocable Trust

[62] Notice of Posting Bond for Costs on Appeal

DISPOSITIONS

01/18/2024 **Judgment** (Judicial Officer: Kishner, Joanna S.)
Debtors: Kent Barkouras (Plaintiff), Brandi Barkouras (Plaintiff), Trustees of the Barkouras Family Revocable Trust (Plaintiff)
Creditors: John Belew (Defendant), Carolyn Long (Defendant), Erin Bush (Defendant), Health Sense AI Inc (Defendant)
Judgment: 01/18/2024, Docketed: 01/19/2024

HEARINGS

12/12/2023 *CANCELED* **Motion** (8:30 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - Moot
PLAINTIFFS MOTION TO EXTEND BRIEFING AND CONTINUE HEARINGS ON ORDER SHORTENING TIME
11/14/2023 Continued to 12/12/2023 - Stipulation and Order - Barkouras, Kent; Hester, Amy; Belew, John; Barkouras, Brandi; Trustees of the Barkouras Family Revocable Trust; Long, Carolyn; Bush, Erin; HD Nursing LLC; Health Sense AI Inc

12/12/2023 *CANCELED* **Motion to Withdraw as Counsel** (8:30 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - Moot
PLAINTIFFS COUNSEL S MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFFS ON ORDER SHORTENING TIME
11/14/2023 Continued to 12/12/2023 - Stipulation and Order - Barkouras, Kent; Hester, Amy; Belew, John; Barkouras, Brandi; Trustees of the Barkouras Family Revocable Trust; Long, Carolyn; Bush, Erin; HD Nursing LLC; Health Sense AI Inc

12/19/2023 **Motion to Dismiss** (8:30 AM) (Judicial Officer: Kishner, Joanna S.)
Events: 10/12/2023 Motion to Dismiss
Defendant Carolyn Long's Motion to Dismiss Plaintiffs' Complaint
11/14/2023 Continued to 12/12/2023 - Stipulation and Order - Barkouras, Kent; Hester, Amy; Belew, John; Barkouras, Brandi; Trustees of the Barkouras Family Revocable Trust; Long, Carolyn; Bush, Erin; HD Nursing LLC; Health Sense AI Inc

12/19/2023 **Motion to Dismiss** (8:30 AM) (Judicial Officer: Kishner, Joanna S.)
Events: 10/12/2023 Motion to Dismiss
Defendant John Belew's Motion to Dismiss Plaintiffs' Complaint
11/14/2023 Continued to 12/12/2023 - Stipulation and Order - Barkouras, Kent; Hester, Amy; Belew, John; Barkouras, Brandi; Trustees of the Barkouras Family Revocable Trust; Long, Carolyn; Bush, Erin; HD Nursing LLC; Health Sense AI Inc

12/19/2023 **Motion to Dismiss** (8:30 AM) (Judicial Officer: Kishner, Joanna S.)
Defendant HD Nursing, LLC's Motion to Dismiss Plaintiffs' Complaint
11/14/2023 Continued to 12/12/2023 - Stipulation and Order - Barkouras, Kent; Hester, Amy; Belew, John; Barkouras, Brandi; Trustees of the Barkouras Family Revocable Trust; Long, Carolyn; Bush, Erin; HD Nursing LLC; Health Sense AI Inc

12/19/2023 **Motion to Dismiss** (8:30 AM) (Judicial Officer: Kishner, Joanna S.)
Defendant Amy Hester's Motion to Dismiss Plaintiffs' Complaint
11/14/2023 Continued to 12/12/2023 - Stipulation and Order - Barkouras, Kent; Hester, Amy; Belew, John; Barkouras, Brandi; Trustees of the Barkouras Family Revocable Trust; Long, Carolyn; Bush, Erin; HD Nursing LLC; Health Sense AI Inc

12/19/2023 **Motion to Dismiss** (8:30 AM) (Judicial Officer: Kishner, Joanna S.)
Events: 10/17/2023 Motion To Dismiss - Alternative Motion For Summary Judgment

Defendant Health Sense AI, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in Alternative

Motion for Summary Judgment
11/21/2023 *Continued to 12/12/2023 - Stipulation and Order - Barkouras, Kent; Hester, Amy; Belew, John; Barkouras, Brandi; Trustees of the Barkouras Family Revocable Trust; Long, Carolyn; Bush, Erin; HD Nursing LLC; Health Sense AI Inc*

12/19/2023 **Motion to Dismiss** (8:30 AM) (Judicial Officer: Kishner, Joanna S.)
Defendant Erin Bush's Motion to Dismiss Plaintiffs' Complaint
11/28/2023 *Continued to 12/12/2023 - Stipulation and Order - Barkouras, Kent; Hester, Amy; Belew, John; Barkouras, Brandi; Trustees of the Barkouras Family Revocable Trust; Long, Carolyn; Bush, Erin; HD Nursing LLC; Health Sense AI Inc*

12/19/2023 **All Pending Motions** (8:30 AM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;
Journal Entry Details:
DEFENDANT ERIN BUSH'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT... DEFENDANT HEALTH SENSE AT, INC'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT OR IN ALTERNATIVE MOTION FOR SUMMARY JUDGMENT... DEFENDANT AMY HESTER'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT... DEFENDANT HD NURSING, LLC'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT... DEFENDANT JOHN BELEW'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT... DEFENDANT CAROLYN LONG'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT Mr. O'Reilly provide a brief background history and argued Plaintiff had been forum shopping, there was a case pending in Arkansas and Arkansas had jurisdiction over the matter. Ms. Jefcik argued Defendants were not subject to general or special jurisdiction in Nevada, the Complaints should be dismissed for forum non-conveniens and residency was not the test for specific jurisdiction. Ms. Jefcik addressed the May 8, 2023 board meeting which took place in Nevada. Mr. Holmes argued Nevada had jurisdiction over the Defendants, HD Nursing conducted substantial business in Nevada and the conduct at issue occurred in Nevada. Colloquy regarding related case litigated in Arkansas. Court stated its Findings, referenced Placer Dome and ORDERED the following: Defendant Carolyn Long's Motion to Dismiss Plaintiffs' Complaint GRANTED on personal jurisdiction and forum non conveniens. Defendant John Belew's Motion to Dismiss Plaintiffs' Complaint GRANTED on personal jurisdiction and forum non conveniens. Defendant Erin Bush's Motion to Dismiss Plaintiffs' Complaint GRANTED on personal jurisdiction and forum non conveniens. Defendant Amy Hester Motion to Dismiss Plaintiffs' Complaint GRANTED on forum non conveniens and DENIED WITHOUT PREJUDICE on personal jurisdiction. Defendant HD Nursing, LLC's Motion to Dismiss Plaintiffs' Complaint GRANTED on forum non conveniens and DENIED WITHOUT PREJUDICE on personal jurisdiction. Mr. O'Reilly argued Plaintiff failed to submit an affidavit to support Rule 56, there were no facts in dispute and summary judgment should be entered as to Health Sense AI, Inc. Mr. Holmes argued the motion for summary judgment was premature and discovery needed to be conducted. Mr. Holmes requested leave to amend to include additional information. Following arguments by Counsel, Court stated its Findings and ORDERED Defendant Health Sense AI, Inc's Motion to Dismiss Plaintiffs' Complaint or in the Alternative Motion for Summary Judgment DENIED WITHOUT PREJUDICE as to the Motion to Dismiss and GRANTED as to alternative relief for Summary Judgment; noting standards of Rule 56 have been met by the moveant. Court NOTED there was no basis for Plaintiff's request for leave to amend considering Plaintiff did not meet the procedural requirements and it was MOOT. COURT DIRECTED Defense to prepare the Order with detailed Findings of Fact and Conclusions of Law, circulate to opposing counsel, and submit to the Court pursuant to EDCR 7.21 and the current Administrative Orders. ;

DATE **FINANCIAL INFORMATION**

Defendant Health Sense AI Inc

Total Charges	200.00
Total Payments and Credits	200.00
Balance Due as of 2/20/2024	**0.00**

Defendant Hester, Amy

Total Charges	1,718.00
Total Payments and Credits	1,718.00
Balance Due as of 2/20/2024	**0.00**

Plaintiff Barkouras, Kent

Total Charges	1,614.00
Total Payments and Credits	1,614.00
Balance Due as of 2/20/2024	**0.00**

Plaintiff Barkouras, Brandi

Appeal Bond Balance as of 2/20/2024	**500.00**

BUSINESS COURT CIVIL COVER SHEET

Clark County, Nevada

Case No. A-23-878023-B
(Assigned by Clerk's Office)

Electronically Filed
9/19/2023 2:30 PM
Steven D. Grierson
CLERK OF THE COURT

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY	AMY HESTER; JOHN BELEW; CAROLYN LONG;
AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE	ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.
TRUST,	
Attorney (name/address/phone):	**Attorney (name/address/phone):**
Michael M. Edwards, Esq.	
Freeman Mathis & Gary LLP	
770 E. Warm Springs Rd. Suite 360	
Las Vegas, NV 89179	

