



1 **MDASJ**

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 MELISSA DILLON, an individual and as Heir,
12 Executor and Personal Representative of the
13 ESTATE OF BILLY WAYNE HENDERSON aka
14 BILL W. HENDERSON,

15 Plaintiffs,

16 v.

17 JOSEPH S. GILBERT, ESQ., individually; JOEY
18 GILBERT & ASSOCIATES, LTD., a Nevada limited
19 liability company d/b/a/ JOEY GILBERT LAW;
20 SIGAL CHATTAH, ESQ., individually; CHATTAH
21 LAW GROUP, LLC, a Nevada limited liability
22 company d/b/a CHATTAH LAW GROUP,; DOES 1
23 through 20, inclusive; and ROE CORPORATIONS 1
24 through 80, inclusive,

25 Defendants.

Case No.: A-25-918743-C

Dept. No.: 29

26 **DEFENDANT WARREN
27 GILBERT'S MOTION TO DISMISS
28 OR IN THE ALTERNATIVE
MOTION FOR SUMMARY
JUDGMENT**

HEARING NOT REQUESTED

29 Defendant Warren Gilbert ("Dr. Gilbert"), by and through his counsel of record, JEPSEN
30 LAW, PLLC, hereby files his Motion to Dismiss pursuant to NRCP 12(b)(5), or in the alternative,
31 Motion for Summary Judgment (the "Motion"). This Motion is made and based upon the following
32 Memorandum of Points and Authorities, the papers and pleadings on file, Dr. Gilbert's Declaration
33 in Support of the Motion attached hereto as **Exhibit 1**, and any oral arguments the Court may
34 entertain on this matter.

35 ///

36 ///

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

It is unclear why Dr. Gilbert was named as a defendant in this lawsuit. Likely, this was a strategic move in an attempt to access insurance funds from Dr. Gilbert's medical malpractice insurance, as there is no legitimate or cognizable claim made against Dr. Gilbert. Despite numerous disparaging opinions included in the Complaint, Plaintiff, Melissa Dillon ("Dillon") has not provided any facts, let alone facts sufficient to support her claims against Dr. Gilbert.

In her Complaint, Dillon claims that Dr. Gilbert was "flagrantly unqualified to render the medical opinions set forth in the Affidavit." *See* Complaint, ¶51. This statement, however, along with most of the information included in the Complaint, is Dillon's opinion, and not a fact. Dr. Gilbert is a highly experienced and respected physician who has been licensed to practice medicine in the State of Nevada since 1974. Over the course of his nearly fifty-year career, Dr. Gilbert has trained and practiced in Family Medicine, Emergency Medicine and General Surgery.

Despite these credentials, Dillon improperly seeks to draw Dr. Gilbert into a dispute in which he played no meaningful role. As alleged in the Complaint, Dillon consulted Dr. Gilbert only after her father, Henderson, had already been admitted to Northern Nevada Medical Center ("NNMC") and had undergone treatment decisions made by his attending physicians. Dr. Gilbert did not provide medical care to Henderson, was not involved in Henderson's hospitalization, and never entered into any agreement, written or oral, with Dillon or Henderson for services. Indeed, Dillon concedes that she never paid Dr. Gilbert or any law firm for the review he performed of medical records later provided to him.

The allegations against Dr. Gilbert are legally insufficient, conclusory and unsupported by specific facts. The Complaint improperly attempts to conflate Dr. Gilbert's limited review of medical records, performed at Dillon's request and without compensation, with duties and obligations he never assumed. Even if taking the factual allegations in the Complaint as true, Dillon has failed to allege the essential elements necessary to state a claim for relief against Dr. Gilbert under Nevada law. Accordingly, and as explained more fully below, the claims against Dr. Gilbert must be dismissed pursuant to NRCP 12(b)(5) for failure to state a claim upon which relief can be

1 granted. In the alternative, the undisputed facts of record demonstrate that no genuine issue of
2 material fact exists as to Dr. Gilbert's involvement, and summary judgment under NRCP 56 is
3 appropriate.

4 **II. UNDISPUTED FACTS**

5 1. Dr. Gilbert has been a licensed practicing physician since 1974, with training and
6 experience in Family Medicine, Emergency Medicine and General Surgery.

7 2. On October 3, 2021, Henderson (who was 65) started to feel ill. Henderson did not
8 improve over the following weeks. *See* Complaint, ¶16.

9 3. On October 15, 2021, Dillon picked up her father to admit him to Northern Nevada
10 Medical Center ("NNMC"). Henderson's oxygen level was low, and he started to slur his words.
11 *Id.*, ¶17.

12 4. When Henderson was admitted to the hospital, Henderson and Dillon told the
13 providers that Remdesivir was not to be administered to her father. Dillon also told the providers
14 no ventilators or intubation. This was important to Henderson and Dillon. *Id.*, ¶18.

15 5. Dillon issued these instructions prior to October 18, 2021. *See id.*

16 6. On October 18, 2021, Dillon first contacted Defendant, Joseph S. Gilbert ("Mr.
17 Gilbert"). Dillon was concerned about the level of medical care her father was receiving in the
18 hospital.

19 7. On December 9, 2021, Dillon obtained Henderson's medical records from NNMC
20 and provided a copy to Mr. Gilbert and Dr. Gilbert for Dr. Gilbert's review. *Id.*, ¶¶32, 33.

21 8. On October 16, 2021, at 00:00 PDT, Dr. Katharina Cadwell Mahadeva, M.D. ordered
22 Remdesivir with instructions to administer Remdesivir to Henderson. *See* a true and correct copy
23 of relevant excerpt from Henderson's medical records attached hereto, as **Exhibit 2**, p. 468.