II. Nature of Controversy *(Please check the applicable boxes for both the civil case type and business court case type)*

☐ Arbitration Requested

Civil Case Filing Types

Real Property

Landlord/Tenant
- ☐ Unlawful Detainer
- ☐ Other Landlord/Tenant

Title to Property
- ☐ Judicial Foreclosure
- ☐ Other Title to Property

Other Real Property
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property

Construction Defect & Contract

Construction Defect
- ☐ Chapter 40
- ☐ Other Construction Defect

Contract Case
- ☐ Uniform Commercial Code
- ☐ Building and Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Collection of Accounts
- ☐ Employment Contract
- ☐ Other Contract

Torts

Negligence
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

Malpractice
- ☐ Medical/Dental
- ☐ Legal
- ☐ Accounting
- ☐ Other Malpractice

Other Torts
- ☐ Product Liability
- ☐ Intentional Misconduct
- ☒ Employment Tort
- ☐ Insurance Tort
- ☐ Other Tort

Civil Writs
- ☐ Writ of Habeas Corpus
- ☐ Writ of Mandamus
- ☐ Writ of Quo Warrant
- ☐ Writ of Prohibition
- ☐ Other Civil Writ

Judicial Review/Appeal/Other Civil Filing

Judicial Review
- ☐ Foreclosure Mediation Case

Appeal Other
- ☐ Appeal from Lower Court

Other Civil Filing
- ☐ Foreign Judgment
- ☐ Other Civil Matters

Business Court Filing Types

CLARK COUNTY BUSINESS COURT
- ☐ NRS Chapters 78-89
- ☐ Commodities (NRS 91)
- ☐ Securities (NRS 90)
- ☐ Mergers (NRS 92A)
- ☐ Uniform Commercial Code (NRS 104)
- ☐ Purchase/Sale of Stock, Assets, or Real Estate
- ☐ Trademark or Trade Name (NRS 600)
- ☐ Enhanced Case Management
- ☒ Other Business Court Matters

WASHOE COUNTY BUSINESS COURT
- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 91)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art.8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademark/Trade Name (NRS 600)
- ☐ Trade Secrets (NRS 600A)
- ☐ Enhanced Case Management
- ☐ Other Business Court Matters

09/19/2023
Date

/s/Michael M. Edwards
Signature of initiating party or representative

Electronically Filed
01/18/2024 4:10 PM
CLERK OF THE COURT

FFCO
John F. O'Reilly, Esq.
Nevada Bar No. 1761
Timothy R. O'Reilly, Esq.
Nevada Bar No. 8866
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Attorneys for Defendants
Amy Hester; John Belew; Carolyn Long;
Erin Bush; HD Nursing, LLC; and
Health Sense Ai, Inc.

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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, vs. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.; and DOES I through X, and DOE Corporations XI through XX, Defendants.	CASE NO.: A-23-878023-B DEPT. NO.: XXXI **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANT HEALTH SENSE AI, INC.'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

This matter came for a hearing before the Court on December 19, 2023 at 8:30 a.m. on Defendant Health Sense Ai, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in the alternative Motion for Summary Judgment.

Having reviewed the parties' moving papers, briefs, and all pleadings and papers on file, and after having considered the arguments and representations of counsel at the hearing on December 19, 2023, the Court, hereby makes the following Findings of Fact and Conclusions of Law set forth herein..

To the extent any Finding of Fact should be properly designated a Conclusion of Law, it shall be deemed a Conclusion of Law. To the extent any Conclusion of Law should be properly designated a Finding of Fact, it shall be deemed a Finding of Fact.

FINDINGS OF FACT

1. Plaintiffs filed their Complaint on September 19, 2023.

2. Plaintiffs' Complaint alleges claims for civil conspiracy, breach of contract, breach of implied covenant of good faith and fair dealing, invasion of privacy, wrongful termination/breach of contract, intentional infliction of emotional distress, inspection and accounting, declaratory relief, preliminary and injunctive relief, and appointment of a receiver against Defendant Health Sense Ai, Inc.

3. On October 17, 2023, Defendant Health Sense Ai, Inc. filed a Motion to Dismiss Plaintiffs' Complaint or in the alternative Motion for Summary Judgment. Defendant attached to the Motion a Declaration of Amy Hester, the Corporate Bylaws of Health Sense Ai, Inc., an Organization Chart of HD Nursing, LLC, an Organization Chart of Health Sense Ai, Inc., an email dated May 9, 2023 from Amy Hester to John Belew and Kent Barkouras, an email dated May 11, 2023 from Kent Barkouras to Amy Hester, John Belew, and Carolyn Long, and Amy Hester's Curriculum Vitae.

4. On October 31, 2023, Plaintiffs filed an Opposition to Defendant Health Sense Ai, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in the alternative, Motion for Summary Judgment.

5. On November 14, 2023, the Court entered a Stipulation and Order to Continue and Consolidate Hearing and Briefing Deadlines. The Stipulation and Order provided that "Plaintiffs shall have until November 21, 2023 to file a Supplemental Brief in Support of Plaintiffs' Opposition to Defendants Amy Hester, John Belew, Carolyn Long, HD Nursing, LLC and Erin Bush's Motions to Dismiss Plaintiffs' Complaint." There was no stipulation by the Parties, or request by Plaintiffs' counsel, to supplement the Opposition to the instant Motion to Dismiss or in the Alternative Motion for Summary Judgment, which was also confirmed by counsel during oral argument.

6. Defendant Health Sense Ai, Inc. then filed its Reply to Plaintiffs' Opposition on December 5, 2023.

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7. Discovery in the case has not opened, an NRCP 16.1 conference has not been held, the parties have not provided initial disclosures, and no scheduling order has been entered in the case.

8. Plaintiffs' Complaint sufficiently pled factual allegations to survive a Motion to Dismiss under *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

9. Defendant's alternative Motion for summary judgment was submitted before the opening and close of discovery and is appropriate with regard to its timing under NRCP 56(b).

10. The uncontroverted Declaration of Dr. Amy Hester in Support of Defendant Health Sense Ai, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in the alternative Motion for Summary Judgment does fully support the underlying relief requested consistent with Rule 56(c)(1)(A) of the Nevada Rules of Civil Procedure and all factual assertions set forth therein are adopted by this Court as Findings of Fact in their entirety.

11. The Declaration of Dr. Amy Hester does properly reference and authenticate the documents attached as exhibits thereto, which are determined factually accurate uncontroverted evidence in this matter.

12. Defendant has satisfied the procedural, evidentiary, and other applicable standards for a proper request for summary judgment under NRCP 56.

13. There is no declaration or affidavit supporting Plaintiffs' Opposition to Defendant's Motion for Summary Judgment as required under Rule 56(c)(4).

14. There is reference to summary judgment in the footnotes of the Plaintiffs' Opposition. Plaintiffs' failure to include an affidavit or declaration as required under Rule 56(c)(4) is not due to inadvertence to just oppose one part of Defendant's Motion (the Motion to Dismiss), without seeing the second part (the Motion for Summary Judgment), because Plaintiffs acknowledge Defendant's alternative request for summary judgment in the footnotes. Plaintiffs= knew the full requirement of what they had to present as evidence in opposition. There is no evidence in opposition.

15. There is reference to Plaintiffs' request for discovery in the footnotes of their Opposition.

16. However, there is no affidavit or declaration in support of Plaintiffs' request as required under NRCP 56(d) or NRCP 56(e).

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CONCLUSIONS OF LAW

Motion to Dismiss

1. A "complaint should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

2. The Court must "regard all factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party." *Stockmeier v. Nevada Dep't of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008).

3. The Court has found Plaintiffs' Complaint sufficiently pled factual allegations to support their claims upon which relief can be granted; thus, the Court **CONCLUDES** the Complaint should survive a motion to dismiss for failure to state a claim upon which relief can be granted.

Motion for Summary Judgment

4. "A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion." NRCP 56(a)."Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." NRCP 56(b).

5. "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." NRCP 56(c)(1)."An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." NRCP 56(c)(4).

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6. When opposing a summary judgment motion, a non-moving party cannot build a case on the "gossamer threads of whimsy, speculation, and conjecture." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). "While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the moving party's favor." *Id*., 121 Nev. at 732, 121 P.3d at 1031. "The nonmoving party 'must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.' " *Id*.

7. The Court **CONCLUDES AS A MATTER OF LAW** that it is required to grant summary judgment to Defendant Health Sense Ai, Inc. for the following reasons:

8. Defendant Health Sense Ai., Inc.'s Motion for Summary Judgment is timely and appropriate under NRCP 56(b).

9. Defendant Health Sense Ai, Inc. has met its evidentiary burden under NRCP 56(a). As Plaintiffs have failed after numerous opportunities to substantively oppose or present any evidence to show disputed issues of material fact, by affidavit or otherwise, Defendant Health Sense Ai, Inc. is entitled to judgment as a matter of law.

10. Plaintiffs argue that the Court can and should consider the material in the record submitted as part of their Opposition to the Motion to Dismiss for Personal Jurisdiction related to other parties in this litigation. The Court declines to do so for the reasons set forth herein.

NRCP 56 Request for Discovery

11. "If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." NRCP 56(d).

12. "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact.; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials—including the facts considered

undisputed—show that the movant is entitled to it; or (4) issue any other appropriate order." NRCP 56(e).

13. The Court further **CONCLUDES AS A MATTER OF LAW** Plaintiffs have failed to make a proper request under NRCP 56(d) or NRCP 56(e) for a continuance and discovery as there is no affidavit or declaration in support of Plaintiffs' request.

Leave to Amend

14. The Court **CONCLUDES AS A MATTER OF LAW** there was no basis for Plaintiffs' request for leave to amend considering Plaintiffs did not meet the procedural requirements in opposing the Motion for Summary Judgment, and, therefore, request for leave to amend is MOOT.

ORDER

IT IS HEREBY ORDERED, Defendant Health Sense Ai, Inc.'s Motion to Dismiss is DENIED WITHOUT PREJUDICE.

IT IS HEREBY FURTHER ORDERED, Defendant Health Sense Ai, Inc.'s alternative Motion for Summary Judgment is GRANTED in its entirety as to Plaintiffs' claims asserted against Defendant Health Sense Ai., Inc. and accordingly JUDGMENT is hereby entered in favor of Health Sense Ai, Inc. and against each of the Plaintiffs..

IT IS SO ORDERED.

Dated this 18th day of January, 2024

Joanna S Kishner

F30 E5B D916 7B43
Joanna S. Kishner
District Court Judge

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Respectfully submitted by:

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From: Dustun Holmes
To: Tracie M. Jefcik
Cc: John F. O"Reilly; Timothy R. O"Reilly; Isela Arauz; Ashley Gonzales; Jodi Farr
Subject: RE: HD Nursing adv. Barkouras
Date: Thursday, January 11, 2024 11:29:08 AM
Attachments: image004.png
image005.png
image006.png
image007.png

Thanks, Tracie. Please change “Approved as to form and content” to “Approved as to form:” before our signature block and you may submit with my e-signature.

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Subject: RE: HD Nursing adv. Barkouras

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Dustun,

We have received and reviewed your proposed redlines. Some are acceptable but some are not. We have attached your redline with those that are acceptable and plan to submit the same to the Court later today with a note advising the Court we understand you will be submitting competing drafts unless you advise by reply email that you are willing to accept our attached drafts.
We do not see a call as necessary or helpful but could set up a call to also include the other OLG attorneys involved in our Clients’ decisions if we can coordinate everyone’s schedules for a call.
Please follow up with John or Tim O’Reilly going forward since they will be handling this matter.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Kent Barkouras, Plaintiff(s)	CASE NO: A-23-878023-B
vs.	DEPT. NO. Department 31
Amy Hester, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, vs. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.; and DOES I through X, and DOE Corporations XI through XX, Defendants.	CASE NO.: A-23-878023-B DEPT. NO.: XXXI **NOTICE OF ENTRY OF ORDER AND JUDGMENT**

PLEASE TAKE NOTICE that a FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANT HEALTH SENSE AI, INC.'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT which includes a JUDGMENT was entered with the Court in the above-captioned matter on the 18th day of January,

/ / /

/ / /

/ / /

Case Number: A-23-878023-B

2024, a copy of which is attached hereto.

Dated: January 29, 2024

O'REILLY LAW GROUP

By: */s/ Timothy R. O'Reilly*
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Attorneys for Defendants
Amy Hester; John Belew; Carolyn Long;
Erin Bush; HD Nursing, LLC; and
Health Sense Ai, Inc.

CERTIFICATE OF SERVICE

I certify that on this 29th day of January, 2024, I served a copy of the above document - ***NOTICE OF ENTRY OF ORDER AND JUDGMENT*** - on all electronic service list recipients who are registered with the court's electronic case management and filing system in this action.

/s/ Ashley Gonzales
Employee of O'REILLY LAW GROUP

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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, vs. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.; and DOES I through X, and DOE Corporations XI through XX, Defendants.	CASE NO.: A-23-878023-B DEPT. NO.: XXXI **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANT HEALTH SENSE AI, INC.'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

This matter came for a hearing before the Court on December 19, 2023 at 8:30 a.m. on Defendant Health Sense Ai, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in the alternative Motion for Summary Judgment.

Having reviewed the parties' moving papers, briefs, and all pleadings and papers on file, and after having considered the arguments and representations of counsel at the hearing on December 19, 2023, the Court, hereby makes the following Findings of Fact and Conclusions of Law set forth herein..

To the extent any Finding of Fact should be properly designated a Conclusion of Law, it shall be deemed a Conclusion of Law. To the extent any Conclusion of Law should be properly designated a Finding of Fact, it shall be deemed a Finding of Fact.

FINDINGS OF FACT

1. Plaintiffs filed their Complaint on September 19, 2023.

2. Plaintiffs' Complaint alleges claims for civil conspiracy, breach of contract, breach of implied covenant of good faith and fair dealing, invasion of privacy, wrongful termination/breach of contract, intentional infliction of emotional distress, inspection and accounting, declaratory relief, preliminary and injunctive relief, and appointment of a receiver against Defendant Health Sense Ai, Inc.

3. On October 17, 2023, Defendant Health Sense Ai, Inc. filed a Motion to Dismiss Plaintiffs' Complaint or in the alternative Motion for Summary Judgment. Defendant attached to the Motion a Declaration of Amy Hester, the Corporate Bylaws of Health Sense Ai, Inc., an Organization Chart of HD Nursing, LLC, an Organization Chart of Health Sense Ai, Inc., an email dated May 9, 2023 from Amy Hester to John Belew and Kent Barkouras, an email dated May 11, 2023 from Kent Barkouras to Amy Hester, John Belew, and Carolyn Long, and Amy Hester's Curriculum Vitae.

4. On October 31, 2023, Plaintiffs filed an Opposition to Defendant Health Sense Ai, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in the alternative, Motion for Summary Judgment.

5. On November 14, 2023, the Court entered a Stipulation and Order to Continue and Consolidate Hearing and Briefing Deadlines. The Stipulation and Order provided that "Plaintiffs shall have until November 21, 2023 to file a Supplemental Brief in Support of Plaintiffs' Opposition to Defendants Amy Hester, John Belew, Carolyn Long, HD Nursing, LLC and Erin Bush's Motions to Dismiss Plaintiffs' Complaint." There was no stipulation by the Parties, or request by Plaintiffs' counsel, to supplement the Opposition to the instant Motion to Dismiss or in the Alternative Motion for Summary Judgment, which was also confirmed by counsel during oral argument.

6. Defendant Health Sense Ai, Inc. then filed its Reply to Plaintiffs' Opposition on December 5, 2023.

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7. Discovery in the case has not opened, an NRCP 16.1 conference has not been held, the parties have not provided initial disclosures, and no scheduling order has been entered in the case.

8. Plaintiffs' Complaint sufficiently pled factual allegations to survive a Motion to Dismiss under *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

9. Defendant's alternative Motion for summary judgment was submitted before the opening and close of discovery and is appropriate with regard to its timing under NRCP 56(b).

10. The uncontroverted Declaration of Dr. Amy Hester in Support of Defendant Health Sense Ai, Inc.'s Motion to Dismiss Plaintiffs' Complaint or in the alternative Motion for Summary Judgment does fully support the underlying relief requested consistent with Rule 56(c)(1)(A) of the Nevada Rules of Civil Procedure and all factual assertions set forth therein are adopted by this Court as Findings of Fact in their entirety.

11. The Declaration of Dr. Amy Hester does properly reference and authenticate the documents attached as exhibits thereto, which are determined factually accurate uncontroverted evidence in this matter.

12. Defendant has satisfied the procedural, evidentiary, and other applicable standards for a proper request for summary judgment under NRCP 56.

13. There is no declaration or affidavit supporting Plaintiffs' Opposition to Defendant's Motion for Summary Judgment as required under Rule 56(c)(4).

14. There is reference to summary judgment in the footnotes of the Plaintiffs' Opposition. Plaintiffs' failure to include an affidavit or declaration as required under Rule 56(c)(4) is not due to inadvertence to just oppose one part of Defendant's Motion (the Motion to Dismiss), without seeing the second part (the Motion for Summary Judgment), because Plaintiffs acknowledge Defendant's alternative request for summary judgment in the footnotes. Plaintiffs= knew the full requirement of what they had to present as evidence in opposition. There is no evidence in opposition.

15. There is reference to Plaintiffs' request for discovery in the footnotes of their Opposition.

16. However, there is no affidavit or declaration in support of Plaintiffs' request as required under NRCP 56(d) or NRCP 56(e).

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CONCLUSIONS OF LAW

Motion to Dismiss

1. A "complaint should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

2. The Court must "regard all factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party." *Stockmeier v. Nevada Dep't of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008).