24 9. On October 17, 2021, at 00:00 Dr. Ayodele O. Okunola, M.D. ordered remdesivir
25 with instructions to administer remdesivir to Henderson. *See* Ex. 2, p. 472.

26 10. Henderson's medical records outline the different procedures taken by NNMC
27 throughout his treatment. Two of those procedures were as follows: "Introduction of Remdesivir
28 Anti-infective into Peripheral Vein, Percutaneous Approach, New Technology Group 5." *See* a true

1 and correct copy of relevant excerpt from Henderson’s medical records attached hereto, as **Exhibit**
2 **3**, p. 1,321.

3 11. Dillon never paid any funds to Dr. Gilbert or to any law firm for any services
4 provided, *i.e.*, review of the medical records provided.

5 **III. LEGAL ARGUMENT**

6 **A. STANDARD OF REVIEW**

7 1. Rule 12(b)(5) Standard of Review

8 A motion to dismiss is warranted when a complaint fails “to state a claim upon which relief
9 can be granted.” Nev. R. Civ. P. 12(b)(5). A complaint should be dismissed if it “appears beyond a
10 doubt that it would prove no set of facts, which if true, would entitle [the non-moving party] to
11 relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).
12 However, vague, conclusory, and general allegations will not overcome a Rule 12(b) motion. See *N.*
13 *Star Int’l v. The Ariz. Corp. Comm’n*. 720 F.2d 578, 583 (9th Cir. 1983) (“Because the complaint is
14 vague, conclusory, and generally does not set forth any material facts in support of the allegations,
15 these claims were properly dismissed [under Federal Rule 12(b)].”)¹ To avoid dismissal, “[t]he
16 allegations must be legally sufficient to constitute the elements of the claim asserted.” *Munda v.*
17 *Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 267 P.3d 771, 774 (2011).

18 Dismissal is proper where the allegations are insufficient to establish the elements of a claim
19 for relief.” *Stockmeier v. Nev. Dep’t of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183
20 P.3d 133, 135 (2009). Thus, to survive a motion to dismiss, a complaint must contain sufficient
21 factual matter “to state a claim to relief that is plausible on its face). *Ashcroft v. Iqbal*, 556 U.S. 662,
22 678 (2009) (citation omitted).

23 2. Essential Pleading Requirements Under NRCP 8 and 9

24 Under NRCP 8(a), a properly pled complaint must provide “a short and plain statement of
25 the claim showing that the pleader is entitled to relief.” Nev. R. Civ. P. 8(a). Nev. R. Civ. P. 8 is

26
27 ¹ This Court may consider federal courts’ interpretations of the corresponding federal rules. See, e.g., *Nelson v. Heer*,
28 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) (recognizing that “federal decisions involving the Federal Rules of
Civil Procedure provide persuasive authority when the court examines its rules.”).

1 based on Fed. R. Civ. P. 8, and this Court can consider federal law evaluating the rule. In *Ashcroft v*
2 *Iqbal*, 556 U.S. 662 (2009), the Court concluded that the purpose of these specific pleading
3 requirements is to enable the Court to determine whether the plaintiff has stated “a plausible claim
4 or relief.” *Ashcroft* 556 US at 679 (internal citation omitted). To state a plausible claim for relief, a
5 complaint must contain both sufficient factual allegations (i.e. names, dates, and facts) and legal
6 conclusions (i.e., specific laws defendants allegedly violated) that create a reasonable inference of
7 liability. *Id.* at 678-79. While Rule 8 does not require detailed factual allegations, it demands more
8 than “labels and conclusions” or a “formulaic recitation of the elements of a cause of action.”
9 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted).

10 Likewise, under NRCP 9(b), to allege a claim of fraud, plaintiff is required to “plead the
11 circumstances constituting fraud with particularity.” *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1192
12 (2006). “To plead with particularity, plaintiffs must include in their complaint ‘averments to the
13 time, the place, the identity of the parties involved and the nature of the fraud.’” *Id.*

14 Mere conclusory allegations not backed up by facts are insufficient to preclude dismissal.
15 See *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 875, 8 P.3d 837, 840 (2000) (“A bare
16 allegation is not enough.”); see also *Taylor v. State*, 73 Nev. 151, 153, 311 P.2d 733, 734 (1957)
17 (affirming dismissal without leave to amend because “without knowledge of the factual basis for the
18 plaintiff’s conclusion, defendants [were] wholly unable to admit or deny it intelligently or
19 conscientiously.”).

20 Dismissal is also proper, where, as here, a complaint consistently fails to allege with
21 specificity which allegations apply to which defendants. See *McHenry v. Renee*, 84 F.3d 1172, 1175
22 (9th Cir. 1996) (affirming dismissal where district court found the complaint “does not properly
23 notify the individual defendants of the allegations with which they are charged” concluding that
24 “claims which vaguely refer to ‘defendants’ . . . will not suffice”). See also *Boyer v. Becerra*, 2018
25 WL 2041995, at *7 (N.D. Cal. Apr. 30, 2018) (“Courts consistently conclude that a complaint which
26 lumps together multiple defendants in one broad allegation fails to satisfy the notice requirements
27 of Rule 8.”) (alterations omitted); *Tatone v. Suntrust Mortg., Inc.*, 857 F. Supp. 821, 831 (D.
28 Minn.2012) (“A complaint which lumps all defendants together and does not sufficiently allege who

1 did what to whom, fails to state a claim for relief because it does not provide fair notice of the
2 grounds for the claims made against a particular defendant.”).²

3 3. Consideration of Extrinsic Materials Outside the Pleadings

4 As a general rule, the Court may not consider materials “outside the pleadings” on a motion
5 to dismiss, without converting the motion to dismiss to a motion for summary judgment. *Kopicko v.*
6 *Young*, 114 Nev. 1333 (1998). There are certain exceptions to this general rule. For example, a
7 court may “consider unattached evidence on which the complaint necessarily relies if: (1) the
8 complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no
9 party questions the authenticity of the document.” *Baxter v. Dignity Health*, 131 Nev. 759, 764
10 (2015). Here, Plaintiff relies upon and refers to many of the underlying pleadings, text/email
11 communications by and between the parties and Henderson’s medical records and the authenticity
12 of the records cannot be disputed.