3. The Court has found Plaintiffs' Complaint sufficiently pled factual allegations to support their claims upon which relief can be granted; thus, the Court **CONCLUDES** the Complaint should survive a motion to dismiss for failure to state a claim upon which relief can be granted.

Motion for Summary Judgment

4. "A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion." NRCP 56(a)."Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." NRCP 56(b).

5. "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." NRCP 56(c)(1)."An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." NRCP 56(c)(4).

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6. When opposing a summary judgment motion, a non-moving party cannot build a case on the "gossamer threads of whimsy, speculation, and conjecture." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). "While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the moving party's favor." *Id*., 121 Nev. at 732, 121 P.3d at 1031. "The nonmoving party 'must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.' " *Id*.

7. The Court **CONCLUDES AS A MATTER OF LAW** that it is required to grant summary judgment to Defendant Health Sense Ai, Inc. for the following reasons:

8. Defendant Health Sense Ai., Inc.'s Motion for Summary Judgment is timely and appropriate under NRCP 56(b).

9. Defendant Health Sense Ai, Inc. has met its evidentiary burden under NRCP 56(a). As Plaintiffs have failed after numerous opportunities to substantively oppose or present any evidence to show disputed issues of material fact, by affidavit or otherwise, Defendant Health Sense Ai, Inc. is entitled to judgment as a matter of law.

10. Plaintiffs argue that the Court can and should consider the material in the record submitted as part of their Opposition to the Motion to Dismiss for Personal Jurisdiction related to other parties in this litigation. The Court declines to do so for the reasons set forth herein.

NRCP 56 Request for Discovery

11. "If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." NRCP 56(d).

12. "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact.; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials—including the facts considered

undisputed—show that the movant is entitled to it; or (4) issue any other appropriate order." NRCP 56(e).

13. The Court further **CONCLUDES AS A MATTER OF LAW** Plaintiffs have failed to make a proper request under NRCP 56(d) or NRCP 56(e) for a continuance and discovery as there is no affidavit or declaration in support of Plaintiffs' request.

Leave to Amend

14. The Court **CONCLUDES AS A MATTER OF LAW** there was no basis for Plaintiffs' request for leave to amend considering Plaintiffs did not meet the procedural requirements in opposing the Motion for Summary Judgment, and, therefore, request for leave to amend is MOOT.

ORDER

IT IS HEREBY ORDERED, Defendant Health Sense Ai, Inc.'s Motion to Dismiss is DENIED WITHOUT PREJUDICE.

IT IS HEREBY FURTHER ORDERED, Defendant Health Sense Ai, Inc.'s alternative Motion for Summary Judgment is GRANTED in its entirety as to Plaintiffs' claims asserted against Defendant Health Sense Ai., Inc. and accordingly JUDGMENT is hereby entered in favor of Health Sense Ai, Inc. and against each of the Plaintiffs..

IT IS SO ORDERED.

Dated this 18th day of January, 2024

Joanna S Kishner

F30 E5B D916 7B43
Joanna S. Kishner
District Court Judge

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Attorneys for Defendants
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Erin Bush; HD Nursing, LLC; and
Health Sense Ai, Inc.

Approved as to form:

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To: Dustun Holmes <dhh@mcmenemyholmes.com>
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We do not see a call as necessary or helpful but could set up a call to also include the other OLG attorneys involved in our Clients’ decisions if we can coordinate everyone’s schedules for a call.
Please follow up with John or Tim O’Reilly going forward since they will be handling this matter.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Kent Barkouras, Plaintiff(s)	CASE NO: A-23-878023-B
vs.	DEPT. NO. Department 31
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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, vs. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.; and DOES I through X, and DOE Corporations XI through XX, Defendants.	CASE NO.: A-23-878023-B DEPT. NO.: XXXI **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANTS AMY HESTER, JOHN BELEW, CAROLYN LONG, ERIN BUSH, AND HD NURSING, LLC'S MOTIONS TO DISMISS PLAINTIFFS' COMPLAINT**

This matter came for a hearing before the Court on December 19, 2023 at 8:30 a.m. on Defendants John Belew, Carolyn Long, Amy Hester, Erin Bush, and HD Nursing, LLC's Motions to Dismiss Plaintiffs' Complaint.

Having reviewed the parties' moving papers, briefs, and all pleadings and papers on file, and after having considered the arguments and representations of counsel at the hearing on December 19, 2023, the Court, hereby makes the following Findings of Fact and Conclusions of Law set forth herein.

To the extent any Finding of Fact should be properly designated a Conclusion of Law, it shall be deemed a Conclusion of Law. To the extent any Conclusion of Law should be properly designated a Finding of Fact, it shall be deemed a Finding of Fact.

FINDINGS OF FACT

1. Plaintiffs filed their Complaint on September 19, 2023.

2. On October 12, 2023, Defendants John Belew and Carolyn Long filed their respective Motions to Dismiss Plaintiffs' Complaint.

3. On October 16, 2023, Defendants HD Nursing, LLC and Amy Hester filed their respective Motions to Dismiss Plaintiffs' Complaint.

4. On October 23, 2023, Defendant Erin Bush filed her Motion to Dismiss Plaintiffs' Complaint.

5. On November 1, 2023, Notices of Non Opposition to Defendants John Belew, Carolyn Long, HD Nursing, LLC, and Amy Hester's Motions to Dismiss were filed by Defendants.

6. On November 6, 2023, Plaintiffs filed an Opposition to Defendants' (Amy Hester, John Belew, Carolyn Long, Erin Bush, and HD Nursing, LLC) Motions to Dismiss.

7. Thereafter, by stipulation of the parties and Order of this Court entered November 14, 2023, Plaintiffs filed their Supplemental Brief in Support of Plaintiffs' Opposition to Jurisdictional Defendants' Motion to Dismiss on November 21, 2023.

8. Defendants (Amy Hester, John Belew, Carolyn Long, Erin Bush, and HD Nursing, LLC) then filed their Reply to Plaintiffs' Opposition on December 5, 2023.

9. Defendants John Belew and Carolyn Long are domiciled in the State of Arkansas and were both physically in attendance at a May 8, 2023 Board Meeting for HD Nursing, LLC and/or Health Sense Ai, Inc. held in Henderson, Nevada.

10. Defendant Erin Bush is domiciled in the State of Texas and that she also was physically in attendance at the May 8, 2023 Board Meeting.

11. Defendant Amy Hester is domiciled in the State of Arkansas and was also physically in attendance at the May 8, 2023 Board Meeting. HD Nursing, LLC is an Arkansas entity with its

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principal place of business in Arkansas and that HD Nursing, LLC held a Board Meeting in Henderson, Nevada on May 8, 2023.

12. Amy Hester has a one-bedroom apartment in Henderson, Nevada, which is also leased and/or paid for in part or in its entirety by Defendant HD Nursing, LLC.

13. The Court finds as a fact and takes into consideration by judicial notice (without objection by Plaintiffs, but for relevancy) an Order presented by Defendants in open Court, which Order was also referenced in the moving papers, from the Circuit Court of Saline County, Arkansas dated December 11, 2023 in an Arkansas case entitled *HD Nursing, LLC vs. Kent Barkouras and Brandi Barkouras*, Case No. 63CV-23-853-3. This Court acknowledges, although it takes no position, that the Arkansas Court has denied Plaintiffs Kent and Brandi Barkouras's motion to dismiss the Arkansas Court Action.

14. Plaintiffs claim to be Nevada residents and are owed great deference as to their choice of forum.

15. However, given that there is a pending case in the Circuit Court of Saline County, Arkansas, an alternative adequate forum exists. It has been specifically shown that there is already an action proceeding with HD Nursing, LLC and the two Plaintiffs in Arkansas.

16. The factors for forum non conveniens in this matter weigh heavily in favor of another forum, namely Arkansas, further analyzed in the Conclusions of Law herein under the factors set forth in *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 350 P.3d 392 (2015).

CONCLUSIONS OF LAW

General Personal Jurisdiction

1. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." *Bristol-Myers Squibb Co. v. Superior Court of Cali., San Francisco Cty.*, 582 U.S. 255, 262 (2017).

2. As Defendants John Belew, Carolyn Long, and Amy Hester are domiciled in the State of Arkansas, this Court **CONCLUDES** it does not have general personal jurisdiction over Defendants John Belew, Carolyn Long, or Amy Hester.

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3. As Defendant Erin Bush is domiciled in the State of Texas, the Court **CONCLUDES** it does not have general personal jurisdiction over Defendant Erin Bush.

4. As HD Nursing, LLC is an Arkansas entity with its principal place of business in Arkansas, this Court **CONCLUDES** it does not have general personal jurisdiction over Defendant HD Nursing, LLC.

Specific Personal Jurisdiction

5. However, Nevada recognizes specific personal jurisdiction is possible via its long-arm statute: "A court of this state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the Constitution of this state or the Constitution of the United States." NRS 14.065. The Nevada Supreme Court has previously held that whether specific personal jurisdiction exists requires an analysis of three (3) factors: (1) where the defendant purposefully avails himself of the forum state or purposefully directs activities with the forum, (2) where the cause of action arises from that purposeful contact with the forum or conduct targeting the forum, and (3) whether requiring defendant to appear in the action would be reasonable. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 122 Nev. 509, 513, 134 P.3d 710, 712–13 (2006)."[B]oth purposeful availment and purposeful direction ask whether defendants have voluntarily derived some benefit from their interstate activities such that they 'will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.' " *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985))."In order for a state court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum." *Bristol-Myers*, 582 U.S. at 262. A defendant's transitory presence in a state "will support jurisdiction only if it was meaningful enough to create a substantial connection with the forum state." *Picot v. Weston*, 780 F.3d 1206, 1213 (9th Cir. 2015).

6. The Court **CONCLUDES** there is no purposeful availment and no minimum contacts with regard to Defendants John Belew, Carolyn Long, and Erin Bush. Thus, the Court **CONCLUDES** AS A MATTER OF LAW Nevada does not have specific personal jurisdiction at this time over Defendants John Belew, Carolyn Long, and Erin Bush. The Court **CONCLUDES**

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there are too many issues at this juncture with regard to the apartment in Henderson, Nevada, rented in part by Defendant HD Nursing, LLC and Defendant Amy Hester and, therefore, whether the Court has specific personal jurisdiction over Defendant Amy Hester would require additional discovery. However, the Court does, **AS A MATTER OF LAW FIND THERE IS A BASIS TO GRANT** Defendant Amy Hester's Motion to Dismiss on the alternative basis of forum non conveniens, further analyzed herein. Because the Court grants Defendant Amy Hester's Motion on the basis of forum non conveniens, there is no need for additional discovery related to personal jurisdiction. The Court **CONCLUDES AS MATTER OF LAW** to **DENY WITHOUT PREJUDICE** Amy Hester's Motion to Dismiss based on personal jurisdiction. The Court **CONCLUDES** that Defendant HD Nursing, LLC would likely be subject to specific personal jurisdiction given that the entity holds meetings in Nevada, has leased an apartment in Nevada, and that, giving the benefit of the doubt to Plaintiffs' assertions, Plaintiffs have shown some minimum contacts and purposeful availment on the part of Defendant HD Nursing, LLC. However, the Court does **FIND AS A MATTER OF LAW THERE IS A BASIS TO GRANT** Defendant HD Nursing, LLC's Motion to Dismiss on the alternative basis of forum non conveniens, further analyzed herein. The Court **CONCLUDES AS MATTER OF LAW** to **DENY WITHOUT PREJUDICE** HD Nursing, LLC's Motion to Dismiss based on personal jurisdiction.

Burden of Proof

7. "When a nonresident defendant challenges personal jurisdiction at the pleading stage, the plaintiff bears the burden of making a prima facie showing that personal jurisdiction is proper by 'producing some evidence in support of all facts necessary for a finding of personal jurisdiction.' " *Matter of Paul D. Burgauer Revocable Living Trust*, 138 Nev. Adv. Op. 79, 521 P.3d 1160, 1165 (2022).

8. The Court is adopting the arguments and assertions made in Defendants' Motions and Reply briefs. With regard to the assertions, the Court is taking fully into account the appropriate standard with regard to jurisdiction on the prima facie showing. The Court **CONCLUDES AS A MATTER OF LAW** Plaintiffs have not met their burden of making a prima facie showing that personal jurisdiction over Defendants John Belew, Carolyn Long, and/or Erin Bush is proper.

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Forum Non Conveniens

9. *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 350 P.3d 392 (2015) walks through the factors of what this Court must do to decide on a motion to dismiss for forum non conveniens.

10. "When deciding a motion to dismiss for forum non conveniens, a court must first determine the level of deference owed to the plaintiff's forum choice." *Id*., 131 Nev. at 300–01, 350 P.3d at 396 (citing *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 70 (2d Cir. 2003)). Here, Plaintiffs are alleging they are Nevada residents, so the Court is giving great deference to Plaintiffs' choice of forum in Nevada.

11. "Next, a district court must determine 'whether an adequate alternative forum exists.' " *Id*., 131 Nev. 301, 350 P.3d at 396 (quoting *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001)) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981)). Here, it has been specifically shown that there is already an action proceeding with HD Nursing, LLC and the two Plaintiffs in Arkansas. The Arkansas suit has already gone through the initial motion practice. With regard to the other individuals that have been set forth, it has been asserted that they would be subject to that jurisdiction as the underlying claims relate to their actions and their involvement with the Arkansas entity, HD Nursing, LLC. This Court **CONCLUDES AS A MATTER OF LAW** there is an alternative adequate forum. "If an adequate alternative forum does exist, the court must then weigh public and private interest factors to determine whether dismissal is warranted." *Id*. (citing *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001)). "Relevant public interest factors include the local interest in the case, the district court's familiarity with applicable law, the burdens on local courts and jurors, court congestion, and the costs of resolving a dispute unrelated to the plaintiffs chosen forum." *Id*. 131 Nev. at 302, 350 P.3d at 397. Here, the local interest in the case would be Arkansas, as the underlying dispute involves an Arkansas company, Arkansas employees, and many of the parties being domiciled in and/or residents of Arkansas. As to the district court's familiarity with applicable law, this Court is familiar with laws from all around the world; but, for a Nevada District Court judge to take on what is already being taken care of Arkansas is not necessary or reasonable. As to the burdens on local courts and jurors, there is no additional or exceptional

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burden placed on this Court or the local jurors, but for the Court and jurors to have to interpret what is already going on in Arkansas. Court congestion is not a factor, as this Court is equipped to handle the cases on its docket. Rather, the duplicative factor weighs heavily in favor of Arkansas when there is already a case in Arkansas. As to the costs of resolving a dispute unrelated to the Plaintiffs' chosen forum, lies in favor of Arkansas, because the majority of the witnesses, the law, the evidence, and the entity are all in Arkansas. Here, other than the May 8, 2023 Board Meeting, Nevada does not have an interest as to these parties or the facts as alleged. With regard to these moving Defendants, none are Nevada entities, so dismissal of these parties does not impact a local company and the case lacks any genuine connection to Nevada. "Where 'personal jurisdiction is difficult to determine, and *forum non conveniens* considerations weigh heavily in favor of dismissal,' a court may properly dismiss a complaint for forum non conveniens without first deciding whether it has personal jurisdiction over the defendant." *Id*., 131 Nev. at 303, 350 P.3d at 397 (quoting *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 436 (2007)). With regard to Defendants Amy Hester and HD Nursing, LLC, this Court denies the Motions for lack of jurisdiction without prejudice because it cannot make a determination as to whether this Court has personal jurisdiction, so the focus with regard to these two Defendants goes to the above noted forum non conveniens analysis. Whether this Court has specific personal jurisdiction over Defendants Amy Hester and HD Nursing, LLC is somewhat unclear (i.e., difficult to determine). Therefore, the Court can and will grant these two defendants' motions to dismiss on the basis of forum non conveniens.

12. Accordingly, the Court **CONCLUDES AS A MATTER OF LAW** to **GRANT** Defendants' motions to dismiss on the basis of forum non conveniens.

ORDER

IT IS HEREBY ORDERED, Defendant John Belew's Motion to Dismiss Plaintiffs' Complaint is GRANTED for lack of personal jurisdiction and also on the basis of forum non conveniens;

IT IS HEREBY FURTHER ORDERED, Defendant Carolyn Long's Motion to Dismiss Plaintiffs' Complaint is GRANTED for lack of personal jurisdiction and also on the basis of forum non conveniens;

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IT IS HEREBY FURTHER ORDERED, Defendant Erin Bush's Motion to Dismiss Plaintiffs' Complaint is GRANTED for lack of personal jurisdiction and also on the basis of forum non conveniens;

IT IS HEREBY FURTHER ORDERED, Defendant Amy Hester's Motion to Dismiss Plaintiffs' Complaint is DENIED WITHOUT PREJUDICE as to personal jurisdiction, and GRANTED on the basis of forum non conveniens;

IT IS HEREBY FURTHER ORDERED, Defendant HD Nursing, LLC's Motion to Dismiss Plaintiffs' Complaint is DENIED WITHOUT PREJUDICE as to personal jurisdiction, and GRANTED on the basis of forum non conveniens.

IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED IN FAVOR OF THE DEFENDANTS AND AGAINST EACH OF THE PLAINTIFFS HEREIN BASED ON THE LACK OF PERSONAL JURISDICTION AND/OR FORUM NON CONVENIENS.

Dated this 18th day of January, 2024

Joanna S Kishner

F08 B04 8CFB 934F
Joanna S. Kishner
District Court Judge

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Respectfully submitted by:

O'REILLY LAW GROUP

By: /s/ Tracie M. Jefcik
John F. O'Reilly, Esq.
Nevada Bar No. 1761
Timothy R. O'Reilly, Esq.
Nevada Bar No. 8866
Tracie M. Jefcik, Esq.
Nevada Bar No. 15575
325 South Maryland Parkway
Las Vegas, Nevada 89101

Attorneys for Defendants Amy Hester; John Belew; Carolyn Long; Erin Bush; HD Nursing, LLC; and Health Sense Ai, Inc.