13 4. Summary Judgment Pursuant to NRCP 56

14 In the alternative, Dr. Gilbert seeks summary judgment under NRCP 56. Summary judgment
15 is appropriate when “after a review of the record viewed in a light most favorable to the nonmoving
16 party, there remains no issues of material fact.” *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956
17 P.2d 1382, 1385 (1998), *citing Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985);
18 NRCP 56. The non-moving party is not, however “entitled to build a case on the gossamer threads
19 of whimsy, speculation, and conjecture.” *Id.*, *quoting Collins v. Union Fed. Savings & Loan*, 99 Nev.
20 284, 302, 662 P.2d 610, 621 (1983). In evaluating a summary judgment motion, a court views all
21 facts and draws all inferences in a light most favorable to the nonmoving party. *Kaiser Cement*
22 *Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

23 In opposing summary judgment under NRCP 56, “the non-moving party may not rest upon
24 general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts
25 demonstrating the existence of a genuine factual issue.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731,
26

27 ² NRCP 8(a), which requires a “short and plain statement of the claim showing that the pleader is entitled to relief,” is
28 identical to Fed. R. Civ. P. 8(a)(2).

1 121 P.3d 1056, 1030-31 (2005), *quoting Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57
2 P.3d 82, 87 (2002). A factual dispute is only genuine if the evidence is such that a rational trier of
3 fact could return a verdict for the non-moving party. *Id.* The non-moving party bears the burden to
4 show more than some metaphysical doubt as to the operative facts in order to avoid summary
5 judgment. *Id.*, 121 Nev. At 732, 121 P.3d at 1031. Further, “[w]here an essential element of a claim
6 for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and
7 summary judgment is proper.” *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, P.2d 588, 592.

8 While Dr. Gilbert believes that dismissal is proper under NRCP 12(b)(5), relief under NRCP
9 56 would also be appropriate based on the clear undisputed facts of the case as set forth in the instant
10 motion.

11 **B. DILLON’S CLAIM FOR DECLARATORY RELIEF AGAINST DR.**
12 **GILBERT FAILS.**

13 The Complaint fails to allege any facts to support her claim for Declaratory Relief against
14 Dr. Gilbert. To request declaratory relief from the Court, Dillon had to allege facts showing that i)
15 a justiciable controversy exists between Dillon and Dr. Gilbert; ii) Dillon has a legally protectable
16 interest in the controversy; and iii) the issue at hand is ripe for judicial determination. *County of*
17 *Clark, ex re. University Medical Center v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998).

18 First and foremost, Dillon does not allege any legally protectable interest in the Complaint
19 as it applies to Dr. Gilbert. Dillon is requesting declaratory relief to determine her “rights and
20 interests, pursuant to Nevada law, in her retainer agreement with the *Attorney Defendants*.” *See*
21 *Complaint*, ¶105 (emphasis added). Dr. Gilbert was not a party to the retainer agreement, and Dillon
22 did not present any facts within her Complaint alleging otherwise. Second, the declaratory relief
23 Dillon is requesting from this Court is as follows:

- 24 • Dillon is entitled to declaratory judgment declaring that: i) the *Attorney Defendants*
25 fell below the standard of care in performing their services set out in the retainer
26 agreement; ii) in falling below the standard of care, the *Attorney Defendants*
27 breached their fiduciary obligations to Dillon; and iii) Dillon suffered damages as a
28 result of the breaches *of the retainer agreement*.

1 See Complaint, ¶106 (emphasis added). It is clear that Dillon has not alleged any facts to suggest
2 that she has any legally protected rights and interests pursuant to Nevada law as it applies to Dr.
3 Gilbert. This is evidenced by Dillon's failure to even name Dr. Gilbert in the claim. As such, this
4 claim must be dismissed as to Dr. Gilbert.

5 **C. DILLON'S INTENTIONAL AND NEGLIGENT MISREPRESENTATION**
6 **CLAIMS FAIL AS TO DR. GILBERT.**

7 In order to maintain a claim for Intentional Misrepresentation, a complaint must demonstrate
8 1) A false representation made by the defendant; 2) Knowledge or belief on the part of the defendant
9 that the representation was false or that he had an insufficient basis of information to make the
10 representation; 3) An intention on the part of the defendant to induce the plaintiff to act or to refrain
11 from acting in reliance upon the misrepresentation; 4) Justifiable reliance upon the misrepresentation
12 on the part of the plaintiff in taking action or refraining from it; and 5) Damages to the plaintiff,
13 resulting from such reliance. *J.A. Jones Const. Co. v. Leher McGovern Bovis, Inc.*, 120 Nev. 277,
14 290-91, 89 P.3d 1009, 1018 (2004). In this case, the underlying lawsuit was submitted with the
15 required medical affidavit. While the Motion to Dismiss the wrongful death action alleged that
16 medical affidavit was insufficient, no ruling was made in that regard by the Court.