Approved as to form:

McMENEMY HOLMES PLLC

By: /s/ Dustun Holmes
Dustun Holmes, Esq.
Nevada Bar No. 12776
Ian M. McMenemy, Esq.
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1645 Village Center Circle, Suite 291
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Attorneys for Plaintiffs Kent Barkouras and Brandi Barkouras

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From: Dustun Holmes
To: Tracie M. Jefcik
Cc: John F. O"Reilly; Timothy R. O"Reilly; Isela Arauz; Ashley Gonzales; Jodi Farr
Subject: RE: HD Nursing adv. Barkouras
Date: Thursday, January 11, 2024 11:29:08 AM
Attachments: image004.png
image005.png
image006.png
image007.png

Thanks, Tracie. Please change “Approved as to form and content” to “Approved as to form:” before our signature block and you may submit with my e-signature.

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OUR ADDRESS HAS CHANGED!

CONFIDENTIALITY NOTE: This communication contains information which is confidential and/or legally privileged. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please delete this communication from your computer and notify us immediately. Thank you.

From: Tracie M. Jefcik <TMJ@oreillylawgroup.com>
Sent: Thursday, January 11, 2024 10:30 AM
To: Dustun Holmes <dhh@mcmenemyholmes.com>
Cc: John F. O'Reilly <jor@oreillylawgroup.com>; Timothy R. O'Reilly <tor@oreillylawgroup.com>; Isela Arauz <ia@oreillylawgroup.com>; Ashley Gonzales <ag@oreillylawgroup.com>; Jodi Farr <jaf@mcmenemyholmes.com>
Subject: RE: HD Nursing adv. Barkouras

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dustun,

We have received and reviewed your proposed redlines. Some are acceptable but some are not. We have attached your redline with those that are acceptable and plan to submit the same to the Court later today with a note advising the Court we understand you will be submitting competing drafts unless you advise by reply email that you are willing to accept our attached drafts.
We do not see a call as necessary or helpful but could set up a call to also include the other OLG attorneys involved in our Clients’ decisions if we can coordinate everyone’s schedules for a call.
Please follow up with John or Tim O’Reilly going forward since they will be handling this matter.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Kent Barkouras, Plaintiff(s)	CASE NO: A-23-878023-B
vs.	DEPT. NO. Department 31
Amy Hester, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 1/18/2024

Timothy O'Reilly	efile@oreillylawgroup.com
Timothy O'Reilly	efile@oreillylawgroup.com
Ian McMenemy	IAN@mcmenemyholmes.com
Dustun Holmes	DHH@mcmenemyholmes.com
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Jay Stocker	jstocker@stocker-law.com
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Electronically Filed
1/29/2024 9:48 AM
Steven D. Grierson
CLERK OF THE COURT

NEOJ
John F. O'Reilly, Esq.
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Attorneys for Defendants
Amy Hester; John Belew; Carolyn Long;
Erin Bush; HD Nursing, LLC; and
Health Sense Ai, Inc.

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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, vs. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.; and DOES I through X, and DOE Corporations XI through XX, Defendants.	CASE NO.: A-23-878023-B DEPT. NO.: XXXI **NOTICE OF ENTRY OF ORDER AND JUDGMENT**

PLEASE TAKE NOTICE that a FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANTS AMY HESTER, JOHN BELEW, CAROLYN LONG, ERIN BUSH, AND HD NURSING, LLC'S MOTIONS TO DISMISS PLAINTIFFS' COMPLAINT, which includes a JUDGMENT was entered with the Court in the above-captioned

/ / /

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/ / /

Case Number: A-23-878023-B

matter on the 18th day of January, 2024, a copy of which is attached hereto.

Dated: January 29, 2024

O'REILLY LAW GROUP

By: */s/ Timothy R. O'Reilly*
Timothy R. O'Reilly, Esq.
Nevada Bar No. 8866
325 South Maryland Parkway
Las Vegas, Nevada 89101
Attorneys for Defendants
Amy Hester; John Belew; Carolyn Long;
Erin Bush; HD Nursing, LLC; and
Health Sense Ai, Inc.

CERTIFICATE OF SERVICE

I certify that on this 29th day of January, 2024, I served a copy of the above document - ***NOTICE OF ENTRY OF ORDER AND JUDGMENT*** - on all electronic service list recipients who are registered with the court's electronic case management and filing system in this action.

/s/ Ashley Gonzales
Employee of O'REILLY LAW GROUP

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ELECTRONICALLY SERVED
1/18/2024 4:19 PM

Electronically Filed
01/18/2024 4:17 PM
CLERK OF THE COURT

FFCO
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Timothy R. O'Reilly, Esq.
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Attorneys for Defendants
Amy Hester; John Belew; Carolyn Long;
Erin Bush; HD Nursing, LLC; and
Health Sense Ai, Inc.

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DISTRICT COURT

CLARK COUNTY, NEVADA

KENT BARKOURAS and BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST, Plaintiffs, vs. AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.; and DOES I through X, and DOE Corporations XI through XX, Defendants.	CASE NO.: A-23-878023-B DEPT. NO.: XXXI **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANTS AMY HESTER, JOHN BELEW, CAROLYN LONG, ERIN BUSH, AND HD NURSING, LLC'S MOTIONS TO DISMISS PLAINTIFFS' COMPLAINT**

This matter came for a hearing before the Court on December 19, 2023 at 8:30 a.m. on Defendants John Belew, Carolyn Long, Amy Hester, Erin Bush, and HD Nursing, LLC's Motions to Dismiss Plaintiffs' Complaint.

Having reviewed the parties' moving papers, briefs, and all pleadings and papers on file, and after having considered the arguments and representations of counsel at the hearing on December 19, 2023, the Court, hereby makes the following Findings of Fact and Conclusions of Law set forth herein.

To the extent any Finding of Fact should be properly designated a Conclusion of Law, it shall be deemed a Conclusion of Law. To the extent any Conclusion of Law should be properly designated a Finding of Fact, it shall be deemed a Finding of Fact.

FINDINGS OF FACT

1. Plaintiffs filed their Complaint on September 19, 2023.

2. On October 12, 2023, Defendants John Belew and Carolyn Long filed their respective Motions to Dismiss Plaintiffs' Complaint.

3. On October 16, 2023, Defendants HD Nursing, LLC and Amy Hester filed their respective Motions to Dismiss Plaintiffs' Complaint.

4. On October 23, 2023, Defendant Erin Bush filed her Motion to Dismiss Plaintiffs' Complaint.

5. On November 1, 2023, Notices of Non Opposition to Defendants John Belew, Carolyn Long, HD Nursing, LLC, and Amy Hester's Motions to Dismiss were filed by Defendants.

6. On November 6, 2023, Plaintiffs filed an Opposition to Defendants' (Amy Hester, John Belew, Carolyn Long, Erin Bush, and HD Nursing, LLC) Motions to Dismiss.

7. Thereafter, by stipulation of the parties and Order of this Court entered November 14, 2023, Plaintiffs filed their Supplemental Brief in Support of Plaintiffs' Opposition to Jurisdictional Defendants' Motion to Dismiss on November 21, 2023.

8. Defendants (Amy Hester, John Belew, Carolyn Long, Erin Bush, and HD Nursing, LLC) then filed their Reply to Plaintiffs' Opposition on December 5, 2023.

9. Defendants John Belew and Carolyn Long are domiciled in the State of Arkansas and were both physically in attendance at a May 8, 2023 Board Meeting for HD Nursing, LLC and/or Health Sense Ai, Inc. held in Henderson, Nevada.

10. Defendant Erin Bush is domiciled in the State of Texas and that she also was physically in attendance at the May 8, 2023 Board Meeting.

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principal place of business in Arkansas and that HD Nursing, LLC held a Board Meeting in Henderson, Nevada on May 8, 2023.

12. Amy Hester has a one-bedroom apartment in Henderson, Nevada, which is also leased and/or paid for in part or in its entirety by Defendant HD Nursing, LLC.

13. The Court finds as a fact and takes into consideration by judicial notice (without objection by Plaintiffs, but for relevancy) an Order presented by Defendants in open Court, which Order was also referenced in the moving papers, from the Circuit Court of Saline County, Arkansas dated December 11, 2023 in an Arkansas case entitled *HD Nursing, LLC vs. Kent Barkouras and Brandi Barkouras*, Case No. 63CV-23-853-3. This Court acknowledges, although it takes no position, that the Arkansas Court has denied Plaintiffs Kent and Brandi Barkouras's motion to dismiss the Arkansas Court Action.

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15. However, given that there is a pending case in the Circuit Court of Saline County, Arkansas, an alternative adequate forum exists. It has been specifically shown that there is already an action proceeding with HD Nursing, LLC and the two Plaintiffs in Arkansas.