17 In order to support this claim, Dillon had to allege facts showing that Dr. Gilbert had
18 knowledge or belief that his representation that Henderson was administered remdesivir was false,
19 or that he had an insufficient basis of information to make said representation. As stated in the
20 Complaint, and again in Dr. Gilbert's Declaration, Dr. Gilbert is a licensed medical doctor, with
21 over 50 years of experience in Family Medicine, Emergency Medicine and General Surgery. Dr.
22 Gilbert, to this day believes that Henderson was administered remdesivir by the attending physicians
23 at NNMC prior to his death. Dr. Gilbert, to this day, believes that Henderson's medical providers
24 fell below their respective standards of care and committed medical malpractice. See Complaint,
25 ¶120. Dr. Gilbert has a sufficient basis of information to make this representation as he has extensive
26 history and experience with medical records. The fact that Dr. Gilbert is not an infectious disease
27 expert does not give him an insufficient basis of knowledge to review and opine on medical records.

28 Assuming *arguendo*, this Court finds that Dr. Gilbert had an insufficient basis of information

1 to make the representation that Henderson was administered remdesivir, Dillon failed to plead any
2 facts that Dr. Gilbert made this representation with the intention to induce Dillon to act in any
3 manner. Dillon alleges that “Defendants intended to induce Dillon to file and maintain a medical
4 malpractice lawsuit, as well as to generally believe that her father was murdered.” *See* Complaint,
5 ¶122. Dr. Gilbert had no intention of inducing Dillon into filing a medical malpractice lawsuit. In
6 fact, it was only after Dillon insisted on filing the medical malpractice lawsuit that Dr. Gilbert
7 reviewed the medical records and determined that Henderson had been administered remdesivir.

8 Finally, Dillon fails to allege any cognizable damages she suffered as a result of her reliance
9 on the alleged misrepresentation, simply stating she suffered and continues to suffer monetary
10 damages. The Nevada Supreme Court is clear that a measure of damages can be determined in two
11 ways: 1) the benefit of the bargain; or out of pocket damages. *Collins v. Burns*, 103 Nev. 394, 398,
12 741 P.2d 819, 822 (1987). The benefit of the bargain “is the value of what [s]he would have received
13 had the representations been true, less what he actually received.” *Id.* Out of pocket damage “is the
14 difference between what [s]he gave and what [s]he actually received.” *Id.* Here, if Dr. Gilbert’s
15 representations had been true (although, again, Dr. Gilbert believes them to be so) Dillon would
16 likely not have received any financial gain, as the medical malpractice lawsuit was dismissed
17 outright based on the statute of limitations surrounding medical malpractice claims. Further, had
18 the lawsuit survived the motion to dismiss, Dillon was not guaranteed any monetary gain from
19 NNMC and the doctor defendants named in the lawsuit. Finally, Dillon has no out of pocket
20 damages, as she did not pay Dr. Gilbert for his services. Thus, Dillon has no damages as a result of
21 any alleged misrepresentations. Accordingly, this claim fails.

22 For the reasons outlined above, Plaintiff’s claim fails for Negligent Misrepresentation. This
23 is because Dr. Gilbert had no pecuniary interest in his dealings with Dillon, nor was his review of
24 Henderson’s medical records and subsequent opinion thereof provided to Dillon to guide her in any
25 business transaction. Section 552 of the Second Restatement of Torts, adopted by the Nevada
26 Supreme Court provides that when:

27 One who, in the course of his business, profession or employment, or in any other
28 [trans] action *in which he has a pecuniary interest*, supplies false information *for
the guidance of others in their business transactions*, is subject to liability for

1 pecuniary loss caused to them by their justifiable reliance upon the information, if
2 he fails to exercise reasonable care or competence in obtaining or communicating
3 the information.

4 *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (emphasis
5 added). Accordingly, “Nevada law only recognizes negligent misrepresentation claims in the
6 context of business transactions.” *Reynolds v. Tufenkjian*, 136 Nev. 145, 152, 461 P.3d 147, 153
7 (2020) citing *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998) (stating
8 that negligent misrepresentation “only applies to business transactions”). “[I]t is clear that the nature
9 of such a claim is not to recover for a personal injury, but instead is more akin to a claim seeking
10 recovery for a loss of property.” *Id.*

11 Here, there was no business transaction to speak of, and Dr. Gilbert had no pecuniary interest
12 in this matter. Dr. Gilbert was not paid by Dillon or either of the attorneys or their law firms for his
13 review of the medical records, nor for his corresponding affidavit. Additionally, the Complaint does
14 not include any facts to suggest that Dillon relied on Dr. Gilbert’s review of the medical records in
15 any business transactions. Instead, she used the information in an attempt to further what was, in
16 effect, a personal injury action, a medical malpractice lawsuit, against NNMC and Henderson’s
17 treatment providers during his hospitalization.

18 The Nevada Supreme Court has “limited claims for negligent misrepresentation to only those
19 claims resulting in pecuniary loss.” *Reynolds v. Tufenkjian*, 136 Nev. 145, 152, 461 P.3d 147, 153
20 (2020). This cause of action requires a Plaintiff to demonstrate pecuniary loss based on justified
21 reliance on false information received. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d
22 1382, 1387 (1998). Indeed, the Nevada Supreme Court stated that damage awards in connection
23 with negligent misrepresentation claims “include (1) the difference between the value of what the
24 plaintiff received in the induced transaction and the value given for it, and (2) pecuniary loss
25 sustained in consequence of the plaintiff’s reliance upon the false representation.” *Goodrich &*
26 *Pennington Mortg. Fund, Inc. v. J.R. Woolard, Inc.*, 120 Nev. 777, 782, 101 P.3d 792, 796. As
27 discussed above, the same analysis applies. Furthermore, Dillon has suffered no pecuniary losses
28 to speak of. Thus, the claim for negligent misrepresentation must be dismissed.

///

D. DILLON’S CLAIM FOR PUNITIVE DAMAGES MUST BE DISMISSED AS SHE FAILS TO PLEAD FACTS SUFFICIENT TO SATISFY NRS 42.005 OR BONGIOVI.

To support a claim for punitive damages, a plaintiff must meet strict criteria set forth in NRS 42.005. NRS 42.005 sets forth that punitive damages are only allowable in instances where plaintiff can prove, by clear and convincing evidence, that the defendant has been guilty of fraud, malice, or oppression. *See* NRS 42.005(1). Fraud, malice and oppression are defined in NRS 42.001. “Fraud” is defined as “an intentional misrepresentation, deception or concealment of a material fact known to the person with intent to deprive another person of his or her rights or property or to otherwise injure another person.” NRS 42.001(2). “Malice, express or implied” is defined as “conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.” NRS 42.001(3). “Oppression” is defined as “despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person.” NRS 42.001(4). “Conscious disregard” for purposes of malice or oppression, is defined as “the knowledge of the probable harmful consequence of a wrongful act and a willful and deliberate failure to act to avoid those consequences.” NRS 42.001(1). Nevada Courts have held that in legal malpractice cases, punitive damages are not generally permissible and may only be awarded if the clear and convincing evidence standard is met demonstrating defendant is guilty of oppression, fraud or malice, express or implied. *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433, 451 (2006).

“In order to establish that a defendant’s conduct constitutes conscious disregard, the conduct must at a minimum ‘exceed mere recklessness or gross negligence.’” *Shaw v. CitiMortgage, Inc.*, 201 F. Supp. 3d 1222, 1263 (D. Nev. 2016) (quoting *Pioneer Chlor Alkali Co.*, 863 F. Supp. At 1251; citing *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P. 3d 243, 255 (2008) (holding that conscious disregard requires a “culpable state of mind” and therefore “denotes conduct that, at a minimum, must exceed mere recklessness or gross negligence.”)). Generally, this requires a showing of affirmative acts by tortfeasors. *See, e.g., Smith’s Food & Drug Centers, Inc. v. Bellgarde*, 114 Nev. 602, 958 P.2d 1208 (1998) (wrongful detention of store patron and use of pepper spray and restraints) (holding overruled on statutory grounds as to employer’s vicarious liability);

1 *Clark v. Lubritz*, 113 Nev. 1089, 944 P.2d 861 (1997) (defendants intentionally withheld funds from
2 their partner).

3 Plaintiff's Complaint contains no specific facts to support such a high standard and simply
4 makes formulistic overarching conclusions that blame Dr. Gilbert for 1) Plaintiff's distrust of
5 remdesivir and other standard covid treatments; 2) Plaintiff's belief in ivermectin and other non-
6 standard treatments; 3) Plaintiff's desire to file a wrongful death lawsuit; and 4) disclosure of the
7 lawsuit to the public. In reality, none of these unsupported allegations are true or accurate.

8 **IV. CONCLUSION**

9 Dr. Gilbert owed no duty, entered no agreement, and received no compensation from Dillon.
10 The Complaint is legally deficient and factually baseless. Because Plaintiff cannot establish any
11 claim against Dr. Gilbert as a matter of law, dismissal with prejudice, or, in the alternative, summary
12 judgment, is proper.

13 DATED this 18th day of August, 2025.

JEPSEN LAW, PLLC

14
15 By: /s/ Kendra J. Jepsen
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21
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26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of JEPSEN LAW, PLLC and that on this date I caused to be served a true copy of the **DEFENDANT WARREN GILBERT'S MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Timothy P. Elson, Esq.
THE LAW OFFICES OF TIMOTHY ELSON
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Attorneys for Joseph S. Gilbert and Joey Gilbert & Assoc.

☐ by personal delivery/hand delivery addressed to:

☐ by email addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 18th day of August, 2025.

/s/ Carla Bankhead
Employee of Jepsen Law, PLLC

EXHIBIT 1

EXHIBIT 1

DECL

KENDRA J. JEPSEN, Esq.
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DISTRICT COURT

CLARK COUNTY, NEVADA

MELISSA DILLON, an individual and as Heir,
Executor and Personal Representative of the ESTATE
OF BILLY WAYNE HENDERSON aka BILL W.
HENDERSON,

Plaintiffs,

v.

JOSEPH S. GILBERT, ESQ., individually; JOEY
GILBERT & ASSOCIATES, LTD., a Nevada limited
liability company d/b/a/ JOEY GILBERT LAW;
SIGAL CHATTAH, ESQ., individually; CHATTAH
LAW GROUP, LLC, a Nevada limited liability
company d/b/a CHATTAH LAW GROUP; DOES 1
through 20, inclusive; and ROE CORPORATIONS 1
through 80, inclusive,

Defendants.

Case No.: A-25-918743-C

Dept. No.: 29

**DECLARATION OF
DEFENDANT WARREN
GILBERT IN SUPPORT OF
MOTION TO DISMISS OR IN
THE ALTERNATIVE MOTION
FOR SUMMARY JUDGMENT**

I, Dr. Warren Gilbert, declare under the penalty of perjury in accordance with the laws of the
State of Nevada that:

1. I am a licensed medical doctor in the State of Nevada.
2. I have been a licensed practicing physician since 1974, with training in Family
Medicine, Emergency Medicine and General Surgery.
3. In October of 2021, I communicated with Melissa Dillon ("Dillon") after her father,
Bill W. Henderson ("Henderson") was hospitalized with COVID.
4. Dillon informed me that she and Henderson had instructed the medical professionals

1 treating him at Northern Nevada Medical Center (“NNMC”) to refrain from giving Henderson
2 remdesivir or dexamethasone.