16. The factors for forum non conveniens in this matter weigh heavily in favor of another forum, namely Arkansas, further analyzed in the Conclusions of Law herein under the factors set forth in *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 350 P.3d 392 (2015).

CONCLUSIONS OF LAW

General Personal Jurisdiction

1. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." *Bristol-Myers Squibb Co. v. Superior Court of Cali., San Francisco Cty.*, 582 U.S. 255, 262 (2017).

2. As Defendants John Belew, Carolyn Long, and Amy Hester are domiciled in the State of Arkansas, this Court **CONCLUDES** it does not have general personal jurisdiction over Defendants John Belew, Carolyn Long, or Amy Hester.

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3. As Defendant Erin Bush is domiciled in the State of Texas, the Court **CONCLUDES** it does not have general personal jurisdiction over Defendant Erin Bush.

4. As HD Nursing, LLC is an Arkansas entity with its principal place of business in Arkansas, this Court **CONCLUDES** it does not have general personal jurisdiction over Defendant HD Nursing, LLC.

Specific Personal Jurisdiction

5. However, Nevada recognizes specific personal jurisdiction is possible via its long-arm statute: "A court of this state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the Constitution of this state or the Constitution of the United States." NRS 14.065. The Nevada Supreme Court has previously held that whether specific personal jurisdiction exists requires an analysis of three (3) factors: (1) where the defendant purposefully avails himself of the forum state or purposefully directs activities with the forum, (2) where the cause of action arises from that purposeful contact with the forum or conduct targeting the forum, and (3) whether requiring defendant to appear in the action would be reasonable. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 122 Nev. 509, 513, 134 P.3d 710, 712–13 (2006)."[B]oth purposeful availment and purposeful direction ask whether defendants have voluntarily derived some benefit from their interstate activities such that they 'will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.' " *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985))."In order for a state court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum." *Bristol-Myers*, 582 U.S. at 262. A defendant's transitory presence in a state "will support jurisdiction only if it was meaningful enough to create a substantial connection with the forum state." *Picot v. Weston*, 780 F.3d 1206, 1213 (9th Cir. 2015).

6. The Court **CONCLUDES** there is no purposeful availment and no minimum contacts with regard to Defendants John Belew, Carolyn Long, and Erin Bush. Thus, the Court **CONCLUDES** AS A MATTER OF LAW Nevada does not have specific personal jurisdiction at this time over Defendants John Belew, Carolyn Long, and Erin Bush. The Court **CONCLUDES**

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there are too many issues at this juncture with regard to the apartment in Henderson, Nevada, rented in part by Defendant HD Nursing, LLC and Defendant Amy Hester and, therefore, whether the Court has specific personal jurisdiction over Defendant Amy Hester would require additional discovery. However, the Court does, **AS A MATTER OF LAW FIND THERE IS A BASIS TO GRANT** Defendant Amy Hester's Motion to Dismiss on the alternative basis of forum non conveniens, further analyzed herein. Because the Court grants Defendant Amy Hester's Motion on the basis of forum non conveniens, there is no need for additional discovery related to personal jurisdiction. The Court **CONCLUDES AS MATTER OF LAW** to **DENY WITHOUT PREJUDICE** Amy Hester's Motion to Dismiss based on personal jurisdiction. The Court **CONCLUDES** that Defendant HD Nursing, LLC would likely be subject to specific personal jurisdiction given that the entity holds meetings in Nevada, has leased an apartment in Nevada, and that, giving the benefit of the doubt to Plaintiffs' assertions, Plaintiffs have shown some minimum contacts and purposeful availment on the part of Defendant HD Nursing, LLC. However, the Court does **FIND AS A MATTER OF LAW THERE IS A BASIS TO GRANT** Defendant HD Nursing, LLC's Motion to Dismiss on the alternative basis of forum non conveniens, further analyzed herein. The Court **CONCLUDES AS MATTER OF LAW** to **DENY WITHOUT PREJUDICE** HD Nursing, LLC's Motion to Dismiss based on personal jurisdiction.

Burden of Proof

7. "When a nonresident defendant challenges personal jurisdiction at the pleading stage, the plaintiff bears the burden of making a prima facie showing that personal jurisdiction is proper by 'producing some evidence in support of all facts necessary for a finding of personal jurisdiction.' " *Matter of Paul D. Burgauer Revocable Living Trust*, 138 Nev. Adv. Op. 79, 521 P.3d 1160, 1165 (2022).

8. The Court is adopting the arguments and assertions made in Defendants' Motions and Reply briefs. With regard to the assertions, the Court is taking fully into account the appropriate standard with regard to jurisdiction on the prima facie showing. The Court **CONCLUDES AS A MATTER OF LAW** Plaintiffs have not met their burden of making a prima facie showing that personal jurisdiction over Defendants John Belew, Carolyn Long, and/or Erin Bush is proper.

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Forum Non Conveniens

9. *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 350 P.3d 392 (2015) walks through the factors of what this Court must do to decide on a motion to dismiss for forum non conveniens.

10. "When deciding a motion to dismiss for forum non conveniens, a court must first determine the level of deference owed to the plaintiff's forum choice." *Id*., 131 Nev. at 300–01, 350 P.3d at 396 (citing *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 70 (2d Cir. 2003)). Here, Plaintiffs are alleging they are Nevada residents, so the Court is giving great deference to Plaintiffs' choice of forum in Nevada.

11. "Next, a district court must determine 'whether an adequate alternative forum exists.' " *Id*., 131 Nev. 301, 350 P.3d at 396 (quoting *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001)) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981)). Here, it has been specifically shown that there is already an action proceeding with HD Nursing, LLC and the two Plaintiffs in Arkansas. The Arkansas suit has already gone through the initial motion practice. With regard to the other individuals that have been set forth, it has been asserted that they would be subject to that jurisdiction as the underlying claims relate to their actions and their involvement with the Arkansas entity, HD Nursing, LLC. This Court **CONCLUDES AS A MATTER OF LAW** there is an alternative adequate forum. "If an adequate alternative forum does exist, the court must then weigh public and private interest factors to determine whether dismissal is warranted." *Id*. (citing *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001)). "Relevant public interest factors include the local interest in the case, the district court's familiarity with applicable law, the burdens on local courts and jurors, court congestion, and the costs of resolving a dispute unrelated to the plaintiffs chosen forum." *Id*. 131 Nev. at 302, 350 P.3d at 397. Here, the local interest in the case would be Arkansas, as the underlying dispute involves an Arkansas company, Arkansas employees, and many of the parties being domiciled in and/or residents of Arkansas. As to the district court's familiarity with applicable law, this Court is familiar with laws from all around the world; but, for a Nevada District Court judge to take on what is already being taken care of Arkansas is not necessary or reasonable. As to the burdens on local courts and jurors, there is no additional or exceptional

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burden placed on this Court or the local jurors, but for the Court and jurors to have to interpret what is already going on in Arkansas. Court congestion is not a factor, as this Court is equipped to handle the cases on its docket. Rather, the duplicative factor weighs heavily in favor of Arkansas when there is already a case in Arkansas. As to the costs of resolving a dispute unrelated to the Plaintiffs' chosen forum, lies in favor of Arkansas, because the majority of the witnesses, the law, the evidence, and the entity are all in Arkansas. Here, other than the May 8, 2023 Board Meeting, Nevada does not have an interest as to these parties or the facts as alleged. With regard to these moving Defendants, none are Nevada entities, so dismissal of these parties does not impact a local company and the case lacks any genuine connection to Nevada. "Where 'personal jurisdiction is difficult to determine, and *forum non conveniens* considerations weigh heavily in favor of dismissal,' a court may properly dismiss a complaint for forum non conveniens without first deciding whether it has personal jurisdiction over the defendant." *Id*., 131 Nev. at 303, 350 P.3d at 397 (quoting *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 436 (2007)). With regard to Defendants Amy Hester and HD Nursing, LLC, this Court denies the Motions for lack of jurisdiction without prejudice because it cannot make a determination as to whether this Court has personal jurisdiction, so the focus with regard to these two Defendants goes to the above noted forum non conveniens analysis. Whether this Court has specific personal jurisdiction over Defendants Amy Hester and HD Nursing, LLC is somewhat unclear (i.e., difficult to determine). Therefore, the Court can and will grant these two defendants' motions to dismiss on the basis of forum non conveniens.

12. Accordingly, the Court **CONCLUDES AS A MATTER OF LAW** to **GRANT** Defendants' motions to dismiss on the basis of forum non conveniens.

ORDER

IT IS HEREBY ORDERED, Defendant John Belew's Motion to Dismiss Plaintiffs' Complaint is GRANTED for lack of personal jurisdiction and also on the basis of forum non conveniens;

IT IS HEREBY FURTHER ORDERED, Defendant Carolyn Long's Motion to Dismiss Plaintiffs' Complaint is GRANTED for lack of personal jurisdiction and also on the basis of forum non conveniens;

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IT IS HEREBY FURTHER ORDERED, Defendant Erin Bush's Motion to Dismiss Plaintiffs' Complaint is GRANTED for lack of personal jurisdiction and also on the basis of forum non conveniens;

IT IS HEREBY FURTHER ORDERED, Defendant Amy Hester's Motion to Dismiss Plaintiffs' Complaint is DENIED WITHOUT PREJUDICE as to personal jurisdiction, and GRANTED on the basis of forum non conveniens;

IT IS HEREBY FURTHER ORDERED, Defendant HD Nursing, LLC's Motion to Dismiss Plaintiffs' Complaint is DENIED WITHOUT PREJUDICE as to personal jurisdiction, and GRANTED on the basis of forum non conveniens.

IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED IN FAVOR OF THE DEFENDANTS AND AGAINST EACH OF THE PLAINTIFFS HEREIN BASED ON THE LACK OF PERSONAL JURISDICTION AND/OR FORUM NON CONVENIENS.

Dated this 18th day of January, 2024

Joanna S Kishner

F08 B04 8CFB 934F
Joanna S. Kishner
District Court Judge

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Respectfully submitted by:

O'REILLY LAW GROUP

By: /s/ Tracie M. Jefcik
John F. O'Reilly, Esq.
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Attorneys for Defendants Amy Hester; John Belew; Carolyn Long; Erin Bush; HD Nursing, LLC; and Health Sense Ai, Inc.

Approved as to form:

McMENEMY HOLMES PLLC

By: /s/ Dustun Holmes
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From: Dustun Holmes
To: Tracie M. Jefcik
Cc: John F. O"Reilly; Timothy R. O"Reilly; Isela Arauz; Ashley Gonzales; Jodi Farr
Subject: RE: HD Nursing adv. Barkouras
Date: Thursday, January 11, 2024 11:29:08 AM
Attachments: image004.png
image005.png
image006.png
image007.png

Thanks, Tracie. Please change “Approved as to form and content” to “Approved as to form:” before our signature block and you may submit with my e-signature.

Dustun H. Holmes
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CONFIDENTIALITY NOTE: This communication contains information which is confidential and/or legally privileged. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please delete this communication from your computer and notify us immediately. Thank you.

From: Tracie M. Jefcik <TMJ@oreillylawgroup.com>
Sent: Thursday, January 11, 2024 10:30 AM
To: Dustun Holmes <dhh@mcmenemyholmes.com>
Cc: John F. O'Reilly <jor@oreillylawgroup.com>; Timothy R. O'Reilly <tor@oreillylawgroup.com>; Isela Arauz <ia@oreillylawgroup.com>; Ashley Gonzales <ag@oreillylawgroup.com>; Jodi Farr <jaf@mcmenemyholmes.com>
Subject: RE: HD Nursing adv. Barkouras

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dustun,

We have received and reviewed your proposed redlines. Some are acceptable but some are not. We have attached your redline with those that are acceptable and plan to submit the same to the Court later today with a note advising the Court we understand you will be submitting competing drafts unless you advise by reply email that you are willing to accept our attached drafts.
We do not see a call as necessary or helpful but could set up a call to also include the other OLG attorneys involved in our Clients’ decisions if we can coordinate everyone’s schedules for a call.
Please follow up with John or Tim O’Reilly going forward since they will be handling this matter.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Kent Barkouras, Plaintiff(s)	CASE NO: A-23-878023-B
vs.	DEPT. NO. Department 31
Amy Hester, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 1/18/2024

Timothy O'Reilly	efile@oreillylawgroup.com
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Ian McMenemy	IAN@mcmenemyholmes.com
Dustun Holmes	DHH@mcmenemyholmes.com
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DISTRICT COURT
CLARK COUNTY, NEVADA

Other Business Court Matters **COURT MINUTES** **December 19, 2023**

A-23-878023-B Kent Barkouras, Plaintiff(s)
vs.
Amy Hester, Defendant(s)

December 19, 2023 8:30 AM All Pending Motions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Stephanie Rapel

RECORDER: Connie Coll

REPORTER:

PARTIES PRESENT:

Holmes, Dustun H	Attorney
Jefcik, Tracie M	Attorney
O'Reilly, Timothy R.	Attorney

JOURNAL ENTRIES

- DEFENDANT ERIN BUSH'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT... DEFENDANT HEALTH SENSE AT, INC'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT OR IN ALTERNATIVE MOTION FOR SUMMARY JUDGMENT... DEFENDANT AMY HESTER'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT... DEFENDANT HD NURSING, LLC'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT... DEFENDANT JOHN BELEW'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT... DEFENDANT CAROLYN LONG'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Mr. O'Reilly provide a brief background history and argued Plaintiff had been forum shopping, there was a case pending in Arkansas and Arkansas had jurisdiction over the matter. Ms. Jefcik argued Defendants were not subject to general or special jurisdiction in Nevada, the Complaints should be dismissed for forum non-conveniens and residency was not the test for specific jurisdiction. Ms. Jefcik addressed the May 8, 2023 board meeting which took place in Nevada. Mr. Holmes argued Nevada had jurisdiction over the Defendants, HD Nursing conducted substantial business in Nevada and the conduct at issue occurred in Nevada. Colloquy regarding related case litigated in Arkansas. Court stated its Findings, referenced Placer Dome and ORDERED the following:

Defendant Carolyn Long's Motion to Dismiss Plaintiffs' Complaint GRANTED on personal jurisdiction and forum non conveniens.

Defendant John Belew's Motion to Dismiss Plaintiffs' Complaint GRANTED on personal jurisdiction and forum non conveniens.

Defendant Erin Bush's Motion to Dismiss Plaintiffs' Complaint GRANTED on personal jurisdiction and forum non conveniens.

Defendant Amy Hester Motion to Dismiss Plaintiffs' Complaint GRANTED on forum non conveniens and DENIED WITHOUT PREJUDICE on personal jurisdiction.

Defendant HD Nursing, LLC's Motion to Dismiss Plaintiffs' Complaint GRANTED on forum non conveniens and DENIED WITHOUT PREJUDICE on personal jurisdiction.

Mr. O'Reilly argued Plaintiff failed to submit an affidavit to support Rule 56, there were no facts in dispute and summary judgment should be entered as to Health Sense AI, Inc. Mr. Holmes argued the motion for summary judgment was premature and discovery needed to be conducted. Mr. Holmes requested leave to amend to include additional information. Following arguments by Counsel, Court stated its Findings and ORDERED Defendant Health Sense AI, Inc's Motion to Dismiss Plaintiffs' Complaint or in the Alternative Motion for Summary Judgment DENIED WITHOUT PREJUDICE as to the Motion to Dismiss and GRANTED as to alternative relief for Summary Judgment; noting standards of Rule 56 have been met by the moveant. Court NOTED there was no basis for Plaintiff's request for leave to amend considering Plaintiff did not meet the procedural requirements and it was MOOT.

COURT DIRECTED Defense to prepare the Order with detailed Findings of Fact and Conclusions of Law, circulate to opposing counsel, and submit to the Court pursuant to EDCR 7.21 and the current Administrative Orders.

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):

PLAINTIFFS' NOTICE OF APPEAL; PLAINTIFFS' CASE APPEAL STATEMENT; NOTICE OF POSTING BOND FOR COSTS ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANT HEALTH SENSE AI, INC.'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER AND JUDGMENT; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DEFENDANTS AMY HESTER, JOHN BELEW, CAROLYN LONG, ERIN BUSH, AND HD NURSING, LLC'S MOTIONS TO DISMISS PLAINTIFFS' COMPLAINT; NOTICE OF ENTRY OF ORDER AND JUDGMENT; DISTRICT COURT MINUTES

KENT BARKOURAS; BRANDI BARKOURAS, INDIVIDUALLY AND AS TRUSTEES OF THE BARKOURAS FAMILY REVOCABLE TRUST,

Plaintiff(s),

vs.

AMY HESTER; JOHN BELEW; CAROLYN LONG; ERIN BUSH; HD NURSING, LLC; HEALTH SENSE AI, INC.,

Defendant(s),

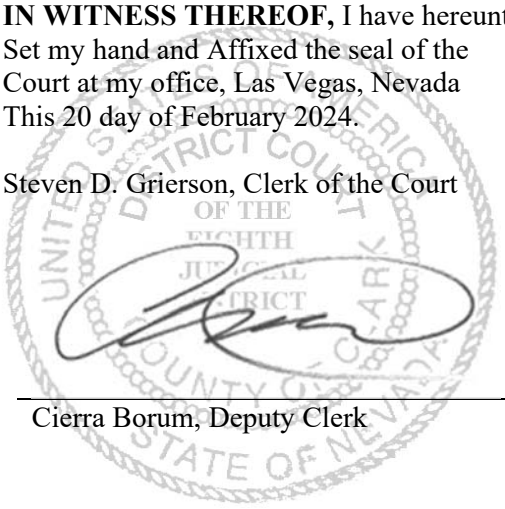
Case No: A-23-878023-B

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 20 day of February 2024.

Steven D. Grierson, Clerk of the Court



Cierra Borum, Deputy Clerk