3 5. Dillon also informed me that she wanted Henderson to be treated with Ivermectin.
4 Dillon expressed concern that the medical professionals treating him at NNMC were not abiding by
5 her and Henderson’s treatment wishes and wanted assistance in this regard.

6 6. I agreed to try to assist Henderson in getting the medical treatment Dillon claimed he
7 wanted.

8 7. I was unable to provide Henderson with the medical treatment Dillon was requesting,
9 as NNMC would not permit certain medications to be administered and would not allow me access
10 to Henderson.

11 8. I was not retained as an expert witness by Dillon and/or the attorneys representing
12 her in Case No. CV22-01909.

13 9. I was asked to review Henderson’s medical records to determine whether Henderson
14 was administered remdesivir or dexamethasone.

15 10. On November 22, 2022, I signed an Affidavit of Merit in Accordance with NRS
16 41A.071, in which I stated that to a reasonable degree of medical probability Henderson was treated
17 with Remdesivir between October 15, 2021 and October 23, 2021.

18 11. The medical records provided to me for my review stated that on October 17, 2021,
19 at 00:00 Dr. Ayodele O. Okunola, M.D. ordered remdesivir with instructions to administer
20 remdesivir to Henderson. *See Exhibit 2* to the Motion, p. 472.

21 12. The medical records provided to me for my review stated Henderson received two
22 different procedures as follows: “Introduction of Remdesivir Anti-infective into Peripheral Vein,
23 Percutaneous Approach, New Technology Group 5.” *See Exhibit 3* to the Motion, p. 1,321.

24 13. Based upon my review of the medical records provided to me, I reasonably believed
25 that Henderson had been administered remdesivir.

26 14. Upon receipt of the instant lawsuit, I once again reviewed Henderson’s medical
27 records. It continues to be my opinion, with a reasonable degree of medical probability, that
28 Henderson was administered remdesivir during his hospitalization.

15. It continues to be my opinion, with a reasonable degree of medical probability, that the care rendered by NNMC, departed from the applicable standard of care by negligently performing medical treatment to Henderson between the approximate dates of October 15, 2021.

Dated this 18th day of August, 2025.

/s/ Warren Gilbert, M.D.
Warren Gilbert, M.D.

JEPSEN LAW, PLLC
405 Marsh Avenue
Reno, NV 89509
Phone: (775) 376-7070

EXHIBIT 2

EXHIBIT 2

NNM- Northern Nevada Medical Center

Patient: HENDERSON, BILL

Admit: 10/15/2021

MRN: NNM725828

Disch: 10/31/2021

DOB/Sex: 3/26/1956 / Male

FIN: NNM0000051890200

Attending: Mahadeva MD,Katharina Cadwell

Orders

Order: **Restraint Nonviolent**

Order Date/Time: 10/27/2021 09:56 PDT

Signed Date/Time: 10/27/2021 09:56 PDT

Order Status: Completed

Department Status:
Completed

Catalog Type: Patient Care

Activity Type:
Asmt/Tx/Monitoring
TransMedRec

End-state Date/Time: 10/28/2021 23:59 PDT

End-state Reason:

Ordering Physician: Surani,Aleem MD

Consulting Physician:

Entered By: Knowles RN,Kristin on 10/27/2021 09:56 PDT

Order Details: 10/27/21 9:56:00 AM PDT, Reason: Interfering - medical treatment/healing, Mitten Left Upper Extremity | Mitten Right Upper Extremity, Not interfering with device/treatment, Constant Indicator, Duration: 2283, Minutes, Routine, Stop Date: 10/28/21 11:59:59 PM PDT

Order Comment:

Action Type: Status Change

Action Date/Time: 10/29/2021 00:03
PDT

Action Personnel: SYSTEM

Responsible Provider/Electronically

Supervising Provider:

Communication Type:

Signed by: Surani,Aleem MD

Order Details: 10/27/21 9:56:00 PDT, Reason: Interfering - medical treatment/healing, Mitten Left Upper Extremity | Mitten Right Upper Extremity, Not interfering with device/treatment, Constant Indicator, Duration: 2283, Minutes, Routine, Stop Date: 10/28/21 23:59:5...

Review Information:

Doctor Cosign: Not Required

Order Comment:

Action Type: Order

Action Date/Time: 10/27/2021 09:56
PDT

Action Personnel: Knowles RN,Kristin

Responsible Provider/Electronically

Supervising Provider:

Communication Type: Verbal w/
Readback

Signed by: Surani,Aleem MD

Order Details: 10/27/21 9:56:00 PDT, Reason: Interfering - medical treatment/healing, Mitten Left Upper Extremity | Mitten Right Upper Extremity, Not interfering with device/treatment, Constant Indicator, Duration: 2283, Minutes, Routine, Stop Date: 10/28/21 23:59:5...

Review Information:

Doctor Cosign: Electronically Signed, Surani,Aleem MD on 10/27/2021 10:50 PDT

Order Comment:

Patient: HENDERSON, BILL

Admit: 10/15/2021

MRN: NNM725828

Disch: 10/31/2021

DOB/Sex: 3/26/1956 / Male

FIN: NNM0000051890200

Attending: Mahadeva MD,Katharina Cadwell

Orders

Order: Respiratory Therapy Protocol Assessment

Order Date/Time: 10/15/2021 23:57 PDT

Signed Date/Time: 10/15/2021 23:57 PDT

Order Status: Completed	Department Status: Completed	Catalog Type: Respiratory Therapy	Activity Type: RT Tx/Procedures
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End-state Date/Time: 10/16/2021 00:12 PDT

End-state Reason:

Ordering Physician: Mahadeva MD,Katharina Cadwell

Consulting Physician:

Entered By: Mahadeva MD,Katharina Cadwell on 10/15/2021 23:57 PDT

Order Details: 10/15/21 11:57:00 PM PDT, Routine

Order Comment:

Action Type: Complete	Action Date/Time: 10/16/2021 00:12 PDT	Action Personnel: Davis RT,Lindsay
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Responsible Provider/Electronically Signed by: Mahadeva MD,Katharina Cadwell	Supervising Provider:	Communication Type:
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Order Details: 10/15/21 23:57:00 PDT, Routine

Review Information:

Doctor Cosign: Not Required

Order Comment:

Action Type: Order	Action Date/Time: 10/15/2021 23:58 PDT	Action Personnel: Mahadeva MD, Katharina Cadwell
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Responsible Provider/Electronically Signed by: Mahadeva MD,Katharina Cadwell	Supervising Provider:	Communication Type: Written
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Order Details: 10/15/21 23:57:00 PDT, Routine

Review Information:

Nurse Review: Electronically Signed, Baynes RN,Monique on 10/16/2021 13:43 PDT

Doctor Cosign: Not Required

Order Comment:

Order: remdesivir

Order Date/Time: 10/16/2021 00:00 PDT

Signed Date/Time: 10/15/2021 23:58 PDT

Order Status: Completed	Department Status: Completed	Catalog Type: Pharmacy	Activity Type: Pharmacy
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End-state Date/Time: 10/16/2021 03:42 PDT

End-state Reason:

Ordering Physician: Mahadeva MD,Katharina Cadwell

Consulting Physician:

Entered By: Mahadeva MD,Katharina Cadwell on 10/15/2021 23:58 PDT

Order Details: 200 mg = 40 mL, Vial, IV - Loading Dose, Once, First Dose: Routine, Start date: 10/16/21 12:00:00 AM PDT, Stop date: 10/16/21 3:42:38 AM PDT, 250 mL/hr, Administer over: 60 Minutes, Respiratory, Upper/Lower

Order Comment: Initial dose= 200 mg. Follow with 100 mg daily. Flush Line after infusion with at least 30 ml. Administer through dedicated IV line.

Action Type: Complete	Action Date/Time: 10/16/2021 03:42 PDT	Action Personnel: Shafer RN,Karla
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NNM- Northern Nevada Medical Center

Patient: HENDERSON, BILL

Admit: 10/15/2021

MRN: NNM725828

Disch: 10/31/2021

DOB/Sex: 3/26/1956 / Male

FIN: NNM0000051890200

Attending: Mahadeva MD,Katharina Cadwell

Orders

Order: **remdesivir**

Responsible Provider/Electronically
Signed by: Mahadeva MD,Katharina
Cadwell

Supervising Provider:

Communication Type:

Order Details: 200 mg = 40 mL, Vial, IV - Loading Dose, Once, First Dose: Routine, Start date: 10/16/21 0:00:00 PDT,
Stop date: 10/16/21 0:00:00 PDT, 250 mL/hr, Administer over: 60 Minutes, Respiratory, Upper/Lower

Review Information:

Doctor Cosign: Not Required

Order Comment:

Action Type: Undo

Action Date/Time: 10/16/2021 01:55
PDT

Action Personnel: Shafer RN,Karla

Responsible Provider/Electronically
Signed by: Mahadeva MD,Katharina
Cadwell

Supervising Provider:

Communication Type:

Order Details: 200 mg = 40 mL, Vial, IV - Loading Dose, Once, First Dose: Routine, Start date: 10/16/21 0:00:00 PDT,
Stop date: 10/16/21 0:00:00 PDT, 250 mL/hr, Administer over: 60 Minutes, Respiratory, Upper/Lower

Review Information:

Doctor Cosign: Not Required

Order Comment:

Action Type: Complete

Action Date/Time: 10/16/2021 01:14
PDT

Action Personnel: Shafer RN,Karla

Responsible Provider/Electronically
Signed by: Mahadeva MD,Katharina
Cadwell

Supervising Provider:

Communication Type:

Order Details: 200 mg = 40 mL, Vial, IV - Loading Dose, Once, First Dose: Routine, Start date: 10/16/21 0:00:00 PDT,
Stop date: 10/16/21 0:00:00 PDT, 250 mL/hr, Administer over: 60 Minutes, Respiratory, Upper/Lower

Review Information:

Doctor Cosign: Not Required

Order Comment:

Action Type: Modify

Action Date/Time: 10/16/2021 00:52
PDT

Action Personnel: Patel Pharm D,
Kristachandra

Responsible Provider/Electronically
Signed by: Mahadeva MD,Katharina
Cadwell

Supervising Provider:

Communication Type: Written

Order Details: 200 mg = 40 mL, Vial, IV - Loading Dose, Once, First Dose: Routine, Start date: 10/16/21 0:00:00 PDT,
Stop date: 10/16/21 0:00:00 PDT, 250 mL/hr, Administer over: 60 Minutes, Respiratory, Upper/Lower

Review Information:

Nurse Review: Electronically Signed, Baynes RN,Monique on 10/16/2021 13:43 PDT

Doctor Cosign: Not Required

Order Comment: Initial dose= 200 mg. Follow with 100 mg daily. Flush Line after infusion with at least 30 ml. Administer through dedicated IV line.

Action Type: Order

Action Date/Time: 10/15/2021 23:58
PDT

Action Personnel: Mahadeva MD,
Katharina Cadwell

Responsible Provider/Electronically
Signed by: Mahadeva MD,Katharina
Cadwell

Supervising Provider:

Communication Type: Written

NNM- Northern Nevada Medical Center

Patient: HENDERSON, BILL

Admit: 10/15/2021

MRN: NNM725828

Disch: 10/31/2021

DOB/Sex: 3/26/1956 / Male

FIN: NNM0000051890200

Attending: Mahadeva MD, Katharina Cadwell

Orders

Order: **remdesivir**

Order Details: 200 mg = 40 mL, Soln-IV, IV - Loading Dose, Once, First Dose: Routine, Start date: 10/16/21 0:00:00 PDT, Stop date: 10/16/21 0:00:00 PDT, 250 mL/hr, Administer over: 60 Minutes, Respiratory, Upper/Lower

Review Information:

Nurse Review: Electronically Signed, Baynes RN, Monique on 10/16/2021 13:43 PDT

Pharmacist Verify: Not Reviewed

Pharmacist Verify: Electronically Signed, Patel Pharm D, Kristachandra on 10/16/2021 00:52 PDT

Doctor Cosign: Not Required

Order Comment: Initial dose= 200 mg. Follow with 100 mg daily. Flush Line after infusion with at least 30 ml

NNM- Northern Nevada Medical Center

Patient: HENDERSON, BILL

Admit: 10/15/2021

MRN: NNM725828

Disch: 10/31/2021

DOB/Sex: 3/26/1956 / Male

FIN: NNM0000051890200

Attending: Mahadeva MD,Katharina Cadwell

Orders

Order: remdesivir

Order Date/Time: 10/17/2021 00:00 PDT

Signed Date/Time: 10/15/2021 23:58 PDT

Order Status: Canceled Department Status: Canceled Catalog Type: Pharmacy Activity Type: Pharmacy

End-state Date/Time: 10/16/2021 11:07 PDT

End-state Reason:

Ordering Physician: Okunola MD,Ayodele O

Consulting Physician:

Entered By: Mahadeva MD,Katharina Cadwell on 10/15/2021 23:58 PDT

Order Details: 100 mg = 20 mL, Vial, IV Piggyback, q24H Interval, Duration: 4 Doses, First Dose: Routine, Start date: 10/17/21 12:00:00 AM PDT, Stop date: 10/16/21 11:07:34 AM PDT, 250 mL/hr, Administer over: 60 Minutes, Respiratory, Upper/Lower

Order Comment: Initial dose= 200 mg. Follow with 100 mg daily. Flush Line after infusion with at least 30 ml. Administer through dedicated IV line.

Action Type: Cancel

Action Date/Time: 10/16/2021 11:07 PDT

Action Personnel: Okunola MD,Ayodele O

Responsible Provider/Electronically

Supervising Provider:

Communication Type: Written

Signed by: Okunola MD,Ayodele O

Order Details: 100 mg = 20 mL, Vial, IV Piggyback, q24H Interval, Duration: 4 Doses, First Dose: Routine, Start date: 10/17/21 0:00:00 PDT, Stop date: 10/20/21 0:00:00 PDT, 250 mL/hr, Administer over: 60 Minutes, Respiratory, Upper/Lower

Review Information:

Pharmacist Verify: Not Reviewed

Pharmacist Verify: Electronically Signed, Duro Pharm D,Raymond on 10/16/2021 11:10 PDT

Doctor Cosign: Not Required

Order Comment:

Action Type: Modify

Action Date/Time: 10/16/2021 00:52 PDT

Action Personnel: Patel Pharm D, Kristachandra

Responsible Provider/Electronically

Supervising Provider:

Communication Type: Written

Signed by: Mahadeva MD,Katharina Cadwell

Order Details: 100 mg = 20 mL, Vial, IV Piggyback, q24H Interval, Duration: 4 Doses, First Dose: Routine, Start date: 10/17/21 0:00:00 PDT, Stop date: 10/20/21 0:00:00 PDT, 250 mL/hr, Administer over: 60 Minutes, Respiratory, Upper/Lower

Review Information:

Nurse Review: Electronically Signed, Baynes RN,Monique on 10/16/2021 13:43 PDT

Doctor Cosign: Not Required

Order Comment: Initial dose= 200 mg. Follow with 100 mg daily. Flush Line after infusion with at least 30 ml. Administer through dedicated IV line.

Action Type: Order

Action Date/Time: 10/15/2021 23:58 PDT

Action Personnel: Mahadeva MD, Katharina Cadwell

Responsible Provider/Electronically

Supervising Provider:

Communication Type: Written

Signed by: Mahadeva MD,Katharina Cadwell

Order Details: 100 mg = 20 mL, Soln-IV, IV Piggyback, q24H Interval, Duration: 4 Days, First Dose: Routine, Start date: 10/17/21 0:00:00 PDT, Stop date: 10/20/21 23:59:00 PDT, 250 mL/hr, Administer over: 60 Minutes, Respiratory, Upper/Lower

EXHIBIT 3

EXHIBIT 3

Patient: HENDERSON, BILL

Admit: 10/15/2021

MRN: NNM725828

Disch: 10/31/2021

DOB/Sex: 3/26/1956 / Male

FIN: NNM0000051890200

Attending: Mahadeva MD, Katharina Cadwell

Procedures

Procedure: **Insertion of Infusion Device into Superior Vena Cava, Percutaneous Approach**

Last Updated:

11/5/2021

Procedure: **Insertion of Infusion Device into Superior Vena Cava, Percutaneous Approach**

Last Updated:

11/5/2021

Procedure: **Introduction of Remdesivir Anti-infective into Peripheral Vein, Percutaneous Approach, New Technology Group 5**

Last Updated:

11/5/2021

Procedure: **Introduction of Remdesivir Anti-infective into Peripheral Vein, Percutaneous Approach, New Technology Group 5**

Last Updated:

11/5/2021